Correspondence with Ministers
March 2005 to January 2006
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- Internal Market (Sub-Committee B)
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- Home Affairs (Sub-Committee F)
- Social Policy and Consumer Affairs (Sub-Committee G)

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## CONTENTS

**European Union Select Committee**

1. Negotiating Frameworks with Croatia and Turkey .......................... 1
2. Parliamentary Scrutiny of EU Business ........................................ 10
3. UK Presidency ............................................................................. 26

**Economic and Financial Affairs, and International Trade**

4. 2006 Draft Budget of the European Communities ......................... 30
5. Capital Requirements Directive (11545/04) ...................................... 37
6. Cohesion Policy in support of Growth and Jobs: Community Strategic Guidelines, 2007-2013 (10684/05) .......................... 38
7. Common Framework for Business Registers for Statistical Purposes (7857/05) ................................................................. 41
8. Community Statistics (7578/05) ..................................................... 43
9. Custom Duties on Imports of certain Products Originating in the United States of America (7737/05) ........................................ 44
10. ECOFIN, April 2005 ..................................................................... 46
11. ECOFIN, September 2005 ............................................................ 47
12. EU Bilateral Trade Agreements: Textile/Clothing .............................. 47
13. EU Framework for Investment Funds (11190/05) ............................... 47
15. European Governance Strategy for Fiscal Statistics (5049/05) .......... 53
16. European Regional Development Fund, the European Social Fund and the Cohesion Fund (11606/04, 11637/04, 11688/04) ................................. 54
17. European Regional Development Fund (11689/04) ............................ 55
18. European Social Fund (11636/04) .................................................. 57
19. European Union Solidarity Fund (8323/05) ....................................... 58
21. Growth and Employment – The Community Lisbon Programme (11618/05) ........................................................................... 59
22. Integrated Guidelines for Growth and Jobs 2005-08 (8008/05) ............ 60
24. Interim Agreement on Trade and Trade-related matters between the EC, EAEC and the Republic of Tajikistan ......................... 63
25. Lisbon Agenda: National Reform Programmes .................................. 64
26. Lisbon Programme: Strengthening EU Manufacturing (13143/05) ....................................................................................... 64
27. Passenger Car Related Taxes (11067/05) .......................................... 65
28. Preliminary Draft Amending Budget No 2 to the General Budget for 2005 (7717/05) ............................................................. 66
29. Preliminary Draft Amending Budget No 3 to the General Budget for 2005 (8571/05) ............................................................. 66
30. Preliminary Draft Amending Budget No 4 to the General Budget for 2005 (9000/05) ............................................................. 67
31. Preliminary Draft Amending Budget No 7 to the General Budget for 2005 (11976/05) 67
32. Preliminary Draft Amending Budget No 8 to the General Budget for 2005 (13095/05) 67
33. Reduced rates of VAT (9125/05) 68
34. Review of the Facility Providing Medium Term Financial Assistance to Member States 70
35. Roadmap to an Integrated Control Framework (10326/05) 70
36. Rules of Origin in Preferential Trade Agreements (7456/05) 73
37. Statistical data (6924/05, 9461/05) 74
38. Statute for Members of the European Parliament 76
39. Supply of Services (11439/05) 78
40. Tariff Rates for Bananas (12249/05) 79
41. Trade in Services other than Transport (11641/05) 80
42. UK Presidency: HM Treasury 81
43. UK Presidency: Indirect Tax (11817/03, 5051/04, 13394/04, 14248/04, 7426/05, 9125/05) 82
44. VAT: Common system (8155/05) 84
45. VAT Simplification (14248/04) 85
46. WTO Ministerial Conference, Hong Kong 2005 86

Internal Market
47. Air Services Agreement with Bulgaria (8670/05) 89
48. Air Services Agreement with Croatia (8482/05) 89
49. Air Transport: Identity of the Operating Carrier (6624/05) 89
50. Air Travel: Rights of Persons with reduced mobility (6622/05) 91
51. Building the ERA of Knowledge for Growth (8156/05) 93
52. Civil Aviation Security (12588/05) 93
53. Community Air Traffic Controller Licence (11484/04) 95
54. Competitiveness and Innovation Framework Programme 2007-2013 (8081/05) 96
55. Competitiveness Council, April 2005 97
56. Competitiveness Council, May 2005 99
57. Competitiveness Council, June 2005 101
58. Competitiveness Council, July 2005 104
59. Competitiveness Council, November 2005 107
60. Competitiveness Council, December 2005 110
61. Convention on Early Notification of a Nuclear Accident (11911/04) 110
62. Digital Broadcasting (9411/05) 113
63. Digital Content in Europe: More Accessible, Usable and Exploitable (6431/04) 114
64. Driving Licenses (15820/03) 115
65. End-of-Life Vehicles (10894/05) 120
67. Enhancing Port Security (6363/04, 10124/04) 122
68. eSafety Communication (12383/05) 123
69. EU Energy Council, June 2005 123
70. EU Maritime Employment Initiative 124
71. EU Spectrum Policy priorities for the Digital switchover (12817/05) 125
72. EURATOM Safety and Security – Activities 2003 (5377/05) 126
73. EURATOM: Seventh Framework Programme 2007-2011 for Nuclear Research and Training Activities (12732/05, 12734/05) 128
74. European Electronic Communications Regulations and Markets 2004 (15715/04, 15726/04) 130
75. European Space Policy (9032/05) 131
77. External Aviation Policy (7214/05, 7369/05, 12044/05, 12045/05, 12276/05, 12752/05) 142
78. Financial Services Policy 2005-2010 (8823/05) 146
79. Freight Transport System – ‘Marco Polo II’ (11816/04) 146
80. General Affairs and External Relations Council (GAERC), June 2005 147
81. Growth and Jobs: A New Start for the Lisbon Strategy (5990/05) 147
82. Harmonised River Traffic Information Services on Inland Waterways (9912/04) 148
83. ‘i2010 – A European Information Society for Growth and Employment’ (9758/05) 149
84. Internal Market Strategy, 2003-2006 (5868/05) 151
85. Machinery Directive (5557/01) 152
86. Marine Fuel (7952/05) 152
87. Market Access to Port Services (13681/04) 153
88. Measures to Safeguard Security of Electricity Supply and Infrastructure Investment (5118/04) 154
89. Motor Insurance 154
90. Motor Vehicles: Frontal Protection Systems (13693/03) 154
91. Multi-Annual Programme for Enterprise and Entrepreneurship (16026/04) 155
93. Outstanding Transport Items 160
94. Passenger Rights (6623/05) 161
95. Protection of Minors and Human Dignity in the European Online and Audiovisual Information Services Industry (9195/04) 161
96. Public Transport Services by Rail and Road (11508/05) 163
97. Reducing the Climate Change Impact of Aviation (12790/05) 178
98. Airplane Emissions 179
99. Regional Aid Guidelines (0432/04) 183
100. Road Transport Activities (12168/03, 15688/03) 189
101. Seventh Framework Programme 2007-2013: research, technological development and demonstration activities: ‘Co-operation’, ‘ideas’, ‘people’, ‘capacities’ (12727/05, 12729/05, 12730/05, 12731/05, 12736/05) 191
102. Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) (8087/05) 194
<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>103.</td>
<td>Ship-source pollution and pollution offences (7312/03)</td>
<td>195</td>
</tr>
<tr>
<td>104.</td>
<td>Spectrum Management (12393/05)</td>
<td>195</td>
</tr>
<tr>
<td>105.</td>
<td>State Aid for Innovation (12695/05)</td>
<td>196</td>
</tr>
<tr>
<td>106.</td>
<td>State Aid Reform 2005-2009 (10083/05)</td>
<td>204</td>
</tr>
<tr>
<td>107.</td>
<td>Telecoms Council, Brussels, December 2005</td>
<td>204</td>
</tr>
<tr>
<td>108.</td>
<td>TENS Transport Projects (7280/05, 7281/05, 7282/05)</td>
<td>206</td>
</tr>
<tr>
<td>109.</td>
<td>Thai Shrimps: Access to the European Union Market</td>
<td>206</td>
</tr>
<tr>
<td>110.</td>
<td>Third Railway Package</td>
<td>207</td>
</tr>
<tr>
<td>111.</td>
<td>Trans-European Energy Networks (10010/05)</td>
<td>213</td>
</tr>
<tr>
<td>112.</td>
<td>Trans-European Transport and Energy Network: Financial Aid (11740/04, 13688/05)</td>
<td>214</td>
</tr>
<tr>
<td></td>
<td>Transport, Telecommunications and Energy Council, April 2005</td>
<td>215</td>
</tr>
<tr>
<td>114.</td>
<td>Transport, Telecommunications and Energy Council, June 2005</td>
<td>217</td>
</tr>
<tr>
<td>115.</td>
<td>Transport, Telecommunications and Energy Council, October 2005</td>
<td>217</td>
</tr>
<tr>
<td>116.</td>
<td>UK Presidency: Department for Transport Priorities</td>
<td>221</td>
</tr>
<tr>
<td>117.</td>
<td>UK Presidency: Department of Trade and Industry Priorities</td>
<td>226</td>
</tr>
<tr>
<td>118.</td>
<td>UK Presidency: Home Office Priorities</td>
<td>232</td>
</tr>
<tr>
<td>119.</td>
<td>UK Presidency: HM Treasury’s Priorities</td>
<td>233</td>
</tr>
<tr>
<td>120.</td>
<td>Universal Service (9592/05)</td>
<td>234</td>
</tr>
<tr>
<td>121.</td>
<td>Vehicle Type Approval Directive (7532/04)</td>
<td>236</td>
</tr>
<tr>
<td>122.</td>
<td>Working Conditions of Mobile Workers (6364/05)</td>
<td>237</td>
</tr>
</tbody>
</table>

**Foreign Affairs, Defence and Development Policy**

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>123.</td>
<td>Access to Community External Assistance (8881/04)</td>
</tr>
<tr>
<td>124.</td>
<td>Article 24 – Model and Framework Participation Agreements</td>
</tr>
<tr>
<td>125.</td>
<td>Cotonou Agreement (8704/05, 9267/05)</td>
</tr>
<tr>
<td>126.</td>
<td>Cotonou Agreement – Consultations between the EU and Haiti (11691/05)</td>
</tr>
<tr>
<td>127.</td>
<td>Cotonou Agreement: Opening of Consultations with Mauritania (14031/05)</td>
</tr>
<tr>
<td>128.</td>
<td>Croatia Co-operation with ICTY (14136/04)</td>
</tr>
<tr>
<td>129.</td>
<td>Destruction of Small Arms and Light Weapons (SALW) and their Ammunition in Ukraine</td>
</tr>
<tr>
<td>130.</td>
<td>ESDP Advice and Assistance Mission for Security Sector Reform Matters in the Democratic Republic of the Congo</td>
</tr>
<tr>
<td>131.</td>
<td>ESDP Civilian Monitoring Mission to Aceh, Indonesia and Sudan</td>
</tr>
<tr>
<td>132.</td>
<td>ESDP: Palestine</td>
</tr>
<tr>
<td>133.</td>
<td>EU Accession Negotiations with the Republic of Croatia</td>
</tr>
<tr>
<td>134.</td>
<td>EU Accession Negotiations with the Republic of Turkey</td>
</tr>
<tr>
<td>135.</td>
<td>EU Border Assistance Mission for the RAFAH Crossing Point, EUBAM, Rafah (14643/05)</td>
</tr>
<tr>
<td>136.</td>
<td>EU Code of Conduct on Arms Exports</td>
</tr>
<tr>
<td>137.</td>
<td>EU Foreign Ministers’ Informal, GYMNICH</td>
</tr>
<tr>
<td>138.</td>
<td>EU-Iraq Relations</td>
</tr>
<tr>
<td>139.</td>
<td>EU-Palestine: Co-operation beyond disengagement – towards a Two State solution (13521/05)</td>
</tr>
</tbody>
</table>
140. EU Rule of Law Mission “LEX” for Iraq 258
141. EU-Russia Four Common Spaces 258
142. EU Strategy against Proliferation of Weapons of Mass Destruction: OPCW Activities 259
143. European Atomic Energy Community (EURATOM) and the People’s Republic of China: R&D Co-operation in the peaceful Uses of Nuclear Energy (15249/04) 260
144. European Defence Agency – Steering Board Meeting, May 2005 260
145. European Defence Agency – Steering Board Meeting, November 2005 264
146. European Defence Agency – Steering Board Meeting, October 2005 270
147. European Development Fund (6589/05) 272
148. European Neighbourhood Policy (7313/05) 273
149. European Neighbourhood Policy: Action Plans for Tunisia and Morocco 274
150. European Neighbourhood Policy: Action Plans for Ukraine and Lebanon (6175/05) 275
151. European Programme for Action to Confront HIV/AIDS, Malaria and Tuberculosis through External Action, 2007-2011 (8689/05) 275
152. European Security and Defence College (10185/05) 278
154. European Security Research Programme 280
155. European Union Civilian – Military Supporting Action to the African Union in the Darfur Region of Sudan 282
156. European Union Development Policy (11413/05) 282
157. European Union Military Staff 285
158. European Union Monitoring Mission (EUMM) 285
159. European Union Police Mission and Special Representative in Bosnia and Herzegovina 286
160. European Union Special Representative for the Former Yugoslav Republic of Macedonia 287
161. European Union Special Representative for Moldova 289
162. European Union Special Representative for the South Caucasus 291
163. European Union Special Representative for the Sudan 291
164. Exchange of Classified Information between the European Union and Swiss Confederation (8103/05) 292
165. Future Financial Perspectives 2007-2013 (11734/05) 293
166. General Affairs and External Relations Council, Luxembourg, June 2005 293
167. General Affairs and External Relations Council, Luxembourg, October 2005 295
168. Global Monitoring for Environment and Security (GMES): From Concept to Reality (14443/05) 296
169. International Tribunal for the Former Yugoslavia (ICTY): Measures against Indictees 297
170. Millennium Development Goals (MDGs) (8137/05, 8138/05, 8139/05) 297
171. Nuclear Non-Proliferation Treaty (NPT) Review Conference 299
172. Operation Althea 300
173. Restrictive Measures against Burma/Myanmar 301
174. Restrictive Measures against Members of the Separatist Regime in Transnistria 301
175. Restrictive Measures against Sudan 301
176. Restrictive Measures against the Democratic Republic of Congo (DRC) 302
177. Security Procedures for the Exchange of Classified Information between the EU and Ukraine 303
178. Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities, 2007-2013 (8087/05) 303
179. Specific Restrictive Measures against certain persons suspected of involvement in the Assassination of Former Lebanese Prime Minister Rafik Hariri 304
180. Stabilisation and Association Agreement with Bosnia and Herzegovina 304
181. Stabilisation and Association Agreement with Serbia and Montenegro 305
182. Strategy to Combat Illicit Accumulation and Trafficking of SALW and their Ammunition 305
183. Tenth Anniversary of the Euro-Mediterranean Partnership (13809/05) 307
184. Togo 308
185. UK Presidency: Department for International Development 309
186. UK Presidency: General Affairs and External Relations Council 311
187. UK Presidency: Informal Meeting of EU Development Ministers, October 2005 314

Agriculture and Environment

188. Aarhus Convention (14152/03, 14153/03, 14154/03) 317
189. Agriculture and Fisheries Council, December 2005 317
190. Avian Influenza (8630/05) 322
191. Bathing Water (8559/04) 322
192. Batteries and Accumulators (15494/03) 324
193. Climate Change: “Winning the Battle” (6417/05) 324
194. Common Fisheries Policy (8142/05) 325
195. Eco-design requirements for Energy-Using Products (12082/03) 326
196. Energy End-Use Efficiency (16261/03) 327
197. EU Agriculture and Environment Councils, September 2005 329
198. EU Agriculture and Fisheries Council, September 2005 330
199. European Agricultural Fund for Rural Development, EAFRD (11495/04) 332
200. European Pollutant Release (13371/04, 9841/05) 332
201. Extractive Industries Waste (10143/03) 333
203. Financing of Interventions (6206/05) 337
204. Financing of the Common Agricultural Policy (11557/04) 338
205. Fisheries Council, December 2005 338
206. Fishery Quota 2006 (14920/05) 339
207. Fluorinated Gases (12179/03) 340
208. Genetically Modified Oilseed Rape (12343/04) 340
209. Genetically Modified Organism (GMO) Legislation (11834/05) 342
210. GM Maize (8635/05) 343
211. GM Maize (10785/05) 343
212. GM Maize (14425/05) 344
213. Groundwater Pollution (12985/03) 344
214. Humane Trapping Standards (12200/04) 348
215. Husked Rice (9198/05) 348
216. Infrastructure for Spatial Information in the Community, INSPIRE (11781/04) 349
217. Marketing Standards for Eggs (9466/05) 350
219. REACH (15409/03) 355
220. Reform of the EU Sugar Regime (10514/05, 10598/05) 361
221. Restrictions on GM Maize and GM Oilseed Rape (8633/05, 8634/05, 8636/05, 8637/05, 8638/05, 8639/05, 8641/05, 8642/05) 366
222. Restrictions on the Marketing and Use of certain Polycyclic Aromatic Hydrocarbons and Extender Oils and Tyres (7190/04) 367
223. Shipments of Waste (11145/03, 7410/04) 367
224. Sustainable Development (9507/05) 368
225. Tariff Quota for Imports of Soluble Coffee (11110/05) 369
226. Thematic Strategy on Air Pollution (12735/05) 369
227. Toluene and Trichlorobenzene (9123/04) 369
228. Total Allowable Catches (8258/05) 370
229. TSEs: Prevention, Control and Eradication (15874/04, 11408/05) 370
230. UK Presidency: DEFRA’s Priorities 373
231. Verification of Agri-Environment Expenditure (12921/05) 376

Law and Institutions

232. Agreement of Cooperation and Assistance between the EU and the International Criminal Court 377
233. Applicable Law and Jurisdiction in Divorce Matters (7485/05) 377
234. Combating Racism and Xenophobia 378
235. Comitology (9087/04) 378
236. Company Law and Corporate Governance Proposals (14119/04, 14197/04) 380
237. Company Law Directive: Mandatory Audit Committees (7677/04) 385
238. Controls of Cash entering or leaving the Community
(14064/04) 387
239. Counter Terrorism Measures and Exchange of Information
(8200/04, 14009/04, 14999/04, 15999/04) 388
240. Enforcement of Intellectual Property Rights and Strengthening
the Criminal Law Framework to Combat Intellectual Property
Offences (11245/05) 389
241. European Arrest Warrant (6815/05) 392
242. European Contract Law (13056/05) 392
243. European Enforcement Order and the Transfer of Sentenced
Persons between Member States (5597/05) 393
244. European Evidence Warrant (7828/05, 11288/05) 399
245. European Order for Payment Procedure (7615/04) 406
246. European Regulatory Agencies (7032/05) 416
247. European Strategy for Combating Radicalisation and
Recruitment to Terrorism (14781/05) 418
248. EUROPOL Annual Report 2004 419
249. Exchange of Information extracted from the Criminal Record
(15281/04) 420
250. Exchange of Information extracted from the Criminal Record
(61371/05) 421
251. Exchanges of Information on Convictions and the Effect of Such
Convictions (6584/05) 424
252. Fight against organised crime (6582/05) 427
253. Fundamental Rights Agency (10774/05) 432
254. Information on the Payer accompanying Transfers of Funds
(11549/05) 437
255. Language Policy (9508/05) 443
256. Mediation in Civil and Commercial Matters (13852/04) 443
257. Minimum standards for granting and withdrawing
refugee status 448
258. Mutual Administrative Assistance for the Protection of the
Community’s Financial Interests against Fraud and any other
Illegal Activities (12993/04) 451
259. Mutual recognition of judicial decisions in criminal matters
(9513/05) 454
260. Mutual Recognition of Non-Custodial Pre-Trial Supervision
Measures (12243/04) 457
261. Patentability of Computer-Implemented Inventions
(6580/02) 457
262. Procedural Rights during Criminal Proceedings (10880/05) 458
263. Proceeds from Crime and the Financing of Terrorism
(12467/05) 463
264. Prohibitions arising from convictions for sexual offences against
children (14207/04) 464
265. Rome II: Law applicable to Non-contractual Obligations
(16231/04) 471
266. Rules of Procedure of the Court of First Instance (5937/05) 475
267. Rules of Procedure of the Court of Justice (10120/05) 476
268. Service of Judicial and Extrajudicial documents in Civil or Commercial matters (11131/05) 477
269. Ship Source Pollution (12537/04) 478
270. Statute for Members of the European Parliament 478
271. Succession and Wills (7027/05) 481
272. Taking into Account of convictions in Member States in New Criminal Proceedings (7645/05) 483
273. Terrorist Recruitment: Addressing the Factors contributing to violent radicalisation (12773/05) 486
274. ‘Third Money Laundering Directive’: Prevention of the Use of the Financial System for the purpose of money laundering, including terrorist financing (11134/04) 486
275. UK Presidency: Achievements 493

Home Affairs
276. 2004 EU Organised Crime Report 496
277. Advance Passenger Information (API)/Passenger Name Records (PNR) (9698/05) 496
278. Civil Protection Mechanism (8430/05, 8436/05) 498
279. Combating Euro Counterfeiting (14811/04) 500
280. Common Agenda for Integration (12120/05) 501
281. Cooperation between the Republic of Croatia and the European Police Office (3710-175) 501
282. Daphne Programme, 2000-2003 (5140/05) 503
283. Developing a Strategic Concept on Tackling Organised Crime (9997/05) 504
284. EU Drugs Action Plan, 2005-08 (6464/05) 505
285. EU Response to the London Bombings 506
286. European Police College (CEPOL) (13506/04, 7140/05) 507
287. EUROPOL Annual Report 2004 510
288. EUROPOL/Canada Co-operation Agreement (3710-160r3) 511
289. Exchange of Information and Intelligence between Law Enforcement Authorities of EU Member States (6888/05, 13563/05) 512
290. Exchange of Information under the Principle of Availability (13413/05) 520
291. Framework Programme on Solidarity and the Management of Migration Flows 2007-2013 (8690/05) 521
292. Hague Programme: Partnership for European Renewal in the field of Freedom, Security and Justice (8922/05) 523
293. Illegal Immigration: Monitoring and Evaluation Mechanism of the Third Countries (11614/05) 526
294. Immigration: Links between Legal and Illegal (10244/04) 530
295. INTERPOL: Transfer of Data (15342/04) 531
296. Measures to Ensure Greater Security in Explosives, Detonators, Bomb-Making Equipment and Firearms (11929/05) 531
297. National Identity Cards (14351/05) 532
298. Police and Customs Co-operation (9903/04) 533
<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>299</td>
<td>Protection of Personal Data Processed in the Framework of Police and Judicial Co-operation in Criminal Matters (13019/05)</td>
<td>534</td>
</tr>
<tr>
<td>300</td>
<td>Regional Protection Programmes (11989/05)</td>
<td>536</td>
</tr>
<tr>
<td>301</td>
<td>Response to Terrorism (8205/05)</td>
<td>539</td>
</tr>
<tr>
<td>302</td>
<td>Retention of Telecommunications Data (12660/05, 12671/05)</td>
<td>541</td>
</tr>
<tr>
<td>303</td>
<td>Schengen Acquis</td>
<td>544</td>
</tr>
<tr>
<td>304</td>
<td>Schengen Agreement: Improvement of Police Co-operation between Member States at the Internal Border (11407/05)</td>
<td>545</td>
</tr>
<tr>
<td>305</td>
<td>Schengen Information System (9942/05, 9943/05, 9944/05)</td>
<td>551</td>
</tr>
<tr>
<td>306</td>
<td>Strategy on the External Dimension of the Area of Freedom, Security and Justice (13384/05, 14366/3/05)</td>
<td>554</td>
</tr>
<tr>
<td>307</td>
<td>Strengthening Cross-Border Police Co-operation (6930/05)</td>
<td>554</td>
</tr>
<tr>
<td>308</td>
<td>UK Presidency: Home Office Priorities</td>
<td>554</td>
</tr>
<tr>
<td>309</td>
<td>Visa Information System (VIS) and the Exchange of Data between Member States on Short-Stay Visas (5093/05)</td>
<td>560</td>
</tr>
</tbody>
</table>

**Social Policy and Consumer Affairs**

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>310</td>
<td>Addition of Vitamins and Minerals to Food (14842/03)</td>
<td>563</td>
</tr>
<tr>
<td>311</td>
<td>Agreements for Consumers (13193/05)</td>
<td>563</td>
</tr>
<tr>
<td>312</td>
<td>Archives in Europe (6702/05, 6703/05)</td>
<td>564</td>
</tr>
<tr>
<td>314</td>
<td>Citizens for Europe 2007-2013 (8154/05)</td>
<td>564</td>
</tr>
<tr>
<td>315</td>
<td>Confronting Demographic Change: A New Solidarity between the Generations (7607/05)</td>
<td>565</td>
</tr>
<tr>
<td>316</td>
<td>Consumer Credit Harmonisation (14246/04)</td>
<td>566</td>
</tr>
<tr>
<td>317</td>
<td>Culture Programme 2007-2013 (11572/04)</td>
<td>568</td>
</tr>
<tr>
<td>318</td>
<td>Dangerous Substances (13774/04)</td>
<td>574</td>
</tr>
<tr>
<td>319</td>
<td>Drugs and Drug Addiction (12143/05)</td>
<td>578</td>
</tr>
<tr>
<td>320</td>
<td>Eco-labelling Schemes for Fisheries Products (10822/05)</td>
<td>578</td>
</tr>
<tr>
<td>321</td>
<td>Employment and Social Solidarity – PROGRESS (11949/04, 13691/05)</td>
<td>579</td>
</tr>
<tr>
<td>322</td>
<td>Employment, Social Policy, Health and Consumer Affairs</td>
<td>582</td>
</tr>
<tr>
<td></td>
<td>ESPHCA Council – June 2005</td>
<td></td>
</tr>
<tr>
<td>323</td>
<td>Equal Treatment of Men and Women in matters of Employment and Occupation (8839/04, 11865/05)</td>
<td>585</td>
</tr>
<tr>
<td>324</td>
<td>European Audiovisual Sector – Media 2007 (11585/04)</td>
<td>590</td>
</tr>
<tr>
<td>325</td>
<td>European Capital of Culture 2007-2019 (9620/05)</td>
<td>590</td>
</tr>
<tr>
<td>326</td>
<td>European Co-operation in Quality Assurance in Higher Education (13495/04, 13969/04)</td>
<td>590</td>
</tr>
<tr>
<td>327</td>
<td>European Institute for Gender Quality (7244/05)</td>
<td>593</td>
</tr>
<tr>
<td>328</td>
<td>European Medicines Agency (7798/05)</td>
<td>603</td>
</tr>
<tr>
<td>329</td>
<td>European Qualifications Framework for Life-long learning (11189/05)</td>
<td>612</td>
</tr>
<tr>
<td>330</td>
<td>European Quality Charter for Mobility (12639/05)</td>
<td>612</td>
</tr>
<tr>
<td>331</td>
<td>European Schools System (6603/05)</td>
<td>613</td>
</tr>
<tr>
<td>332</td>
<td>European Year of Equal Opportunities for all 2007 – Towards a Just Society (9883/05)</td>
<td>613</td>
</tr>
<tr>
<td>333</td>
<td>European Year of Intercultural Dialogue (13094/05)</td>
<td>617</td>
</tr>
<tr>
<td>334</td>
<td>European Youth Policy (11586/04, 13856/04)</td>
<td>617</td>
</tr>
</tbody>
</table>
335. Evaluation of Community Activities 2002-2003 in favour of Consumers (12805/05) 619
336. Food Additives (13489/04) 619
337. Genetically Modified Maize (13042/05) 622
338. Genetically Modified Maize (14425/05) 622
339. GM Maize Line MON 863 (12197/05) 622
340. GM Roundup Ready Maize Line GA21(11928/05) 623
341. Health and Consumer Protection Strategy (8064/05) 624
342. Health and Long Term Care: Open Method of Co-ordination (8131/04) 624
343. i2010: Digital Libraries (12981/05) 636
344. Informal EU Gender Equality Council, Birmingham, November 2005 636
345. Informal EU Sports Ministers Meeting 639
346. Integrated Programme in the field of Lifelong Learning (11587/04) 641
347. Medicinal Products for Paediatric Use (13880/04) 645
348. Mental Health Strategy for the European Union (13442/05) 656
349. Minimum Health and Safety Requirements regarding the exposure of workers to the risks arising from Physical Agents – Optical Radiation (10678/04) 657
350. Mortgage Credit in the EU (11500/05) 659
351. New Indicators on Education and Training (15538/04) 665
352. Nominal Quantities for Pre-packed products (15570/04, 15614/04) 665
353. Non-discrimination and Equal Opportunities for All (9884/05) 672
354. Novel Foods or Novel Food Ingredients (12127/05, 12135/05, 12136/05) 672
355. Nutrition and Health claims made on food (11646/03) 673
356. Partnership for change in an enlarged Europe – enhancing the contribution of the Social dialogue (12002/04) 675
357. Recognition of Professional Qualifications (7239/02, 8726/04, 5376/05) 676
358. Social Agenda 2005-2010 (6370/05) 677
359. Supplementary Pension Rights (13686/05) 677
360. European Indicator of Language Competence (11704/05) 677
361. Toys – Safety (Phthalates) (13308/99) 678
362. UK Presidency: Department for Work and Pensions 679
363. UK Presidency: Department of Health 681
364. UK Presidency: Priorities for Education and Youth Council Business 683
365. Unfair Commercial Practices (10904/03) 687
366. World Health Organisation – International Health Regulations (13074/03) 689
367. Working Time (12683/04, 9554/05) 690

Numerical Order

1. (13308/99) Toys – Safety (Phthalates) 678
2. (5557/01) Machinery Directive 152
3. (6580/02) Patentability of Computer-Implemented Inventions 457
4. (7239/02) Recognition of Professional Qualifications 676
5. (7312/03) Ship Source Pollution and on the introduction of sanctions 195
6. (10143/03) Extractive Industries Waste 333
7. (10904/03) Unfair Commercial Practices 687
8. (11145/03, 7410/04) Shipments of Waste 367
9. (11646/03) Nutrition and Health claims made on food 673
10. (11817/03, 5051/04, 13394/04, 14248/04, 7426/05, 9125/05) UK Presidency: Indirect Tax 82
11. (12082/03) Eco-design requirements for Energy-using Products 326
12. (12168/03) Road Transport Activities 189
13. (12179/03) Fluorinated Gases 340
14. (12985/03) Groundwater Pollution 344
15. (13074/03) World Health Organisation – International Health Regulations 689
16. (13693/03) Motor Vehicles: Frontal Protection Systems 154
17. (14152/03, 14153/03, 15154/03) Aarhus Convention 317
18. (14842/03) Addition of Vitamins and Minerals to Food 563
19. (15409/03) REACH 355
20. (15494/03) Batteries and Accumulators 324
21. (15820/03) Driving Licenses 115
22. (16261/03) Energy End-Use Efficiency 327
23. (0432/04) Regional Aid Guidelines 183
24. (5118/04) Measures to Safeguard Security of Electricity Supply and Infrastructure Investment 154
25. (6363/04) Enhancing Port Security 122
26. (6431/04) Digital Content in Europe: More Accessible, Usable and Exploitable 114
27. (7190/04) Restrictions on the Marketing and Use of certain Polycyclic Aromatic Hydrocarbons and Extender Oils and Tyres 367
28. (7532/04) Vehicle Type Approval Directive 236
29. (7615/04) European Order for Payment Procedure 406
31. (8131/04) Health and Long Term Care: Open Method of Co-ordination 624
32. (8200/04, 14009/04, 14999/04, 15999/04) Counter-Terrorism Measures and Exchange of Information 388
33. (8559/04) Bathing Water 322
34. (8839/04) Equal Treatment of Men and Women in matters of Employment and Occupation 585
35. (8881/04) Access to Community External Assistance 240
36. (9087/04) Comitology 378
37. (9123/04) Toluene and Trichlorobenzene 369
38. (9195/04) The Protection of Minors and Human Dignity and the Right of Reply in relation to the Competitiveness of the European Online and Audiovisual Information Services Industry

39. (9903/04) Police and Customs Co-operation

40. (9912/04) Harmonised River Traffic Information Services on Inland Waterways

41. (10244/04) Immigration: Links between Legal and Illegal

42. (10678/04) Minimum Health and Safety Requirements regarding the exposure of workers to the risks arising from Physical Agents – Optical Radiation

43. (11134/04) ‘Third Money Laundering Directive’: Prevention of the Use of the Financial System for the purpose of money laundering, including terrorist financing

44. (11484/04) Community Air Traffic Controller Licence

45. (11495/04) European Agricultural Fund for Rural Development, EAFRD

46. (11545/04) Capital Requirements Directive

47. (11557/04) Financing of the Common Agricultural Policy

48. (11572/04) Culture Programme 2007-2013

49. (11585/04) European Audiovisual Sector – Media 2007

50. (11586/04) European Youth Policy

51. (11587/04) Integrated Programme in the field of Lifelong Learning

52. (11606/04, 11637/04, 116688/04) European Regional Development Fund, the European Social Fund and the Cohesion Fund

53. (11636/04) European Social Fund

54. (11689/04) European Regional Development Fund

55. (11740/04) Trans-European Transport and Energy Network: Financial Aid

56. (11781/04) Infrastructure for Spatial Information in the Community, INSPIRE

57. (11816/04) Freight Transport System –‘Marco Polo II’


59. (12002/04) Partnership for change in an enlarged Europe – enhancing the contribution of the Social dialogue

60. (12200/04) Humane Trapping Standards

61. (12243/04) Mutual Recognition of Non-Custodial Pre-Trial Supervision Measures

62. (12343/04) Genetically Modified Oilseed Rape

63. (12537/04) Ship Source Pollution

64. (12683/04, 9554/05) Working Time

65. (12993/04) Mutual Administrative Assistance for the Protection of the Community’s Financial Interests against Fraud and any other Illegal Activities

66. (13071/04) Financial Instrument for the Environment: LIFE +

67. (13489/04) Food Additives

68. (13495/04, 13969/04) European Co-operation in Quality Assurance in Higher Education

69. (13681/04) Market Access to Port Services
<table>
<thead>
<tr>
<th>No.</th>
<th>Document Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>70.</td>
<td>(13774/04) Dangerous Substances</td>
<td>574</td>
</tr>
<tr>
<td>71.</td>
<td>(13852/04) Mediation in Civil and Commercial Matters</td>
<td>443</td>
</tr>
<tr>
<td>72.</td>
<td>(13880/04) Medicinal Products for Paediatric Use</td>
<td>645</td>
</tr>
<tr>
<td>73.</td>
<td>(14064/04) Controls of Cash entering or leaving the Community</td>
<td>387</td>
</tr>
<tr>
<td>74.</td>
<td>(14119/04, 14197/04) Company Law and Corporate Governance Proposals</td>
<td>380</td>
</tr>
<tr>
<td>75.</td>
<td>(14136/04) Croatia Co-operation with ICTY</td>
<td>244</td>
</tr>
<tr>
<td>76.</td>
<td>(14207/04) Prohibitions arising from convictions for sexual offences against children</td>
<td>464</td>
</tr>
<tr>
<td>77.</td>
<td>(14246/04) Consumer Credit Harmonisation</td>
<td>566</td>
</tr>
<tr>
<td>78.</td>
<td>(14248/04) VAT Simplification</td>
<td>85</td>
</tr>
<tr>
<td>79.</td>
<td>(14811/04) Combating Euro Counterfeiting</td>
<td>500</td>
</tr>
<tr>
<td>80.</td>
<td>(15249/04) European Atomic Energy Community (EURATOM) and The People’s Republic of China: R&amp;D Co-operation in the Peaceful Uses of Nuclear Energy</td>
<td>260</td>
</tr>
<tr>
<td>81.</td>
<td>(15281/04) Exchange of Information extracted from the Criminal Record</td>
<td>420</td>
</tr>
<tr>
<td>82.</td>
<td>(15342/04) INTERPOL: Transfer of Data</td>
<td>531</td>
</tr>
<tr>
<td>83.</td>
<td>(15538/04) New Indicators on Education and Training</td>
<td>665</td>
</tr>
<tr>
<td>84.</td>
<td>(15570/04, 15614/04) Nominal Quantities for Pre-packed products</td>
<td>665</td>
</tr>
<tr>
<td>85.</td>
<td>(15715/04, 15726/04) European Electronic Communications Regulations and Markets 2004</td>
<td>130</td>
</tr>
<tr>
<td>86.</td>
<td>(15874/04) TSEs: Prevention, Control and Eradication</td>
<td>370</td>
</tr>
<tr>
<td>87.</td>
<td>(16026/04) Multi-Annual Programme for Enterprise and Entrepreneurship</td>
<td>155</td>
</tr>
<tr>
<td>88.</td>
<td>(16231/04) Rome II: Law applicable to Non-contractual Obligations</td>
<td>471</td>
</tr>
<tr>
<td>89.</td>
<td>(5049/05) European Governance strategy for fiscal statistics</td>
<td>53</td>
</tr>
<tr>
<td>90.</td>
<td>(5093/05) Visa Information System (VIS) and the Exchange of Data between Member States on Short-Stay Visas</td>
<td>560</td>
</tr>
<tr>
<td>91.</td>
<td>(5140/05) Daphne Programme, 2000-2003</td>
<td>503</td>
</tr>
<tr>
<td>92.</td>
<td>(5377/05) Euratom Safety and Security – Activities 2003</td>
<td>126</td>
</tr>
<tr>
<td>93.</td>
<td>(5597/05) European Enforcement Order and the Transfer of Sentenced Persons between Member States</td>
<td>393</td>
</tr>
<tr>
<td>94.</td>
<td>(5868/05) Internal Market Strategy</td>
<td>151</td>
</tr>
<tr>
<td>95.</td>
<td>(5937/05) Rules of Procedure of the Court of First Instance</td>
<td>475</td>
</tr>
<tr>
<td>96.</td>
<td>(5990/05) Growth and Jobs – A New start for the Lisbon Strategy</td>
<td>147</td>
</tr>
<tr>
<td>97.</td>
<td>(6137/1/05) Exchange of Information extracted from the Criminal Record</td>
<td>421</td>
</tr>
<tr>
<td>98.</td>
<td>(6175/05) European Neighbourhood Policy: Action Plans for Ukraine and Lebanon</td>
<td>275</td>
</tr>
<tr>
<td>99.</td>
<td>(6206/05) Financing of Interventions</td>
<td>337</td>
</tr>
<tr>
<td>100.</td>
<td>(6364/05) Working Conditions of Mobile Workers</td>
<td>237</td>
</tr>
<tr>
<td>101.</td>
<td>(6370/05) Social Agenda 2005-2010</td>
<td>677</td>
</tr>
<tr>
<td>102.</td>
<td>(6417/05) Climate Change: “Winning the Battle”</td>
<td>324</td>
</tr>
<tr>
<td>103.</td>
<td>(6464/05) EU Drugs Action Plan, 2005-2008</td>
<td>505</td>
</tr>
<tr>
<td>104.</td>
<td>(6582/05) Fight against organised crime</td>
<td>427</td>
</tr>
<tr>
<td>Number</td>
<td>Document Reference</td>
<td>Title</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>105.</td>
<td>(6584/05)</td>
<td>Exchanges of Information on Convictions</td>
</tr>
<tr>
<td>106.</td>
<td>(6603/05)</td>
<td>European Schools System</td>
</tr>
<tr>
<td>107.</td>
<td>(6622/05)</td>
<td>Air Travel: Rights of persons with reduced mobility</td>
</tr>
<tr>
<td>108.</td>
<td>(6623/05)</td>
<td>Passenger Rights</td>
</tr>
<tr>
<td>109.</td>
<td>(6624/05)</td>
<td>Air Transport: Identity of the Operating Carrier</td>
</tr>
<tr>
<td>110.</td>
<td>(6702/05)</td>
<td>Archives in Europe</td>
</tr>
<tr>
<td>111.</td>
<td>(6703/05)</td>
<td>Archives in Europe</td>
</tr>
<tr>
<td>112.</td>
<td>(6815/05)</td>
<td>European Arrest Warrant</td>
</tr>
<tr>
<td>113.</td>
<td>(6888/05)</td>
<td>Exchange of Information and Intelligence between Law Enforcement Authorities of EU Member States</td>
</tr>
<tr>
<td>114.</td>
<td>(6924/05, 9461/05)</td>
<td>Statistical data</td>
</tr>
<tr>
<td>115.</td>
<td>(6930/05)</td>
<td>Strengthening Cross-Border Police Co-operation</td>
</tr>
<tr>
<td>116.</td>
<td>(7027/05)</td>
<td>Succession and Wills</td>
</tr>
<tr>
<td>117.</td>
<td>(7032/05)</td>
<td>European Regulatory Agencies</td>
</tr>
<tr>
<td>118.</td>
<td>(7214/05, 7369/05, 12044/05, 12045/05, 12276/05, 12752/05)</td>
<td>External Aviation Policy</td>
</tr>
<tr>
<td>119.</td>
<td>(7244/05)</td>
<td>European Institute for Gender Quality</td>
</tr>
<tr>
<td>120.</td>
<td>(7280/05, 7281/05, 7282/05)</td>
<td>TENS Transport Projects</td>
</tr>
<tr>
<td>121.</td>
<td>(7313/05)</td>
<td>European Neighbourhood Policy</td>
</tr>
<tr>
<td>122.</td>
<td>(7456/05)</td>
<td>Rules of origin in preferential trade agreements</td>
</tr>
<tr>
<td>123.</td>
<td>(7485/05)</td>
<td>Applicable Law and Jurisdiction in Divorce Matters</td>
</tr>
<tr>
<td>124.</td>
<td>(7578/05)</td>
<td>Community Statistics</td>
</tr>
<tr>
<td>125.</td>
<td>(7607/05)</td>
<td>Confronting Demographic Change: A New Solidarity between the Generations</td>
</tr>
<tr>
<td>126.</td>
<td>(7645/05)</td>
<td>Taking into Account of convictions in Member States in New Criminal Proceedings</td>
</tr>
<tr>
<td>127.</td>
<td>(7717/05)</td>
<td>Preliminary Draft Amending Budgets</td>
</tr>
<tr>
<td>128.</td>
<td>(7737/05)</td>
<td>Custom Duties: Imports of certain products originating in the United States of America</td>
</tr>
<tr>
<td>129.</td>
<td>(7798/05)</td>
<td>European Medicines Agency</td>
</tr>
<tr>
<td>130.</td>
<td>(7828/05)</td>
<td>European Evidence Warrant</td>
</tr>
<tr>
<td>131.</td>
<td>(7857/05)</td>
<td>Common Framework for business registers for statistical purposes</td>
</tr>
<tr>
<td>132.</td>
<td>(7952/05)</td>
<td>Marine Fuel</td>
</tr>
<tr>
<td>133.</td>
<td>(8008/05)</td>
<td>Integrated Guidelines for Growth and Jobs, 2005-08</td>
</tr>
<tr>
<td>134.</td>
<td>(8064/05)</td>
<td>Health and Consumer Protection Strategy</td>
</tr>
<tr>
<td>135.</td>
<td>(8081/05)</td>
<td>Competitiveness and Innovation Framework Programme 2007-2013</td>
</tr>
<tr>
<td>136.</td>
<td>(8087/05)</td>
<td>Community for Research, Technological Development and Demonstration Activities</td>
</tr>
<tr>
<td>137.</td>
<td>(8103/05)</td>
<td>Exchange of Classified Information between the European Union and Swiss Confederation</td>
</tr>
<tr>
<td>138.</td>
<td>(8137/05, 8138/05, 8139/05)</td>
<td>Millennium Development Goals (MDGs)</td>
</tr>
<tr>
<td>139.</td>
<td>(8142/05)</td>
<td>Common Fisheries Policy</td>
</tr>
<tr>
<td>140.</td>
<td>(8154/05)</td>
<td>Citizens for Europe 2007-2013</td>
</tr>
<tr>
<td>141.</td>
<td>(8155/05)</td>
<td>VAT: Common system</td>
</tr>
</tbody>
</table>
142. (8156/05) Building the ERA of Knowledge for Growth 93
143. (8205/05) Response to Terrorism 539
144. (8257/05) International Convention on the Harmonisation of Frontier Controls of Goods 62
145. (8258/05) Total Allowable Catches 370
146. (8323/05) European Union Solidarity Fund 58
147. (8430/05, 8436/05) Civil Protection Mechanism 498
148. (8482/05) Air Services Agreement with Croatia 89
149. (8571/05) Preliminary Draft Amending Budgets 66
150. (8630/05) Avian Influenza 322
151. (8633/05, 8634/05, 8636/05, 8637/05, 8638/05, 8639/05, 8641/05, 8642/05) Restrictions on GM Maize and GM Oilseed Rape 366
152. (8635/05) GM Maize Product 343
153. (8670/05) Air Services Agreement with Bulgaria 89
154. (8689/05) European Programme for Action to Confront HIV/AIDS, Malaria and Tuberculosis through External Action 275
156. (8704/05) Cotonou Agreement 241
157. (8823/05) Financial Services Policy 2005-2010 146
158. (8922/05) The Hague Programme: Partnership for European Renewal in the field of Freedom, Security and Justice 523
159. (9000/05) Preliminary Draft Amending Budgets 67
160. (9032/05) European Space Policy 131
161. (9125/05) Reduced rates of VAT 68
162. (9198/05) Husked Rice 348
163. (9411/05) Digital Broadcasting 113
164. (9466/05) Marketing Standards for Eggs 350
165. (9507/05) Sustainable Development 368
166. (9508/05) Language Policy 443
167. (9513/05) Mutual recognition of judicial decisions in criminal matters 454
168. (9592/05) Universal Service 234
169. (9620/05) European Capital of Culture 2007-2019 590
170. (9698/05) Advance Passenger Information (API)/Passenger Name Records (PNR) 496
171. (9758/05) ‘i2010 – A European Information Society for Growth and Employment’ 149
172. (9883/05) European Year of Equal Opportunities for all 2007 – Towards a Just Society 613
173. (9884/05) Non-discrimination and Equal Opportunities for All 672
174. (9942/05, 9943/05, 9944/05) Schengen Information System 551
175. (9997/05) Developing a Strategic Concept on Tackling Organised Crime 504
176. (10010/05) Trans-Euro Energy Networks 213
178. (10083/05) State Aid Reform 2005-2009 204
179. (10120/05) Rules of Procedure of the Court of Justice 476
<table>
<thead>
<tr>
<th>No.</th>
<th>Document Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>180.</td>
<td>(10185/05)</td>
<td>European Security and Defence College</td>
</tr>
<tr>
<td>181.</td>
<td>(10326/05)</td>
<td>Roadmap to an Integrated Control Framework</td>
</tr>
<tr>
<td>182.</td>
<td>(10514/05, 10598/05)</td>
<td>Reform of the EU Sugar Regime</td>
</tr>
<tr>
<td>183.</td>
<td>(10684/05)</td>
<td>Cohesion Policy in support of Growth and Jobs: Community Strategic Guidelines, 2007-2013</td>
</tr>
<tr>
<td>184.</td>
<td>(10774/05)</td>
<td>Fundamental Rights Agency</td>
</tr>
<tr>
<td>185.</td>
<td>(10785/05)</td>
<td>GM Maize</td>
</tr>
<tr>
<td>186.</td>
<td>(10822/05)</td>
<td>Eco-labelling Schemes for Fisheries Products</td>
</tr>
<tr>
<td>187.</td>
<td>(10880/05)</td>
<td>Procedural Rights during Criminal Proceedings throughout the European Union</td>
</tr>
<tr>
<td>188.</td>
<td>(10894/05)</td>
<td>End-of-Life Vehicles</td>
</tr>
<tr>
<td>189.</td>
<td>(11067/05)</td>
<td>Passenger Car Related Taxes</td>
</tr>
<tr>
<td>190.</td>
<td>(11110/05)</td>
<td>Tariff Quota for Imports of Soluble Coffee</td>
</tr>
<tr>
<td>191.</td>
<td>(11131/05)</td>
<td>Service of Judicial and Extrajudicial documents in Civil or Commercial matters</td>
</tr>
<tr>
<td>192.</td>
<td>(11189/05)</td>
<td>European Qualifications Framework for Life-long learning</td>
</tr>
<tr>
<td>193.</td>
<td>(11190/05)</td>
<td>EU Framework for Investment Funds</td>
</tr>
<tr>
<td>195.</td>
<td>(11407/05)</td>
<td>Schengen Agreement: Improvement of Police Co-operation between Member States at the Internal Border</td>
</tr>
<tr>
<td>196.</td>
<td>(11413/05)</td>
<td>European Union Development Policy</td>
</tr>
<tr>
<td>197.</td>
<td>(11439/05)</td>
<td>Supply of Services</td>
</tr>
<tr>
<td>198.</td>
<td>(11500/05)</td>
<td>Mortgage Credit in the EU</td>
</tr>
<tr>
<td>199.</td>
<td>(11508/05)</td>
<td>Public Transport Services by Rail and Road</td>
</tr>
<tr>
<td>200.</td>
<td>(11549/05)</td>
<td>Information on the Payer accompanying Transfers of Funds</td>
</tr>
<tr>
<td>201.</td>
<td>(11614/05)</td>
<td>Illegal Immigration: Monitoring and Evaluation Mechanism of the Third Countries</td>
</tr>
<tr>
<td>202.</td>
<td>(11618/05)</td>
<td>Growth and Employment – The Community Lisbon Programme</td>
</tr>
<tr>
<td>203.</td>
<td>(11641/05)</td>
<td>Trade in Services other than Transport</td>
</tr>
<tr>
<td>204.</td>
<td>(11691/05)</td>
<td>Cotonou Agreement – Consultations between the EU and Haiti</td>
</tr>
<tr>
<td>205.</td>
<td>(11704/05)</td>
<td>European Indicator of Language Competence</td>
</tr>
<tr>
<td>206.</td>
<td>(11734/05)</td>
<td>Future Financial Perspectives 2007-2013</td>
</tr>
<tr>
<td>208.</td>
<td>(11834/05)</td>
<td>Genetically Modified Organism (GMO) Legislation</td>
</tr>
<tr>
<td>209.</td>
<td>(11928/05)</td>
<td>GM Roundmap Ready Maize Line GA21</td>
</tr>
<tr>
<td>210.</td>
<td>(11929/05)</td>
<td>Measures to Ensure greater Security in Explosives, Detonators, Bomb-Making Equipment and Firearms</td>
</tr>
<tr>
<td>211.</td>
<td>(11949/04, 13691/05)</td>
<td>Employment and Social Solidarity – PROGRESS</td>
</tr>
<tr>
<td>212.</td>
<td>(11976/05)</td>
<td>Preliminary Draft Amending Budget No 7 to the General Budget for 2005</td>
</tr>
<tr>
<td>213.</td>
<td>(11989/05)</td>
<td>Regional Protection Programmes</td>
</tr>
</tbody>
</table>
214. (12120/05) A Common Agenda for Integration
215. (12127/05, 12135/05, 12136/05) Novel Foods or Novel Food Ingredients
216. (12143/05) Drugs and Drug Addiction
217. (12197/05) GM Maize Line MON 863
218. (12249/05) Tariff Rates for Bananas
219. (12383/05) eSafety Communication
220. (12393/05) Spectrum Management
221. (12467/05) Proceeds from Crime and the Financing of Terrorism
222. (12588/05) Civil Aviation Security
223. (12639/05) European Quality Charter for Mobility
224. (12660/05, 12671/05) Retention of Telecommunications Data
225. (12695/05) State Aid for Innovation
227. (12732/05, 12734/05) EURATOM: Seventh Framework Programme 2007-2011 for Nuclear Research and Training Activities
228. (12735/05) Thematic Strategy on Air Pollution
229. (12773/05) Terrorist Recruitment: Addressing the Factors contributing to violent radicalisation
230. (12790/05) Reducing the Climate Change Impact of Aviation
231. (12805/05) Evaluation of Community Activities 2002-2003 in favour of Consumers
232. (12817/05) EU Spectrum Policy Priorities for the Digital Switchover
233. (12921/05) Verification of Agri-Environment Expenditure
234. (12981/05) i2010: Digital Libraries
235. (13019/05) Protection of Personal Data Processed in the Framework of Police and Judicial Co-operation in Criminal Matters
236. (13056/05) European Contract Law
237. (13042/05) Genetically Modified Maize
238. (13094/05) European Year of Intercultural Dialogue
239. (13095/05) Preliminary Draft Amending Budget No 8 to the General Budget for 2005
240. (13143/05) Lisbon Programme: Strengthening EU Manufacturing
241. (13193/05) Agreements for Consumers
242. (13371/04, 9841/05) European Pollutant Release
243. (13384/05) A Strategy on the External Dimension of the Area of Freedom, Security and Justice
244. (13413/05) Exchange of Information under the Principle of Availability
245. (13442/05) Mental Health Strategy for the European Union
246. (13506/04, 7140/05) European Police College (CEPOL)
247. (13521/05) EU-Palestine: Co-operation beyond disengagement –
towards a Two State solution 225
248. (13686/05) Supplementary Pension Rights 677
249. (13809/05) Tenth Anniversary of the Euro-Mediterranean
Partnership 307
250. (14031/05) Cotonou Agreement: Opening of Consultations with
Mauritania 243
251. (14351/05) National Identity Cards 532
252. (14425/05) Genetically Modified Maize 622
253. (14443/05) Global Monitoring for Environment and Security
(GMES): From Concept to Reality 296
254. (14643/05) EU Border Assistance Mission for the RAFAH
Crossing Point, EUBAM, Rafah 252
255. (14781/05) European Strategy for Combating Radicalisation and
Recruitment to Terrorism 418
256. (14920/05) Fishery Quota 2006 339
Correspondence with Ministers

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

We publish occasional volumes of such correspondence, including Ministerial replies and other material where appropriate. This volume covers the period from March 2004 to January 2006 and includes the text of letters sent and received together with any supporting material. This volume includes not only an index of contents but also a list of documents by Council document numbers, where one is given.

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1 The previous volume of Correspondence with Ministers was published as the 4th Report, Session 2005-2006 (HL Paper 16).

2 All letters are signed and sent by the Chairman of the Select Committee, regardless of which Sub-Committee has prepared them.
APPENDIX: RECENT REPORTS FROM THE SELECT COMMITTEE

Session 2005-06


Correspondence with Ministers: June 2004 to February 2005 (4th Report, Session 2005-06, HL Paper 16)

The 2006 EC Budget (5th Report, Session 2005-06, HL Paper 22)

Services in the Internal Market (6th Report, Session 2005-06, HL Paper 23)

European Union Fisheries Legislation (7th Report, Session 2005-06, HL Paper 24)


Ensuring Effective Regulation in the EU (9th Report, Session 2005-06, HL Paper 33)

Evidence from the Minister for Europe – the European Council and the UK Presidency (10th Report, Session 2005-06, HL Paper 34)

The European Union’s Role at the Millennium Review Summit (11th Report, Session 2005-06, HL Paper 35)

The United Kingdom Presidency: Defra’s Priorities (12th Report, Session 2005-06, HL Paper 36)


Economic Migration to the EU (14th Report, Session 2005-06, HL Paper 58)


Human Rights Proofing EU Legislation (16th Report, Session 2005-06, HL Paper 77)

Too much too little? Changes to the EU Sugar Regime (18th Report, Session 2005-06, HL Paper 80)


The Work of the European Ombudsman (22nd Report, Session 2005-06, HL Paper 117)

European Small Claims Procedure (23rd Report, Session 2005-06, HL Paper 118)

Proposed European Institute for Gender Equality (24th Report, Session 2005-06, HL Paper 119)


Current Developments in European Foreign Policy (26th Report, Session 2005-06, HL Paper 124)

Current Developments in European Defence Policy (27th Report, Session 2005-06, HL Paper 125)


European Arrest Warrant – Recent Developments (30th Report, Session 2005-06, HL Paper 156)


Scrutinising EU Legislation – Public Awareness of the Role of the House of Lords (32nd Report [bis], Session 2005-06, HL Paper 179)
The Seventh Framework Programme (33rd Report, Session 2005-06, HL Paper 182)

The EU and Africa: Towards a Strategic Partnership (Vol 1 Report, Vol 2 Evidence) (34th Report, Session 2005-06, HL Paper 206)

Current Developments in European Defence (35th Report, Session 2005-06, HL Paper 209)


The 2007 EC Budget (39th Report, Session 2005-06, HL Paper 218)

Behind Closed Doors: the Meeting of the G6 Interior Ministers at Heiligendamm (40th Report, Session 2005-06, HL Paper 221)


Criminal Competence (42nd Report, Session 2005-06, HL Paper 227)

Current Developments in European Foreign Policy (43rd Report, Session 2005-06, HL Paper 228)


Correspondence with Ministers – March 2005 to January 2006 (45th Report, Session 2005-06, HL Paper 243)


The EU Strategy on biofuels; from field to fuel (47th Report, Session 2005-06, HL Paper 267)

Europe in the World (48th Report, Session 2005-06, HL Paper 268)

The EU and Africa: Follow-up Report (49th Report, Session 2005-06, HL Paper 269)


Rome III – Choice of Law in Divorce (52nd Report, Session 2005-06, HL Paper 272)

European Union Select Committee

EUROPEAN UNION COMMITTEE ANNUAL REPORT 2005

NEGOTIATING FRAMEWORKS WITH CROATIA AND TURKEY

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

Thank you for your letter of 26 October requesting access to the negotiating frameworks agreed with Turkey and Croatia at the 3 October General Affairs and External Relations Council (GAERC). These documents have just been published on the Europa website (www.europa.eu.int) and I attach them for your consideration along with the 3 October GAERC Conclusions on Croatia.

In your letter, you also sought information on the Government’s plans on keeping the Committees routinely and regularly informed of the progress of negotiations over the coming years. The Government will continue to send, under the cover of an Explanatory Memorandum (EM), the European Commission’s Regular Reports and Opinions on Turkey’s and Croatia’s accession negotiations. On 21 November, the Government sent EM’s on Council Decisions on the Principles, Priorities and Conditions Contained in the Accession Partnership with Turkey and Croatia and the European Partnerships with Albania, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo as defined by UNSCR 1244), and Macedonia. Additionally, the Government is currently preparing an EM on the 2005 Enlargement Strategy (including the Regular Reports).

30 November 2005

Negotiating Framework for Croatia

PRINCIPLES GOVERNING THE NEGOTIATIONS

1. The negotiations will be based on Croatia’s own merits and the pace will depend on Croatia’s progress in meeting the requirements for membership. The Presidency or the Commission as appropriate will keep the Council fully informed so that the Council can keep the situation under regular review. The Union side, for its part, will decide in due course whether the conditions for the conclusion of negotiations have been met; this will be done on the basis of a report from the Commission confirming the fulfilment by Croatia of the requirements listed in point 13. The shared objective of the negotiations is accession. By their very nature, the negotiations are an open-ended process whose outcome cannot be guaranteed beforehand.

2. Negotiations are opened on the basis that Croatia meets the political criteria set by the Copenhagen European Council in 1993, for the most part later enshrined in Article 6(1) of the Treaty on European Union and proclaimed in the Charter of Fundamental Rights, and the Stabilisation and Association Process conditionalities established by the Council in 1997. The Union expects Croatia to continue to fulfil the political criteria and to work towards further improvement in the respect of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law; to cooperate fully with the International Criminal Tribunal for the former Yugoslavia; and to make further progress in relation to minority rights, the return of refugees, judiciary reform, regional co-operation and the fight against corruption. The Union and Croatia will continue their intensive political dialogue. To ensure the irreversibility of progress in these areas and its full and effective implementation, notably with regard to fundamental freedoms and to full respect of human rights, progress will continue to be closely monitored by the Commission, which is invited to continue to report regularly on it to the Council.

In the case of a serious and persistent breach in Croatia of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded, the Commission will, on its own initiative or on the request of one third of the Member States, recommend the suspension of negotiations and propose the conditions for eventual resumption. The Council will decide by qualified majority on such a recommendation, after having heard Croatia, whether to suspend the negotiations and on the conditions for their resumption. The Member States will act in the Intergovernmental Conference in accordance with the Council decision, without prejudice to the general requirement for unanimity in the Intergovernmental Conference. The European Parliament will be informed.
3. The advancement of the negotiations will be guided by Croatia’s progress in preparing for accession, within a framework of economic and social convergence. This progress will be measured in particular against the following requirements:

   — the Copenhagen criteria, which set down the following requirements for a membership:
     — the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
     — the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
     — the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union and the administrative capacity to effectively apply and implement the acquis;
   — the Stabilisation and Association Process conditionalities, in particular:
     — Croatia’s full co-operation with the International Criminal Tribunal for the former Yugoslavia:
     — Croatia’s commitment to good neighbourly relations taking full account, inter alia, of the European Council conclusions of 17–18 June 2004, and the strong contribution expected from Croatia to the development of closer regional co-operation in accordance with the Thessaloniki Agenda for the Western Balkans adopted in June 2003, which remains the common framework for relations with all Western Balkan countries up to their accession;
     — Croatia’s undertaking to resolve any border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the United Nations Charter, including if necessary compulsory jurisdiction of the International Court of Justice;
   — the fulfilment of Croatia’s obligations under the Stabilisation and Association Agreement, as well as the implementation of the European Partnership, as regularly revised.

4. In the period up to accession, Croatia will be required to progressively align its policies towards third countries and its positions within international organisations with the policies and positions adopted by the Union and its Member States.

5. Croatia must accept the results of any other accession negotiations as they stand at the moment of its accession.

6. Enlargement should strengthen the process of continuous creation and integration in which the Union and its Member States are engaged. Every effort should be made to protect the cohesion and effectiveness of the Union. In accordance with the conclusions of the Copenhagen European Council in 1993, the Union’s capacity to absorb Croatia, while maintaining the momentum of European integration is an important consideration in the general interest of both the Union and Croatia.

Parallel to accession negotiations, the Union will engage with Croatia in an intensive political dialogue and cultural co-operation. With the aim of enhancing mutual understanding by bringing people together, this inclusive co-operation also will involve civil society.

Substance of the negotiations

7. Accession implies the acceptance of the rights and obligations attached to the Union system and its institutional framework, known as the “acquis” of the Union. Croatia will have to apply this as it stands at the time of accession. Furthermore, in addition to legislative alignment, accession implies timely and effective implementation of the acquis. The acquis is constantly evolving and includes:

   — the content, principles and political objectives of the Treaties on which the Union is founded;
   — legislation and decisions adopted pursuant to the Treaties, and the case law of the Court of Justice;
   — other acts, legally binding or not, adopted within the Union framework, such as interinstitutional agreements, resolutions, statements, recommendations, guidelines;
   — joint actions, common positions, declarations, conclusions and other acts within the framework of the common foreign and security policy;
   — joint actions, joint positions, conventions signed, resolutions, statements and other acts agreed within the framework of justice and home affairs;
   — international agreements concluded by the Communities, the Communities jointly with their Member States, the Union, and those concluded by the Member States among themselves with regard to Union activities.
Croatia will need to produce translations of the acquis into Croatian in good time before accession, and will need to train a sufficient number of translators and interpreters required for the proper functioning of the EU institutions upon its accession.

8. The resulting rights and obligations, all of which Croatia will have to honour as a Member State, imply the termination of all existing bilateral agreements between Croatia and the Communities, and of all other international agreements concluded by Croatia which are incompatible with the obligations of membership. Any provisions of the Stabilisation and Association Agreement which depart from the acquis cannot be considered as precedents in the accession negotiations.

9. Croatia’s acceptance of the rights and obligations arising from the acquis may necessitate specific adaptations to the acquis and may, exceptionally, give rise to transitional measures which must be defined during the accession negotiations.

Where necessary, specific adaptations to the acquis will be agreed on the basis of the principles, criteria and parameters inherent in that acquis as applied by the Member States when adopting that acquis, and taking into consideration the specificities of Croatia.

The Union may agree to requests from Croatia for transitional measures provided they are limited in time and scope, and accompanied by a plan with clearly defined stages for application of the acquis. For areas linked to the extension of the internal market, regulatory measures should be implemented quickly and transition periods should be short and few; where considerable adaptations are necessary requiring substantial effort including large financial outlays, appropriate transitional arrangements can be envisaged as part of an ongoing, detailed and budgeted plan for alignment. In any case, transitional arrangements must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition. In this connection, account must be taken of the interests of the Union and of Croatia. Transitional measures and specific arrangements, in particular safeguard clauses, may also be agreed in the interest of the Union, in line with the second bullet point of paragraph 23 of the European Council conclusions of 16–17 December 2004.

Detailed technical adaptations to the acquis will not need to be fixed during the accession negotiations. They will be prepared in co-operation with Croatia and adopted by the Union institutions in good time with a view to their entry into force on the date of accession.

10. Croatia will participate in economic and monetary union from accession as a Member State with a derogation and shall adopt the euro as its national currency following a Council decision to this effect on the basis of an evaluation of its fulfilment of the necessary conditions. The remaining acquis in this area fully applies from accession.

11. With regard to the area of freedom, justice and security, membership of the European Union implies that Croatia accepts in full on accession the entire acquis in this area, including the Schengen acquis. However, part of this acquis will only apply in Croatia following a Council decision to lift controls on persons at internal borders taken on the basis of the applicable Schengen evaluation of Croatia’s readiness.

12. The EU points out the importance of a high level of environmental protection, including all aspects of nuclear safety.

13. In all areas of the acquis, Croatia must bring its institutions, management capacity and administrative and judicial systems up to Union standards with a view to implementing the acquis effectively or, as the case may be, being able to implement it effectively in good time before accession. At the general level, this requires a well-functioning and stable public administration built on an efficient and impartial civil service, and an independent and efficient judicial system.

Negotiating Procedures

14. The Commission will undertake a formal process of examination of the acquis, called screening, in order to explain it to the Croatian authorities, to assess the state of preparation of Croatia for opening negotiations in specific areas and to obtain preliminary indications of the issues that will most likely come up in the negotiations.

15. For the purposes of screening and the subsequent negotiations, the acquis will be broken down into a number of chapters, each covering a specific policy area. A list of these chapters is provided in the Annex. Any view expressed by either Croatia or the EU on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters. Also, agreements reached in the course of negotiations on specific chapters, even partial ones, may not be considered as final until an overall agreement has been reached for all chapters.
16. Building on the Commission’s Opinion on Croatia’s application for membership, on subsequent Regular Reports and in particular on information obtained by the Commission during screening, the Council, acting by unanimity on a proposal by the Commission, will lay down benchmarks for the provisional closure and, where appropriate, for the opening of each chapter. The Union will communicate such benchmarks to Croatia. Depending on the chapter, precise benchmarks will refer in particular to legislative alignment with the *acquis* and to a satisfactory track record in implementation of key elements of the *acquis* demonstrating the existence of an adequate administrative and judicial capacity. Where relevant, benchmarks will also include the fulfilment of commitments under the Stabilisation and Association Agreement, in particular those that mirror requirements under the *acquis*. Where negotiations cover a considerable period of time, or where a chapter is revisited at a later date to incorporate new elements such as new *acquis*, the existing benchmarks may be updated.

17. Croatia will be requested to indicate its position in relation to the *acquis* and to report on its progress in meeting the benchmarks. Croatia’s correct transposition and implementation of the *acquis*, including effective and efficient application through appropriate administrative and judicial structures, will determine the pace of negotiations.

18. To this end, the Commission will closely monitor Croatia’s progress in all areas, making use of all available instruments, including on-site expert reviews by or on behalf of the Commission. The Commission will inform the Council of Croatia’s progress in any given area when presenting draft EU Common Positions. The Council will take this assessment into account when deciding on further steps relating to the negotiations on that chapter. In addition to the information the EU may require for the negotiations on each chapter and which is to be provided by Croatia to the Conference, Croatia will be required to continue to provide regularly detailed, written information on progress in the alignment with and implementation of the *acquis*, even after provisional closure of a chapter. In the case of provisionally closed chapters, the Commission may recommend the re-opening of negotiations, in particular where Croatia has failed to meet important benchmarks or to implement its commitments.

### PRELIMINARY INDICATIVE LIST OF CHAPTER HEADINGS

(Note: This list in no way prejudices the decisions to be taken at an appropriate stage in the negotiations on the order in which the subjects will be dealt with.)

1. Free movement of goods
2. Freedom of movement for workers
3. Right of establishment and freedom to provide services
4. Free movement of capital
5. Public procurement
6. Company law
7. Intellectual property law
8. Competition policy
9. Financial services
10. Information society and media
11. Agriculture and rural development
12. Food safety, veterinary and phytosanitary policy
13. Fisheries
14. Transport policy
15. Energy
16. Taxation
17. Economic and monetary policy
18. Statistics
19. Social policy and employment
20. Enterprise and industrial policy
21. Trans-European networks
22. Regional policy and coordination of structural instruments
23. Judiciary and fundamental rights
24. Justice, freedom and security
Negotiating Framework for Turkey

**Principles Governing the Negotiations**

1. The negotiations will be based on Turkey’s own merits and the pace will depend on Turkey’s progress in meeting the requirements for membership. The Presidency or the Commission as appropriate will keep the Council fully informed so that the Council can keep the situation under regular review. The Union side, for its part, will decide in due course whether the conditions for the conclusion of negotiations have been met; this will be done on the basis of a report from the Commission confirming the fulfilment by Turkey of the requirements listed in point 6.

2. As agreed at the European Council in December 2004, these negotiations are based on Article 49 of the Treaty on European Union. The shared objective of the negotiations is accession. These negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand. While having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through the strongest possible bond.

3. Enlargement should strengthen the process of continuous creation and integration in which the Union and its Member States are engaged. Every effort should be made to protect the cohesion and effectiveness of the Union. In accordance with the conclusions of the Copenhagen European Council in 1993, the Union’s capacity to absorb Turkey, while maintaining the momentum of European integration is an important consideration in the general interest of both the Union and Turkey. The Commission shall monitor this capacity during the negotiations, encompassing the whole range of issues set out in its October 2004 paper on issues arising from Turkey’s membership perspective, in order to inform an assessment by the Council as to whether this condition of membership has been met.

4. Negotiations are opened on the basis that Turkey sufficiently meets the political criteria set by the Copenhagen European Council in 1993, for the most part later enshrined in Article 6(1) of the Treaty on European Union and proclaimed in the Charter of Fundamental Rights. The Union expects Turkey to sustain the process of reform and to work towards further improvement in the respect of the principles of liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, including relevant European case law; to consolidate and broaden legislation and implementation measures specifically in relation to the zero tolerance policy in the fight against torture and ill-treatment and the implementation of provisions relating to freedom of expression, freedom of religion, women’s rights, ILO standards including trade union rights, and minority rights. The Union and Turkey will continue their intensive political dialogue. To ensure the irreversibility of progress in these areas and its full and effective implementation, notably with regard to fundamental freedoms and to full respect of human rights, progress will continue to be closely monitored by the Commission, which is invited to continue to report regularly on it to the Council, addressing all points of concern identified in the Commission’s 2004 report and recommendation as well as its annual regular report.

5. In the case of a serious and persistent breach in Turkey of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded, the Commission will, on its own initiative or on the request of one third of the Member States, recommend the suspension of negotiations and propose the conditions for eventual resumption. The Council will decide by qualified majority on such a recommendation, after having heard Turkey, whether to suspend the negotiations and on the conditions for their resumption. The Member States will act in the Intergovernmental Conference in
accordance with the Council decision, without prejudice to the general requirement for unanimity in the Intergovernmental Conference. The European Parliament will be informed.

6. The advancement of the negotiations will be guided by Turkey’s progress in preparing for accession, within a framework of economic and social convergence and with reference to the Commission’s reports in paragraph 2. This progress will be measured in particular against the following requirements:

- the Copenhagen criteria, which set down the following requirements for membership:
  - the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
  - the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
  - the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union and the administrative capacity to effectively apply and implement the acquis;

- Turkey’s unequivocal commitment to good neighbourly relations and its undertaking to resolve any outstanding border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the United Nations Charter, including if necessary jurisdiction of the International Court of Justice;

- Turkey’s continued support for efforts to achieve a comprehensive settlement of the Cyprus problem within the UN framework and in line with the principles on which the Union is founded, including steps to contribute to a favourable climate for a comprehensive settlement, and progress in the normalisation of bilateral relations between Turkey and all EU Member States, including the Republic of Cyprus;

- the fulfilment of Turkey’s obligations under the Association Agreement and its Additional Protocol extending the Association Agreement to all new EU Member States, in particular those pertaining to the EU-Turkey customs union, as well as the implementation of the Accession Partnership, as regularly revised.

7. In the period up to accession, Turkey will be required to progressively align its policies towards third countries and its positions within international organisations (including in relation to the membership by all EU Member States of those organisations and arrangements) with the policies and positions adopted by the Union and its Member States.

8. Parallel to accession negotiations, the Union will engage with Turkey in an intensive political and civil society dialogue. The aim of the inclusive civil society dialogue will be to enhance mutual understanding by bringing people together in particular with a view to ensuring the support of European citizens for the accession process.

9. Turkey must accept the results of any other accession negotiations as they stand at the moment of its accession.

Substance of the Negotiations

10. Accession implies the acceptance of the rights and obligations attached to the Union system and its institutional framework, known as the acquis of the Union. Turkey will have to apply this as it stands at the time of accession. Furthermore, in addition to legislative alignment, accession implies timely and effective implementation of the acquis. The acquis is constantly evolving and includes:

- the content, principles and political objectives of the Treaties on which the Union is founded;
- legislation and decisions adopted pursuant to the Treaties, and the case law of the Court of Justice;
- other acts, legally binding or not, adopted within the Union framework, such as interinstitutional agreements, resolutions, statements, recommendations, guidelines;
- joint actions, common positions, declarations, conclusions and other acts within the framework of the common foreign and security policy;
- joint actions, joint positions, conventions signed, resolutions, statements and other acts agreed within the framework of justice and home affairs;
- international agreements concluded by the Communities, the Communities jointly with their Member States, the Union, and those concluded by the Member States among themselves with regard to Union activities.
Turkey will need to produce translations of the *acquis* into Turkish in good time before accession, and will need to train a sufficient number of translators and interpreters required for the proper functioning of the EU institutions upon its accession.

11. The resulting rights and obligations, all of which Turkey will have to honour as a Member State, imply the termination of all existing bilateral agreements between Turkey and the Communities, and of all other international agreements concluded by Turkey which are incompatible with the obligations of membership. Any provisions of the Association Agreement which depart from the *acquis* cannot be considered as precedents in the accession negotiations.

12. Turkey’s acceptance of the rights and obligations arising from the *acquis* may necessitate specific adaptations to the *acquis* and may, exceptionally, give rise to transitional measures which must be defined during the accession negotiations.

Where necessary, specific adaptations to the *acquis* will be agreed on the basis of the principles, criteria and parameters inherent in that *acquis* as applied by the Member States when adopting that *acquis*, and taking into consideration the specificities of Turkey.

The Union may agree to requests from Turkey for transitional measures provided they are limited in time and scope, and accompanied by a plan with clearly defined stages for application of the *acquis*. For areas linked to the extension of the internal market, regulatory measures should be implemented quickly and transition periods should be short and few; where considerable adaptations are necessary requiring substantial effort including large financial outlays, appropriate transitional arrangements can be envisaged as part of an ongoing, detailed and budgeted plan for alignment. In any case, transitional arrangements must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition. In this connection, account must be taken of the interests of the Union and of Turkey.

Long transitional periods, derogations, specific arrangements or permanent safeguard clauses, ie clauses which are permanently available as a basis for safeguard measures, may be considered. The Commission will include these, as appropriate, in its proposals in areas such as freedom of movement of persons, structural policies or agriculture. Furthermore, the decision-taking process regarding the eventual establishment of freedom of movement of persons should allow for a maximum role of individual Member States. Transitional arrangements or safeguards should be reviewed regarding their impact on competition or the functioning of the internal market.

Detailed technical adaptations to the *acquis* will not need to be fixed during the accession negotiations. They will be prepared in cooperation with Turkey and adopted by the Union institutions in good time with a view to their entry into force on the date of accession.

13. The financial aspects of the accession of Turkey must be allowed for in the applicable Financial Framework. Hence, as Turkey’s accession could have substantial financial consequences, the negotiations can only be concluded after the establishment of the Financial Framework for the period from 2014 together with possible consequential financial reforms. Any arrangements should ensure that the financial burdens are fairly shared between all Member States.

14. Turkey will participate in economic and monetary union from accession as a Member State with a derogation and shall adopt the euro as its national currency following a Council decision to this effect on the basis of an evaluation of its fulfilment of the necessary conditions. The remaining *acquis* in this area fully applies from accession.

15. With regard to the area of freedom, justice and security, membership of the European Union implies that Turkey accepts in full on accession the entire *acquis* in this area, including the Schengen *acquis*. However, part of this *acquis* will only apply in Turkey following a Council decision to lift controls on persons at internal borders taken on the basis of the applicable Schengen evaluation of Turkey’s readiness.

16. The EU points out the importance of a high level of environmental protection, including all aspects of nuclear safety.

17. In all areas of the *acquis*, Turkey must bring its institutions, management capacity and administrative and judicial systems up to Union standards, both at national and regional level, with a view to implementing the *acquis* effectively or, as the case may be, being able to implement it effectively in good time before accession. At the general level, this requires a well-functioning and stable public administration built on an efficient and impartial civil service, and an independent and efficient judicial system.
Negotiating Procedures

18. The substance of negotiations will be conducted in an Intergovernmental Conference with the participation of all Member States on the one hand and the candidate State on the other.

19. The Commission will undertake a formal process of examination of the **acquis**, called screening, in order to explain it to the Turkish authorities, to assess the state of preparation of Turkey for opening negotiations in specific areas and to obtain preliminary indications of the issues that will most likely come up in the negotiations.

20. For the purposes of screening and the subsequent negotiations, the **acquis** will be broken down into a number of chapters, each covering a specific policy area. A list of these chapters is provided in the Annex. Any view expressed by either Turkey or the EU on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters. Also, agreements reached in the course of negotiations on specific chapters, even partial ones, may not be considered as final until an overall agreement has been reached for all chapters.

21. Building on the Commission’s Regular Reports on Turkey’s progress towards accession and in particular on information obtained by the Commission during screening, the Council, acting by unanimity on a proposal by the Commission, will lay down benchmarks for the provisional closure and, where appropriate, for the opening of each chapter. The Union will communicate such benchmarks to Turkey. Depending on the chapter, precise benchmarks will refer in particular to the existence of a functioning market economy, to legislative alignment with the **acquis** and to a satisfactory track record in implementation of key elements of the **acquis** demonstrating the existence of an adequate administrative and judicial capacity. Where relevant, benchmarks will also include the fulfilment of commitments under the Association Agreement, in particular those pertaining to the EU-Turkey customs union and those that mirror requirements under the **acquis**. Where negotiations cover a considerable period of time, or where a chapter is revisited at a later date to incorporate new elements such as new **acquis**, the existing benchmarks may be updated.

22. Turkey will be requested to indicate its position in relation to the **acquis** and to report on its progress in meeting the benchmarks. Turkey’s correct transposition and implementation of the **acquis**, including effective and efficient application through appropriate administrative and judicial structures, will determine the pace of negotiations.

23. To this end, the Commission will closely monitor Turkey’s progress in all areas, making use of all available instruments, including on-site expert reviews by or on behalf of the Commission. The Commission will inform the Council of Turkey’s progress in any given area when presenting draft EU Common Positions. The Council will take this assessment into account when deciding on further steps relating to the negotiations on that chapter. In addition to the information the EU may require for the negotiations on each chapter and which is to be provided by Turkey to the Conference, Turkey will be required to continue to provide regularly detailed, written information on progress in the alignment with and implementation of the **acquis**, even after provisional closure of a chapter. In the case of provisionally closed chapters, the Commission may recommend the re-opening of negotiations, in particular where Turkey has failed to meet important benchmarks or to implement its commitments.

Preliminary Indicative List of Chapter Headings
(Note: This list in no way prejudices the decisions to be taken at an appropriate stage in the negotiations on the order in which the subjects will be dealt with.)

1. Free movement of goods.
2. Freedom of movement for workers.
3. Right of establishment and freedom to provide services.
4. Free movement of capital.
5. Public procurement.
8. Competition policy.
10. Information society and media.
11. Agriculture and rural development.
12. Food safety, veterinary and phytosanitary policy.
13. Fisheries.
15. Energy.
16. Taxation.
17. Economic and monetary policy.
19. Social policy and employment.¹
20. Enterprise and industrial policy.
22. Regional policy and coordination of structural instruments.
23. Judiciary and fundamental rights.
26. Education and culture.
27. Environment.
28. Consumer and health protection.
29. Customs union.
30. External relations.
31. Foreign, security and defence policy.
32. Financial control.
33. Financial and budgetary provisions.
34. Institutions.
35. Other issues.

Delegations are invited to find attached the Council conclusions on Croatia, as adopted by GAERC on 3 October 2005.

Annex

CROATIA: OPENING OF NEGOTIATIONS²

The Council recalled that in March 2005 it had confirmed that Croatia was a candidate country for accession and had agreed that a bilateral intergovernmental conference would be convened by common agreement in order to open negotiations, as soon as the Council had established that Croatia was co-operating fully with the ICTY.

The Council warmly welcomed the report to the Croatia Task Force by the ICTY Chief Prosecutor that Croatia was now co-operating fully with the ICTY, as well as the clear commitment by the Croatian Prime Minister that full co-operation would be maintained until the last remaining indictee was in The Hague, and as long as required by the ICTY. It noted the Chief Prosecutor’s assessment that, if Croatia continued to work with the same resolve and intensity, she was confident that Ante Gotovina would be transferred to The Hague Soon.

The Council concluded that Croatia had met the outstanding condition for the start of accession negotiations, and that negotiations should therefore begin as soon as possible.

The Council confirmed that sustaining full co-operation with the ICTY would remain a requirement for progress throughout the accession process. The Council invited the Commission to continue to monitor this closely, on the basis of regular reports from the ICTY, and report to the Council if full co-operation is not maintained. The Council noted that an assessment of co-operation with the ICTY would form part of the Commission’s reports to the Council on Croatia’s fulfilment of the political criteria. The Council agreed that

¹ This chapter includes also anti-discrimination and equal opportunities for women and men.
² The Council decided that these conclusions form part of the negotiating framework.
less than full co-operation with the ICTY at any stage would affect the overall progress of the negotiations and could be grounds for triggering the mechanism in paragraph 12 of the negotiating framework.

PARLIAMENTARY SCRUTINY OF EU BUSINESS

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

I am happy to confirm that my Committee warmly endorsed your proposals subject to clarification on two matters described below. You will have noticed that I took the opportunity also to welcome your proposals during the debate in the House of Lords on the Presidency on 9 March.

The two matters on which the Committee have asked for clarification are first whether the reference to “each council” includes both formal and informal meetings; and secondly whether the offer to “explain the agenda” will cover all items on our council agenda and not just those subject to a formal scrutiny reserve. I am sure that the answer to these two questions will be yes and subject to that we will be delighted for the new system to begin as soon as possible.

I should take this opportunity to let you know that Sub-Committee C (Foreign Affairs, Defence and Development Policy) is shortly going to be turning its mind to the parliamentary scrutiny of CFSP matters where a number of unresolved issues would seem to merit discussion between the Committee and the Government. I know that officials in your department have already had several helpful conversations with the officials of Sub-Committee C and we will of course keep the Foreign and Commonwealth Office involved in discussions both at official and ministerial level.

10 March 2005

Letter from Sandy Mewies AM, Chair, European and External Affairs Committee, National Assembly for Wales to the Chairman

REVIEW OF SCRUTINY OF EUROPEAN POLICY AND LEGISLATION

Please find enclosed a paper, recently approved by the Panel of Chairs, reviewing the scrutiny of European policy and legislation by National Assembly Committees. I also enclose a summary of priorities selected by Committees from the European Commission’s work programme, for scrutiny and monitoring.

22 March 2006

Second Assembly
Panel of Chairs—Review of Scrutiny of European Policy and Legislation

PURPOSE OF PAPER

1. A new approach to scrutinising European Union (EU) legislation and policy proposals within the Assembly’s Committees was adopted for this year, on the basis of the recommendation of the European and External Affairs Committee (EEAC, 11 November 2004) which was endorsed by the Panel of Chairs (7 December 2004). EEAC reviewed the process one year on, at their 18 January meeting. The Panel of Chairs is invited to consider the results of the review and the recommendations agreed by EEAC.

SUMMARY

2. Following positive feedback from the Committees, it is proposed that this new approach should be continued, whereby a limited number of high priority issues are selected by the Assembly’s Committees on the basis of the EU work programme for scrutiny over the coming year.

3. A number of recommendations have been put forward for consideration by EEAC to the Panel of Chairs for improving the process of scrutinising EU legislation.
BACKGROUND—A MORE STRATEGIC APPROACH TO EU ISSUES

3. In previous years, Committees considered whether they wished to scrutinise any EU proposals on the basis of regular lists of EU documents “deposited in the UK Parliament”, as is the practice of the UK Houses of Parliament. Although, these lists were sifted according to relevance to the Committees’ priorities, it was felt that this was not always effective in bringing important issues to the attention of the Committees.

4. It was decided therefore to use the European Commission’s Annual Work Programme as the starting point for identifying documents which were of potential importance to the Assembly during the year ahead.

5. Each Committee was presented with an analysis of the Work Programme between February and April 2005, which had been prepared by the Members’ Research and Committee Services. This included suggestions for key legislative and policy proposals in their subject areas which Committees could monitor and scrutinise. For some Committees there were no significant items of interest. All committees have now undertaken a similar exercise for this year.

6. The Panel of Chairs subsequently agreed a protocol for Committees for dealing with the scrutiny of EU legislative and policy proposals (19 April 2005)—attached at Annex A.

7. Each Committee has tailored its own approach to dealing with EU issues, depending on the nature of the document(s) identified for further scrutiny and monitoring. Committee Chairs have generally welcomed this more strategic approach as compared to the deposited documents list. A summary of items identified by each Committee and how they are being dealt with is attached in Annex B.

8. A complete list of all documents “deposited in the UK Parliament” is still produced for information purposes, and made available to this Committee and other Committee Chairs. This provides a check that nothing is being missed.

AREAS WHERE THE PROCESS COULD BE STRENGTHENED

9. The following issues have been identified with a view to strengthening the EU scrutiny process and relate to four main areas: identifying priorities for Committees from the annual work programme (paragraphs 10–13); undertaking better informed scrutiny (paragraphs 14–15); the role of EEAC in taking an overview of EU issues (paragraph 16); and promoting the Assembly Committees’ views externally (paragraph 17).

10. This year, at the request of the Chair, the Welsh Assembly Government provided a statement on their EU priorities for 2006, which will help inform the Committees’ views. Although this was not the case last year, it had been provided in previous years.

11. The Member State holding the Presidency will often push their own specific policy initiatives. It is important, therefore, not to lose sight of the agendas of the rotating EU Presidency during the year, when Committees consider which policy areas to prioritise.

12. Although the Commission’s Work Programme should be the main focus for identifying priorities for the Committees, increasing amounts of EU activities are inter-governmental in character. The aim is to help Member States to develop their own policies through National Action Plans, according to EU guidelines, which are then evaluated at the EU level and stimulate the exchange of good practice. This is a process referred to in EU jargon as “the Open Method of Co-ordination”. These are on-going processes rather than part of any new initiative. They relate to specific policy areas eg Lisbon agenda, education and training, health, social inclusion.

13. The Welsh contributions to the National Action Plans are generally not scrutinised, although the European and External Affairs Committee did look at the Welsh dimension of the UK National Reform Programme which is part of the Lisbon strategy open method of co-ordination. National Action Plans (the Open Method of Co-ordination) is an area which could be further explored, if it’s felt to be of sufficient importance and interest to Committees.

14. One recommendation in the protocol for dealing with EU issues is that Committee Chairs request reports of discussions and outcomes of Council of Ministers meetings from the Welsh Assembly Government (paragraph xi of the protocol—Annex A). This would help Committees to track developments in negotiations relating to their priority issues, as often the Commission’s original proposals undergo significant amendments as the European Parliament and Council of Ministers try to find an agreement. This suggestion has not been taken up by any of the Committees as yet.

15. The UK Government produces Explanatory Memorandums (EMs) on every document deposited in the UK Parliament. These form the basis of the House of Commons’ European Scrutiny Committee’s scrutiny of EU matters. EMs are public documents and are sent to the Welsh Assembly Government. They provide a
useful summary of the UK Government’s analysis of the issue and their position. It would be useful for the Assembly’s Committees to have sight of the relevant EM when scrutinising specific issues.

16. Several of the other committees have undertaken detailed EU scrutiny work over the past year, following the identification of specific items in the Commission’s annual work programme, as mentioned above. The European and External Affairs Committee has generally been kept informed through membership cross-over, but is not formally receiving this information. However, it is suggested that the Committee has a role to play in overseeing the process and therefore should formally receive information about how other Assembly Committees are dealing with EU issues.

17. It is important to inform other parliamentary bodies of the Assembly Committees’ views to enhance its influence. Members of the European Parliament and Members of the House of Commons European Scrutiny Committee have expressed a wish to be kept better informed of the Assembly’s views on EU issues.

Action for the Committee

18. The Panel of Chairs is invited to consider the following recommendations by EEAC:

(i) The approach to EU legislative and policy scrutiny is continued whereby the Committees select a limited number of EU priority issues for the coming year, on the basis of the Commission’s work programme, taking into account the WAG’s EU priorities.

(ii) The Committees should take into account the work programme of the Council of Ministers as well (as determined by the Member State assuming the Presidency of the EU), when deciding on its priorities for the year ahead as they may encompass issues which do not feature in the Commission’s work programme.

(iii) Some Committees may wish to consider looking into how Wales contributes to UK National Action Plans, which is part of an on-going EU process for developing policy through the exchange of good practice between Member States. This does not generally feature in the Commission’s annual work programme.

(iv) That the Committees consider requesting that the Welsh Assembly Government, in line with the agreed protocol, provides a summary of the results of all Council of Ministers meetings where the Committees’ high priority issues are discussed, to facilitate on-going monitoring and scrutiny by Committees.

(v) That the Welsh Assembly Government makes the UK Government’s Explanatory Memorandums available to Committees systematically, when they look at EU proposal in detail ie as annexes to commissioned papers.

(vi) That the European and External Affairs Committee should be kept regularly informed of the actions of other Committees in relation to EU scrutiny through papers to note to the Committee provided by the Members’ Research and Committee Service.

(vii) That Members’ Research and Committee Service ensure that other parliamentary bodies are regularly informed of the scrutiny of EU issues within the Assembly’s Committees.

Annex A

Protocol for Committee Scrutiny and Action on EU Policy

This protocol was agreed by the Panel of Chairs in April 2005

1. The key to influencing proposals is to engage with the right players at the right time. This is a suggested general approach to European issues, Committees may wish to consider some or all of the following in order to maximise their effectiveness:

(i) Inviting the Welsh Assembly Government to explain the impact of a proposal on Wales, to give its response to the proposal and explain how it is making its views known to the UK Government and Commission.

(ii) Inviting a Commission representative, UK Government officials or MEPs for a direct exchange of views.

(iii) Inviting Welsh or UK organisations to the committee or expert witnesses to give their views on any particular issue, (eg business representatives, ASPBs, Welsh Local Government Association, social and environmental NGOs, universities).
(iv) EU proposals may sometimes cut across several committees' remit and will therefore require coordination of views and perspectives. In such a case, it may be appropriate for one committee to take the lead.

(v) Having agreed its position on an issue, Committees may wish to promote this to the key institutions in the decision-making process, and other relevant players, as follows.

(vi) The European Parliament: for example, by communicating this to Wales MEPs and inviting them to pursue the issue in the European Parliament. Channels open to MEPs to do so include:

- influencing relevant EP Committee rapporteurs;
- tabling amendments;
- tabling questions to the Commission and representatives of the Council of Ministers;
- influencing the position of their EP political grouping.

(vii) The European Commission:

- by responding to Commission consultations;
- inviting the Commission to Committee meetings or engaging in dialogue with the Commission through other opportunities, such as European conferences;
- write to the relevant Commissioner responsible for the policy to promote the Committee's view.

(viii) In addition to scrutinising the WAG's position, the Committee may wish to write to the relevant UK Government Minister to make its view known.

(ix) Other potential players include:

- the European Committees of the Houses of Parliament, for example, submitting evidence to House of Lords' enquiries;
- Assembly Members of the Committee of the Regions may table amendments to the CoR's reports;
- European associations on which the Assembly is represented and other networks of like-minded regions and organisations. Forming a pan-European coalition on an issue is important for having a wider impact and takes the debate beyond national boundaries.

(x) Monitoring the progress of the proposal through the decision-making process, either through updates from the Welsh Assembly Government in particular on the outcome of Council meetings (Minister's report, for example), or through European update briefings from the Members' Research Service.

(xi) In the interest of transparency, the Committee Chair should request that WAG systematically brief Committees on the outcome of Council of Ministers meetings which are relevant to the Committee's remit.

(xii) It may be necessary for the Committee to re-assess its view in light of the evolving negotiations and to issue a further response at a later stage.

Annex B

Scrutiny of EU Policy and Legislation undertaken in the Assembly’s Subject and Standing Committees

**European and External Affairs Committee**

The Committee’s role is to maintain an overview of all EU issues affecting Wales. These are some of the main issues it has focused on during the course of 2005.

At its 24 February 2005 meeting, EEAC considered a number of priorities from the Commission’s 2005 work programme.

- Mid-term review of the Lisbon Agenda.
- The future of state aid policy.
- Revision of the regional aid guidelines.
- Communication Strategy.
Several on-going issues were considered of high priority, including the revision of the working time directive and the services directive and discussions on the EU Financial Perspectives 2007–13 and funding programmes.

The Committee took evidence from a number of stakeholders on the implications of the services directive for Wales. A report of the Committee’s conclusions was sent to key players in the EU decision-making process, including the Members of the European Parliament, the European Commission and the UK Government (April 2005).

The Committee has kept under constant review the implications of the negotiations on the EU’s future budget on funding for Wales, in particular the future of the structural funds programmes for Wales, post 2006. It also received a report from WEFO on preparations for the 2007–13 programmes which are in hand (October 2005).

On state aids, the Committee noted the Commission’s Action Plan for the reform of state aid rules. The Committee has mainly concentrated on the revision of the regional aid guidelines, receiving regular reports on the progress of negotiations from the Welsh Assembly Government.

Officers from the UK Government (DTI, HMT) and the Welsh Assembly Government have attended the Committee to explain the review of the Lisbon Strategy and the contribution of Wales to the UK National Reform Plan (January and November 2005).

With regards the EU Constitutional Treaty, the Committee received a presentation from Andy Klom, the Commission’s representative in Wales on the Commission’s Plan D, relating to the period of reflection on the Treaty (November 2005). The Committee will receive an update on progress in 2006, and will consider the related issue of the White Paper on Communication (deferred from the 2005 work programme—likely to be published in February 2006).

The Committee has also considered how the principle of subsidiarity can be more rigorously applied when it comes to the scrutiny of EU policy and legislation. The Committee participated in a pilot project run by the Committee of the Regions to establish a European network of regional and local authorities to strengthen the monitoring of the principle of subsidiarity. The Committee will continue to participate in the development of the network in 2006 and will work with the UK Houses of Parliament who are also considering the issue.

ECONOMIC DEVELOPMENT AND TRANSPORT

On 9 March 2005, the EDT Committee considered the Commission’s work programme. At the meeting Members agreed that cohesion/state aid and regional aid were issues that they would continue to focus on. It was also suggested that the Committee consider the strategic guidelines for cohesion policy. Members also expressed an interest in the EC Green Paper on Energy Efficiency as well as the proposed communication on renewable energies.

In the last year the Committee has had two updates on structural funds post 2006 and two updates on Regional Aid guidelines. The Committee have also considered the State Aid Road Map and a letter was submitted to the commission in response to their consultation. The Committee had also has regular updates from WEFO. In September the Community Strategic Guidelines were circulated to Members for their comments but no comments were submitted.

The Committee are considering the Green Paper on Energy Efficiency at its meeting on 11 January 2006.

ENVIRONMENT PLANNING AND COUNTRYSIDE (EPC)

The EPC Committee identified six issues for further consideration and, if possible, influence. It wished to consider:

- thematic strategies on the urban environment, waste, the marine environment; and
- a policy document on biodiversity.
- Given the far-reaching implications of the EC Rural Development Regulation and the REACH (registration, evaluation and authorisation of chemicals) Regulation, the Committee expressed a wish to consider them in detail.

The Committee requested that the Welsh Assembly Government provide details of its discussions and input into the development of these policies/legislative issues. The information was discussed at Committee meetings in May.
The Committee’s scrutiny of EU legislation to date has centred on the REACH regulation. Having received an initial Welsh Assembly Government view on 4 May, the Committee requested details of a scoping study carried out with businesses in Wales and invited representatives from the chemical industry and from an NGO to give evidence. The results of the scoping study were discussed and an evidence session on the Regulation held on 22 June. Having taken evidence, the Committee requested a paper summarising its work on REACH and emerging conclusions. The paper was discussed on 13 July and the Committee requested that the Chair write to:

— The Minister for Environment, Planning and Countryside, supporting the UK’s negotiating standpoint on the Regulation in Europe;
— The Minister for Health and Social Services noting its concerns over the results of bio-monitoring drawn to its attention during evidence from WWF Cymru; and
— The Minister for Economic Development and Transport noting Committee’s concerns that not enough was being done to raise awareness of the resource implications and the expertise small-to-medium sized enterprises (SMEs) would require to implement REACH.

The Chair received replies from the Minister for Health and Social Services and the Minister for Economic Development and Transport. These were discussed by the Committee at its meeting on 5 October. It was concerned at the lack of detail and a timeframe in the reply received form the Minister for Economic Development and Transport and requested that the Chair write again requesting further details. (No reply has been received to date.)

On 5 October, the Committee also received a Government paper on OSOR—One Substance; One Registration. It outlines the UK Government’s negotiating standpoint in Europe and was of particular interest to Committee given the flexibility it affords SMEs with regard to registration. The Committee supports OSOR.

The Committee has received regular updates on the development of the EU strategic guidelines for Member States on the drafting of rural development plans. At its meeting on 3 November, the Committee received a Government paper, which outlined the current state of negotiations in Europe and lessons learnt from the rural development plan 2000–06. The Committee took evidence from a range of stakeholders at two further meetings in November with regard to the four axes of the plan, with a view to influencing the drafting of the rural development plan for Wales, 2006–13.

The Committee will continue to monitor the development of the Rural Development Plan for Wales 2007–13, which must be drafted with regard to the EU strategic guidelines. Welsh Assembly Government officials hope to publish a draft plan in February, which Committee will be able to scrutinise and influence.

The Committee will consider the European Commission’s proposal for a Thematic Strategy on the Urban Environment early in 2006 and may, if appropriate, link its future inquiry into the Welsh marine industry with the publication of the European Commission’s proposal for a thematic strategy on the marine environment (and with the publication of the UK’s Marine Bill in autumn 2006).

**HEALTH AND SOCIAL SERVICES COMMITTEE**

The Committee identified three items from the Commission’s work programme:

— Directive updating measures for the control of avian influenza;
— Green Paper on a European programme on nutrition and health (published December 2005, Committee to consider in 2006).

The Committee expressed an on-going interest in the revision of the working time directive, the services directive and the paediatric medicines directive.

It considered the implications of the services directive on health services at its March 2005 meeting with a paper from the Welsh Assembly Government and has monitored the developing negotiations.

It has received regular updates from the Members Research and Committee Service on the priority items identified, and has raised any emerging issues with the Minister for Health, in particular preparations for the potential bird flu pandemic.

At its 23 November 2005 meeting, the Committee decided to respond to the Commission’s Green Paper on an EU Mental Health Strategy, which it will consider in 2006.
EQUAL OPPORTUNITIES

The Equality of Opportunity Committee identified three items from the Commission’s work programme as areas of potential interest during the course of 2005:

- youth policy;
- a policy approach to non-discrimination; and
- e-accessibility.

The Chair wrote to Jane Davidson, Minister for Education and Lifelong Learning with regards to youth policy and Jane Hutt, Business Minister regarding the other two items. The Committee received responses from the Welsh Assembly Government on their views and involvement in the three policy areas, including Assembly involvement in preparations for the Cardiff Youth Event during the UK Presidency in October 2005.

The Business Minister responded to the Committee’s request for more information on a planned “European Year of Equal Opportunities for All 2007” which was part of the Commission’s non-discrimination policy. Members of the Committee also received a summary and update on these three policy proposals from the Members Research Service in November 2005.

OTHER SUBJECT COMMITTEES

The other subject Committees did not identify any high priority issues from the Commission’s work programme. However, the Culture, Welsh Language and Sport Committee has received a briefing about the work of the European Parliament’ Culture Committee, at the request of the Chair.

The Education and Lifelong Learning Committee is kept regularly informed of the Welsh Assembly Government’s involvement in European Association of Regions and Local Authorities for Lifelong Learning (EARLALL) and other EU issues relating to education through the Minister’s report.

EUROPEAN AND EXTERNAL AFFAIRS COMMITTEE

EUROPEAN COMMISSION WORK PROGRAMME 2006

1. Background

The EC Work Programme 2006 was considered on 18 January 2006 and it was agreed that the Clerk would produce a summary paper identifying priorities to inform the Committee’s forward work programme.

Subject Committees have all considered the EC Work Programme and their priority areas are listed below.

2. Suggested Priorities for European and External Affairs Committee

- Structural Funds Regulations.
- Strategic Community guidelines on Cohesion.
- White Paper on Communications Strategy.
- Future of the EU Constitutional Treaty: Plan D.
- Lisbon Strategy for Growth and Jobs.
- Services Directive.

3. Priorities identified by Subject Committees

Economic Development and Transport Committee

- Communication on Clean Coal Technologies.
- Strategic Community Guidelines on Cohesion.
— Communication on Renewable Energy.
— EU Framework Programmes for Research Funding (FP7).

Environment, Planning and Countryside Committee
— Green Paper on Adaptation to Climate Change.
— Green Paper on future European Maritime Policy.
— Review of health issues on animal by-products.
— Proposals to combat Environmental Crime.
— Marine Thematic Strategy.
— Urban Thematic Strategy.
— Waste Thematic Strategy.
— Rural Development Plan.

Education and Lifelong Learning Committee
— Recommendation for a European Qualifications Framework.

Culture, Welsh Language and Sport Committee
— Issues related to Minority Languages.
— The European Year of Intercultural Dialogue.
— Digitisation of Cultural Heritage.

Health and Social Services Committee
— Decision pending; awaiting outcome of discussions during the EEA Committee visit to Brussels.

Local Government and Public Services Committee

Social Justice and Regeneration Committee
— Proposals for the full accomplishment of the Internal Market for Postal Services.
— Communication on the Rights of the Child.
— Green Paper on Drugs and Civil Society.
— Commission Communication on an Alcohol Policy.

4. Action
— That the Committee agrees priority areas from the EC Work Programme 2006 and notes the priorities identified by subject committees.

Chris Reading
Committee Clerk

Letter from Rt Hon Douglas Alexander MP, Minister for Europe, Foreign and Commonwealth Office
to the Chairman
Thank you for your letter of 10 March to my predecessor, Dr MacShane, about the Parliamentary Scrutiny
of EU Business. I am replying as Minister for Europe. I am sorry that it has taken so long to reply, Ministerial deliberations of this matter have only recently been completed.

In your letter to Dr MacShane you asked for clarification over two matters relating to his proposals for pre-and post-Council reporting. Dr MacShane consulted Ministerial colleagues over the first of these matters: whether the reference to report on each Council by way of Written Ministerial Statements included both formal and informal meetings. I can report that Ministerial colleagues are willing to provide reports after informal Councils; these reports will be general in nature and will not set out the positions taken by Member States, including the UK’s. However, as there is, increasingly, no prior agenda set for informals, there was no consensus to report to Parliament before these meetings take place. The reporting of informals will therefore be limited to post-Council Statements.

For formal Councils, we will provide as much detail as we can in both the pre- and post-Council reports. But a number of colleagues have emphasised that, on some occasions, reports prior to formal Council meetings will be fairly uninformative due to the fact that Council agendas are not always available until two to three days beforehand. We will work on a best endeavours basis to capture as much information as we have available to us, which of course should be easier for us whilst we have the Presidency.

On your second point, the offer to “explain the agenda” will cover all items on our Council agenda and not just those subject to a formal scrutiny reserve.

In his reply to Dr MacShane’s letter of 2 February, Jimmy Hood agreed to our proposals on a trial basis. I agree that this is a sensible approach. The introduction of the new measures will take immediate effect in order to capture the first Councils of our Presidency. (The first informal—Employment and Social Affairs—takes place in Belfast on 7-8 July; the first formal, ECOFIN, on 12 July.) In line with the views of the European Scrutiny Committee, however, the new measures will be put in place initially for the duration of the Presidency. During this time they can then be kept under review and adjusted as necessary to ensure that the Statements do indeed provide what they are intended to: better and more timely information to Parliament.

The Cabinet Office has circulated detailed guidance to Whitehall departments setting out the new approach on providing this information about Council agendas and outcomes to Parliament to ensure that departments can respond quickly to these new arrangements. This guidance is attached. I understand that Cabinet Office officials have been in touch with the chief clerk of your committee to discuss the practicalities of introducing the new measures. I will now also make a Written Ministerial Statement to both Houses announcing this initiative for reporting on formal and informal Councils.

Annex A

Pre and Post-Council Scrutiny

BACKGROUND

As part of the Government’s continuing efforts to improve the Parliamentary scrutiny and transparency of EU business, revised arrangements have been put in place for the provision of information before and after Council meetings. These revised arrangements take immediate effect. This includes the provision of detailed information to the Scrutiny Committees which allows the Committees to have a regular dialogue with Departments on forthcoming Council business; to track the progress of business during each Presidency; and to enable issues to be identified at an early stage on which it would be appropriate for the Committees to seek further information either by written or oral evidence. The essential elements of the system are:

— provision of information (up to three weeks before a Council) to the Committees focussing on the scrutiny position of items on the agenda of forthcoming Councils—see proforma below;

— liaison between the Committee staff and Departments on agenda details which may result in a request for further information, including calling the lead Minister to give evidence to the Committee on a particular issue;

— a written Ministerial statement in both Houses shortly (no later than a day) before each formal Council meeting setting out why the items are on the agenda and during the period of the UK’s Presidency off the EU, the Presidency’s position on the items. After the Presidency the Statements should revert to being written in terms of the Government’s general position on the items;

— provision of detailed post-Council reports in the form of written Ministerial statements in both Houses setting out what happened at the meeting and what the UK as Presidency delivered. Again as above, after the Presidency the Statements should revert to stating what role the UK played. The
statements should also record any votes taken. Similar statements should be made after informal
Councils but these should be general in nature and not provide details of Member States’ positions;
— the possibility that Ministers may be called to give further evidence after a Council meeting;
— during recesses, Ministerial letters to the Chairmen of the Committees in place of written Ministerial
statements. These letters should be copied to the Clerks of the two Committees and to the Libraries
of both Houses to ensure that information on Council meetings is accessible to all members of
both Houses.

ITEMS ON FORTHCOMING COUNCIL AGENDAS

The Committees should be informed three weeks before a forthcoming Council of items expected to appear
on the Agenda. The Committee Clerks understand that it may be difficult to provide this information with any
certainty at this point and are happy to be contacted informally to discuss provisional business. As soon as
the agenda becomes clearer, Departments should provide a detailed assessment of the main agenda items using
the annotated agenda pro-forma below. This should include detail of previous relevant scrutiny by both
Scrutiny Committees. If Departments are uncertain of the details of previous scrutiny they should consult the
reports published weekly by the European Scrutiny Committee and the “Progress of Scrutiny” document
published fortnightly by the Lords European Union Committee, or the European Secretariat who can provide
details. Significant changes to the agenda should be notified to the relevant Clerk/Adviser in the Commons
and Sub-Committee Clerk in the Lords immediately so that the Clerk/Adviser or Lords Sub-Committee Clerk
can indicate whether further information is required in writing. Copies of annotated agenda should also be
placed in the House libraries.

A day or two before the Council a written Ministerial statement should be provided to both Houses confirming
the final Council agenda, the reason why each item is on the agenda and the Government’s general position
on each item. These statements should be sent to the Chairmen and Clerks of both Committees, to Mr L
Saunders in the European Secretariat of the Cabinet Office and to the Departmental scrutiny co-ordinator.

LIAISON

The Committee Clerks (Sub-Committee Clerks in the Lords) will keep in regular touch with Departments to
identify as far ahead as possible, issues on which each Committee might want to consider taking further
evidence. This could be by providing further written evidence or could involve officials and/or Ministers
appearing before the Committee. The Clerks will contact Departments at the earliest moment that the
Committee has identified an issue on which it wishes further information to discuss handling and timing.
Formal invitations to give evidence will be sent to Ministers.

POST-COUNCIL REPORTING

Written Ministerial statements should be provided within five working days of both formal and informal
Councils unless Parliament has gone into recess—see below. For formal Councils the statements should give
a full account of business taken at the Council. During the UK’s Presidency it is important that the report
states clearly what the Presidency has delivered and records the details of votes taken. After the Presidency
the Statements should revert to reporting on what stance the UK took in discussions.

But when reporting on informal Councils the reports should be more general in nature and should not record
the positions taken by individual Member States. When reporting to Parliament the statements should be
circulated in the same way as pre-Council statements.

POST COUNCIL EVIDENCE

The Committees may call Ministers to give evidence after Council Meetings to follow up particular items of
business. Departments should consider therefore whether a reporting letter, in addition to the statements and
containing greater detail, might be useful in appraising the Committees more fully of the outcome of a Council,
and so possibly avoiding the need for an oral evidence session. This may be important for items that have been
the subject of particular Committee interest.
Recesses

During recesses, Ministers should provide pre- and post Council statements in the form of letters to the Chairmen of both Committees. These letters should also be copied to the Clerks of each Committee (Currently Simon Burton (Lords) and Dorian Gerhold (Commons)), to Mr L Saunders in the European Secretariat of the Cabinet Office, to the (named) Departmental scrutiny co-ordinator and to the Libraries in each House.

Contact Details

If it is unclear which Sub-Committee in the Lords is dealing with a particular Council, the Documents Officer (020 7219 5791, currently Shaun Connor) can be asked for advice. Copies of all agendas/pro formas/letters for the Clerks should be emailed to escom@parliament.uk for the Commons, and to euclords@parliament.uk for the Lords.

[TITLE OF COUNCIL AND DATE]: ANNOTATED AGENDA—See also attached Agenda

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<td>To include details of previous documents/Ministerial correspondence considered by Committee, including reference to any points of concern raised by Committee etc. Should also include reference to Lords Scrutiny position.</td>
<td>To note latest developments in negotiations and prospects for the Council, with particular emphasis on concerns expressed by the Committee previously, or outstanding problems for the UK, eg on points of substance, legal base etc.</td>
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Scrutiny Reserve Resolution: Overrides—July–December 2005

Letter from Kim Darroch to the Chairman

I enclose the latest list of scrutiny overrides covering the period July–December 2005.

You will see that following the last report which covered the period of the dissolution and a period immediately afterwards when your Committee was unable to meet, the number of overrides has returned to previous levels. There were only 22 during the second half of last year and of these 19 were overrides in the House of Lords. A further two which were omitted from the report for the period January–June are included in the latest list.

The second half of the year always presents problems because of the summer recess. Eleven of the proposals listed were agreed at times when your Committee was not sitting. Also, the usual late tabling of the annual fisheries proposals caused familiar difficulties with scrutiny—though I note your Committee cleared the proposals ahead of the December Fisheries Council. I know that Ben Bradshaw recently gave evidence to the European Scrutiny Committee on how the Government took this issue forward during our Presidency.

We will continue to work closely with departments to improve the handling of business coming to the Committees.

SCRUTINY OVERRIDES: JULY–DECEMBER 2005

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<td>12.7.05 &amp; 22.07.05: Douglas Alexander to Jimmy Hood</td>
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<td>5 10120/05 + COR 1</td>
<td>Draft amendments to Articles 9, 11, 11b, 11c, 11d, 16, 35, 37, 44, 45, 46, 60, 74, 75, 76, 92 and 93 of the Rules of Procedure of the Court of Justice</td>
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<td>29.6.05, 20.7.05, 26.8.05 &amp; 8.11.05: Douglas Alexander to Chairman</td>
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<td>Council Joint Action on the European Monitoring Mission in Aceh (Indonesia)</td>
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<td>Draft Agreement between the EU and the Government of Indonesia on the Status of the EU led Monitoring Mission in Indonesia</td>
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<td>Common Position extending Common Position 2004/661/CFSP concerning restrictive measures against certain officials of Belarus</td>
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<td>Council Regulation abolishing tariff quota for imports of soluble maize product (Zea mays L, line 150?) genetically modified for resistance to certain lepidopteran pests and for tolerance to the herbicide glufosinate-ammonium</td>
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<td>Draft Council Decision on the exchange of information and cooperation concerning terrorist offences</td>
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<td>Preliminary Draft Amending Budget No. 7/2005—General statement of revenue—Statement of revenue and expenditure by section—Section IV: Court of Justice</td>
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<td>22.9.05: Ivan Lewis to Lord Grenfell</td>
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<td>Council Decision authorising the placing on the market of foods and food ingredients derived from genetically modified maize line MON 863 as novel foods or novel food ingredients under Regulation (EC) No 258/97 of the European Parliament and of the Council</td>
<td>13.9.05</td>
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<td>Council Decision concerning the provisional prohibition in Greece of the marketing of seeds of maize hybrids with the genetic modification MON 810 inscribed in the common catalogue of varieties of agricultural plant species, pursuant to Directive 2002/53/EC</td>
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<td>Proposal for a Council Decision concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a maize product (Zea mays L., hybrid MON 863 x MON 810) genetically modified for resistance to corn rootworm and certain lepidopteran pests of maize</td>
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European Union Select Committee

BREAKDOWN OF LEG AND NON-LEG ISSUES SUBMITTED FOR SCRUTINY WITH OVERRIDES

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Notes

The number of documents deposited is a higher figure than issues scrutinised since some documents have working docs and other annexes which are deposited as separate documents but which form part of the single issue being scrutinised; equally some documents contain more than one legislative proposal.

U/N EMs are submitted where depositable docs were not available at the time (or subsequently) or where the text was attached to the EM.
DEFRA total figure of 10 overrides includes two overrides not included in previous report covering January–June 2005. Actual figure for July–December 2005 is 22.

UK PRESIDENCY

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

I was glad to be able to present evidence to the Lords EU Select Committee on 11 July and hope that the Committee found the session useful.

As we were not able to cover the full range of questions that the Committee had prepared, I enclose written answers covering the issues that we did not have the opportunity to discuss. These answers reflect progress over the recess as well as the outcome of the Informal Summit.

3 November 2005

What kind of debate about Europe is the UK Presidency hoping to engage in? Is it about economic reform? the budget? social models? democracy? or several of these? What is the Presidency hoping to achieve from such a debate? Are specific outcomes sought or would the very fact of genuinely engaging others in such a discussion be an appropriate end in itself? How will that debate be organised within the UK?

Heads of State and Government met at Hampton Court on 27 October to set a clear direction on how Europe responds to the challenge of globalisation. They reached broad agreement on the right direction for Europe’s economic and social policy for the future. This is the direction outlined in the European Commission’s paper “European values in the globalised world”. The Prime Minister’s written statement placed before Parliament on 31 October confirmed that EU leaders agreed further work in some key areas including Research and Development; Universities; Addressing the demographic challenge; and Energy. The UK Presidency, working closely with the incoming Austrian Presidency and the Commission will decide how to take work forward in these areas. EU Leaders also agreed that the Commission would look at further work on illegal immigration, crime and security. In these areas, there would be an interim report to the December European Council and final reports during the Austrian Presidency in 2006. The High Representative for the CFSP and Secretary-General of the Council of the EU would work with the Presidency to take forward work on the CFSP aspects of defence and security.

Moreover, a wider debate is necessary. The UK Presidency is working to establish the common ground between all 25 Member States and the European institutions. The debate is about reconnecting people to Europe by ensuring the EU talks about what is on their minds and addresses their concerns.

The principles and framework for the broader debate need to be distinctively European in character. They need to allow for national and EU level action involving all Community actors—including Member States, the Commission and the European Parliament. In the UK, the Government is committed to engaging and informing the UK public on the future of Europe and has plans to develop a website, publications and contacts with stakeholders, all of which will enable people to feedback views. The Government’s Presidency communications strategy focuses on the practical ways in which the EU seeks to address the problems the public care about, like the environment, organised crime and international development.

How could the recent road maps for the EU-Russia Four Common Spaces be strengthened in order to promote democracy within Russia more forcefully?

The Four Common Spaces road maps were agreed at the EU-Russia Summit on 10 May. It is not possible now to re-open the agreement. The agreed texts contain many references to common values—including respect for democracy, the rule of law, human rights and fundamental freedoms including free and independent media—which form the basis of the EU-Russia relationship.

During our Presidency of the EU we have ensured that the Four Common Spaces are implemented in a way that ensures that these values are fully taken into account. We held the second round of EU-Russia Human Rights Consultations on 8 September in Brussels. Discussions focused on human rights abuses in Chechnya, media freedom, judicial reform and international human rights concerns. During the EU-Russia summit on 4 October the Prime Minister and European Union Commission President Barroso discussed the situation in the North Caucasus at some length with President Putin, including their human rights concerns. The EU underlined the need for human rights to be safeguarded in the fight against terrorism. There was also
agreement that the upcoming Chechen parliamentary elections were an opportunity to move things in the right direction.

*What is the Government’s position on the proposed lifting of the arms embargo to China given the current situation in Taiwan, and what impact would the proposed revision of the Code of Conduct on arms exports have?*

The UK supports the ongoing review of the embargo but, as my Rt Hon Friend the Foreign Secretary has said before, the political environment surrounding the lifting of the embargo has become more difficult since the passing of the anti-secession law aimed at Taiwan in March. It has also become clear that more needs to be done to consult other partners. The UK supports the, EU’s decision to take forward dialogue with the US and Japan on East Asia.

The revision of the Code of Conduct is not linked to a decision on the China Arms Embargo. The revised Code will govern EU arms exports worldwide. The UK has been working with partners to strengthen the Code to provide a more effective, transparent mechanism for monitoring and controlling future exports. This is important in its own right.

*The White Paper on the UK Presidency lists a lot of continuing work in the AFSJ (Area of Freedom, Security and Justice). What are the main differences between HMG’s position on JHA matters and those of other Member States? What are the Presidency’s main priorities against which it will judge the success of its Presidency in this area? Has the Presidency any initiatives of its own up its sleeve? Now that asylum and immigration measures are subject to qualified majority voting do you expect an acceleration of activity in this area? Will the UK’s opt-out complicate its Presidency role?*

The UK is fully committed to the JHA agenda which has been agreed with other Member States and is reflected in the Hague Programme of 2004, and the Hague Action Plan of 2005. Following the terrorist attacks on London, the UK called an extraordinary JHA Council on 13 July, which reaffirmed all Member States’ intentions to step up implementation of the EU’s Counter Terrorism Action Plan and to co-operate more closely to tackle international challenges. As Presidency, our priorities are to: reduce the terrorist threat; tackle serious and organised crime, in particular human trafficking; manage migration and strengthen the EU’s borders; improve access to justice; and develop co-operation on these issues with countries outside the EU.

As far as asylum and immigration measures are concerned, future activity will be driven not by the move to qualified majority voting, but by the need to maximise the effectiveness of EU co-operation. Common asylum measures are now in place which create a level playing field in the EU, and allow the UK to return around 150 asylum seekers per month to other Member States where their claims should be assessed. The European Borders Agency, Frontex, started operating under our Presidency and will co-ordinate 2 operations at the EU’s external frontiers by the end of the year. The EU will work increasingly closely with third countries to improve arrangements for the return of illegal immigrants. As discussed at the Hampton Court Summit, leaders agree that the EU must work increasingly closely with third countries to build their capacity for migration management and to improve arrangements for the return of illegal immigrants. This is a focus of activity for the UK Presidency.

The UK opt-in to asylum and immigration will have no bearing on our Presidency role.

*The White Paper states that “Africa is a top priority on the EU agenda”. What concrete proposals might the “new long-term strategy for EU-Africa relations” contain and will the EU reach any firm commitments on Africa at the December European Council?*

As Presidency we remain committed to reaching agreement at the December European Council on a new long term partnership between the EU and Africa, based on core principles of partnership, equality and mutual accountability. The European Commission, in consultation with African stakeholders, has produced a Communication on the EU and Africa. We welcome this Communication, which will form a core element of our final strategy in December, along with work by Javier Solana, High Representative for the Common Foreign and Security Policy, on peace and security issues and contributions from the high level working group on Migration. The Foreign Secretary has called for action in particular on peace and security, governance, growth and investment in people. Discussions continue with partners on the details of these issues on which we hope to agree firm commitments by December. The EU has already agreed this year to double its aid to poor countries over the next five years, with half of the additional resources to be earmarked for Africa.
What dialogue is the UK Presidency to have with China and India on climate change?

The UK ensured climate change was high on the agenda for the EU Summits with both China and India in September. With India, we launched an EU/India Initiative on Climate and Clean Development, with the aim of enhancing practical co-operation on low carbon technologies. With China, we launched the EU-China Partnership on climate change.

Both agreements will deliver concrete practical action to develop cleaner technologies, as well as high level dialogue. They will promote cooperation on sustainable energy production and consumption, renewable energies and research on climate change impacts and adaptation to the impacts of climate change.

The EU-China Partnership includes a project to develop and demonstrate near Zero-Emissions Coal technology using Carbon Capture and Storage in China before 2020. The partnership demonstrates the EU’s commitment to deployment of climate-related technologies as well as providing a significant opportunity for EU industry. This kind of technological cooperation is essential in tackling climate change, given China’s huge coal reserves and growing energy needs.

At both the EU-China and the EU-India Summits we underlined our commitment to the objectives and principles of the UN Framework Convention on Climate Change and the Kyoto Protocol. As Presidency, the UK will speak for the EU at the upcoming UN Climate Change Conference in Montreal in December. The EU hopes that meeting will agree to start negotiations on further international action to tackle climate change after 2012. We will be looking to engage constructively with India and China in Montreal and the cooperation launched during our EU Presidency will have the effect of strengthening momentum for these discussions.

The UK and Luxembourg agreed an annual operating programme for 2005. Although in this case in particular it has been necessary for priorities to be adapted in response to events, will such joined up thinking across Presidencies continue into 2006?

The Multi-Annual Strategic Programme 2004-06 sets out the European Union’s long term agenda for the period 2004-06. This was the first document of its kind, but marks a more strategic approach to policy making in the Union. The annual programmes (including the UK-Luxembourg annual programme) focus in more detail on the Union’s agenda for each year. Ours was not the first (the Irish and Dutch produced one before us) and they will indeed continue after our Presidency. The Austrians and Finns will produce their annual programme for 2006 in December 2005. We welcome this long term, strategic approach.

What progress is the UK Presidency planning to make on the post FSAP agenda?

The UK strongly supports the approach outlined by Commissioner McGreevy in his Green Paper on financial services policy with its focus on implementation and enforcement, its respect for the principles of better regulation and its focus on developing the global competitiveness of Europe’s financial services industry. We are working hard to take this agenda forward and are pleased with recent developments, particularly the agreement on the Capital Requirements Directive, which is an excellent example of Europe adopting global standards.

Among the points identified by the European Council as a priority during the second half of the year is the draft Directive on the retention of telecommunications data. We looked at the proposal last year and identified a number of flaws in it. We also asked for a Regulatory Impact Assessment, which has still not been forthcoming nearly a year later. How realistic is it to secure agreement on this dossier by the end of the Presidency?

This is a difficult but important dossier. Communications data provide a vital investigative tool that can reveal associations and events by time and location. It has proven benefits in terms of helping secure successful convictions. The October JHA Council agreed that work should continue to secure agreement on an EU data retention measure before the end of the year, and the UK Presidency is taking forward work on its substance and legal base, in consultation with Member States, the Commission and European Parliament.

The Government believes that the retention of specific communications data for a fixed period is a proportionate reaction to the threat of terrorism and that the associated costs are not excessive. A copy of the Regulatory Impact Assessment has been made available to the committee by the Home Secretary.
Given that the ratification process on the draft Constitutional Treaty has been delayed, are there any plans to press ahead with the proposed External Action Service; and, if so, how might this be done under the current treaties?

The future of preparatory work on the European External Action Service is clearly tied up with future of the Constitutional Treaty. Now is a time for reflection, as called for by the European Council. Our view is that one cannot create a EEAS as envisaged in the Treaty without either the Constitutional Treaty or change to the current Treaties.

I do not therefore anticipate there being any decisions, or even Ministerial discussion, on the EEAS under our Presidency. But we will continue to listen to partners’ views.

What funding has been pledged by the EU in support of the constitutional process in Iraq, and how have funds been spent to date?

To date, the EU has provided assistance amounting to over €300 million from the Commission budget to Iraq. This total includes the €100 million committed for humanitarian activities in 2003, as well as the €200 million pledged in Madrid for reconstruction in 2003–04.

At the 21 February 2005 GAERC, EU Foreign Ministers agreed a new aid package of €200 million for 2005 (which includes the funding for Constitutional Assistance): €130 million was allocated for the Iraqi Trust Funds; €15 million for Commission work on energy and trade/investment; €10 million for democracy, governance, human rights and civil society; and a €45 million reserve (to be spent according to changing priorities). At the 22 June International Conference the Commission (Ferrero-Waldner) announced that it would allocate €20 million to the constitutional process (€15 million from the reserve).
Letter from Ivan Lewis MP, Economic Secretary, HM Treasury, to the Chairman

As you are probably aware, the Council of the European Union formally established the 2006 Draft Budget (DB) of the European Communities at the ECOFIN (Budget) Council on 15 July, following conciliation with the European Parliament. The DB was based on a package put together by the UK Presidency following discussion of the Commission’s 2006 Preliminary Draft Budget (PDB) in Council’s Budget Committee.

My Explanatory Memorandum of 1 June 2005 set out the PDB proposals in detail. The DB documents will be published in the autumn and discussed further at the Council’s second reading in November, alongside the amendments and modifications proposed by the European Parliament in its own first reading in October. The main features of the DB are set out below.

The DB proposes a total of £120.81 billion in commitment appropriations and £111.42 billion in payment appropriations.1 This represents a reduction of £478 million (or 0.4 per cent) for commitments and £1.15 billion (or 1.0 per cent) for payments compared to the Commission’s PDB. These figures are well within the ceilings set by the multi-annual Financial Perspective (FP), leaving margins of £2.89 billion for commitments and £7.87 billion for payments.

In Heading 1 (Agriculture), a reduction of £150 million compared to the PDB was made to commitment and payment appropriations for agricultural expenditure (sub-heading 1A). A horizontal cut was applied to Budget lines above £50 million, except for sub-heading 1B (Rural Development) and budget lines relating to CAP reform. The modest scale of this reduction reflects improvements in the Commission’s forecasting. It establishes an increased margin of £1.36 billion below the FP ceiling for commitments.2

In Heading 2 (Structural Operations), payment appropriations were reduced by £150 million compared to the PDB. This cut is split between Structural Funds programmes (−£72 million) and Community Initiatives (−£78 million) and reflects Council’s estimate of the Commission’s ability to fully implement funds for this Heading. Commitment appropriations remain unchanged, and payments to the new member states will not be unaffected by the reduction.

In Heading 3 (Internal Policies), commitment appropriations were reduced by £43.41 million and payment appropriations by £516.02 million compared to the PDB, leaving a total margin of £210.05 million under the FP ceiling for commitments. Reductions in commitments were designed first to limit appropriations for Commission prerogatives, pilot projects and preparatory actions, especially where Activity-Based Budgeting information did not justify the PDB amount; and second to control the spiralling operating costs for agencies. Council imposed a 3.6 per cent maximum increase for settled agencies and a 12 per cent maximum increase for developing agencies. There were no reductions for start-up agencies. The massive increases in payments in the PDB was halved to bring it closer to expected implementation capacity, while still permitting a substantial 12 per cent rise in payments for research and development lines most closely associated with the Lisbon reform agenda. Council believes increases above this level would be excessive and wasteful.

In Heading 4 (External Actions), commitment appropriations were reduced by £165.16 million and payment appropriations by £82.55 million, creating a positive margin of £41.66 million under the FP ceiling for commitments. This leaves room for £40 million transitional assistance for sugar reform, which the Commission is expected to propose in the autumn, without recourse to the Flexibility Instrument (FI). As set out in the Inter-Institutional Agreement, Council believes the FI should be reserved for unexpected needs which cannot be met through reprioritisation. In respect of the 2006 budget it is too soon to rule out reprioritisation and right to treat Tsunami reconstruction and sugar assistance as known quantities. In the absence of any serious effort from the Commission, Council reprioritised resources by applying a cut of 3.87 per cent to all budget lines apart from co-decided programmes (no cut) the priority lines for CFSP, post-

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1 For sterling figures, please refer to the summary table at Annex 1 of this letter.
2 There is a global FP ceiling for payments, but this is not divided into more specific ceilings for individual Headings. Hence individual Heading margins are only given for commitments.
Tsunami reconstruction and Iraq (no cut) and the priority line for Afghanistan (2 per cent cut). Council made corresponding but smaller cuts to payments across the heading, reflecting the capacity to improve implementation and reduce the backlog. Spending on reconstruction in Afghanistan, Iraq and Tsunami affected areas remains fully consistent with Community pledges. Adjustments to other budget lines are in line with multi-annual programming—for example the fall in the Human Rights budget in 2006 compared to 2005 reflects the front loading of commitments by the EP, and will not affect the planned flow of payments for this important priority.

In Heading 5 (Administration), commitment and payment appropriations were cut by €119.87 million, leaving an increased margin of €130.11 million under the FP ceiling for this category. An efficiency saving of 2 per cent was imposed on the main institutions (with the exception of the EP) and the flat-rate abatements for some institutions were increased to better reflect high vacancy rates. 40 of the Commission’s new “enlargement-related” posts were also cut, as Council did not believe they would be filled. These cuts were designed to improve efficiency within EC institutions and subject them to the same rigour which member states impose domestically.

In Heading 7 (Pre-Accession Strategy), payment appropriations were reduced by €127.25 million compared with the Commission’s PDB, while commitment appropriations remained unchanged. This reflects Council’s expectation that implementation rates for five budget areas (ISPA, SAPARD, Turkey, Cross-border cooperation and Horizontal programmes) will be lower than those forecast in the Commission’s PDB, and reflects a budget-disciplined approach to payment appropriations.

There were no changes to the PDB proposals for Headings 6 (Reserves) and 8 (Compensation). Tables summarising the changes between the PDB and the DB are set out in Annex 1 to this letter.

At the Conciliation during ECOFIN (Budget) Council on 15 July, the EP Committee on Budgets (CoBu) joined the Commission to express concern at cuts to payments in Heading 3, claiming it would undermine the EU’s delivery of the Lisbon agenda. CoBu also criticised the cuts to Heading 5 and Heading 4, demanding that the Flexibility Instrument be deployed to meet the Community’s external priorities. There was a clear indication that the EP will reinstate much of the PDB at its own first reading, and there was no scope for any agreement between Council and Parliament at this stage.

However, two other issues were successfully resolved. First agreement was reached on Preliminary Draft Amending Budget 3/2005 (PDAB 03/2005), concerning Tsunami reconstruction assistance for South East Asia and East Africa. Following the €123 million emergency aid committed in January, the Commission proposed a further €170 million for reconstruction. The budget authority agreed to re-deploy €60 million from the Asia budget, as proposed by the Commission, and to provide €12 million from the Rapid Reaction Mechanism, €15 million from the flexibility instrument and €70 million from the emergency aid reserve. The source of the remaining €13 million would be decided in the autumn, when more information about implementation will be available. Second PDAB 5/2005, concerning the mobilisation of the solidarity fund in favour of the victims of Slovakian storms and concerning the return of the remaining budget surplus from 2004 to member states, was adopted without amendment.

In conclusion, the Government believes that Council’s 2006 DB represents the best possible outcome in a difficult negotiating climate. The failure to agree future financing at the June Economic Summit has affected the spirit of compromise and encouraged the main beneficiaries of the budget—and there are more of them following enlargement—to be especially insistent this year. And other member states more usually associated with budget discipline saw advantages in endorsing spending levels they might normally oppose. Consequently it was tough to agree significant amendments to the PDB. Nevertheless the DB package is a good one, reflecting HM government priorities including overall budget discipline and controlled growth of payments. It defends spending in key areas such as Iraq and Afghanistan, establishes sensible margins in most Headings and remains fully consistent with the financial settlement for the new Member States agreed at Copenhagen in December 2002.

The Government will continue to pursue its key objectives in the subsequent stages of the 2006 budget process, and will continue to keep the Parliamentary scrutiny committees closely informed on developments.

26 August 2005

1 A “Gentleman’s agreement” exists between the European Parliament and the Council, whereby neither institution may cut the other’s administration budget.
### Annex 1

**TABLE 1: 2006 PDB AND DRAFT EC BUDGET (EUROS)**

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<tr>
<td>TOTAL</td>
<td>85,516.5</td>
<td>79,367.6</td>
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</tr>
<tr>
<td></td>
<td>87,213.6</td>
<td>84,109.1</td>
<td>84,109.1</td>
</tr>
</tbody>
</table>

CA = Commitment Appropriations. PA = Payment Appropriations.

Figures may not add up exactly due to rounding.

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4 Figures relate to rectified PDB 2006. The total PDB figure for Administration is €14.7 million lower than that cited in my EM of 1 June, reflecting the fact that the Commission issued a correction of its PDB forecast for administrative expenditure in the interim.

5 Converted at the 31 December 2004 rate of £1 = 1.4183.

6 Figures relate to rectified PDB 2006. The total PDB figure for Administration is €14.7 million lower than that cited in my EM of 1 June, reflecting the fact that the Commission issued a correction of its PDB forecast for administrative expenditure in the interim.
Letter from Ivan Lewis MP to the Chairman

The European Parliament (EP) recently held its first reading of the 2006 EC Budget, culminating in a plenary vote on amendments on 27 October. I am writing to you now to update you on the main changes to the Draft Budget (DB) established by Council on 15 July (see my letter of 26 August).

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

The European Parliament’s Amendments

Overall, the EP increased commitments by €1.00 billion to a total of €121.81 billion and payments by €4.81 billion to a total of €116.23 billion (compared to the Draft Budget). The payment figures correspond to 1.05 per cent of EU GNI, compared to the ceiling of 1.24 per cent of GNI set by the Community’s Own Resources Decision. The total margin left under the Financial Perspective ceiling following the EP’s amendments is €1.89 billion for payments and €3.07 billion for payments.

In Heading 1 (Agriculture), the EP reinstated Council’s across-the-board reduction of €150.00 million to both commitments and payments. In addition, increases totalling €38.00 million were proposed to specific priorities, including programmes for deprived persons and energy crops. The EP also reversed a reduction of €3.15 million proposed for Tobacco-growing premiums, although no amendments were made to Sub-Heading 1 B (Rural Development). This brings the total commitment and payment appropriations for Heading 1 to €43.68 billion, leaving a margin of €1.17 billion under the Financial Perspective ceiling.

In Heading 2 (Structural Operations), the EP reversed Council’s €150 million reduction to payments, and further increased payments by €3.59 billion to €39.23 billion, representing a total increase of 21.1 per cent over the 2005 Adopted Budget. Despite falling implementation rates in Heading 2, the EP continues to believe that further reinforcements are necessary, whereas in reality over-budgeting is likely to lead to another end-of-year surplus. Commitment appropriations also increased by €12.00 million for the European Social Fund and the European Regional Development Fund. The EP has made release of €12 million required to complete the PEACE II programme for Northern Ireland conditional upon deployment of the Flexibility Instrument.

In Heading 3 (Internal Policies), the EP reinstated Council’s reductions of €43.41 million commitments and €516.02 million payments, and approved further increases. Commitments therefore increased by €264.79 million to €99.44 billion, converting Council’s Draft Budget margin of €210.05 million into a negative margin of €54.74 million, while payments rose by €491.31 million to €8.81 billion. The main increases were to policy areas most commonly associated with the Lisbon Strategy, for instance Education and Culture (€69.35 million commitments/€73.42 million payments), Research (€57.65 million commitments/€135.80 million payments), and Enterprise (€36.85 million commitments/€40.34 million payments). However, some of the EP’s proposed increases exceed co-decided multi-annual reference amounts and must therefore be agreed with Council. In order to give its consent, Council will have to be convinced that genuine and durable needs exist in these areas.

In Heading 4 (External Actions), the EP proposes to increase Council’s Draft Budget by €457.00 million to €3.58 billion (commitments) and by €252.36 million to €5.53 billion (payments). These increases mean that Council’s margin of €41.66 becomes a negative margin of €415.34 million. The EP proposes to finance commitments in three specific policy areas via a mobilisation of the Flexibility Instrument: Iraq Reconstruction (€200 million), Post-tsunami Reconstruction in South-East Asia (€180 million) and the ACP Sugar Assistance (€40 million). Other significant increases to commitments include Development Co-operation Policy (€136.09 million), MEDA (€56.14 million) and Relations with Latin America (€36.74), as well as a (€1.5 million) decrease to commitments for CFSP.

In Heading 5 (Administration), the EP reversed €77.48 million of Council’s €119.87 million reduction. Although the EP increased the Commission’s budget by €89.77 million and reinstated all posts proposed in the PDB, it also reduced proposals for its own Administration budget by €20.00 million.

In Heading 7 (Pre-Accession Strategy), the EP proposes to re-instate €54.95 million of Council’s €127.25 million reduction to payments, bringing the new payments total for this Heading to €3.08 billion (commitments remain unchanged at €2.48 billion, with a margin of €1.09 million). The EP’s amendments were split almost equally between the SAPARD instrument and pre-accession aid.

There were no amendments to Headings 6 (Reserves) or 8 (Compensations).

1 Excluding CAP Reform lines.
UK Priorities and Next Steps

The EP’s amendments will be discussed in Council’s Budget Committee from 8 November onwards, and subsequently by Ambassadors in Coreper. A conciliation meeting between Council and the European Parliament will take place on 24 November during Budget ECOFIN, during which both sides will attempt to reach agreement on key elements of the Budget Council will then complete its second reading of the 2006 Budget, when compulsory expenditure (mainly Agriculture and pensions) will be settled definitively. The Budget will then pass back to the EP for its second reading on 15 December, when non-compulsory expenditure will be settled and the 2006 Budget finally adopted.

The Government’s overarching priority for the forthcoming Council discussions will be to steer discussions towards an outcome which preserves Budget discipline by respecting Financial Perspective ceilings and setting payments at reasonable levels in line with likely implementation rates, as well as ensuring that a principled stance is taken on Administration spending.


Amending Letter 1

Amending Letter 1 (AL 1/2006) affects Heading 4 (External Actions) of the 2006 Budget, and concerns extra appropriations required to finance assistance for ACP countries affected by the sugar reform. The Government is a strong supporter of the sugar reform and welcomes AL 1/2006, which requires further appropriations of €40.00 million commitments and €21.20 million payments. Heading 4 expenditure in the PDB included a negative margin of €123.50 million for commitments, which would increase to a negative margin of €163.50 taking AL 1/2006 into account. Council’s Draft Budget established a margin of €41.66 million in order to accommodate the anticipated implications of sugar reform within the Heading 4 ceiling.

In contrast the EP proposes to finance this via a mobilisation of the Flexibility Instrument. Council will strive to ensure that the ceilings for all Budget Headings are respected during forthcoming negotiations with the EP.

Amending Letter 2

Amending Letter 2 (AL 2/2006) presents a technical revision of Heading 1 (Agriculture) to take into account legislative decisions, the latest market data and fluctuations in the Euro/US $ exchange rate. AL 2/2006 therefore contains more up-to-date information than the PDB. The overall effect of the Amending Letter is to reduce both commitments and payments under Sub-Heading 1A of the 2006 Budget by €361.00 million (Sub-Heading 1B is not affected). The Government welcomes AL 2/2006.

A table summarising the total effect of the two amending letters is attached to this letter (Annex 3).

14 November 2005

Annex 1

SUMMARY OF AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

( EUR million)

<table>
<thead>
<tr>
<th>Heading 1—Agriculture</th>
<th>CA</th>
<th>PA</th>
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<tbody>
<tr>
<td>05—Agriculture and rural development</td>
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<tr>
<td>Programmes for deprived persons</td>
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<td>15.2</td>
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<tr>
<td>Total direct aids</td>
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<td>124.6</td>
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<tr>
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<tr>
<td>Olive oil production aid</td>
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</tr>
<tr>
<td>Tobacco premiums</td>
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<td>5.1</td>
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<tr>
<td>Aid for energy crops</td>
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<td>24.3</td>
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<tr>
<td>TOTAL</td>
<td>+188.1</td>
<td>+188.1</td>
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* Figures relate to expenditure by Title, figures in italics relate to policy area of interest.
### Heading 2—Structural Actions

<table>
<thead>
<tr>
<th>CA</th>
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<tr>
<td>04—Employment and social affairs</td>
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<tr>
<td>05—Agriculture and rural development</td>
<td>586.5</td>
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<tr>
<td>11—Fisheries</td>
<td>3.0</td>
</tr>
<tr>
<td>13—Regional policy</td>
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</tr>
<tr>
<td><strong>Subtotal Structural Funds</strong></td>
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</tr>
<tr>
<td><strong>Objective 1</strong></td>
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<tr>
<td><strong>Objective 2</strong></td>
<td><strong>356.7</strong></td>
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<tr>
<td><strong>Objective 3</strong></td>
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<tr>
<td><strong>Community initiatives</strong></td>
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<tr>
<td><strong>Innovative measures and technical assistance</strong></td>
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<tr>
<td><strong>Subtotal Cohesion Fund</strong></td>
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### Heading 3—Internal Policies

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<td>02—Enterprise</td>
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<tr>
<td>04—Employment and social affairs</td>
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<td>05—Agriculture and rural development</td>
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<td>06—Energy and transport</td>
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<td>07—Environment</td>
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<td>08—Research</td>
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<td>09—Information society</td>
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<tr>
<td>11—Fisheries</td>
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<td>12—Internal market</td>
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<td>14—Taxation and customs union</td>
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<td>15—Education and culture</td>
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<td>16—Press and communication</td>
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<td>17—Health and consumer protection</td>
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<td>18—Area of freedom, security and justice</td>
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<td>19—External relations</td>
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<td>22—Enlargement</td>
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### Research framework programme

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<td>71.7</td>
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### Heading 4—External Actions

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<td>07—Environment</td>
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<tr>
<td>11—Fisheries</td>
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<tr>
<td>15—Education and culture</td>
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</tr>
<tr>
<td>19—External relations</td>
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<tr>
<td><strong>Democracy and human rights</strong></td>
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<tr>
<td><strong>MEDA</strong></td>
<td><strong>50.8</strong></td>
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<td><strong>Latin America</strong></td>
<td><strong>36.7</strong></td>
</tr>
<tr>
<td><strong>Afghanistan</strong></td>
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<td><strong>Asia</strong></td>
<td><strong>56.4</strong></td>
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<tr>
<td>20—Trade</td>
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</tr>
<tr>
<td>21—Development and relations with ACP countries</td>
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</tr>
<tr>
<td>22—Enlargement</td>
<td>33.8</td>
</tr>
<tr>
<td><strong>Relations with the western Balkans</strong></td>
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</tr>
<tr>
<td>23—Humanitarian aid</td>
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<td><strong>TOTAL</strong></td>
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36  ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

**Heading 5—Administration**

<table>
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<tr>
<th></th>
<th>CA</th>
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<td>Commission (excluding pensions)</td>
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<td>89.8</td>
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<tr>
<td>European Parliament</td>
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<td>-20.0</td>
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<tr>
<td>Court of Justice</td>
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<td>Court of Auditors</td>
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<td>Committee of the Regions</td>
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<td>European Ombudsman</td>
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<td>0.2</td>
</tr>
<tr>
<td>European Data Protection Supervisor</td>
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<td>0.1</td>
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<tr>
<td><strong>TOTAL</strong></td>
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**Heading 7—Pre-accession instruments**

<table>
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<tr>
<td>05—Agriculture and rural development</td>
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<td><strong>SAPARD</strong></td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>+55.0</td>
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Figures may not add up exactly due to rounding.

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Annex 2

2006 Draft EC Budget as amended by the European Parliament

<table>
<thead>
<tr>
<th>EUR (million)</th>
<th>2006 Rectified PDB</th>
<th>2006 DB</th>
<th>EP First Reading</th>
<th>Change DB/EP1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>51,412</td>
<td>51,353</td>
<td>51,262</td>
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<tr>
<td>Margin</td>
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<td>1,168</td>
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<td>Structural Operations</td>
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<td>44,555</td>
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<td>Margin</td>
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<td>62</td>
<td>50</td>
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<tr>
<td>Internal Policies</td>
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<td>210</td>
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<td>+265</td>
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<tr>
<td>External Actions</td>
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<tr>
<td>Margin</td>
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<td>-42</td>
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<td>+252</td>
</tr>
<tr>
<td>Administration</td>
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<td>6,442</td>
<td>6,655</td>
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<td>Margin</td>
<td>10</td>
<td>130</td>
<td>53</td>
<td>-39</td>
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<tr>
<td>Reserves</td>
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<td>458</td>
<td>458</td>
<td>0</td>
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<td>Margin</td>
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<td>0</td>
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<td>-415</td>
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<tr>
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<td>1,085</td>
<td>1,085</td>
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<td>Compensations</td>
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<td>0.5</td>
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<tr>
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<td>123,695</td>
<td>123,695</td>
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<tr>
<td><strong>Margin</strong></td>
<td>2,407</td>
<td>6,725</td>
<td>2,885</td>
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<td>**Change DB/EP1</td>
<td>2,407</td>
<td>6,725</td>
<td>2,885</td>
<td>-999</td>
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</table>

Figures may not add up exactly due to rounding.

<table>
<thead>
<tr>
<th>£ (million)</th>
<th>2006 Rectified PDB</th>
<th>2006 DB</th>
<th>EP First Reading</th>
<th>Change DB/EP1</th>
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<tr>
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<td>6,499</td>
<td>6,469</td>
<td>6,213</td>
<td>+347</td>
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Tables do not include the effect of AL 1/2006 or AL 2/2006.

10 Converted at a rate of £1 = €1.4183.
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A) 37

<table>
<thead>
<tr>
<th>£ (million)</th>
<th>2006 Rectified PDB</th>
<th>2006 DB</th>
<th>EP First Reading</th>
<th>Change DB/EP1</th>
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<td></td>
<td>CA</td>
<td>PA</td>
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<tr>
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<td>Pre-Accession Aid</td>
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<tr>
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<td>85,516</td>
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<td>85,179</td>
<td>78,560</td>
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<td>FP Ceiling</td>
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Figures may not add up exactly due to rounding.

Annex 3


( EUR million)

<table>
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CAPITAL REQUIREMENTS DIRECTIVE (11545/04)

Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman

I am writing at the earliest opportunity to inform you of progress in respect of the Capital Requirements Directive (CRD) (Explanatory Memorandum 11545/04 refers). You will recall that our negotiating position on CRD, then titled 3rd Capital Adequacy Directive, was considered by sub-Committee A and cleared from scrutiny on 30 November last year.

I noted in my letter to you of 19 July 200511 that we anticipated CRD might reach final agreement during the UK Presidency. In the event, negotiations on this dossier have moved quickly since the summer recess, and I am pleased to report that we have secured political agreement at first reading between the Council and the European Parliament. This will lead to real benefits in terms of improved risk management, a more prudentially sound financial system and a more efficient allocation of capital in the UK and across the EU.

I am also pleased to inform you that the UK Presidency has successfully achieved all its objectives on the CRD. The main changes to the text since I last wrote to you include the insertion of Lamfalussy style provisions in the directive and the incorporation of the Basel International Banking Committee’s Trading Book Review, which will benefit UK based investment banks.

Whilst formal adoption at first-reading will not occur for some months as we await the translation of the directive into all EU languages (known as the jurist-linguist process), I wanted to make you aware that ECOFIN may signal political agreement at our next meeting on 11 October. I hope you will agree that this is a good outcome on a complex and important piece of legislation.

7 October 2005

11 See page UK Presidency: HM Treasury Section.
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

COHESION POLICY IN SUPPORT OF GROWTH AND JOBS: COMMUNITY STRATEGIC GUIDELINES 2007–13 (10684/05)

Letter from the Chairman to Rt Hon Alun Michael MP, Minister for Industry and the Regions, Department of Trade and Industry

Thank you for your Explanatory Memorandum dated 1 August which Sub-Committee A considered (Economic and Financial Affairs and International Trade) at its meeting on 25 October 2005.

The Sub-Committee decided to hold the document under scrutiny because although in principle it welcomes the Commission’s proposal to focus EU cohesion policy in the next Financial Perspective on the goals reiterated by the renewed Lisbon process, it was not clear to the members what the Government’s view is of the proposal.

The Sub-Committee would like to know whether the Government agrees with the Commission that the new Community strategic guidelines for cohesion should focus on the Lisbon goals of making the EU more attractive to investors, encouraging more R&D expenditure and more and better jobs? Do you expect the Council to concur with the Commission proposal when it comes to agreeing final Strategic Guidelines for Cohesion?

In the Committee’s report on the Future Financing of the European Union (6th report of Session 2004–05) the Sub-Committee supported the Government’s proposed reform of EU Structural Funds. The Sub-Committee agreed that Structural Fund expenditure should be focused on the ten poorest Member States, plus Romania and Bulgaria and that money for the wealthiest 13 Member States should be phased out over the period of the next Financial Perspective. The Sub-Committee would be keen to learn whether the UK Presidency has been able to convince other Member States of the need for Structural Fund reform and a change to the Commission’s 2004 proposal and whether you still expect agreement to be reached by the end of the year.

25 October 2005

Letter from Rt Hon Alun Michael MP to the Chairman

Thank you for your communication of 25 October advising me that the above Explanatory Memorandum did not clear scrutiny at your Committee’s recent meeting. Your letter seeks further information relating to the Government’s views on the substance of the European Commission’s proposals for Community Strategic Guidelines. This letter provides that fuller information.

You have also requested a copy of the Government’s response to the Commission as part of the public consultation process relating to the above Communication. Please find the Government’s response attached to this letter as requested (Annex A).

The Government has supported the Commission’s proposals to establish Community Strategic Guidelines for EU Cohesion Policy and National Strategic Frameworks for delivering regional policy objectives at the Member State level. However, we and other Member States are eager to ensure that a greater strategic focus does not lead to a prescriptive, top down approach to programming and that regions should have sufficient flexibility to set priorities that reflect local conditions.

In our view, the draft Community Strategic Guidelines successfully identify the contribution that EU cohesion policy can make towards meeting the Lisbon targets and provide a good starting point for discussion amongst the Member States.

Given the diversity of the EU’s nations and regions, there are obvious limitations to a “one size fits all” approach to regional development. For this reason we have argued that the Guidelines should be concise, high-level and strategic. With this in mind we welcome much of the language of the draft Guidelines, which makes clear that the Guidelines should be considered as a menu for Member States to draw from, rather than a prescriptive list of activities that they should pursue irrespective of local conditions.

However, there is scope for an even more flexible approach and, while we welcome the general approach set out in the draft Guidelines, we do believe that there are certain provisions that need to be adjusted to take account of modifications that have been agreed to the package of draft Structural Funds Regulations.

The Commission has given a commitment to simplify the current, bureaucratic rules for delivering programmes, but we do not believe that its proposals go far enough to simplify arrangements, we are working with other Member States to reduce the administrative burdens associated with implementing the Funds.
We have also welcomed the Commission’s proposals to introduce a principle of proportionality, so that the administrative requirements for delivering programmes are commensurate with the actual levels of EU funding involved. However, the Commission’s proposals would only extend the principle of proportionality to a small number of programmes and administrative requirements. We wish to extend the principle of proportionality to a larger number of requirements and programmes in order to ensure a genuine balance between levels of funding and administrative burdens.

The Commission summarised the results of its July to September public consultation on the Community Strategic Guidelines at the Structural Actions Working Group on 25 October. There had been some requests for more clarity on the objectives in the draft Guidelines, but without any real indications of how this might be achieved, and there had been some doubts about the applicability of more detailed parts of the text. There had also been calls for more operational information, but the Commission considered this to be inappropriate in the Guidelines. The Commission confirmed that there would be no new text on the draft Guidelines until after the Structural and Cohesion Funds General Regulations had been agreed.

We will continue to keep the Committee informed of future developments.

26 November 2005

Draft Community Strategic Guidelines on Cohesion

Annex A

UK Government Comments

1. The UK strongly supports the European Commission’s proposals to strengthen the strategic focus of Structural and Cohesion Funds spending and has studied carefully the Commission’s draft Community Strategic Guidelines on Cohesion of 5 July 2005. In our view, the draft Guidelines successfully identify the contribution that EU cohesion policy can make towards meeting the Lisbon targets and provide a good starting point for discussion amongst the Member States.

2. During our initial discussions of the Guidelines, the UK has emphasised the need to achieve a balance between a strategic focus and flexibility to respond to local conditions. Given the diversity of the EU’s nations and regions, there are obvious limitations to a “one size fits all” approach to regional development. And for this reason we have argued that the Guidelines should be concise, high-level and strategic, leaving sufficient scope to decide how exactly to pursue the Community objectives in their National, Frameworks and Operational Programmes.

3. With this in mind, we welcome much of the language of the draft Guidelines, which makes clear that the Guidelines should be considered as a menu for Member States to draw from, rather than a prescriptive list of activities that they should pursue irrespective of local conditions. However, we still believe that there is scope to develop a lighter and more flexible approach with regard to a small number of the Commission’s proposals.

4. Therefore, while we welcome the general approach set out in the draft Guidelines, including the proposed focus on developing the attractiveness of the EU and its regions, improving knowledge and innovation for growth, and stimulating more and better jobs, we believe that the drafting of certain provisions needs to be adjusted to take account of modifications that have been agreed to the package of draft Structural Funds Regulations.

Section 3: The Framework for Cohesion Policy, 2007–13

5. We welcome the emphasis in section 3.5 on developing effective partnerships with stakeholders for the delivery of the Funds. We believe that it is important to refer to environmental stakeholders in this section (as well as to economic and social partners) given the important role that environmental stakeholders can play in implementing programmes and ensuring that the principle of sustainable development is considered at all stages in the programming process.

6. We similarly welcome the reference to promoting sustainable communities as an objective for regional competitiveness and employment programmes (section 3.2), although we would note that building sustainable communities is equally important in convergence regions. We agree also with the analysis in section 2.2 that the sustainable communities approach is a way of securing integrated strategies for renewal, regeneration and development in both urban and rural areas.
Section 4: Guidelines for Cohesion Policy, 2007–13

7. We welcome the emphasis placed on promoting equality between men and women at all stages of the preparation and implementation of programmes and projects. However, we believe that this section needs to be expanded to cover other forms of discrimination. This is important to reflect the modifications that the Member States have already made to Article 14 of the draft Structural Funds General Regulation, in order to require Member States and the Commission both to promote gender equality and to prevent discrimination on the basis of race, ethnic origin, religion or beliefs, disability, age or sexual orientation in the implementation of the Funds.

8. We also believe that, as well as equality, the Guidelines should emphasise the need to take account of the principles of sustainable development in all stages of the preparation and implementation of programmes and projects. We have welcomed the strong focus in the draft Regulations and the Guidelines on supporting projects to improve the environment. However, it is also important that the Member States take account of the principles of sustainable development in other projects, even if they are not directly focused on the environment. It is therefore important for the Guidelines to establish sustainable development as a “cross-cutting” theme covering all aspects of implementation of the Funds.

Section 4.1: Making Europe and its regions more attractive places to invest and work

9. We strongly agree that there is an important link between the environment and economic growth. An attractive environment can play an important role in attracting businesses and can therefore help promote sustainable economic development. However, we would also maintain that, as well as attracting investment, the environment can be an economic driver in itself. The development of new technologies and greater resource efficiency can improve competitiveness whilst also helping to protect and improve the environment.

10. We also believe that section 4.1.2 should include a reference to the 6th Environment Action Programme, in order to demonstrate consistency with the Commission’s long-term policy programme for environmental development.

11. Finally, we warmly support the strong focus in section 4.1.3 on addressing Europe’s intensive use of traditional energy sources.

Article 4.2: Improving knowledge and innovation for growth

12. We believe that the provisions in section 4.2.2 on the administration and delivery of services for business are excessively prescriptive. For example, the section stipulates: “information and initial support should be available from—a network of one-stop shops”. In our view, it is not appropriate for strategic guidelines to impose detailed rules for the delivery of projects and services. The Member States should have flexibility to develop the precise mechanisms for delivery of different activities, taking account of their specific administrative arrangements.

Section 4.3: More and better jobs

13. We are concerned that some of the language in this section is excessively prescriptive and restrictive. This appears to be in contradiction with the more flexible approach established in the introduction of the Guidelines, which emphasises the need for Member States and their regions to develop an appropriate mix of investments based on an analysis of their strengths and weaknesses.

14. For example, section 4.3.1 requires Member States to pay special attention to providing support for three specific groups: young people, women, and migrants. This wording fails to take account of the diversity of the Member States’ labour markets, ignoring the fact that, in certain regions, other social groups might be more in need of support. The UK’s employment strategy emphasises the importance of helping economically inactive people into work, including people on sickness and disability benefits, people from ethnic minorities and older workers. We would therefore advocate the introduction of more flexible, less prescriptive wording both here and in the section as a whole.

15. Certain provisions in section 4.3 also need to be modified to ensure consistency with the changes that the Member States have agreed to the draft European Social Fund Regulation. For example, the phrase “specific action to increase women’s participation in employment” should be amended to “mainstreaming and specific action to increase women’s participation in employment” in order to ensure consistency with the revised text for the European Social Fund Regulation.
16. We would not support the use of Structural Funds to finance major health infrastructure or, as suggested in the draft Guidelines, to “fill the gaps” in Member States’ healthcare infrastructure. There is a risk that such provisions would allow the Structural Funds to be used to replace national spending on healthcare.

17. We agree that in certain Member States it may be appropriate for the Structural Funds to support population-based public health interventions, where these provide an effective means of overcoming regional disparities and are likely to have a significant impact on employment and productivity. Where appropriate, it might be valuable to use Health Impact Assessments to judge the potential effects of such projects.

18. Finally, we believe that it is important to ensure that the Guidelines accurately reflect the provisions of the package of draft Structural Funds Regulations regarding expenditure on healthcare infrastructure. As currently drafted, the European Social Fund Regulation would not allow for expenditure on healthcare, while the European Regional Development Regulation would only allow for expenditure on healthcare in Convergence regions, providing that it contributes to regional and local development.

Section 5: Taking account of the territorial dimension of Cohesion Policy

19. It is of course important that national strategies and programmes tackle urban and rural dimensions appropriately. We would be concerned, however if the guidelines implied a rigid and prescriptive approach to tackling urban and rural issues and limited the flexibility for Member States and their regions to choose priorities that reflect local conditions. It is a mistake to assume that there is always a clear distinction between the needs of rural and urban areas, or that these areas automatically face similar challenges across the EU.

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter dated 26 November 2005 which Sub-Committee A (Economic and Financial Affairs and International Trade) considered at its meeting on 13 December. We are grateful for the detailed information you have provided and for the copy of the Government’s submission to the Commission on the draft Community Strategic Guidelines on Cohesion.

We agree that EU regional funding allocations over the next Financial Perspective should be concentrated on programmes which promote the Lisbon goals of economic growth and more jobs. We support the Government in seeking to ensure that such a strategic focus does not become too prescriptive as it is very important that regions continue to have sufficient flexibility to set priorities within the Guidelines that reflect local conditions.

We note the Commission has confirmed that no new text on draft guidelines will be published until after General Regulations for the Structural and Cohesion Funds have been agreed in Council. We welcome your promise to keep the Committee informed of future developments. Until we have seen the new draft Guidelines we have agreed to retain this document under scrutiny.

11 January 2006

COMMON FRAMEWORK FOR BUSINESS REGISTERS FOR STATISTICAL PURPOSES (7857/05)

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

Thank you for your Explanatory Memorandum of 26 May 2005 on a common framework for business registers for statistical purposes. Sub-Committee A considered this document at its meeting on 5 July and decided to hold it under scrutiny.

Whilst the Committee understands the argument for a better framework for business registers, we are not convinced that introducing legislation is necessarily the right way to proceed. What is the Government’s thinking behind agreeing to this proposal?

The Committee also shares the Government’s concern about the legality of sharing the data collated. We would be very grateful if you would keep us updated on the negotiations on this proposal.

7 July 2005
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

Letter from John Healey MP to the Chairman

Thank you for your letter dated 7 July asking about the Government’s thinking behind agreeing this proposal. The proposal for a new EU regulation for an improved framework for business registers comes from a concern that the existing regulation does not address the issues of increasing globalisation of business activity over recent years. As the existing regulation would be repealed automatically, the new regulation is effectively an amendment of the existing Council Regulation (EEC) No 2186/93.

The existing regulation also excludes the agricultural industry and public administration activities. The National Statistics Review of Agricultural Statistics recommended integration of statistical data collection in that sector with the main economic data collection processes, in order to ensure coherence of national economic statistics. A complete business register is a prerequisite for such a collection process. The proposed regulation does not impose an additional burden on the UK and is fully in line with Government policy.

The Government has also recognised the need for improved statistical data collection for the public sector, because of the requirement to demonstrate that policies to reduce staff numbers are effective. It has requested the ONS to implement a quarterly survey of employment in public services, which commenced in the autumn of 2004. A comprehensive business register is required, in order to produce the quality of estimates demanded to make decisions in this important area of the UK economy. This proposal in the regulation does not impose an additional burden on the UK and is fully in line with Government policy.

While the regulation would not impact on UK data collection for agriculture and the public sector, it would ensure coherence between EU Member States and enable the UK to make comparisons with more confidence than is currently the case.

The inclusion of information on multinational enterprise groups on a consistent basis within all EU member states will provide a basis for recording business activity that crosses boundaries of Member States. The requirements of the regulation would be met from the existing UK business register systems and, as a result, the regulatory burden would not increase. The requirement to create a central register of European enterprise groups, if done effectively and with appropriate controls, specifically relating to the limits to data sharing and to confidentiality, would reduce the costs to Member States of maintaining information for such groups.

The UK Presidency is now seeking a compromise that would allow an extended period for implementation and specify limits to data sharing. If agreed, this will address concerns expressed by the UK and several other Member States, and shared by you, in relation to sharing data.

I will keep you informed as the proposal develops further.

21 July 2005

Letter from the Chairman to John Healey MP

Thank you for your letter of 21 July in response to my earlier letter. Sub-Committee A considered this response at their meeting on 18 October and have decided to continue to hold the document under scrutiny pending agreement to the UK Presidency’s compromise proposal addressing the concerns over data sharing.

I note that your letter states that you will keep the Committee informed as the proposal develops further. I look forward to hearing from you in due course with details of the agreed compromise.

20 October 2005

Letter from John Healey MP to the Chairman

UPDATE—UK PRESIDENCY COMPROMISE

The proposal relates to the approval process for a new Regulation establishing a common framework for business registers for statistical purposes, repealing the previous Regulation (2186/93). The existing framework, dating from 1993, covers the creation and maintenance of business registers for statistical purposes in each Member State. The UK, together with all other Member States, agrees that the Regulation requires updating to recognise the increasing importance of globalisation of business activity. The UK supported the principles of the European Commission draft, although along with other Member States expressed some reservations.

The substantive changes from the Regulation that is currently in place (2186/93) are:

1. The inclusion of agriculture: The UK supported the Commission proposal, which is consistent with recommendations in the National Statistics Review of Agricultural Statistics. The Office for
National Statistics (ONS) is working with the Department for Environment, Food and Rural Affairs (Defra) to develop a joined-up system for farm statistics and wishes to see a similar approach in the rest of the European Union.

2. The inclusion of public administration: As with agriculture, the UK supported the Commission proposal, which is in line with recent developments by ONS to extend its surveys to this sector.

3. The inclusion of information for enterprise groups: The UK supported the Commission proposal, which is consistent with the present practice in the UK.

4. A requirement to transmit to Eurostat, a Directorate General of the Commission, data held on national business registers and to permit the onward transmission to other Member States: The UK expressed concern about the Commission proposals that would go further than existing national legislation. The UK maintains its business register for statistical purposes through the use of administrative data supplied under UK legislation from the VAT and PAYE systems within HM Revenue and Customs (HMRC), supplemented by data from the statutory statistical surveys of ONS and the Department for Enterprise, Trade and Industry in Northern Ireland. The data provided by HMRC may only be used for statistical purposes within United Kingdom government departments and certain other specified bodies, and any unlawful disclosure of the information carries criminal sanctions. While access would continue to be only for statistical purposes, Eurostat is not one of those bodies that may access the data.

The UK Presidency has produced a compromise proposal that has been agreed by officials through the STATIS European Council committee. The compromise addresses the concerns expressed on the inclusion of agriculture, public administration and enterprise group structures through providing an extended period for implementation, and through clearer rules governing interchange of data.

The compromise also states explicitly the conditions under which data may be shared with Eurostat and with national statistical offices. The data relate only to multinational enterprise groups. Within the UK, this information comes from the company registration service of Companies House supplemented by data supplied under a contract between the ONS and a commercial supplier of such data, currently Dun and Bradstreet. It is the view of the ONS that these sources, which can be shared under existing provisions, meet the data sharing requirements of the compromise. As such, the compromise text meets the needs of the UK.

The UK, along with other Member States, however feels strongly that the Commission should provide an assurance that a review will be undertaken of the Regulation on Community Statistics (322/97), which provides the framework for sharing of confidential data for statistical purposes.

The European Central Bank (ECB) has recently made a strong request for access to national data for statistical purposes. The compromise, that addresses: UK concerns, lays down clear procedures that prevent access by the ECB and national banks beyond the limits of existing national legislation.

The UK Presidency compromise also addresses, through the inclusion of a clause to require a full impact assessment before any change, the concern that the UK has about the cost to both government and businesses of implementing the Regulation. The extended period for implementation for agriculture aligns the change with the farms census planned for 2010, to ensure that there is no increase in regulatory burden through this business registers Regulation.

The UK Presidency compromise is expected to receive consideration at the European Parliament under the Austrian Presidency.

15 December 2005

COMMUNITY STATISTICS (7578/05)

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

Thank you for your Explanatory Memorandum of May 2005 regarding the Proposal from the Commission for a Regulation of the European Parliament and of the Council on Community Statistics on the structure and activity of foreign affiliates. Sub-Committee A considered this issue at its meeting on 14 June 2005.

In previous documents submitted to the Committee, the Government has argued that it is not in support of European regulations governing the collection of trade or economic statistics. Could you please explain to the Committee why the Government appears not to object to this proposal?

15 June 2005
Letter from John Healey MP to the Chairman

Thank you for letter of 15 June 2005 regarding the above Commission proposal for a Regulation on the structure and activity of foreign affiliates.

The government’s position on European regulations governing the collection of trade or economic statistics is that these should be kept to the minimum needed for agreed European purposes. We also support EU regulations that are aligned with UK government purposes, as this promotes the comparability of such statistics across Europe.

As is noted in the Explanatory Memorandum there is a need for statistics to measure the impact of globalisation, which is becoming evident in the outsourcing abroad of both manufacturing and service jobs. Foreign Affiliates’ Trade Statistics (FATS)—both statistics of the overseas economic activity of UK businesses (outwards) and of the operations in the UK of overseas owned businesses (inwards)—are an important contribution to this debate.

For Inward Foreign Affiliate statistics (FATS), the UK is meeting the requirements of the Regulation from existing Office for National Statistics (ONS) survey sources in combination with information on the foreign ownership of UK businesses held on the ONS business register. As there is neither any additional data collection burden on businesses, nor any work needed to identify foreign owned businesses in the UK, there seems no reason for the UK government to object to the Regulation in relation to Inward FATS.

The Regulation does make proposals for four further pilot studies for Inward FATS. These are to investigate the feasibility of both collecting additional data from businesses and of providing an analysis of the FATS data by the size of the business. The UK is not seeking to be involved in any of these pilot studies as the requirements can very largely be met from existing sources. The only exception to this is that one of the pilot studies will investigate the feasibility of collecting Inward FATS data on intra group import and export of goods and services. These are not available from existing sources and a pilot would establish whether collecting these data is feasible.

For Outward FATS the Regulation proposes a series of pilot studies to investigate the feasibility of collecting the data. The UK does not currently collect any data on Outward FATS, but the businesses that would be involved in such a collection are a subset of those currently covered by the ONS surveys of Outward Foreign Direct Investment.

A number of other Member States, including the UK, have expressed concern about the ability to collect good quality data on Outward FATS, at a reasonable cost and burden on businesses. This concern arises because for Outward FATS the data will not be collected about UK based businesses but about the overseas operations of their foreign affiliates.

A few Member States, including the UK, have said that they will be willing to participate in the pilot studies for Outward FATS to test matters such as cost, quality and burden to business and establish whether collection is really feasible.

The UK Presidency now holds the Chair of the Council Working Party on Statistics until 31 December and will be seeking a legal solution that would satisfy Member States that the implementation of Outward FATS will meet requirements regarding the quality of the data, and the cost and burden of collecting it.

I trust that this letter satisfies you that the UK is acting sensibly in relation to the development of this Regulation.

20 July 2005

CUSTOMS DUTIES ON IMPORTS OF CERTAIN PRODUCTS ORIGINATING IN THE UNITED STATES OF AMERICA (7737/05)

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

I am writing to explain that it is expected that the UK will need to clear Parliamentary Scrutiny in respect of the above proposal before Parliament reconvenes after the general election. The reason for this is that Council will be asked to approve shortly (under QMV) the proposed Council Regulation to enable the measure to be introduced from 1 May 2005.

The Commission proposal has only just been received and it has not been possible to submit an Explanatory Memorandum before Parliament is dissolved.
On 28 October 2000, the United States of America (“United States”) enacted the Continued Dumping and Subsidy Offset Act (“CDSOA”). This legislation mandates the yearly distribution of the anti-dumping and countervailing duties collected during the preceding fiscal year to the companies that brought or supported the complaint at the origin of the anti-dumping or countervailing duty order. The WTO ruled that this legislation breached WTO rules and the United States has been given ample opportunity to comply with the WTO’s findings but has failed to do so.

The EU has been authorised by the World Trade Organisation to impose additional import duties on US imports into the EU at a level that the WTO has also authorised. The purpose of the proposed regulation is to implement retaliation against the US until such time as the US comes into line with the WTO ruling. The UK wants the US to repeal its legislation and supports retaliation as a lever to encourage the US to become WTO compliant. Under these circumstances I consider that it would be unreasonable for the UK to attempt to delay the implementation of this Community measure until after the new Parliament convenes. UK industry has been consulted and the Commission proposal fully reflects UK concerns.

7 April 2005

Letter from the Chairman to Ian Pearson MP, Minister of State for Trade, Foreign and Commonwealth Office and Department of Trade and Industry

Thank you for your Explanatory Memorandum of 23 May on the Proposal for a Council Regulation establishing additional customs duties on imports of certain products originating in the United States of America. Sub-Committee A considered this document at its meeting on 14 June.

Whilst the Committee decided to clear the document from scrutiny, we are concerned that the issue of damage to UK business touched upon in paragraph 16 of your Explanatory Memorandum be addressed. Could you provide the Committee with details of how extensive this damage has been since the imposition of the retaliatory measures, together with your estimate of any future damage.

The Committee was also concerned to know which products would be affected. The Committee has noted the list provided under Annex 1 of the Proposal, listing the products under their eight digit CN codes. The Committee would be very grateful for a more detailed description of these products.

16 June 2005

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 16 June raising questions about the potential damage to UK industry caused by the introduction of retaliatory measures following US non-compliance with the rulings of the WTO in relation to the US “Byrd Amendment.”

Firstly, I would like to say that I am grateful to your Committee for recognising the importance of this issue, and clearing it from scrutiny in such a timely fashion.

It is not yet possible to tell precisely what impact the measures will have on UK trade: the latest trade data relates to April 2005 and the duties were not introduced until 1 May 2005.

However, available trade figures show that the effect of the measures on UK business are limited. The additional 15 per cent Customs duty is payable in addition to the rate of Customs duty normally applied. This means that if business chooses to continue to source the goods in question from the US, and based upon 2004 levels of trade, the additional costs to business would be in the region of £930,000.

The DTI consulted widely with UK industry on the Commission’s draft retaliation lists, and lobbied hard where it became apparent that items were included that would cause difficulties for UK enterprises. We were successful in having removed from the draft lists goods with a potential £168 million per annum of UK trade. In order that UK companies could assess easily whether they would be affected, we “translated” both drafts, and the final lists (Annex I and Annex II) of commodity codes into product descriptions, and I attach a copy of the final lists for your information (not printed). Only items on the Annex I list are currently subject to the additional 15 per cent duty.

On average, the US accounts for less than 1 per cent of UK imports on the final lists, and in no case does it account for more than 10 per cent of UK import demand (the highest share is around 9 per cent for paper and paperboard albums).

Total UK imports from the US are around £23 billion. Products subject to retaliation account for just 0.02 per cent of total UK imports from the US.
This suggests that the costs of finding alternative suppliers, and/or the likelihood that UK businesses will be forced to absorb higher import costs will be relatively low compared with a situation where the US accounted for a relatively high proportion of UK imports.

The DTI has in place systems for consulting with business whenever retaliatory measures authorised by the WTO are under consideration. In relation to this particular measure the DTI has received relatively few complaints about adverse effects of the measure to UK business. I would like to remind the Committee that the purpose of retaliation is to persuade the US to become WTO-compliant and not to penalise EU business. This is why the goods targeted are those that can be easily sourced from a number of countries, although specialist imports may not always be cushioned from the effects of retaliation.

14 July 2005

ECOFIN, APRIL 2005

Letter from Stewart James, Head of EU Coordination and Strategy Team, HM Treasury to the Chairman

You will be aware that during the pre-election period EU business has continued as normal including a scheduled meeting of the Economic and Financial Affairs Council (ECOFIN). I have set out the outcome of the meeting below.

The Council received a presentation by the Commission on its Recommendation on the “Broad Economic Guidelines for the economic policies of Member States and the Community”. The Commission’s recommendations will form the basis for ECOFIN’s formulation of new Broad Economic Policy Guidelines and for the Employment Council’s formulation of new Employment Guidelines to cover the period 2005–08.

The Council welcomed the commitment of the Greek government to bring its deficit below 3 per cent of GDP in 2006. The Council also welcomed the continued efforts of the Greek authorities, in close collaboration with Eurostat, to address remaining statistical issues. The Council considered that the decisions taken by the Greek government are in line with the Council recommendations of 17 February in accordance with Article 104(9). There would be a further report by the Greek authorities and associated Commission assessment of the Greek fiscal situation by 31 October.

The Council took note of a presentation by the Commission on the principal results of the fiscal notifications for Member States for 2004.

Reporting on its Communication on administrative burdens on business the Commission outlined the areas where pilot projects will be set up to measure this administrative burden, confirming that the results of these pilot projects will be available in early Autumn 2005. The UK welcomed the political commitment shown by the Commission in its Communication and noted the importance of improving the regulatory environment as part of the Lisbon agenda.

The Presidency presented to the Council the negotiating box for the financial perspectives for the period 2007–13. There was an exchange of views. The UK reiterated the need for expenditure reform and its view that the rebate remains fully justified and is not up for negotiation.

There was an exchange of views on the funding of development aid. The UK’s proposed International Finance Facility and French and German proposals for international taxes for development emerged as possible issues for further consideration. The issue will be discussed in more detail at an informal meeting of the ECOFIN Council.

There was a discussion of two key aspects of the Savings Directive: progress towards implementation on 1 July; and remaining questions of the interpretation of the directive with regard to accrued interest and investment via funds of funds. The Commission confirmed that good progress was being made towards implementation. Agreement was reached on common interpretation which will apply equally to Member States, third countries and dependent and associated territories.

The Council agreed Conclusions calling upon the Commission to present proposals to increase minimum rates of excise duty on alcoholic beverages in line with inflation, and to modernise the system of classification of alcoholic beverages.

I look forward to working with the newly constituted EU Scrutiny committees in due course.

5 May 2005
ECOFIN, SEPTEMBER 2005

Letter from Rt Hon Gordon Brown MP, Chancellor of the Exchequer, HM Treasury to the Chairman

I am writing to inform you of the outcome of the informal meeting of the Economic and Financial Affairs Council which I hosted in Manchester on 9–10 September, in partnership with the Governor of the Bank of England. As is customary at Informal meetings, the regular ECOFIN delegation was joined by the Central Bank Governors of the 25 Member States, and the two accession countries.

The meeting opened with a discussion of the challenges to Europe of globalisation. This included contributions from three European business leaders, Patrick Cescau (CEO Unilever), Arun Sarin (CEO Vodafone), Bart Becht (CEO Reckitt Benckiser), and Andre Sapir from the Bruegel research institute.

Finance Ministers agreed a statement on debt relief and innovative financing as part of a common EU position on development financing which was presented to the UN Financing for Development High Level Dialogue on 14 September in New York.

Finance Ministers reached political agreement on a draft Decision, under article 104(6) of the EU Treaty, on the existence of an excessive government deficit in Portugal and on a draft recommendation, under article 104(7) of the EU treaty, on action to be taken for its correction. The Council adopted this Decision and Recommendation at the meeting of the Council on 20 September 2005.

Ministers agreed on the importance of supporting economic regeneration in the West Bank and Gaza Strip. Ministers invited the European Commission and European Investment Bank to take forward technical work on a European support package, including discussion with other international partners to establish a joint loan guarantee scheme for small businesses, reporting back to the Council in October on progress.

The informal ECOFIN held its regular discussion on the current economic situation and financial stability, including a presentation from the Governor of the Bank of England. Ministers agreed a short statement which is available on the UK Presidency website.

Ministers repeated their commitment to international standards to tackle finance and money laundering, to implement these standards in Europe and to help other countries to do so. Ministers welcomed progress being made in Europe to deny terrorists access to financial resources and agreed to work together proactively in support of further action in Europe to freeze terrorist assets.

6 October 2005

EU BILATERAL TRADE AGREEMENTS: TEXTILE/CLOTHING

Letter from Ian Pearson MP, Minister of State for Trade, Investment and Foreign Affairs, Foreign and Commonwealth Office and Department for Trade and Industry to the Chairman

I am writing to inform you that the European Commission intend to bring forward a mandate to renew the bilateral textile and clothing agreement with Belarus.

As you may be aware, on 1 January 2005 all textiles and clothing licensing controls under the Multi-Fibre Arrangement (MFA) were liberalised as part of the GATT/WTO Uruguay Round Agreement on textiles and Clothing (ATC). However, the ATC only applies to WTO member countries and the Commission intend to renew the agreements with non-WTO Countries as they expire.

The non-WTO Countries are: Belarus, Bosnia-Herzegovina, Cambodia, Laos, Nepal, Russian Federation, Ukraine, Uzbekistan and Vietnam. As soon as these countries join the WTO, the licensing parts of these agreements will lapse (any market access commitments will remain).

13 July 2005

EU FRAMEWORK FOR INVESTMENT FUNDS (11190/05)

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury

Thank you for your Explanatory Memorandum dated 7 September 2005 which Sub-Committee A (Economic and Financial Affairs and International Trade) considered at its meeting on 18 October 2005.

The Sub-Committee cleared this Communication from scrutiny and supports the Commission in its decision to improve existing UCITS legislation rather than propose new legislation. The Committee Members are interested in the UK Government’s and UK stakeholders’ views on the Commission proposals, in particular the question whether in the longer-term the Lamfalussy process should be extended to UCITS legislation.
We therefore look forward to receiving a copy of the Government’s submission to the Commission, including a list of those stakeholders who took part in the Government’s consultation and their views if different to yours.

19 October 2005

Letter from Ivan Lewis MP to the Chairman

Thank you for your letter of 19 October, explaining that the Explanatory Memorandum on this Green Paper was being retained under scrutiny.

I am pleased to enclose a copy of the response that has been sent to the Commission on this Green Paper ( Annex B ). This was a joint response from HM Treasury and the Financial Services Authority.

It may be helpful to explain that in addition to a number of bilateral meetings, my officials convened a group of industry practitioners to inform the development of our response. A list of the groups and firms involved is attached to this letter ( Annex A ). While there were inevitably minor differences of emphasis, these stakeholders were strongly supportive of the position we adopted. My officials are continuing to stay in touch with this group.

I hope to be able to write to you separately about mortgages in the near future. We are in the process of finalising our response to that Green Paper.

23 November 2005

Annex A

GROUPS AND FIRMS INVOLVED IN DISCUSSIONS

The Association of British Insurers
The Investment Management Association
Aberdeen Asset Management
AXA Investment Managers
Barclays
Fidelity
Goldman Sachs
JP Morgan
Legal and General
Merrill Lynch
Schroders
Threadneedle
UBS

A number of these organisations have produced their own responses to the Green Paper. They will be available either directly from the organisations concerned or from the Commission website.

Annex B

UK Response to Commission Green Paper on the Enhancement of the EU Framework for Investment Funds

OVERVIEW

1. Creating a single market in financial services is at the core of economic reform in the EU. And because of its key role in the investment chain, achieving an efficient single market in asset management is central to that agenda. Through the investment chain, savers and borrowers are brought together—bringing finance to business and opportunities for savers to manage their finances over their lifetime. The efficiency of this chain, which links individual savers to firms seeking capital for investment, is critical to allocating capital to the most profitable investments, providing a mechanism for saving, raising productivity, and in turn, improving competitiveness in the global economy.
2. In spite of some recognised weaknesses, the UCITS framework has delivered many of the benefits of the single market to the retail fund management industry. The framework has delivered a volume of cross-border trade which, although still small in percentage terms, is nonetheless significant and appears to be growing. Furthermore, UCITS is now a recognised brand outside the EU, facilitating substantial export business for EU financial services companies. The UK authorities believe that the priority now must be to build on this success. The UK’s five priorities for post-FSAP are relevant, in particular:

- Better implementation—the fundamental framework to allow cross-border trade in investment management services is already in place. The priority now must be to implement it properly.
- Alternatives to EU regulation—supporting the ongoing work within the industry on standardisation of fund processing.
- Better regulation—carrying out robust, defendable cost/benefit analysis on any legislative proposals.
- Making Lamfalussy work well—even closer regulatory co-operation through CESR to deliver consensus on notification and eligible assets.
- Recognising the global nature of financial markets—UCITS providers sell not only in the EU, but also in other markets (for example Asia and Switzerland). The impacts of any changes to UCITS on the ability of firms to do business in these markets must be taken into account.

3. Some key areas where the existing framework could be made to work better are already being dealt with through CESR. We support this work and believe the Commission should do everything it can to ensure that the CESR work delivers a worthwhile outcome. Success here will lessen any perceived need for more resource-intensive options such as Directive overhaul, so CESR should be given every chance to succeed.

4. The UK strongly supports the Commission’s view that the focus should be on exhausting the possibilities offered by the existing framework. It is only without prejudice to this overriding goal that consideration can be given to setting the direction of policy in the longer term, and the discussion of longer-term policy goals contained within this response must be read in that context.

Priorities

5. The UK believes that one of the key outputs of this consultation process should be to establish consensus on priority actions to improve the functioning of the UCITS framework. We see the immediate priorities as the following:

- Notification—reducing the costs to firms (and therefore to investors) of selling funds outside their home Member State.
- Private placement—work to design and implement a harmonised regime for private placement, allowing products aimed at institutional and sophisticated investors to benefit from similar cross-border freedoms to those already enjoyed by UCITS.
- Management company passport—allowing companies operating cross border greater freedom to rationalise their operations and so cut costs for investors.
- Simplified prospectus—making further progress towards genuinely simplified and consistently implemented disclosure that adds meaningful clarity for investors.

6. These are the issues we believe should be addressed first. On these issues, particularly on notification and on the simplified prospectus, we believe that widespread consensus has existed for some time on the required outcomes. We believe that the role that now falls to the Commission is to set a firm timetable and to drive delivery of those priority actions where the agenda has already largely been set and to lead work on cost/benefit analysis in the areas where further work is required.

Making Existing Legislation Deliver (Q1 and Q2)

7. The UK authorities agree with the priority action areas for delivering greater legal certainty over the implementation of the directive. We do not see any significant additional concerns in this area. Turning to the specific areas raised:

- Grandfathered funds—we welcome the CESR guidelines and are reasonably confident that these should deliver the required certainty. We do not see any significant problems for the UCITS framework arising from this process.
— Notification—the UK has consistently emphasised the vital importance of a simple and broadly consistent notification procedure to the continued successful development of the UCITS framework. There are clearly significant problems in this area at present. We applaud CESR’s efforts towards rectifying these problems. However, should it become clear that this avenue has been exhausted, we would encourage the Commission to consider further options for reform. This should include further investigation of the experts group report recommendation of removing the requirement for host Member State notification (perhaps with provisions for co-operation between supervisors to ensure the necessary information sharing). As more investors carry out fund transactions outside their home Member State, a regime of pure notification such as this would seem to have even greater attractions. The UK authorities see considerable merit in this option, although would of course emphasise that any options for legislative change should only be pursued where the benefits clearly outweigh the costs and where appropriate levels of consumer protection can be maintained.

— Derivatives—the Commission’s recommendation on derivatives provided useful clarification and appears for the most part to have been successfully implemented.

— Simplified prospectus—a consistently implemented simplified prospectus has the potential to assist significantly the development of a single market in UCITS, particularly by making it easier for investors to compare funds from different Member States. This goal has not yet been achieved. We would encourage the Commission to give further consideration to how this framework could be improved. In particular, we would urge the Commission to start from a basis of considering what it is realistic for a typical consumer to take in from disclosure material, rather than what it would be desirable for a consumer to know, making use of targeted consumer testing to inform the process.

— Eligible assets—we support CESR’s work to clarify legislation in this area. Given the highly technical nature of this work, we believe it is especially important that every effort be made to resolve these issues within CESR, where such a large pool of technical expertise resides.

8. In general, the UK supports the efforts of CESR to deliver consistent implementation of the directives across the EU. It is vital that this channel should be exhausted before legislative action is considered, both to avoid unnecessary legislation and, should it be decided that legislation is required, to give legislators a precise representation of the problem in hand. However, CESR may well come up against problems (for example questions of national primary legislation) which it cannot resolve. The Commission should therefore remain closely involved in this work and be prepared to take action should it become clear that further progress within CESR is impossible.

THE MANAGEMENT COMPANY PASSPORT (Q3 AND Q4)

9. The UK believes that a fully operational management company passport could confer significant benefits on the EU industry. By allowing greater centralisation of management operations, the passport could deliver greater efficiency by allowing centres of excellence in management to develop within the EU. Allowing cross-border operators to centralise their management operations across borders should make it easier for them to monitor and ensure compliance, thus reinforcing consumer protection. We do not believe that split supervision would pose any problems in practice (particularly given the ongoing requirement to have a depositary in the same Member State as the fund). It would of course be important to reach agreement on a framework for appropriate division of responsibilities between regulators but this seems an entirely achievable objective.

DISTRIBUTION (Q5, Q6 AND Q7)

10. Well functioning distribution channels are essential to the proper functioning of the UCITS framework for two reasons:

— ensuring consumers get the right product; and

— encouraging competition amongst fund providers.

11. In encouraging competition, it seems likely that open architecture distribution frameworks will be preferable. Large and efficiently run funds will find it easier to gain further market share if they have good access to distribution networks. This in turn will promote consolidation. For the majority of EU firms, gaining access to new distribution channels is very costly and in some cases impossible. The UK would welcome further investigation by the Commission of the functioning of the market for financial services distribution in the EU. Given the highly diverse nature of EU distribution networks, this would seem likely to be an area
where alternatives to legislation would be more likely to deliver net benefits. One option could be to establish, in co-operation with the industry, a non-statutory definition of “open architecture” to allow distributors to self certify and make it easier for consumers to differentiate.

LONGER-TERM WORK

12. As stated above, the priority must be to continue to work towards successful and consistent implementation of the existing UCITS framework. However, as flagged in the green paper, there are also several areas where targeted analysis could help in determining the UCITS policy strategy over the medium term.

MERGERS AND POOLING (Q8, Q9 AND Q10)

13. The UK sees considerable merit in examining how to make cross-border fund mergers more viable, and to examine whether pooling of funds would contribute to a more efficient market. If so, it is important that permitted pooling types are sufficiently transparent so as not to interfere with the taxation of funds. As a first step, we would welcome a Commission assessment of the present barriers to mergers and pooling followed, if appropriate, by proposals for removing them.

14. In some circumstances, pooling is a second-best alternative to merging where merging is prevented by institutional or regulatory barriers. However, there are also instances where pooling is preferred to a full merger for internal management reasons. For example a company operating cross border and having established a significant presence in another Member State might set up a separate fund in that Member State with an investment style particularly suited to demand in that market but then wish to pool that funds assets with a hub fund. In this instance a full merger would not be appropriate. The Commission should therefore consider how best to facilitate both pooling (including master/feeder structures) and mergers.

THE DEPOSITARY (Q11)

15. A passport for depositary services might assist the functioning of the UCITS framework by:

— making cross-border pooling easier; and

— increasing competition and efficiency in the market.

16. However, there are clearly non-trivial issues to be resolved, particularly in the varying roles assigned to depositaries in the field of oversight of the activities of the management company. In some Member States (including the UK), the depositary is assigned a crucial role in ensuring that the management company acts in the best interests of investors and in line with the rules of the fund, whereas in other jurisdictions this responsibility could be shouldered to a greater extent by a board of directors of the fund. Given these differing structures, considerable discussion between regulators, governments and industry would be required to deliver the necessary level of harmonisation without prejudicing consumer protection. On balance, therefore, we would recommend that this workstream receive only a low priority.

BROAD APPROACH TO UCITS REGULATION OVER THE LONGER TERM (Q13 AND Q19)

17. The Commission asks whether reliance on formal investment limits represents a sustainable approach to delivering high levels of investor protection. Retail investment markets evolve, and it is unlikely that any specific regulatory approach will remain optimal over the very long term. However, at present the UCITS regulatory framework, in spite of its flaws, is working well and the UK authorities see no benefit in the consideration of fundamental overhaul. Investigation in this area should receive only a low priority.

18. We would view adaptation of the UCITS legislation to the Lamfalussy approach in similar terms. While the UK is strongly supportive of Lamfalussy as an approach to Community financial services regulation, adapting the UCITS legislation to it would, as the Commission points out, be far from a cosmetic exercise. The cost of this re-engineering would be considerable, and it is far from clear that the incremental benefits would make the effort worthwhile at this stage. So we believe that while adapting UCITS to the Lamfalussy approach is desirable in theory, it should not be considered until such time (which we believe will be long into the future) as agreement can be reached across Member States, regulators and industry that fundamental reform of UCITS is required.
INVESTOR PROTECTION (Q14)

19. Conflicts of interest are unfortunately inevitable in financial services provision. The aim of regulation should, generally speaking, not be to eliminate but to manage them. We do not see any strong evidence that mismanagement of conflicts of interest is a fundamental problem in the UCITS framework but agree that this is a question which the Commission should keep under investigation.

COMPETITION FROM SUBSTITUTE PRODUCTS (Q15)

20. The fundamental aim of the UCITS framework is to facilitate a single market in investment funds. This objective will only be prejudiced by competition from substitute products if that competition is so great as to dominate UCITS and thus severely limit the proportion of asset management business which can be done cross border. As the Commission points out, UCITS account for over 70 per cent of assets under management by the fund industry. This statistic gives no indication that substitute products pose a serious threat to UCITS. We do however recognise the risk that in the future regulatory disparities (in particular differing standards of disclosure) may lead to a shift towards other products and so would encourage the Commission to keep this situation under observation.

PRIVATE PLACEMENT (Q16, Q17 AND Q18)

21. In June 2005, €731 billion of assets were held in special or institutional non-UCITS funds in the EU (source: EFAMA, September 2005). While much smaller than the combined UCITS assets (over €5 trillion), this is nonetheless a highly significant segment of the asset management industry. These funds are generally not sold via public offer but by private placement. The regimes governing private placement sales vary widely across the EU. This makes true cross-border operation difficult or impossible in this sector of the industry. Conversely, institutional and qualified investor asset management services seem to have several characteristics which make cross-border operation both feasible and desirable:

— High degree of specialisation—institutional funds often respond to a very specific set of investor needs (for example to match a particular set of liabilities). This implies that greater specialisation within the EU would be desirable, with centres of expertise in particular strategies being allowed to develop.

— Reduced requirement for detailed rules—because experienced and institutional investors do not require the same degree of regulatory protection as retail consumers the need for detailed conduct of business rules is reduced. This ought to facilitate the development of a common European regulatory approach.

— Large average transaction size—because average transactions via private placement are so large, investors are more likely to find it worthwhile to engage in a wide (and therefore cross-border) search for a provider. This suggests that if the regulatory impediments can be removed, a more integrated market should develop quickly.

22. In some Member States, no private placement regime exists. In most of the remaining Member States, some combination of the following types of rules apply:

— Limits on the number of investors to whom the fund can be offered—designed to ensure that the fund is not mass marketed. The difficulty with this rule in practice is that it is not always possible accurately to assess the number of investors to whom the fund has been offered, or indeed to define what constitutes an offer.

— Minimum investment limits—these have the advantage of being easily measurable, but may make diversification more difficult for some investors whose entire portfolio size is close to the minimum limit. However, if the offer is mainly to institutional investors this may not be a biting constraint.

— Qualifying investor rules—requirements that investors demonstrate (or self-certify) certain levels of investment expertise, that they seek advice, or that they have some minimum level of net assets. In the UK’s experience, the first two are useful criteria. The difficulty with a net assets criteria is that it is very difficult for firms and regulators to measure.

23. We strongly support the Commission’s proposal to establish a working group to examine these issues and believe that a harmonised private placement regime could deliver substantial benefits for the EU asset management industry. We believe that the mandate of this group should focus on the private placement issue, where the goal is achievable and the potential benefits seem clear. When appropriate the Commission should include in its examination a cost-benefit analysis of each policy option so that the optimum choice can be made.
24. We do not believe that a case has been made for harmonised regulation of hedge funds and private equity funds themselves: in markets characterised by rapid and significant innovation the deadweight costs of regulation are likely to be large, and the high levels of investor competence and due diligence reduce any potential investor benefit from product regulation. We would however strongly support work to investigate the development of a common regime for the distribution of such investments. We do believe that this can be implemented independently of regulation of the fund managers themselves, harmonisation of which should not be a priority.

EUROPEAN COURT OF AUDITOR’S ANNUAL REPORT: FINANCIAL YEAR 2003

Letter from the Chairman to Stephen Timms MP, Financial Secretary, HM Treasury

Thank you for your Explanatory Memorandum concerning the European Court of Auditors (ECA) Annual Report for 2003. Sub-Committee A of the European Union Committee considered the report at its meeting on 22 February 2005.

Although the document has been cleared from scrutiny, the Sub-Committee is concerned that, for the tenth year running, the European Court of Auditors has failed to give a positive Statement of Assurance for the EC Budget due to errors identified in a sample of payment transactions. The Sub-Committee was surprised by the Government’s relaxed approach to the conclusions of the ECA’s report and it will wish to return to this matter in due course. The Sub-Committee also awaits a copy of the Government’s responses to UK references in the ECA Report.

3 March 2005

Letter from Stephen Timms MP to the Chairman

Thank you for your letter of 3 March.

I am pleased to enclose a copy of the UK’s response to the European Court of Auditors’ (ECA) Report on the 2003 EC Budget, including responses to specific UK references therein, (not printed).

You suggest in your letter that the Government has adopted a relaxed approach to the conclusions of the ECA’s report and state that you will wish to return to this matter in due course. I can assure you that the Government has not been relaxed about the fact that for the 10th year in succession the ECA was unable to give a positive Statement of Assurance (usually referred to by its French acronym, DAS) on the majority of the EC Budget. We consider this an issue of great importance. We are working with the European Commission to identify what needs to be done to address the ECA’s criticisms of how the EC Budget is managed, and to improve the methodology for the Statement of Assurance.

The UK, and I personally, have been in the lead in calling for action to tackle the DAS issue. Changes to the accountancy arrangements, moving to full accruals accounting, were introduced from 1 January 2005. Directorates General are also now required to produce annual activity statements which include a declaration on the extent of financial assurance they can give for the funds they manage. The ECA is also looking at Member States’ financial control systems as well as continuing to audit an annual sample of transactions. The impact of these changes is, of course, still working its way through and it is for this reason that we have called for further reform of the ECA methodology. We need a system which can assess the quality of the Commission’s and Member States’ financial management and control systems, which can identify what needs to be done to improve, and which can also assess progress from year to year.

17 March 2005

EUROPEAN GOVERNANCE STRATEGY FOR FISCAL STATISTICS (5049/05)

Letter from the Chairman to Stephen Timms MP, Financial Secretary, HM Treasury

Thank you for your Explanatory Memorandum 5049/05 on the Commission Communication proposing the development of a European governance strategy for fiscal statistics, which Sub-Committee A (Economic and Financial Affairs and International Trade) considered at its meeting on 22 February 2005.

The Committee is concerned by the revelation of serious inadequacies in Greece’s budgetary statistics for 2003 that remained undetected by the Commission and the Council until September 2004. The Committee agrees with the Commission that the reliability of Member States’ fiscal statistics must be improved and urges the Government to be proactive in developing a sound and acceptable system to ensure this. The Committee expects to be informed of any developments on this matter.

3 March 2005
EUROPEAN REGIONAL DEVELOPMENT FUND, THE EUROPEAN SOCIAL FUND AND THE COHESION FUND (11606/04, 11637/04, 11688/04)

Letter from Rt Hon Alun Michael MP, Minister for Industry and the Regions, Department of Trade and Industry to the Chairman

I am writing to inform you and your Committee of the current position relating to the above Explanatory Memoranda, which were submitted by the Department of Trade and Industry on 1 September 2004. These set out the UK’s views on the European Commission’s draft proposals for the Structural and Cohesion Funds for the 2007–13 Financial Perspective.

The Member States began negotiations on the Commission’s package of draft Structural and Cohesion Fund Regulations under the Dutch Presidency in September 2004.

We have now had extensive discussions in the Structural Actions Working Group on the draft Regulations under the Dutch and Luxembourg Presidencies. These discussions will continue under the UK Presidency.

The Dutch Presidency handled the negotiations on twin tracks. Discussion on the size and focus of the Structural Funds budget took place in an ad hoc working group on the next Financial Perspective, while discussions on the Commission’s package of Structural Funds Regulations took place in the Structural Actions Working Group.

The Luxembourg Presidency continued this twin track approach and attempted to build support for compromise texts within the draft Regulations, building on a consensus on specific issues as set out in the Working Group’s report to the European Council of December 2004. The Working Group has made good progress on the draft European Social Fund Regulation and draft Cohesion Fund Regulation, which I believe are now reasonably close to completion. It has also made some progress on the draft General Regulation, reaching a consensus on the rules for financial control and evaluation of programmes, while making progress on the rules for establishing a strategic framework for Structural Funds spending. Discussions on the European Regional Development Fund Regulation have had some success, and have included an agreement of concentration levels and priority lists for spending under the different Objectives. However, a number of outstanding issues remain to be resolved, including the precise arrangements for strategic reporting, the Commission’s proposals for Member States to establish compulsory performance reserves to reward successful programmes, the treatment of urban and rural areas, and application of the principle of proportionality with regard to financial controls (i.e. the principle for defining how the European Union should exercise its competence once it has been established that it should take action).

The UK Government was eager to secure a deal at the Luxembourg European Council on 16 and 17 June, both on reform of the Structural Funds and on the next Financial Perspective as a whole. We are disappointed that it was not possible for Member States to reach agreement at that stage.

However, our most important objective is to reach the right agreement on Structural Funds reform, and not to sign up to the wrong deal. In his statement to Parliament on 19 June, the Prime Minister announced that the UK would continue to push for a deal on Future Financing during its EU Presidency. He also emphasised the need for a fundamental debate on the future of EU spending.

Our aim for the Structural Funds is to make as much progress as possible in resolving the outstanding administrative or technical issues in the Commission’s package of draft Structural Funds Regulations, so that the Regulations can be finalised as quickly as possible once a budgetary agreement is reached.

We will keep the Committee informed of future developments.

4 August 2005

Letter from Rt Hon Alun Michael MP to the Chairman


The most important first reading amendments on the proposal for a Regulation on the European Regional Development Fund in the European Parliament were as follows:

(a) Parliament added strong references on social inclusion and the rejection of discrimination on grounds of gender, race or ethnic origin, religion or belief, disability, age or sexual orientation.

(b) Parliament reinforced the need to encourage economic, social and territorial cohesion, with particular reference to the EU Sustainable Development Strategy.

(c) Parliament strengthened references to ensuring greater collaboration and co-ordination between regional actors through joint local initiatives, improved networking and synergic exchanges of experience.

(d) Parliament added text further supporting local development and employment initiatives. These initiatives would have to be sustainable and focus on skills, vocational training and lifelong learning.

(e) Parliament increased the emphasis on supporting the economic and social regeneration of crisis-hit towns, cities and peripheral urban areas.

(f) Parliament included more detail on providing assistance for small and medium sized enterprises (SMEs), such as helping them to take full advantage of current research. They further highlight the significant role that SMEs play in the creation and safeguarding of jobs.

(g) Parliament inserted text that outlined the need to create sustainable tourism and so sustainable jobs in rural areas.

(h) Finally, Parliament strengthened the environmental aspect of the regulations, specifying the need to invest in water management, quality and security. Further references to the protection of biodiversity and mitigation of the impact of businesses were also included.

The Council has now made good progress in its discussion of the Regulation. The Member States’ main concerns related to the thematic focus of future spending, and the need to find a sensible balance between concentration on a limited number of activities and flexibility to respond to local conditions. The Member States have agreed changes to the draft Regulation which maintain a clear focus on the limited number of priorities, but allow Member States to fund a wider range of activities in cases where this is genuinely necessary to respond to specific local needs.

I will continue to keep you informed as the negotiations on the future of the Structural and Cohesion Funds post-2006 progress.

29 September 2005

EUROPEAN REGIONAL DEVELOPMENT FUND (11689/04)

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

Thank you for your letter to Jacqui Smith of 20 October 2004 with regard to Explanatory Memorandum number 11689/04 on the European Commission’s proposal for a Regulation establishing a European grouping of cross-border cooperation (EGCC). I am replying as Minister of State for Trade, Investment and Foreign Affairs.

As explained in the Explanatory Memorandum, the purpose of the proposed EGCC would be to facilitate cross-border, transnational and interregional co-operation within the European Union by allowing for the creation of co-operative groupings on the community territory. You ask in your letter for further information on the exact nature or composition of the proposed groupings and, in particular, their legal status, the activities they might conduct, and how they might operate without Community funding.

The purpose of the proposed legal instrument is to make it easier for local and regional authorities and other bodies in EU Member States that participate in joint activities such as cooperation projects to establish a single authority with decision-making powers for the purposes of managing these operations.

At present, regions in different Member States participate in a variety of cooperation activities that are funded through the Community’s INTEREG initiative, including projects to assist the Community’s internal and external border areas in overcoming development problems due to their isolation and the creation of co-operation networks. Member States establish joint authorities for managing INTEREG programmes which include the development of transport and communications structures and the development of tourism through joint marketing and joint projects.
As the Commission explains in its own Explanatory Memorandum on the proposed instrument, Member States and regional authorities have experienced important difficulties in carrying out and managing co-operation activities within the framework of differing national laws and procedures. It has often been difficult to establish single authorities with the powers to manage cooperation programmes that cover more than one Member State.

The proposed instrument would, in principle, remove these difficulties by providing for authorities in the Member States to establish unitary groupings invested with a legal personality in order to run such activities. Hence, a number of authorities in different Member States which were responsible for running a programme of cooperation activities with support from the EU Structural Funds might in future decide to create an EGCC comprising of representatives of their different organisations in order to manage the programme. According to the Commission’s proposal, an EGCC could be comprised of member States and/or regional and local authorities and/or local public bodies.

If the Commission’s proposed instrument did succeed in overcoming the difficulties mentioned above, it would significantly reduce the bureaucratic complexity of establishing single authorities to run cooperation projects across more than one Member State and would indeed have a significant added value in comparison with the present situation.

Turning to your point on the legal status of the EGCC, the Commission is proposing an innovative instrument for implementing cross-border co-operation programmes and we will need to examine this carefully. My officials are currently investigating this and I will of course keep your Committee informed.

As I have explained above, the principle purpose of the EGCC would be to make it easier for authorities in different Member States to establish joint entities for the management of cooperation activities with financial support from the EU Structural Funds. However, the proposal as currently drafted would not prohibit the creation of EGCCs for other purposes. For example, it is possible that authorities in different Member States might wish to establish a single authority for the management of a joint activity or project which was to be funded from domestic resources rather than from Structural Funds allocations.

Under the Commission’s proposals, it would be possible for them to establish an EGCC for the purposes of managing such an initiative as well as for managing Structural Funds programmes. It is important to remember that the EGCC is simply a legal vehicle to facilitate the management of certain types of activities irrespective of how they might be funded.

I very much hope that these comments are of use to the Committee and would of course be delighted to provide further information if necessary. I should add that the Commission’s proposal has now been discussed in the Council’s Structural Actions Working Group and that a number of Member States have raised serious concerns with regard to the proposed legal base of the instrument and the scope for Member States to regulate the creation of EGCCs that include authorities from their territory. We are considering these issues along with other Member States.

26 November 2004

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

The purpose of this letter is to give you an update on the European Commission’s proposal for a Regulation of the European Parliament and of the Council establishing a European Grouping of Cross-border Co-operation, which had its first reading in the European Parliament on 6 July 2005.

Explanatory Memoranda number 11689/04 on a Proposal for a Regulation of the European Parliament and of the Council establishing a European Grouping of Cross-border Co-operation was submitted by the Department of Trade and Industry on 1 September 2004. This proposal forms part of the Commission’s package of draft Regulations for the operation of the Structural and Cohesion Funds from 2007–13.

The most important first reading amendments on the proposal for a European Grouping of Cross-border Co-operation in the European Parliament were as follows:

(a) Parliament changed the name of the proposal from “European Grouping of Cross-border Co-operation” to “European Grouping of Territorial Co-operation”. It stated that the grouping should support European territorial co-operation in three areas: cross-border, interregional or transnational.

(b) Under the proposed amendments, these conventions would be transferred to the European Commission and to the Committee of the Regions. The Commission would keep a public register of all conventions relative to the grouping.
In addition to Member States and/or local public bodies, the grouping may be made up of other bodies acting on a not-for-profit basis, in which regional/local authorities and Member States participate. The grouping will be subject to the law governing the operation of associations of the State designated by its members.

Parliament added an operative clause stating that the competent authority of the Member State whose law is applicable must have a right of supervision over the Grouping’s management of public funds, both national and Community. The competent authority of the Member State whose law is applicable shall inform the other Member States affected by the convention of the results of any checks carried out.

Agreements on border, interregional or supranational cooperation between Member States and/or regional and local authorities may, however, continue to be applied.

Parliament specified that no financial liability would fall on Member States that are not members of the grouping, even though their regional, local or public bodies are participating as members. This, however, is without prejudice to the financial responsibility of Member States in relation to Community funds operated by the grouping.

Finally, where border regions have experienced prolonged periods of civil or military conflict, the grouping may also have the objective of promoting reconciliation and assisting with peace-building programmes.

In the Council, whilst most Member States have welcomed the Commission’s initiative in principle, some still have unanswered questions about some technical elements of the Regulation, as well as the benefits of the grouping over existing instruments that could be used to establish cross-border programmes. If the grouping is adopted many Member States have also sought a clear power in the Regulation to control their authorities’ and others’ participation in such groupings.

I will continue to keep you informed as the negotiations on the future of the Structural and Cohesion Funds post-2006 progress.

22 September 2005

EUROPEAN SOCIAL FUND (11636/04)

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


The most important first reading amendments on the proposal for a Regulation on the European Social Fund in the European Parliament were as follows:

(a) Parliament’s amendments amplify the Commission’s text by emphasising that the European Social Fund (ESF) shall improve employability and job opportunities, encourage a high level of employment and ensure more and better jobs. Its amendments reinforce the role of ESF in combating social exclusion by improving disadvantaged people’s access to employment and in particular by promoting the participation of economically inactive people.

(b) Parliament introduced stronger references to equality between men and women, and specified more detailed action to prevent discrimination against women and promote work-life balance and access to childcare.

(c) Parliament extended the scope of the Regulation’s provisions on equal opportunities and non-discrimination beyond gender issues. It emphasised increasing participation in employment by groups such as people with disabilities, older people and ethnic minorities.

(d) Parliament introduced text to ensure that the principles of the Equal Community Initiative are taken into consideration in future ESF programmes. These principles include access for Non-Governmental Organisations (NGOs), innovation and experimentation, cross-border co-operation, and access to the labour market for marginalised groups.
(e) Parliament introduced specific references to business start-ups, and greater emphasis on promoting lifelong learning particularly in small and medium-sized enterprises.

(f) Parliament’s amendments emphasised the role of stakeholders, particularly social partners and NGOs, and introduced a provision to allocate at least 1 per cent of ESF resources in the Convergence Objective (i.e. the poorest Member States and regions) for capacity building, education and networking activities by NGOs.

(g) Parliament strengthened references to ESF support for innovation, and introduced provisions that innovative activities shall account for at least 1 per cent of each ESF programme and that at least 1 per cent of ESF resources shall be allocated to the Commission to finance innovative activities.

(h) Parliament made amendments that reduce the frequency of Member States’ reports to the Commission from annually to every two years, but with more detailed requirements to report on issues such as ESF support for groups suffering discrimination and disadvantage, measures to encourage self employment and business start-ups, and actions to address social exclusion and economic inactivity.

The Commission’s proposal for the draft European Social Fund Regulation and the European Parliament’s amendments are being considered in the Council. Member States, including the UK, have welcomed the Commission’s proposals to strengthen the link between ESF and the European Employment Strategy. There is agreement that ESF should support Member States’ employment and training actions in line with the “national reform programmes” introduced in the revised Lisbon strategy process agreed by the European Council in March 2005.

There is broad agreement that that the European Social Fund should help to promote social inclusion by supporting activities that integrate disadvantaged groups into the labour market. Member States also agree that the principles of equal opportunities and non-discrimination should be extended beyond gender to include other issues such as disability.

There is also a consensus in the Council that there should be flexibility for Member States to develop ESF programmes to meet their national and regional labour market needs. Member States are also concerned to simplify ESF programme management and reporting rules.

The UK Presidency will take forward discussion of the ESF Regulation in the Council, so that the first reading can be completed as soon as possible after agreement has been reached on the EU Financial Perspective for 2007–13.

I will continue to keep you informed as the negotiations on the future of the Structural and Cohesion Funds post-2006 progress.

29 September 2005

EUROPEAN UNION SOLIDARITY FUND (8323/05)

Letter from the Chairman to Rt Hon John Hutton MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, Cabinet Office

Thank you for your Explanatory Memorandum which Sub-Committee A (Economic and Financial Affairs and International Trade) considered at its meeting on 25 October.

The Committee decided to retain the scrutiny reserve on this document as Members are not fully persuaded that the EU Solidarity Fund has added any real value after the initial payments which were made in 2002 to those countries affected by the severe floods of that autumn.

The figures provided by the Commission in its Impact Assessment appear to show enormous underspends in 2003 and in particular in 2004. The Commission lists approved EUSF applications in 2002 as amounting to €728 million, but dropping to €107.8 million in 2003, and amounting to no more than €19.6 million in 2004. Lowering the threshold from €3 billion to €1 billion as proposed in this document, may allow the Commission to allocate more funds in the future, but the question remains whether this is the most effective way of spending EU money at a time when the overall budget for the next Financial Perspective is under such strain. The Committee would be interested to learn what happened to the money that was allocated to the EUSF, but not spent in 2002, 2003 and 2004.

The Sub-Committee agrees with you that EU spending should complement, not replace national spending for disasters and that the Commission should be pushed to justify its proposal to lower the threshold and the new criterion which gives the Commission discretion to accept applications that fall below the new threshold.
However, the Sub-Committee can see some justification for extending the scope of the Solidarity Fund to include public health threats, as long as the Commission is clear what its role would be in coordinating the Member States’ efforts to fight a threat such as a flu pandemic. The Sub-Committee has noted press reports that state the Commission is considering to set aside €1 billion to be used in the event of a flu pandemic. Is the Commission proposing to set aside money for a flu pandemic? If they are, would this money be part of the present Solidarity Fund, and how would the Commission intend to add value to national efforts to fight such a health risk? Finally, does the UK Government agree with this initiative?

25 October 2005

FINANCIAL PERSPECTIVE 2007–13

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury

As you know, my Committee has taken a keen interest in the Financial Perspective 2007–13. We published a report The Future Financing of the European Union, on 9 March 2005 to which you responded on 24 May 2005 and which was also debated on the floor of the House.

Following the agreement reached at the Council meeting this weekend, the Committee would very much like to receive an update from you with details of the negotiations which took place and the conclusions which were reached. In addition to a broad summary of the Financial Perspective as approved by the Council, we would appreciate you comments on the following:

— The UK’s abatement, including details of the changes made to it.
— The promise to review the Common Agricultural Policy, including details of how this would take place, and of how countries could veto such a review.
— The overall size of the budget.
— The measures built into the budget to accommodate possible enlargement of the Union to include Bulgaria, Romania and Turkey.
— The money that will be spent on Structural Funds, including details of which Member States will benefit.
— The money that will be available for initiatives designed to improve Europe’s economy, including support for the Lisbon Agenda.

19 December 2005

Letter from Ivan Lewis MP to the Chairman

Thank you for your letter of 19 December about the agreement on the 2007–13 Financial Perspective reached by the European Council on 17 December.

I must apologise for the delay in sending a formal reply, although I believe that the points raised in your letter have been covered in written PQ responses and an EU Committee evidence session during January. Specifically, the Treasury has deposited responses to a large number of written PQs from the Lords including: HL3833, HL 3834, HL3559, HL3571, HL3569, HL3148; 40951, 40547, 46226, 45339 and 39618.

You will know that the next steps in the process are to conclude a new Inter-Institutional Agreement (HA) between the European Parliament, Council and the Commission; and to agree a new Own Resources Decision (ORD). The IIA provides the framework for management of the Financial Perspective and the budgetary procedure. The Commission has recently published its proposal for the IIA, which will be discussed in triilogue between the Austrian Presidency, Commission and Parliament. Council approval will come to the General Affairs Council in due course. The ORD provides the legal basis for financing of the EC budget. The Government will use its Explanatory Memoranda on these proposals to give further information on the agreement reached in December, the Commission’s proposals and the Government’s position on them.

15 February 2006

GROWTH AND EMPLOYMENT—THE COMMUNITY LISBON PROGRAMME (11618/05)

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

Thank you for your Explanatory Memorandum which Sub-Committee A (Economic and Financial Affairs and International Trade) considered at its meeting on 1 November 2005. The document has been cleared from scrutiny.
We continue to support the Government’s efforts to secure reform of the EU Budget. The Committee also supports the Government in resisting any proposal for a binding common consolidated corporate tax base. We note, however, that the FT reported on 25 October that the Commissioner Kazlo Kovacs has in mind to propose a non-binding voluntary instrument so that those Member States that wish to do so can press ahead with a common corporate tax base. The Committee would be interested to learn how this might affect UK companies’ competitiveness compared to their EU counterparts?

14 November 2005

INTEGRATED GUIDELINES FOR GROWTH AND JOBS, 2005–08 (8008/05)

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

Please find attached an Explanatory Memorandum on the Commission Communication on the Integrated Guidelines for Growth and Jobs (2005–08), including a Commission Recommendation on the Broad Guidelines for the economic policies of the Member States and the Community (under Article 99 of the EC Treaty); and a proposal for a Council Decision on Guidelines for the employment policies of the Member States (under Article 128 of the EC Treaty).

The Communication outlines the challenges ahead and the urgency with which action is required, as well as the necessary actions to be taken at Member State and EU level to raise the EU’s growth potential, while maintaining sound macroeconomic policies that underpin the success of reform efforts.

Ecofin is expected to finalise its Recommendation on the Broad Economic Policy Guidelines at its 7 June meeting. I am conscious that it is unlikely your committees will be in a position to complete scrutiny of this matter before this date. It is unfortunate that Parliamentary timetables are in this case incompatible with EU processes, but I hope you will agree that on substance this is a positive initiative that aims to refocus the macroeconomic, microeconomic and employment policies to be undertaken in the context of the Lisbon agenda on employment and growth.

18 May 2006

Letter from James Plaskitt MP, Parliamentary Under Secretary, Department for Work and Pensions to the Chairman

Please find attached an Explanatory Memorandum on the Commission Communication on the Integrated Guidelines for Growth and Jobs (2005–08), including a Commission Recommendation on the Broad Guidelines for the economic policies of the Member States and the Community (under Article 99 of the EC Treaty); and a proposal for a Council Decision on Guidelines for the employment policies of the Member States (under Article 128 of the EC Treaty).

The Communication outlines the challenges ahead and the urgency with which action is required, as well as the necessary actions to be taken at Member State and EU level to raise the EU’s growth potential, while maintaining sound macroeconomic policies that underpin the success of reform efforts.

EPSHCA will meet on 2 June to discuss the Employment Guidelines general approach. I am conscious that it is unlikely your committee will be in a position to complete scrutiny of this matter before this date. It is unfortunate that Parliamentary timetables are in this case incompatible with EU processes, but I hope you will agree that on substance this is a positive initiative that aims to refocus the macroeconomic, microeconomic and employment policies to be undertaken in the context of the Lisbon agenda on employment and growth.

I should also explain that the Commission’s proposals have now been subject to detailed discussions and negotiations in the employment committee and the council working group. During negotiations the wording of article two was changed to closer reflect the Treaty. In addition there will be no national targets set under the employment strategy and finally guideline 18 now includes a reference to inactives. These changes are in line with UK negotiating objectives and we will endeavour to retain them when the dossier is discussed at COREPER on 25 May.

25 May 2005

Letter from the Chairman to John Healey MP

Thank you for your Explanatory Memorandum on the Integrated Guidelines for Growth and Jobs and your letters dated 18 and 25 May 2005 which were considered by Sub-Committee A (Economic and Financial Affairs and International Trade) at its meeting on 14 June 2005. The Committee appreciates the way in which your two Government departments worked together to produce a joint scrutiny note on both aspects of the
Integrated Guidelines. However, to avoid complications, I have decided to write to you and copy this letter to James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions.

The Explanatory Memorandum raises a number of reservations concerning the Broad Economic Policy Guidelines. The Committee would like to know whether these were addressed at ECOFIN on 7 June and therefore decided to maintain the scrutiny reserve.

You note the inclusion of a proposal for the elimination of tax obstacles in the Broad Economic Policy Guidelines and write that the Government is against any proposal for tax harmonisation. The Committee agrees that tax systems must remain a national preserve and would like to be assured that any proposal suggesting otherwise has been deleted from the Broad Economic Policy Guidelines.

We would like to have more information on the following: has more recognition been given to globalisation and external openness in the guidelines? Was it agreed at ECOFIN on 7 June that a reference be added to competitiveness testing and simplification of regulation as well as the need to consider alternatives to regulation? Has the Government now taken a view on whether Joint Technology Initiatives at EU level are appropriate and add value?

The Committee was also interested to know how the present pressure on the UK to abandon its individual opt-out of the Working Time Directive relates to the Employment Guidelines for 2005–08.

16 June 2005

Letter from John Healey MP to the Chairman

Thank you for your letter regarding my recent Explanatory Memorandum on the Commission’s Communication on the Integrated Guidelines for Jobs and Growth, which included a recommendation on the Broad Economic Policy Guidelines (BEPGs). I am copying this letter to James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions.

As you know, ECOFIN recently finalised its Recommendation on the BEPGs, and transmitted it to the European Council (16–17 June) for endorsement. ECOFIN is now set formally to adopt the BEPGs as an “A” point at its 12 July meeting. Your letter of 16 June requested further clarification on the final text of the BEPGs as agreed by ECOFIN in June; I am happy to provide this.

Post-ECOFIN, the Recommendation continues to reflect several of the UK’s priorities, including: securing economic stability to raise employment and growth potential, particularly in the long-term in view of Europe’s ageing population; further regulatory reform through the measurement of the administrative burden to create a more attractive business environment; further steps to create a dynamic and competitive Single Market by increasing the speed of transposition and improving the enforcement of Single Market legislation; promoting innovation and enterprise by increasing investment in R&D; improving access to finance, education and training and developing a more entrepreneurial culture; and increasing competition within Europe by removing barriers to competition.

The UK also secured, via the June ECOFIN and its preparatory committees, helpful text on several of our economic reform priorities at ECOFIN, including those you refer to in your letter:

— The Recommendation on the BEPGs no longer includes a proposal for the elimination of tax obstacles, and provides for Member State flexibility in considering the case for adopting infrastructure pricing systems;
— The BEPGs call for the urgent reform of labour markets and include high-level coverage of the policy actions required, allowing the BEPGs to fulfil their function of providing consistency across macroeconomic, microeconomic and employment policies;
— In line with the Government’s better regulation agenda, the paper also refers to competitiveness testing and simplification of regulation, as well as to the need to consider alternatives to regulation;
— The BEPGs now include an introductory section at the beginning of the BEPGs Recommendation, which outlines the key priorities;
— Globalisation and external openness are recognised, reflecting the key role that trade and investment play in increasing growth and employment;
— The industrial policy text was improved to call for a modern and active industrial policy;
— The deletion of the reference to Joint Technology Initiatives at the European level.

While the Government supports tackling market failures through technological development, no detailed proposals have yet been brought forward by the Commission, and further discussion with our European partners is required to assess their suitability.
In sum, the Government has endorsed the Broad Economic Policy Guidelines in the form agreed by ECOFIN in June and by the subsequent European Council. However I hope you will agree that the final text is one the UK can welcome, and that reserves can now be lifted before formal adoption at the 12 July ECOFIN to avoid an override, particularly as our concerns of substance have been addressed and it would be difficult as the incoming Presidency to maintain our Parliamentary reserve at that point. I look forward to your response.

There is no direct relation between the Employment Guidelines 2005–08 and the negotiations on the European Working Time directive. Integrated Guideline 21 does call for the adaptation of employment legislation in order to promote flexibility, and the UK’s position on the individual opt-out from the Directive’s weekly working time limit is driven by the wish to promote such flexibility. In that sense, we consider our position to be in line with the guidelines. More broadly, the employment guidelines are focused on the areas of attracting and retaining more people in employment, improving adaptability of workers and enterprises and increasing investment in human capital.

6 July 2006

INTERNATIONAL CONVENTION ON THE HARMONISATION OF FRONTIER CONTROLS OF GOODS 1982 (8257/05)

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

Thank you for your Explanatory Memorandum on amendments to the International Convention on the Harmonisation of Frontier Controls of Goods. Sub-Committee A considered this document at its meeting on 14 June 2005.

The Committee raised concerns over the proposed legal base, Article 133 of the Treaty and Article 300(2) sub-paragraph 2. This indicates that the Commission considers that the decision falls exclusively under the Common Commercial Policy. But as you point out in your Explanatory Memorandum Article 2 of the draft decision would call for amendments to visa policy. Are the Government content that Article 133 provides sufficient vires for this measure. Does the Government accept that provisions on visas (control of persons) may fall under the Common Commercial Policy and within the exclusive competence of the Community?

The Committee also noted that your Explanatory Memorandum contained references to TIR Carnets, but did not explain what they were. The Committee would be very grateful for an explanation.

15 June 2005

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter of 15 June 2005 seeking clarification of the Government’s view of the proposed legal base, particularly with regard to the provisions on visa procedures.

The Government had similar concerns to those expressed by your Select Committee, in particular considering that the visa provisions were a matter of national not Community competence. Following representations, it has now been agreed at Council Working Group that the proposal should be amended to include the following recital:

“(8) In accordance with the Protocol on the position of the United Kingdom and Ireland and the Protocol on the position of Denmark, both annexed to the Treaty on European Union and the Treaty establishing the European Community, the Community position within the Administrative Committee does not apply to those States insofar as the facilitation of visa procedures for professional drivers is concerned.”

This meets our concerns by making it clear that in respect of visa procedures the Community position does not apply to the UK. The Government is satisfied that other aspects of the measure fall under the Common Commercial Policy. In accordance with Community practice, we are content with the use of a single policy-specific legal base of Article 133 of the Treaty, in conjunction with Article 300(2) sub-paragraph 2.

You also asked for an explanation of TIR Carnets. These are provided by the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention 1975), which operates under the auspices of the United Nations Economic Commission for Europe. The Convention facilitates movements of goods between and through the territories of contracting parties, with suspension of duties and taxes. From the UK’s perspective the arrangements are used largely for movements by road to and from countries beyond the Community’s eastern border. The carnet is the control document that accompanies the goods and is presented to the Customs authorities. UK hauliers would use the international weight certificate (Article 5 of the proposed annex to the Convention) primarily outside the Community, in conjunction with TIR carnets. I hope you find this helpful.

29 June 2005
Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you for your letter of 29 June on the proposal to amend the International Convention on the Harmonisation of Frontier Controls of Goods. Sub-Committee A considered this letter at its meeting on 5 July and was pleased to note the addition of the recital making clear that the visa procedures do not apply to the UK. However, we decided to continue holding the proposal under scrutiny.

The Committee felt that your letter did not fully address the concerns over the adequacy of the legal base raised in my letter of 15 June. Would you please supply a more detailed explanation of the legal arguments presented in favour of dealing with this proposal, which includes visa policy, under the Common Commercial Policy. Is the Government aware of any other case where matters of visa policy have been dealt with by a Common Commercial Policy Instrument made solely under Article 133. If there are none, what precedent might this set particularly regarding the Community’s external competence?

6 July 2005

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter of 6 July 2005 seeking further clarification of the Government’s view of the proposed legal base, particularly with regard to the provisions on visa procedures.

It may help if I refer to the European Court of Justice’s (ECJ) jurisprudence on choice of legal bases for a measure. This was summarised in the Mutual Assistance in Recovery of Debts (MARD) case (C-338/01, particularly paragraphs 54–57, judgment delivered 29 April 2004). It is settled case law that the choice must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure. If examination of a measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of these is identifiable as the main or predominant purpose or component and the other is merely incidental, the act must have as its sole legal basis that required by the predominant purpose or component.

The Court has also decided that exceptionally, where the measure simultaneously pursues several objectives that are inseparably linked without one being secondary to the other, it must be founded on the corresponding legal bases. However no dual legal basis is possible where the procedures laid down for each legal basis are incompatible with each other.

The Government’s view is that the proposed amendment to the Harmonisation Convention covers a range of frontier issues, of which visa procedures form only a small part. All other aspects come under the Common Commercial Policy, with Article 133 as the appropriate legal basis. It follows that in accordance with ECJ jurisprudence the Commission proposal can properly refer to Article 133 as the sole legal basis, even though visa procedures fall outside that Article’s provisions.

The Government is not aware of any other case where matters of visa policy have been dealt with by a Common Commercial Policy Instrument made solely under Article 133. In view of the ECJ jurisprudence noted above and bearing in mind the recital specifically acknowledging the special position of the UK, Ireland and Denmark on visa issues, the Government does not consider the proposal sets a precedent regarding the Community’s external competence. I hope you find this helpful.

11 July 2005

INTERIM AGREEMENT ON TRADE AND TRADE-RELATED MATTERS BETWEEN THE EC, EAEC AND REPUBLIC OF TAJIKISTAN

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

A Partnership and Co-operation Agreement (PCA) was recently established between the European Community, European Atomic Energy Community (EAEC), and the Republic of Tajikistan. The PCA was signed by the European Community and President Rakhmonov of Tajikistan at the General Affairs and External Relations Council (GAERC) on 11 October 2004.

Pending the entry into force of the PCA, it is proposed that the European Community, EAEC and Tajikistan conclude an interim agreement mainly concerning trade, co-operation and the institutional framework. Having completed the negotiation process, the Commission proposed that the Council approve the results and initiate the procedures for the signing and conclusion of the agreement.
We submitted an Explanatory Memorandum to your Committee on 13 September 2004 regarding a proposal for a Council Decision on the conclusion of an interim agreement on trade and trade-related matters (and the PCA) on behalf of the European Community. This Council Decision was cleared by your Committee as “not legally or politically important” on 15 September 2004.

The procedures for the signing and the conclusion of the Agreement are different for the two European Communities (European Community and the EAEC). Procedure stipulates that the Council approves the agreement on behalf of the EAEC, under the terms of the second paragraph of Article 101 of the EAEC Treaty, before the agreement is concluded by the Commission. In view of these procedures, the Commission called on the Council to give its approval to the conclusion of the interim agreement by the Commission on behalf of the EAEC. No such act is required for its signing.

The Council Decision to approve the interim package between the European Community, EAEC and the Republic of Tajikistan was deposited with the Cabinet Office on 22 September. However, the FCO mistakenly viewed this as an addition to the original Explanatory Memorandum and sent an addendum accordingly. The mistake was not recognised until your Clerks brought it to the FCO’s attention on 11 October 2004.

Since your Committee approved the other two related decisions without question or a report to the House, I hope that your Committee will understand why, with President Rakhmonov’s visit to Brussels and with Parliament in recess, I did not think it necessary to hold up agreement at the GAERC. I attach a copy of the Council Decision, which on inspection is based on the PCA (not printed).

25 October 2004

LISBON AGENDA: NATIONAL REFORM PROGRAMMES

Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman

Thank you for giving me the opportunity to give evidence before Sub-Committee A of the House of Lords European Union Select Committee on 1 November.

I offered to follow-up in writing with answers to two questions that were asked during the session.

The 2005 Spring European Council called on Member States to “enhance their internal coordination, where appropriate by appointing a Lisbon national coordinator”. Lord Blackwell and Lord Kerr asked about this. In the UK, no single Minister has sole responsibility for the Lisbon Agenda. The Agenda covers a wide range of government activity encompassing economic, social, and environmental policy. The Government has therefore chosen to encourage all relevant Departments to contribute directly to the achievement of the Lisbon jobs and growth agenda with Cabinet and the Committee system providing policy oversight and consistency.

You also asked how many EU Member States had submitted Lisbon National Reform Programmes (NRPs). As of today, 23 have done so. Because of elections, Poland and Germany submitted provisional documents. But both will be submitting full NRPs shortly. The Chancellor of the Exchequer presented the UK NRP to parliament on 13 October.

30 November 2005

LISBON PROGRAMME: STRENGTHENING EU MANUFACTURING (13143/05)

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

Thank you for your Explanatory Memorandum dated 31 October which Sub-Committee A (Economic and Financial Affairs and International Trade) considered and cleared at its meeting on 29 November.

We welcome the Commission’s research into the main challenges facing the EU manufacturing sectors and its aim to address the weaknesses in competitiveness this research exposed.

If handled in a sensible way, these initiatives could influence the Commission’s present better regulation agenda. However, we note that the actual output of these initiatives will only become clear after the mid-term review of the strategy in 2007. We urge the Government to do its best to ensure that practical outcomes to improve the competitiveness of EU manufacturing are achieved by these initiatives.

We note you mention the Commission’s new Legislative Simplification Programme as one of the seven major cross-sectoral Community initiatives to foster competitiveness in the European industrial sector. We understand this was published on 25 October 2005. I would like to remind you that the Committee has not yet received an Explanatory Memorandum on this document and hope that you will be able to submit one as soon as is possible.

30 November 2005
PASSENGER CAR RELATED TAXES (11067/05)

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury

Thank you very much for your Explanatory Memorandum dated 3 October 2005 which Sub-Committee A considered at their meeting on Tuesday 26 October. The Sub-Committee have decided to hold the document under scrutiny.

The Sub-Committee noted that the Explanatory Memorandum did not indicate the Government’s position on this issue. Is the Government in favour of the Commission’s Proposal? Furthermore, the Sub-Committee would be interested to hear the Government’s response to the Commission’s argument that the Proposal meets the subsidiarity test.

The Sub-Committee also expressed interest in the impact that the Proposal would have on the UK economy. We would be very grateful of further information.

26 October 2005

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

Explanatory Memorandum 11067/05 concerned the Commission’s Proposal for new legislation in the field of passenger car tax. The Committee asks whether the Government accepts the principle of further limitation on the taxation powers of Member States, and whether, in the Government’s view, the Proposal meets the subsidiarity test. It also expresses interest in the impact that the Proposal would have on the UK economy. I am pleased to provide you with further information.

The position of the UK Government on passenger car taxation has not changed since the then Chief Secretary submitted an Explanatory Memorandum on the Commission’s communication in 2002 (11819/02). The Government has carefully considered the case made in the Commission’s Impact Assessment and a partial Regulatory Impact Assessment, which analyses the effect the Proposal would have on the UK economy, will be with the Committee very shortly.

The Government does not believe that the elements of the Proposal relating to the abolition of registration taxes and the restructuring of passenger car taxes on the basis of CO2 emissions meet the subsidiarity test, as it remains unconvinced by the Commission’s arguments that restricting Member States’ choices over forms and structures of passenger car taxation is necessary for the smooth functioning of the Internal Market. The Government also considers that Member States should be able to choose the passenger car taxes that deliver CO2 reductions in the most cost-effective way. A number of other Member States have expressed the view that passenger car tax is a matter for national governments to decide, and that they oppose the principle of further limitation on the taxation powers of Member States.

I hope you find this information helpful.

8 November 2005

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you very much for your letter and Supplementary Explanatory Memorandum both dated 8 November 2005. Sub-Committee A considered these at their meeting on Tuesday 13 December and have decided to continue to hold the document under scrutiny.

Whilst the Committee consider that some commonality of passenger car related taxes may be a good thing, we do share a number of the Government’s concerns. On the subsidiarity issue, for example, we consider that taxation designed to reduced carbon dioxide emissions should be a matter for Member States. We would like to be kept informed of any measures the Government will be taking to ensure that this Proposal does not threaten subsidiarity.

We were also interested to note that the Partial Regulatory Impact Assessment states that “the Commission has not made a case for the necessity of this Proposal or its effectiveness in meeting the objectives set”. Again, we would like to be kept informed of any representations that the Government makes in this respect, and would like to be kept updated on further negotiations.

20 December 2005
PRELIMINARY DRAFT AMENDING BUDGET NO 2 TO THE GENERAL BUDGET FOR 2005  
(7717/05)

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury
Thank you for your Explanatory Memorandum of 7 June on Preliminary Draft Amending Budget No 2 to the General Budget for 2005. Sub-Committee A considered this document at its meeting on 28 June.

Whilst the Committee decided to clear this document from scrutiny we were concerned to note that the Preliminary Draft Amending Budget contains a cut in the appropriations for the Court of Auditors, as shown on page 4 and 6 of the Commission’s document. Does the Government have more information on the reasons for this cut; and is the Government happy with a cut in the Court of Auditors’ budget?

5 July 2005

Letter from Ivan Lewis MP to the Chairman
Thank you for your letter of 5 July about Explanatory Memoranda on Preliminary Draft Amending Budgets 02/2005. I am grateful for the clearance from scrutiny and am writing to answer the supplementary questions in your letter.

You asked about a decrease of €1,612,000 to the budget of the European Court of Auditors. Following a report on vacancy rates submitted in 2004, the ECA was obliged to down-grade a total of 128 new and 33 existing posts due to insufficient recruitment (this was carried out via PDAB 04/2004). However, a series of oversights on the part of the Court led to adjustments being required to its Establishment Plan; these are contained in PDAB 02/2005. The Government welcomes these corrections and consequent reductions in the budget.

12 July 2005

PRELIMINARY DRAFT AMENDING BUDGET NO 3 TO THE GENERAL BUDGET FOR 2005  
(8571/05)

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury
Thank you for your Explanatory Memorandum of 15 June on Preliminary Draft Amending Budget No 3 and the proposal to mobilise the Flexibility Instrument for post-tsunami assistance. Sub-Committee A considered this document at its meeting on 28 June.

The Committee has decided to clear this document from scrutiny, however we noted that the Explanatory Memorandum states that the Government will seek assurances from the Commission that the proposed use of the Flexibility Instrument is consistent with the rules and procedures on budgetary discipline. Has the Government received such an assurance?

We were also concerned to know whether the Government has any way to ensure that the €350 million earmarked longer-term assistance will be properly spent?

5 July 2005

Letter from Ivan Lewis MP to the Chairman
Thank you for your letter of 5 July about Explanatory Memoranda on Preliminary Draft Amending Budgets 03/2005. I am grateful for the clearance from scrutiny and am writing to answer the supplementary questions in your letter.

You asked whether the Commission had given any assurances about using the Flexibility Instrument in line with budget discipline, and about whether any assurances had been given on proper spending of the €350 million long-term assistance. The Government remains unconvinced that all opportunities for redeployment of funds have been exploited by the Commission proposal, and Council is concerned about a proposal which would result in the total Flexibility Instrument deployment in 2005 exceeding €200 million, in breach of the spirit of the IIA.

The UK will work to reach an agreement between Council and the European Parliament on a more budget-disciplined approach, which might involve further redeployment and perhaps further mobilisation of the emergency aid reserve. We expect an acceptable outcome by Budget ECOFIN on 15 July. I will update you in my usual scrutiny letter on the Annual Budget following Budget ECOFIN.

12 July 2005
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A) 67

PRELIMINARY DRAFT AMENDING BUDGET NO 4 TO THE GENERAL BUDGET FOR 2005 (9000/05)

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury
Thank you for your Explanatory Memorandum of 15 June on the Preliminary Draft Amending Budget No 4 to the General Budget for 2005. Sub-Committee A considered this document at its meeting on 28 June. The Committee has decided to clear this document from scrutiny. We would, however, like to know whether the Government is satisfied that this surplus is within the normally expected range. Furthermore, can the Government tell the Committee what they will do to prevent such a surplus in future.
5 July 2005

Letter from Ivan Lewis MP to the Chairman
Thank you for your letter of 5 July about Explanatory Memoranda on Preliminary Draft Amending Budgets 04/2005. I am grateful for the clearance from scrutiny and am writing to answer the supplementary questions in your letter.

You asked about the Government’s views on the surplus of £2,736,707,563.42 generated from the 2004 EC Budget. This surplus is much lower than the very high levels of recent years (for instance £5.5 billion in 2003, £7.4 billion in 2002 and £15 billion in 2001), mainly due to improved implementation of Structural Funds expenditure. Although the Government welcomes such an improvement, the EC Budget is funded in such a way that there will always be some uncertainty over the total amount of revenue, and a degree of surplus is therefore inevitable. The Government will continue to work with like-minded Member States to ensure that surpluses are kept to a minimum, via use of the N + 2 rule, Activity-based Budgeting, and improved forecasts and implementation rates.
12 July 2005

PRELIMINARY DRAFT AMENDING BUDGET NO 7 TO THE GENERAL BUDGET FOR 2005 (11976/05)

Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman
You will see from my Explanatory Memorandum of 21 September 2005 that I have taken the unusual step of agreeing to a proposal in Council on PBAB 07/2005 before the original document has cleared Parliamentary scrutiny. As I said in the EM, the Government supports the proposal, subject to the reduction in posts as agreed in Council’s Draft Budget for 2006. I believe it is important for the UK Presidency to steer this through well before the end of September so that the funds are in place by the beginning of October in line with Council’s decision to bring forward the establishment of the Civil Service Tribunal. It is unfortunate that this issue arose during the summer recess and I trust that you will understand my decision.

As you are aware, this is the second time that our Parliamentary timetable has conflicted with normal scrutiny arrangements this year. In my EM of 7 June 2005 I noted that the need to agree PDAB 02/2005 before scrutiny clearance because of the election recess. And I believe another amending budget concerning the mobilisation of the solidarity fund is due, which may require me to take a similar step again. I apologise in advance for doing so, and will endeavour to provide a full explanation in the associated EM.

I would like to take this opportunity to stress the Treasury’s commitment to the Parliamentary scrutiny process, and my personal commitment to the special scrutiny arrangements related to the annual EC budget. I look forward to working with you and to continually improve the role of scrutiny in the budget-setting process.
22 September 2005

PRELIMINARY DRAFT AMENDING BUDGET NO 8 TO THE GENERAL BUDGET FOR 2005 (13095/05)

Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman
I wrote to you on 1 November with an Explanatory Memorandum on Preliminary Draft Amending Budget to the General Budget for 2005. The Amending Budget, presented on 5 October, included provisional figures suggesting that a reinforcement of €650 million would be required for Heading 2 of the 2005 Budget (Structural Actions).
The European Commission agreed to provide the Budgetary Authority with final figures for Amending Budget 8 by mid November. Council therefore postponed taking a decision on the Amending Budget. The Commission duly presented an Amending Letter to Amending Budget 8 on 16 November, based on the latest implementation rates.

The Amending Letter reduced the provisional reinforcement to Heading 2 to zero on the basis of lower than expected implementation, and identified a further under-implementation of €650 million in Heading 1 (Agriculture) due to €/US$ exchange rates and favourable agricultural markets. The proposed €650 million reinforcement therefore becomes a proposed €650 million refund, equating to an overall difference between the estimates in Amending Budget 8 and the Amending Letter of €1.3 billion.

The Government welcomes the Amending Letter, which demonstrates that the budget set in November 2004 has provided more than sufficient payments for the 2005 budget year, as the Council predicted. The Government further doubts that the Commission will be able to implement remaining payments in full and will work towards an early refund of any budget surplus arising from 2005.

The revised version of Amending Budget 8 was discussed and agreed at Budget Committee on 18 November, and is due to be approved by the Budgetary Authority at a single reading.

30 November 2005

REDUCED RATES OF VAT (9125/05)

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

Thank you very much for your Explanatory Memorandum of June 2005 regarding reduced rates of VAT. Sub-Committee A considered this document at its meeting on 28 June and decided to hold it under scrutiny pending answers to a number of questions.

Firstly, the Committee noted that you believe that the compromise strikes a balance between those Member States who wanted to be able to apply reduced rates to additional goods and services, and those who would prefer a more harmonised approach. Are you happy that this compromise is in the best interests of the United Kingdom?

Secondly, we noted that you believe that there should be scope for introducing new reduced rates, particularly for repairs to listed places of worship, memorials, energy-saving materials for DIY installation and energy-efficient products. The Committee is concerned to know why you have not included repairs to listed buildings in this list. Furthermore, what success have you had in securing the support of other Member States for these reduced rates?

Finally, the Committee noted that this Compromise was discussed at the ECOFIN on 7 June. Please provide us with a summary of these discussions.

5 July 2005

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter of 5 July 2005 regarding reduced rates of VAT. I am pleased to answer the questions that you have raised.

As you are aware, this is an important dossier for almost all Member States and has been under discussion for over two years now. They wish to see these discussions come to a conclusion soon, not least because of the expiry of the Labour Intensive Services reduced rates at the end of the year.

With this in mind, the Luxembourg Presidency put forward a compromise text which was discussed at ECOFIN on 7 June. While many Member States supported it, a small group remained opposed. At the meeting, the Presidency therefore changed its approach and asked for Member States’ views on the individual elements of the package. They agreed that the 15 per cent minimum standard rate should be extended to 2010 but no further agreement was reached at this meeting.

The package proposed by the Luxembourg Presidency was balanced to take account of the different interests for Member States. While it contains only modest additions to the list of permitted reduced rates, it would, if agreed, extend the period of application of the labour-intensive services rates. In addition, the text proposed to preserve the Article 28 derogations granted to certain Member States which provide the legal basis for the UK’s zero rates. (You will recall that some of these zero rates—such as those applying to children’s clothing and footwear—were threatened by the Commission’s original proposal).
You ask about the scope for the introduction of new reduced rates, noting the absence of repairs to listed buildings. A reduced rate for repairs to listed buildings has not been one of the UK’s aims under this review. The Government receives many requests for new reduced rates but has only argued for those that would provide the best-targeted and most efficient support for our key social objectives. It is by no means clear that a reduced rate for repairs to listed buildings would do so.

It is clear that this remains a dossier on which Member States have divergent views. To summarise, a group of Member States, either for philosophical reasons or in response to domestic budgetary pressure, are opposed to new reduced rates and indeed would have liked to limit the existing arrangements. Other Member States would prefer more flexibility in the system. Recent discussions have confirmed, however, that the vast majority of Member States are opposed to new reduced rates for goods, because of the theoretical possibility of distortion of cross-border competition and consequent harm to the functioning of the Internal Market. It therefore seems that there is no prospect of agreement on the dossier if those few Member States who want new reduced rates for goods maintain these requests.

The prospects for an agreement containing new reduced rates for locally delivered services (a category that might include, for example, repairs to listed places of worship and construction services related to memorials) are greater. Even here, though, the outcome of the negotiations is, at this stage, uncertain, but I will keep you informed of progress.

I would like to take this opportunity to alert you to the possibility that we may be called upon to give political agreement to the dossier at short notice. Given the political importance of this negotiation to a number of Member States, I believe it would be severely detrimental to our Presidency to maintain a Parliamentary scrutiny reserve at such a juncture. Whilst I and my officials shall make every effort to ensure that scrutiny procedures are respected as far as possible, I hope that the Committee will understand should we find ourselves required to give political agreement before scrutiny is completed.

I hope you find this information helpful.

28 September 2005

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Following my letter of 28 September, I am writing to update you on developments on the VAT Reduced Rates dossier.

As I said to you then and in my letter of 5 July, the prospect of the expiry of the labour-intensive services experiment at the end of the year has created a strong expectation that negotiations should be concluded under the UK Presidency. The UK’s work programme for the ECOFIN Council reflected our intention to take forward the work we inherited from the Luxembourg Presidency on this dossier. The next ECOFIN meeting on 6 December now represents the last opportunity to conclude a deal in 2005, and as such we have included it on our agenda as potential “political agreement”.

Finance Ministers had a preliminary exchange of views on the dossier at ECOFIN on 8 November. A number of Member States reiterated the political importance to them of this issue, particularly in the light of the expiry of the labour-intensive services experiment. There will be strong pressure to reach a deal in December. Within this context, we have worked hard to ensure that the Government’s key negotiating objectives have been secured.

I explained in my letter to you of 28 September 2005 that most Member States are opposed to new reduced rates for goods as they believe that such rates would harm the Internal Market by distorting cross-border trade. Our assessment remains that there is no prospect of an agreement that includes new reduced rates for goods. However, there is more support for the argument that reduced rates for locally delivered services do not harm the Internal Market.

The Government’s priority for this negotiation has been to preserve the zero rates that were threatened in the Commission’s 2003 review. The package that is under discussion does this. In addition, the fact that repairs to listed places of worship and construction services related to memorials are locally delivered services means that there is a reasonable chance that a deal would give us the ability to apply reduced rates in these areas. Because of the strong opposition of many Member States to reduced rates for goods, we have reluctantly come to the conclusion that there is no prospect of reduced rates for DIY energy-saving materials and energy-efficient products, and that blocking a deal in an attempt to secure this relief might put at risk our other gains and could lead to a less acceptable deal being tabled by another Presidency in the future. However, the Government remains committed to tackling climate change and continues to look for further ways to improve household energy efficiency.
70  ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

Taken as a whole, the package delivers the Government’s main objective for this dossier and we hope that it can give us the ability to apply some of the new reduced rates that we have been pursuing. In light of this I remain of the view that it would be detrimental to our Presidency—the credibility of which is key to ensuring that we can negotiate in the UK interest—to maintain a Parliamentary scrutiny reserve if Council is ready to reach political agreement. In that instance I regret that it might be necessary to override the scrutiny reserve. However, I very much hope that on the basis of the information I have provided you will feel able to clear this dossier from scrutiny.

22 November 2005

REVIEW OF THE FACILITY PROVIDING MEDIUM TERM FINANCIAL ASSISTANCE TO MEMBER STATES

Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman

The review of the facility providing medium term financial assistance to member states is tabled for agreement as an “A” point at the 11 October ECOFIN Council, as detailed in my Explanatory Memorandum of 3 October 2005.

As Presidency, we have a responsibility to handle ongoing work within ECOFIN’s remit as smoothly as possible, and to process as “A” points those items where the Member States have been able to reach agreement without the need for a full discussion in Council. In order to preserve our neutrality as Presidency we should generally avoid blocking progress except on first-order UK priorities; we therefore feel it would be inappropriate to maintain a scrutiny reserve in this case. I hope you will agree that the substance of the matter, as set out in my Explanatory Memorandum, is uncontroversial.

It is regrettable that Parliament will not have the opportunity to scrutinise the review before the ECOFIN Council is held, but I hope you can agree that in this instance our responsibilities as Presidency make it necessary to proceed.

7 October 2005

ROADMAP TO AN INTEGRATED INTERNAL CONTROL FRAMEWORK (10326/05)

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury

Thank you very much for your Explanatory Memorandum of 12 July 2005 on the roadmap to an integrated internal control framework. Sub-Committee A considered this document at its meeting on Tuesday 18 October and decided to clear the document from scrutiny.

However, members of the Sub-Committee expressed considerable interest in the Communication and would very much appreciated being kept up to date on developments. We would be particularly interested to hear from you again when the Panel of Experts (mentioned in paragraph 23 of your EM) has reported.

20 October 2005

Letter from Ivan Lewis MP to the Chairman

Thank you for your letter of 20 October. I am very pleased that Sub-Committee A cleared this document from scrutiny and I am happy to provide the update they requested.

The Panel of Experts, which was co-chaired by the UK Presidency and the Commission, met on 21–22 September and had a very constructive discussion of the issues concerned. The major issue discussed concerned the Commission’s and the European Parliament’s proposals for Member States to sign an annual declaration of assurance on their management of the funds for which they have delegated responsibility (agriculture and structural funds). The European Parliament had suggested that this should be signed by the Finance Minister. However, as suggested in my Explanatory Memorandum, the United Kingdom along with most other Member States would not find this practical, for legal and constitutional reasons. Those Member States organised on a federal or regional basis (notably Germany and Spain) would also have serious problems with the unacceptable administrative and cost burden this would impose. However, the Panel of Experts did explore in depth the possibility of making better use of existing reports and declarations which are already a requirement under existing (and future, for the next financial perspective) legislation, and which could provide the information on financial management and control which the Commission and the Court of Auditors required.
The results of the Panel of Experts’ discussions fed into the draft conclusions on the “roadmap” for the ECOFIN Council on 8 November. Agreement was not without difficulty; some thought the conclusions did not commit Member States sufficiently to taking responsibility for their management of the funds; others thought they went too far. Although the proposal for Member State declarations had to be omitted because of the lack of consensus, the conclusions as finally agreed (Annex A) are substantial and include important action points for the Commission, for the Council, and for the Court of Auditors. If I may just highlight some of these:

— The Commission, working with the Member States, is to provide an assessment of the present controls at sector and regional level and the value of existing statements and declarations (paragraph 9 of the conclusions). This will force improvement and allow a realistic evaluation of how the information provided can be made more effective and useful.

— The Court of Auditors is invited to examine and report on how the integrated internal control framework would affect its audit approach, taking account of current International Auditing Standards (paragraph 15). This will help drive further the changes the Court has already introduced into its methodology and will bring it closer into line with the methods used by our own and other National Audit Offices.

— The Council should reach an understanding with the European Parliament regarding the risks to be tolerated in the underlying transactions, having regard to the costs and benefits of controls for the different policy areas, and the value of the expenditure involved (paragraph 17). This was suggested by the Court of Auditors in its Opinion 2/2004 on the “tingle audit” model. The Court currently audits against a materiality level of 2 per cent for the whole budget, but accepts that the tolerable risk of error may vary according to the type and value of expenditure involved, the costs and benefits of controls, and the acceptable outcomes achieved. It would not be appropriate for the Court to decide what level is acceptable; this is the responsibility of the Budgetary Authority (Council and European Parliament). If the Budgetary Authority can reach a political agreement on this, the Court will be able to amend its audit practice accordingly.

It is clear that there is much work to be done to implement these and other action points in the conclusions. We are discussing with the Commission, and with the succeeding Austrian and Finnish Presidencies, how this work will be taken forward. We expect that the Commission’s Action Plan, which will respond in detail to the ECOFIN conclusions, and to the results of the Commission’s own gap analysis, will be issued at the end of this month.

In conclusion, we believe that under the United Kingdom Presidency we have tackled this issue for the first time, and have agreed actions that will commit Member States and the Commission to co-operate in playing an effective role in the shared management of the Community budget.

5 December 2005

Annex A

2688th Council meeting
Economic and Financial Affairs
Brussels, 8 November 2005
ITEMS DEBATED
EU BUDGET CONTROL FRAMEWORK—Council conclusions
The Council adopted the following conclusions:

“INTRODUCTION

1. Since its introduction for the discharge of the 1994 budget, the European Court of Auditors has given a qualified Statement of Assurance (DAS) for most transactions underlying the European Union’s accounts. Nonetheless, the Council welcomes the substantial progress made by the Commission and the Member States to strengthen control systems and now notes the publication of the Commission’s Communication on “a Roadmap to an integrated internal control framework”. A panel of experts met on 21 and 22 September 2005 to discuss the issues raised by the communication.

2. Numerous measures have already been implemented to improve sound financial management. It is in the EU’s interests to continue to improve financial management so that reasonable and verifiable assurance can be had that controls are in place which work correctly and effectively. Achieving a positive DAS is an ambitious mid-term objective.
3. The Council recalls that, under the EC Treaty, the Commission is responsible for the implementation of the European Union’s budget. It also considers that the controls and assurance required should be improved by building on existing control structures with a view to improving the cost-benefit ratio and promoting simplification. Participants in the management of EU funds should ensure that controls are operating effectively.

4. The Council believes that the achievement of an effective integrated internal control framework in line with the principles set out in the Court’s opinion No 2/2004 should provide reasonable assurance regarding the management of the risk of error in the underlying transactions.

**Simplification**

5. It is of fundamental importance to pursue the harmonisation of the principles of controls and also the simplification of legislation. The regulations to be adopted for the programming period 2007–13 should include simplification of the control requirements while providing reasonable assurance. These regulations should be simple, easy to apply and predictable throughout the programming period. The Council requests that the Commission assess the cost of controls by area of expenditure. Simplification should not lead to any increase of the current level of administrative and control costs and should ensure elimination of multiple internal controls by different bodies and entities.

**Control Systems**

6. The Member States and the Commission should seek to optimise the effectiveness, economy and efficiency of current control systems. While recognising the different national administrative arrangements of the Member States, the Council believes that there is scope for general common principles and elements regarding internal controls, whether existing or to be adopted for the programming period 2007–13. For multi-annual programmes, the control systems to manage the risk of error should also be assessed over the period as a whole. It requests that the Commission provide clarification in a number of areas identified in its communication1, *inter alia*:

   - Simplification of legislation and harmonisation.
   - Single Audit in the context of internal control.
   - Assessment of the relevance of the various internal controls standards.
   - Assessment of the risk of error and the consequential financial impact of those errors.
   - Balancing costs and benefits of controls, taking a risk based approach.
   - Roles of the various actors.

**Action by the European Commission**

7. An initial analysis has been made with the publication of the Commission services’ “gap assessment between the internal control framework in the Commission Services and the control principles set out in the Court of Auditors’ proposal for a Community internal control framework opinion No 2/2004”. The Council will consider the Commission’s Action Plan to improve the quality of systems of administration and control.

8. The Council notes the Commission’s actions, identified in its communication, to improve the Commission’s internal control framework for budgetary management and centrally managed funds, and to improve the framework for decentralised management. As regards shared management, the Commission is invited to assess the implementation of the current regulations concerning *inter alia* sample checks on operations, paying authorities and winding up bodies’ activities.

9. The Commission, working with the Member States, should provide an assessment of the present controls at sector and regional level and the value of existing statements and declarations.

**The Role for Member States**

10. The Council recalls that the Commission implements the budget on its own responsibility, and that Member States, in the framework of their cooperation with the Commission under Article 274 of the EC Treaty should continue to undertake and improve controls over funds under shared management arrangements.
11. Contract of Confidence arrangements proposed under the Structural Funds programmes could help increase assurance under the present regulations, and the Council invites the Commission and Member States which have indicated their wish to proceed to complete the process of their adoption of these arrangements.

**DECLARATIONS AND DECENTRALISED MANAGEMENT OF EU FUNDS**

12. Taking into account the need not to put into question the existing balance between the Commission and the Member States or to compromise responsibility and accountability at the operational level, the Council believes existing operational-level declarations can provide an important means of assurance for the Commission and ultimately the Court of Auditors and should be useful and cost effective and be taken into account by the Commission and ultimately the Court of Auditors to attain a positive DAS.

**AUDIT ISSUES**

13. The Council emphasises the need for a strict distinction between internal control and external audit. External bodies are not part of the internal control framework.

14. The Council stresses that any form of cooperation between Independent Supreme Audit Institutions and the Court of Auditors can only be based on Article 248 of the EC Treaty. It notes the possibility that some Independent Supreme Audit Institutions are willing to discuss further how they might strengthen their contribution to an integrated control framework governing EU funds.

15. The Commission and Member States should ensure that their approach concerning the integrated internal control framework is based on common control standards and should consider together, in the appropriate formation, how these standards can be most effectively applied. The Council invites the European Court of Auditors to examine and report on how the integrated internal control framework would affect its audit approach taking account of current International Auditing Standards.

16. The Council encourages the Court to:

   — continue to improve the clarity of the DAS;
   — identify each year the factors which have prevented the supervisory and control systems from functioning effectively so as to manage adequately the risk to the legality and regularity of the underlying transactions;
   — address the issue of multi-annual programmes and their relationship with the DAS;
   — take into account existing declarations from Member States; and
   — present the DAS supplemented by a specific assessment of each major area of Community activity, in accordance with Article 248 of the EC Treaty.

The Council encourages Member States, within the framework of the existing procedure, to discuss bilaterally with the Court the findings of the latter’s DAS audits, and to resolve any systemic problems which are identified. The Commission is encouraged to develop solutions to problems common to several Member States and to report to the Council.

17. The Council believes, in line with the Court’s opinion 2/2004, that it should reach an understanding with the European Parliament regarding the risks to be tolerated in the underlying transactions, having regard to the costs and benefits of controls for the different policy areas and the value of the expenditure concerned.

**NEXT STEPS**

18. On the occasion of the 2004 discharge process, the Council should examine the Commission’s Action Plan to fill the gaps in the present control framework.

19. The Council will examine progress in respect of the present conclusions during 2006 to further improve internal control.”

**RULES OF ORIGIN IN PREFERENTIAL TRADE AGREEMENTS (7456/05)**

**Letter from the Chairman to Ian Pearson MP, Minister for Trade, Department of Trade and Industry**

Thank you for your Explanatory Memorandum of 8 June on the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the rules of origin in preferential trade arrangements. Sub-Committee A considered this document at its meeting on 28 June.
The Committee decided to clear this document from scrutiny. However, we were concerned that the document did not contain any reference to the priorities identified as a result of the Doha Round. Will the Government ensure that any change to the Generalised System of Preferences makes reference to these priorities?

5 July 2005

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 5 July in which you reported that the 28 June meeting of the Lords Select Committee on the European Community cleared the above Explanatory Memorandum (EM) from scrutiny but requested information about the relationship between the Commission document that was the subject of the EM, Doha Round (DDA) priorities and reform of the Generalised Scheme of Preferences (GSP).

The document specifies the approach the Commission intends to take in respect of reform of rules of origin that govern the various preferential trade agreements and arrangements that are currently maintained by the Community. Preferential terms of trade—including the rules of origin that control their application—are essentially bilateral arrangements. As such, they are outside the ambit of the multilateral negotiations on the DDA that are currently taking place at the World Trade Organisation (WTO). However, there is a clear policy link between the DDA negotiations and reform of preferential rules of origin. This is acknowledged in the Executive Summary of the Commission document. It states:

“In the context of the Doha Agenda for Development, ensuring a better integration of developing countries into the world economy, in particular through improved access to the markets of developed countries remains the top priority of Community trade relations and shall inspire the revision of its preferential rules of origin.”

The link was further underlined by Trade Ministers when they met in Dalian, China on 12–13 July 2005 to review progress on DDA. The text of the communiqué released following the meeting, reports that Ministers “recognised that complex Rules of Origin reduced the effectiveness of existing preference regimes and committed to seeking ways to simplify them so as to improve utilization.”

The top priority of the Government in the DDA negotiations is to ensure a successful outcome for developing countries. The Government believes that trade can be a driver of economic growth and is therefore committed to the liberalisation of trade across all sectors. However, liberalisation is not a panacea and developing and least-developed countries must get appropriate transitional assistance and reforms must be properly designed and sequenced within the context of their own poverty reduction strategies.

Your letter also mentioned changes to GSP. A new GSP scheme was adopted on 27 June through Council Regulation (EC) 980/2005 which was the subject of an Explanatory Memorandum (EM6153/05) submitted by the DTI in February 2005. This Regulation will apply from 1 January 2006 until 31 December 2008, but the provisions concerning the special incentive scheme for sustainable development and good governance apply with effect from 1 July 2005.

The rules of origin that apply to GSP are the subject of a separate regulation. The Commission is currently working on a draft proposal to amend this regulation. The proposed changes will take account of the issues that were highlighted in the Commission Communication that was the subject of Explanatory Memorandum 7456/05. We anticipate that the Commission proposal will be ready for discussion with member states in the Autumn. The approach of the United Kingdom during the discussions will be to promote an outcome that will encourage increased take up of GSP by developing countries.

8 August 2005

STATISTICAL DATA (6924/05, 9461/05)

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

Thank you for your Explanatory Memorandum of March 2005 regarding the Proposal for a Council Regulation amending Regulation (EC) No 3605/93 as regards the quality of statistical data in the context of the Excessive Deficit Procedure. Sub-Committee A cleared this document before the dissolution of Parliament, but returned to it at its meeting on 7 June.

The Committee would be very grateful if you would provide a report of the discussions on this issue at the ECOFIN meeting on 7 June.

13 June 2005
Letter from John Healey MP to the Chairman

I would like to take this opportunity, following a meeting yesterday of the Economic and Financial Committee (EFC), to update you on negotiations around a package of statistical government measures including Commission proposals on ensuring the quality of statistical data. I should first apologise for not having been in a position to provide the further information requested in your reports on the two Explanatory Memoranda above; in the event these negotiations have moved quickly over recent days and weeks.

Yesterday’s EFC meeting achieved clarity on several important outstanding aspects of the package. So while this update comes to you close to the next Council discussion of this policy, I believe we are now in a position to provide you with responses to your earlier concerns. I am confident the package before us now is a significant improvement on the Commission’s original proposals, and I hope you will agree that the Government’s concerns, which you echoed in your reports, have been successfully addressed.

As you are aware, the background to these proposals was that following the misreporting of EDP data by Greece, the Council invited the Commission to make a proposal to strengthen the independence, integrity and accountability of Eurostat and the European Statistical System. In June the Council further decided to incorporate this in a statistical package, which also included the Commission’s proposal to amend the existing Regulation (EC) No 3605/93, and discussions of how to rationalise the burden of statistical regulations. In light of progress this week, I can now set out in more detail the latest position on the key elements of this package.

EDP Regulation

Turning first to the proposed regulation, you will recall that in its 15th report, session 2004–05, held on 6 April, the European Scrutiny Committee did not clear the Explanatory Memorandum 6924/05 submitted by the Office of National Statistics concerning the commission proposal to amend Regulation (EC) No 3605/93 as regards the quality of statistical data in the context of the excessive deficit procedure. The Committee took the view that the Commission had tabled a disproportionate response to the underlying problem, and this breached the principle of subsidiarity. The Committee asked the Minister to resist strongly the adoption of the draft regulation, and requested that he keep the Committee aware of further developments.

The Commission’s proposal was discussed at ECOFIN in June, when the Council agreed Conclusions (attached) outlining its view on the appropriate future direction of this proposal. By this point, it was becoming clear that the overwhelming majority of Member States favoured a regulation as a vehicle to take this proposal forward, but also that Member States were concerned to ensure that any new powers were clearly defined and limited in scope. In view of our impending Presidency of the Council, and the fact that this regulation would be decided by a qualified majority (QMV), the Government took the view that we should focus our energy on working with like-minded Member States to ensure the regulation met our concerns on substance.

Echoing your Committee’s concerns, the Council stated in June that methodological visits (referred to as “in-depth monitoring visits” in the original commission proposal) should only be undertaken in cases where Eurostat identifies substantial risks or potential problems with the methods, concepts and classifications applied to a Member State’s data. It also stated that any methodological visits should not go beyond the purely statistical domain. The Commission proposal has been amended accordingly. This has limited the scope of the regulation to statistical methodology, rather than an investigation into the underlying data.

These amendments have significantly limited the scope of the new Eurostat powers. They have also considerably reduced the likelihood of the UK ever being subject to a methodological visit. At the EFC yesterday, there was a further agreement to add an annex to the regulation which clearly defines the scope of any Eurostat visits. We are particularly pleased that we have succeeded in enshrining these limits in the body of the regulation rather than in a ministerial declaration, which would have had less force.

In light of these improvements on the original Commission proposal, the Government now believes that legislative action in this area is acceptable. We feel that negotiations since March have won sufficient alterations to meet the UK’s key concerns on the substance of the proposals, and we welcome in particular the fact that monitoring visits would only be triggered in the event of a serious risk of statistical inadequacies. Given these improved outcomes we are prepared to accept a legislative vehicle as an acceptable means for achieving the EU’s aims in this area.
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

**Advisory Body**

Turning to the remainder of the statistics package, you will further recall that in its 2nd report, session 2005–06, held on 13 July, the European Scrutiny Committee did not clear Explanatory Memorandum 9461/05, and requested further information concerning the outcome of the council’s consideration of the proposal for a high-level advisory body in the context of the subsidiarity principle.

As we noted in the Explanatory Memorandum, in June the Council took note of the Commission’s intention to propose the establishment of a high level advisory body with political visibility and power to enhance the independence, integrity and accountability of Eurostat and of the European Statistical System. However, the Council also noted that it was important to discuss further the role and power of this body, its composition, and its relation to CEIES (the European Advisory Committee on statistical information in the economic and social spheres). It also noted the importance of discussing the scope of such a body, and in particular the question of whether it would cover only Eurostat, or the entire European Statistical System (ie both Eurostat and national statistical institutes, such as ONS).

At EFC yesterday, it became clear that there is a consensus among the 25 Member States that if such a body were to be set up, that its role should be limited to monitoring Eurostat in the fulfilment of its mission and its professional independence. The new body should be small, with its chair selected by the Council. The Member States will also argue that CEIES should be reformed separately, and it should not be replaced by the new advisory body. We expect ECOFIN to agree conclusions to this effect on 8 November. We will keep you informed of the Commission’s response.

**Better Regulation**

In our Explanatory Memorandum 9461/05 we noted the importance of accelerating progress on rebalancing statistical priorities. We have argued that if Eurostat is to receive any additional powers, that there should also be a substantial reduction on the administrative burden on national statistical institutes, as well as on providers of data. In June the Council argued that it was vital to accelerate work in this area.

At the EFC yesterday, we were successful in securing draft conclusions that underlined the importance of putting this work into practice. The conclusions would set a deadline of December 2005 for Eurostat to provide an update on progress, and July 2006 to deliver concrete results. This increases the pressure on Eurostat, which has the right of initiative with respect to statistical regulations, to cut back burdens that are no longer necessary.

**ECOFIN deliberations on 8 November**

ECOFIN will discuss the statistics “package” at its next meeting on 8 November, chaired by the Chancellor of the Exchequer. I apologise that the Committee will only have a very short time to consider this update before that Council discussion, which I recognise is far from ideal. However, I hope you will agree that we have been able to use our Presidency to greatly improve the statistics package, which now meets the UK’s key objectives.

It is likely that there will be a consensus in the Council in favour of adopting the EDP regulation on 8 November. In that case, the UK will participate in that consensus. I very much hope that on the basis of the information above you will feel able to clear EM No 6924/05 from scrutiny before ECOFIN meets, but I recognise that given rapid developments in recent days, the time available to you is unfortunately limited. I regret that if clearance is not possible the UK as Presidency will need to override the scrutiny reserve, since it would be politically difficult for us, having achieved our stated aims in negotiations, to resist adoption from the Chair.

While ECOFIN will take no formal decisions on the other aspects of the statistics package, I hope that you will find this update helpful and that EM No 9461/05 can also be cleared from scrutiny in due course. My officials will forward a copy of any Conclusions agreed on the 8th to the Committee for your information.

27 October 2005

**Statute for Members of the European Parliament**

*Letter from Rt Hon Douglas Alexander MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman*

I thought that you would appreciate an update on where we stand on agreeing a Statute for Members of the European Parliament in the light of recent proposals from the Luxembourg Presidency. The proposed revisions to the Statute are an improvement on the proposals made by the Irish Presidency which were cleared...
by Parliament last year. I attach the letter from the President of the Council to the President of the European Parliament setting out the detail of the Luxembourg Presidency’s proposals (not printed).

Because of the recent pace of progress of negotiations, it is likely that the Council may be asked to take a decision on the Luxembourg Presidency’s proposal before it has been through the normal parliamentary scrutiny procedure. The timetable for the likely agreement of a Statute is as follows. On 1 June, Coreper will agree the letter setting out the key elements the Council wants included in the text. This letter will go to the 13 June GAERC, probably as a false “B” point and, once agreed, will be sent to the European Parliament. The EP’s Legal Affairs Committee will then debate and adopt the draft Statute, taking into account the elements the Council has outlined. A deal will be contingent on both institutions agreeing those elements. If they do, the road would be clear for an EP plenary vote in late June or early July, to adopt the statute. The Council could then approve the statute at the earliest possible Council.

I understand that with your reappointment only recently confirmed and the Whitsun recess now upon us it may not be possible for scrutiny to be cleared. The Luxembourgers’ timetable is ambitious and it may be that the proposals do not move forward at the expected pace. But I wanted to warn you in case this is indeed what happens.

I would like to set out how the package of proposals offered by the Luxembourg Presidency differ from both the Irish Presidency (which were cleared by Parliament in January 2004—see Foreign and Commonwealth Explanatory Memoranda of 28 March 2003 on document PE 324.184 and of 26 February 2004 on Council Document 5574/04 setting out a draft European Parliament Resolution for an MEPs’ Statute) and from Westminster MPs’ allowances, pensions and pay.

As you will recall, there is currently no Statute governing the terms and conditions of Members of the European Parliament (MEPs). Instead, MEPs are eligible for the same salaries, pensions and other benefits as their national counterparts, resulting in MEPs receiving vastly differing packages. All receive expenses and allowances, funded from the European Parliament’s budget. The Treaty of Amsterdam, as amended by the Treaty of Nice, provides a legal basis for a Statute in Article 190(5) TEC. The Statute is for the European Parliament to adopt, and the Council to approve.

The European Parliament previously voted on 4 June 2003 in favour of a Statute which was unacceptable to the Council. The Irish Presidency tried to reach a deal on the Statute on January. The UK supported its proposal but Germany considered the deal too costly and blocked it in the Council. The Luxembourg Presidency’s proposal is the same as the deal put forward by the Irish Presidency—which the UK and European Parliament both supported and which cleared scrutiny—but with the following changes:

— **Salary:** it provides a uniform salary for all MEPs of €7,000 per month (a downward revision from €9,000 last year) paid for out of the EC budget.
— **Tax:** it allows Member States to impose national rates of taxation (over and above the Community tax) to ensure that MEPs are taxed on the same basis as their constituents, thus ensuring they don’t benefit from a lower taxation rate than those they represent.
— **Pension:** as with the Luxembourg proposal, it raises the pension age from 60 to 63. But pensions are to be paid by the European Parliament, not MEPs, which is a change from last year. However, the overall level of the package (salary plus pension) will be less than the one we accepted the last time a potential deal was on the table.
— **Expenses:** there would be an internal EP regulation on real costs and expenses to secure reimbursement of travel expenses based on actual cost incurred. Five out of the six *frais* (allowances) will now be based on real costs. The outstanding *frais* would remain a lump sum for general administrative expenses.

From the date on which the Statute enters into force there would be a transitional period of two full terms of office during which each Member State could opt to maintain the current national system of allowances for all MEPs (“grandfathering”). This is better than the text we agreed last year, which would have allowed existing MEPs to keep their current terms and conditions for as long as they remained in the Parliament. We favour as short a transition period as possible.

The salary for MEPs will be set at €7,000 per month, equivalent to £4,809 at the current exchange rate. (As you know, Westminster MPs’ basic salary for the year from 1 April 2005 is £59,095—or £4,925 per month.) This is a welcome improvement on the previous proposal, which would have set MEPs’ salaries at 50 per cent of that of an ECJ judge, higher than we would have liked. On this basis, MEPs’ salaries would have come to more than €9,000 per month. It is also a flat salary: all MEPs will be paid at the basic level, irrespective of what position they hold. The Statute would index MEPs’ salaries to Commission salaries, thereby allowing them to be up-rated annually in line with the Commission’s cost-of-living indicators. This method, which we
and the European Scrutiny Committee have previously agreed (Committee’s decision of 9 April 2003), is a sensible approach. The new salary level will mean UK MEPs taking a pay cut.

As with last year’s proposals, the pension age is raised from 60 to 63. But in a change from last year, the European Parliament would pay MEPs’ pension contributions, not the MEPs themselves (under the Irish proposals, MEPs would have paid one third of their pensions, with the remaining two-thirds being paid by Parliament). However, the drop in salary, plus the fact that a lower salary naturally means a lower pension, means that MEPs will actually be substantially worse off financially than they would have been under the Irish proposals. In Westminster, membership of the Parliamentary Contributory Pension Fund (PCPF), a funded scheme, is optional. (The provisions of the UK MEPs’ scheme are currently a mirror image of those of the PCPF.) MPs pay either 10 per cent (for a 1/40th accrual rate) or 6 per cent (1/50th). The employer contribution is paid by the Exchequer at a rate determined by the Government Actuary. The current contribution is 24 per cent. In Sweden and Denmark national parliaments pay 100 per cent of their national parliamentarians’ pension contributions.

Under the new proposals, the European Parliament will meet two-thirds of the cost of social security (medical and accident insurance) contributions. MEPs would bear the remaining third.

The draft Statute incorporates the compromise on taxation which was agreed under the last Belgian Presidency, namely that MEPs would be subject to Community tax with the option for Member States to impose a national top-up tax. This ensures that MEPs will be taxed on the same basis as their constituents, meaning they won’t benefit from a lower rate of taxation than those they represent.

We welcome the provision under the internal European Parliament Regulation on real costs and expenses for only one of the six frais—that being for general administrative expenses (office equipment etc)—to be paid in lump-sum form. The other five frais, including travel, would be based on actual costs incurred. This is a very welcome and extremely significant amendment, as it will help to halt any abuse of expense claims by MEPs. There are currently some MEPs who, because they can travel in their home countries for free, can receive through the travel expenses every year nearly £30,000 tax-free in addition to their salary. This will stop under the new expenses regime, as travel will be reimbursed on production of receipts only. As you know, backbench MPs here have all office IT and staff covered by the House and an annual budget of up to £80,460 to employ staff in their constituencies. They are also afforded free travel to and from the House and on Parliamentary business in the UK and/or a motor mileage allowance of 40p per mile for the first 10,000 miles and 25p for every mile thereafter.

The Luxembourg Presidency’s proposals on a Members’ Statute therefore offer a number of small, positive changes on that agreed by Parliament, HMG and the European Parliament last year. I believe that the current deal is a good one and is to be supported. The longer the European Parliament operates without a Statute, the longer it is open to claims of a lack of transparency.

I regret that, on this occasion, the Council may be asked to take a decision before the proposal has been through the normal parliamentary scrutiny procedure. I would be happy to discuss this matter further with you if necessary. I will also update you of any changes to the proposals ahead of the GAERC on 13 June.

1 June 2005

SUPPLY OF SERVICES (11439/05)

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

Thank you very much for your Explanatory Memorandum of 30 September 2005 on the place of supply of services. Sub-Committee A considered this document at its meeting on Tuesday 18 October and decided to hold it under scrutiny.

Members of the Sub-Committee expressed some concern that the Proposal does not include the compromises agreed to an earlier, similar proposal under the Irish and Dutch Presidencies. I would be grateful if you would keep the Committee updated on the negotiations so that the Sub-Committee can return to this proposal when it incorporates the changes that you indicate are likely to be made.

Thank you also for your letter of 5 July 2005 in which you updated the Committee on the indirect tax dossiers that the Government hopes to take forward under the UK Presidency. We look forward to a further update on what progress has been made on each of these dossiers at the end of the UK Presidency.

20 October 2005
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A) 79

TARIFF RATES FOR BANANAS (12249/05)

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

Thank you for your Explanatory Memorandum of 30 September 2005. Sub-Committee A considered this document at their meeting on 18 October and have decided to continue to hold it under scrutiny pending clarification of a number of issues.

The Sub-Committee was concerned about the possible effect that this proposal might cause on the WTO Ministerial meeting in Hong Kong, particularly in the light of your comment that the ACP and MFN countries could seek to voice their dissatisfaction if the WTO’s arbitration panel does not rule in their favour. I would therefore be very grateful if you would keep the Committee updated on the result of the WTO panel. The Committee would also be interested in the Government’s assessment of the effect that these countries could have on the negotiations by voicing their dissatisfaction at the WTO Ministerial.

Members of the Sub-Committee noted that the EU currently pays compensation to European banana producers. They would be very interested to know where these producers are located and the levels of subsidies they receive.

The Sub-Committee also discussed the redistribution of the quota. Could you please explain how the revised EU proposal for a duty free quota of 775,000 tonnes of bananas is compatible with the 2001 agreement to end the quota based system? What effect will the redistribution of the quota have on the Windward Islands?

20 October 2005

Letter from Lord Bach to the Chairman

Your Committee considered Explanatory Memorandum 12249/05 of 30 September 2005 on a proposal for a regulation on the tariff rates for bananas and concluded that it should be held under scrutiny, pending further information about this proposal.

You asked to be kept informed on the WTO Arbitration Panel’s consideration of this matter. As you will now know, on 27 October, the Panel’s Award determined that the Commission’s proposal (of a tariff of €187 per tonne, combined with a quota for duty-free ACP imports of 775,000 tonnes) would not result “in at least maintaining total market access for Most Favoured Nation banana suppliers”.

Council has yet to discuss this disappointing outcome and its implications for the EU’s obligation to move to a tariff only system by 1 January 2006, nor its wider implications, including for negotiations in Hong Kong.

Similarly, in terms of your question about the possible redistribution of quota, it is not yet clear in the light of the Panel’s Award whether the Commission will sustain its proposal for a quota for ACP supplies (for which a new WTO waiver would now be required). If it does not, no licensing system will be needed.

You also asked about the EU regime’s compensation to European banana producers. Compensatory aid is presently calculated on the basis of the difference between (a) the “flat-rate reference income” for bananas produced and marketed within the Community and (b) the “average production income” obtained on the Community market during each year for bananas produced and marketed within the Community. The maximum quantity of Community bananas eligible under the compensatory aid scheme is fixed at 867,500 tonnes, broken down between the producer regions as follows: Canary Islands, 420,000t; Guadeloupe, 150,000t; Martinique 219,000t; Madeira, the Azores and the Algarve 50,000t; Crete and Lakonia, 15,000t, and Cyprus 13,500t. The average yearly expenditure within the period 1999–2003 amounts to €249 million.

The Commission is now studying the WTO Arbitration Panel’s decision against its proposal before deciding how best to proceed in these extremely difficult circumstances. This is fast moving and I will write again once the Commission has put its views to Council.

12 November 2005

Letter from Lord Bach to the Chairman

Your Committee considered Explanatory Memorandum 12249/05 of 30 September 2005 on a proposal for a regulation on the tariff rates for bananas and concluded that it should be held under scrutiny, pending further information about this proposal. Further information was supplied in my letter of 12 November, in which I explained that this is now a fast moving dossier and I therefore undertook to write again.
We now understand that the Commission intends to seek a decision on a proposal for a tariff level of €179 per tonne of bananas imported from Most Favoured Nations and a duty-free ACP quota of 775,000 tonnes at the General Affairs and External Relations Council on Monday 21 November. Depending on the outcome, a proposal to introduce interim licensing measures for ACP supplies for the first quarter of 2006 is then expected to be considered by the Banana Management Committee on 29 November.

It is unfortunate that scrutiny could not be completed in time for Council but I wish to inform your Committee of the Government’s intention to proceed and support the Commission proposal. There is of course an international binding obligation on the EU to replace its existing quota controls on imports of bananas with a tariff only system by 1 January. An urgent decision is also considered desirable before the WTO Ministerial in Hong Kong and for reasons of good market management, where presently there is great uncertainty for all suppliers.

17 November 2005

Letter from Lord Bach to the Chairman

Thank you for your letter of 20 October about the Proposal for a Council Regulation on the tariff rate for bananas. I am sorry for the excessive length of time it has taken to reply.

Your Committee considered Explanatory Memorandum 12249/05 of 30 September 2005 on a proposal for a Regulation on the tariff rates for bananas and concluded that it should be held under scrutiny, pending further information about this proposal.

You asked to be kept informed on the WTO Arbitration Panel’s consideration of this matter. As you will now know, on 27 October, the Panel’s Award determined that the Commission’s proposal (of a tariff of €187 per tonne, combined with a quota for duty-free ACP imports of 775,000 tonnes) would not result “in at least maintaining total market access for Most Favoured Nation banana suppliers”.

Council has yet to discuss this disappointing outcome and its implications for the EU’s obligation to move to a tariff only system by 1 January 2006, nor its wider implications, including for negotiations in Hong Kong.

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The Commission is now studying the WTO Arbitration Panel’s decision against its proposal before deciding how best to proceed in these extremely difficult circumstances. This is fast moving and I will write again once the Commission has put its views to Council.

8 December 2005

TRADE IN SERVICES OTHER THAN TRANSPORT (11641/05)

Letter from the Chairman to Ian Pearson MP, Minister for Trade, Department for Trade and Industry

Thank you very much for your Explanatory Memorandum of 27 September 2005 which was considered by Sub-Committee A at its meeting on 8 November. The Sub-Committee have decided to hold the document under scrutiny.

As you indicate the proposal raises a number of questions. Perhaps the most important is defining the scope of the proposal. We agree that in assessing the potential impact of the proposal what is crucial is to determine the meaning of “agreements on trade in services”. You envisage it being given a very wide construction. How does the term differ from “agreements in the fields of trade in services” used in Article 133? Does “services” include intellectual property? We note the distinction drawn by Article 133 TEC in this context. Does “services” include “foreign direct investment” (see Article III-315 of the Constitutional Treaty)?
Closely related to scope are the questions of legal base and subsidiarity. We agree that the question of the proposed legal base requires careful examination. However, we are not convinced that the reference to Article 133, as you suggest, necessarily removes the issue of subsidiarity. Would you agree that subsidiarity is only removed where the Community has exclusive competence? Would you also agree that Article 133 now extends to matters which are not within the exclusive competence of the Community?

The proposed Regulation appears to be a consequence of the amendments made by the Nice Treaty. Article 133(5), last paragraph, expressly contemplates agreements by Member States with third countries. Formerly Article 133 was an area of exclusive competence; it was not open to Member States to enter into bilateral agreements in relation to matters which fell within the scope of the Common Commercial Policy. In short a Regulation along the lines of the present proposal was not necessary when the Community had exclusive competence. The Nice Treaty sought to clarify the position of services and of intellectual property in relation to the Common Commercial Policy. While the content and effect of Article 133(5) and (6) are not always transparent, what seems clear is that it cannot now be assumed that the Community has exclusive competence for all services falling within Article 133. Cultural and audiovisual services, for example are stated to be matters of shared competence—see the list of services in Article 133 (6).

If, post Nice, Article 133 also deals with areas of shared competence, would you agree that the principle of subsidiarity is engaged by the Regulation? If so, do you believe the proposal is compatible with the principle? If so, why? If not, in what areas do you foresee difficulties?

Finally, we note the reference to Directive 98/34 EC in the Commission Explanatory Memorandum. You draw attention to the standstill provision and to timing issues (and we agree that there are questions to be answered), but what would be the consequence of entering into an agreement in breach of the notification obligation in the Regulation? What would be the status of the agreement (a) in international law and (b) in Community law?

The Sub-Committee would be very pleased to receive your views on the above issues as well as an Impact Assessment when one is available.

8 November 2005

UK PRESIDENCY: HM TREASURY

Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman

With the UK Presidency of the European Union now underway, I would like to take the opportunity to write setting out the Treasury’s priorities for the coming six months.

**Presidency Priorities**

As background to this letter, I attach the ECOFIN Work Programme of the UK Presidency, which includes provisional ECOFIN agendas for your information (not printed). The Chancellor presented this work programme to Council at the first ECOFIN meeting of our tenure on 12 July. As set out in that document, in our role as Chair of ECOFIN the UK Presidency we will be prioritising the following high-level themes:

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**Economic reform**, following up the 2005 Spring Council’s focus on jobs and growth, including through a strategic discussion around Member States’ Lisbon National Reform Programmes, due in October. The Chancellor’s statement to Parliament of 26 May sets out our economic reform priorities in more detail;

**Better regulation**, including agreeing a methodology for measuring the administrative burden on business of new EU legislation, and embedding a risk-based approach to regulation;

**Financial Services**, working with the Commission to agree a future EU financial services strategy based upon implementation and enforcement of existing legislation, and firmly embedding the better regulation principles. We will also aim for a first-reading deal on the Capital Requirements Directive;

**Financing for development**, continuing with work already set in motion under the Luxembourg Presidency to put together an ambitious EU financing package ahead of the UN Millennium Development Summit in New York in September; and

**Working with global partners**; including a strengthened transatlantic economic relationship, and financial markets regulatory dialogues with India as well as China.

I would also like to highlight the importance we will be placing on counter-terrorism, including the full and rapid implementation of the EU’s Counter-Terrorism Action Plan. ECOFIN will have a particular interest in counter-terrorist financing, including further work on asset freezing.
PROGRESS OF SCRUTINY DURING THE UK PRESIDENCY

I am conscious that the long summer recess this year means that Parliamentary scrutiny processes will not be fully active until some way into the UK Presidency. However I am hopeful that we should be able to keep overrides of the scrutiny reserve to an absolute minimum, reflecting the seriousness with which my Department approaches our scrutiny obligations. The fact that our September meeting is an Informal Council also means that where final decisions are taken in Council this should generally be in the latter half of our Presidency.

However it may be helpful for me to set out as far as possible those items which we expect may reach final agreement under our Presidency. The Paymaster General has written separately to keep you informed of developments on taxation policy, so I will confine myself to non-tax issues here. To the best of my knowledge at this stage, these are likely to include:

- Capital Requirements Directive 11545/05 refers;
- Extension to the Markets in Financial Instruments Directive (10165/05 refers);
- Payments Regulation (this relates to wire transfers; an EM will be produced when the draft regulation issues);
- Amendment of the Excessive Deficit Procedure Regulation in respect of Eurostat powers (9461/05 refers);
- 2006 Annual Budget (adoption expected in December; EM OTNYR refers);
- Roadmap to an integrated internal control framework (possibly Council conclusions only, but you will want to consider before next ECOFIN discussion, likely in November. 10326/05 refers).

ECOFIN will also continue during the UK Presidency to discharge its responsibilities for the implementation of the Stability and Growth Pact.

Finally, you will be aware that the UK Presidency will take forward the discussions on the Financial Perspectives 2007–13, drawing on progress made to date, with a view to resolving all the elements necessary for an overall agreement as soon as possible.

I hope the above information is useful to your Committees in planning your work programme for the coming months. Officials will of course be considering other issues which remain under scrutiny and will seek to update the Committee on developments over the summer. I look forward to continued good co-operation between HM Treasury and your Committees this year, including through our new arrangements for pre- and post-Council statements to Parliament, which I hope will be a positive step in improving the transparency of EU business.

19 July 2005

UK PRESIDENCY: INDIRECT TAX (11817/03, 5051/04, 13394/04, 14248/04, 7426/05, 9125/05)

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

As we begin our Presidency I thought it would be helpful if I wrote to you about the indirect tax dossiers that the Government is planning to take forward under the UK Presidency, commenting where appropriate on where we might see developments over the summer months when you will not be meeting.

In July we expect the Commission to issue a Proposal amending the VAT place of Supply rules for Services. The objective of the proposal is to better reflect the principle that tax is due in the country where the service is consumed. The proposal will principally change the rules for the place of supply of services supplied to private consumers, including certain non-business organizations. However, for procedural reasons we expect it to be merged with the Commission’s separate Proposal in December 2003 for the place of supply of business to business (B2B) supplies (EM 5051/04 dated 14 January 2004), which has yet to be agreed. We aim to make as much progress as possible during the UK Presidency on all aspects of the Proposal.

In October 2004 the Commission adopted three legislative proposals for improving the operation of the VAT system within the context of the internal market (EM 14248/04 dated 24 November 2004). Taken together, these proposals provided a package of measures to introduce simplification changes primarily for businesses involved in cross-border activities. The package included the introduction of a one-stop scheme, revision of the Eighth VAT Directive refund procedure, simplification of SME VAT obligations (including allowing Member States more discretion over registration thresholds) and a revision of the distance selling arrangements. Discussions commenced during the Dutch Presidency but were not taken forward by Luxembourg.
This EM is still being held under scrutiny by the European Union Scrutiny committee, and I wrote to you most recently on 27 June 2005 in response to your letter on 13 June about these proposals. The UK intends giving priority to this important package of proposals and hopes to make as much progress as possible during its Presidency.

The VAT rates dossier (EM 11817/03) forms part of the inherited agenda for the UK Presidency. This is because certain reduced rates on labour-intensive services are set to expire at the end of 2005. We have exchanged several letters on this dossier, most recently on 1 March 2004 and on 7 June 2005 I submitted EM 9125/05 on the latest Presidency compromise text. During our Presidency, we will make our best efforts to find an agreement on this dossier and plan to hold discussions at the November ECOFIN.

The Rationalisation of Derogations dossier (EM 7426/05) also forms part of the inherited agenda for the UK Presidency. Luxembourg completed the first read through of the Proposal during their Presidency and worked with the UK to produce a compromise text. The Council may possibly work on the first Presidency compromise text at working group depending on the presidency timetable, but it is, not anticipated that this proposal will be discussed beyond working group level before the Committees return from their summer recess. The original proposal cleared scrutiny in the European Union Committee on 5 April 2005 and there are no substantial changes anticipated within the Presidency compromise text, with the minor amendments in line with UK policy.

We expect that agreement will be reached on the Implementing Regulations Proposal some time during the summer. EM 13394/04 on this proposal cleared on 3 November 2004, and I will be writing as promised to both Committees with an update on the text finally agreed.

We are expecting the Commission shortly to adopt a proposal on the taxation of passenger cars. Depending on the date of adoption and the Presidency timetable, we may begin Working Group discussions in the early autumn.

Finally, the UK has asked the Commission to propose raising the £145/€175 tax and duty free limit on goods brought into the EU from third countries, by travellers. We hope to make progress on this under our Presidency, should the Commission issue a formal proposal.

5 July 2005

Letter from Rt Hon Dawn Primarolo MP to the Chairman

At the beginning of our Presidency, I wrote to you about the indirect tax dossiers that the Government was planning to take forward. Similarly, at the end of the UK Presidency, I thought it would be helpful to provide you with an “end of Presidency report”, commenting where appropriate on how far we were able to make progress on our priorities.

The UK made significant progress during its Presidency in taking forward the EU’s indirect tax agenda. Given the legacy we inherited, I believe we achieved as much, and in many cases, more than we could have expected.

On 28 September 2005, I updated you on progress on a package of VAT simplification measures designed to ease the burden of VAT compliance, primarily for businesses involved in cross-border trade (Explanatory Memorandum 14248/04). There had been some initial discussions on this dossier under the Dutch Presidency, but none under the Luxembourg Presidency. The work resumed under the UK Presidency and good progress was made. An update letter on recent progress will follow shortly.

As you will be aware, the Commission has also proposed changes to Article 9 of the Sixth VAT Directive, aimed at ensuring that VAT on cross-border supplies of services is paid at the place of consumption, for both business-to-business and business-to-consumer transactions. As my separate SEM reports (SEM 11439/05), significant progress was made on this dossier during the UK Presidency.

The VAT rates dossier (EMs 11817/03 and 9125/05) was discussed at the November and December ECOFINs and at the European Council on 15–16 December. The European Council called on Finance Ministers to consider the dossier at meeting on 24 January, with a view to finalising agreement on the issue. The Chancellor passed the usual written Ministerial statement reporting the outcome of this meeting on 31 January.

The proposal for a Council Regulation laying down implementing measures for the Sixth VAT Directive was agreed by the Council on 17 October 2005 (EM 13394/04). The Regulation, which confirms existing UK policy, relates to those EU VAT Committee guidelines which were unanimously agreed by the 15 Member States, and sets them into a legal framework which is binding on all Member States. I wrote to you on 10 January with details of the final text.
The Commission has proposed an exercise to rationalise the extensive framework of derogations from the Sixth VAT Directive that help Member States to counter tax avoidance and evasion (EM 7426/05). The UK Presidency chaired a number of working party meetings on this issue, and we expect the Austrian Presidency to take it forward.

The Commission has also undertaken to update and modernise (“recast”) the current Sixth VAT Directive as it has been amended more than 20 times since it entered into force in 1977 (EM 8470/04). During the UK Presidency, bilateral meetings were held with several Member States, and the full text was considered in two meetings of Council Working Group. Good progress was made, including removal of several previous drafting changes that could have led to substantive changes in the law, and Austria has indicated that it intends to take the dossier forward during its Presidency.

Finally, the Commission’s Proposal on the taxation of passenger cars in the EU (EM 11067/05 & 11067/05 ADD 1, dated 3 October 2005) was discussed at a Working Group meeting on 19 October 2005. Member States had an initial exchange of views on the Proposal but did not reach any agreement. No further meetings were held under the UK Presidency.

On other issues, the Directive on Taxation of Savings Income in the form of Interest Payments (Directive 2003148/EC) came into effect on 1 July and the UK Presidency has brokered agreement on various practical issues regarding its implementation. The UK Presidency also hosted an informal high-level meeting at the Germans’ request to discuss the European Court of Justice and tax in early October, which provided a useful forum for exchange of views between Member States.

31 January 2006

VAT: COMMON SYSTEM (8155/05)

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

I am writing to inform you that on 7 June 2005 ECOFIN had an exchange of views on the issue of VAT rates and agreed that the minimum standard rate of 15 per cent should continue to apply until 31 December 2010, before the European Scrutiny Committee had an opportunity to scrutinise the Commission’s proposal. It may be helpful to set out the background but before doing so I would like to assure you that the Government and I take the Parliamentary scrutiny reserve very seriously and fully believe that reserves should be maintained whilst proposals are under scrutiny, unless there are exceptional circumstances. I regret that your Committee was unable to be reappointed in time to consider the proposal before the Government took the decision to support the agreement reached.

The proposal was adopted by the Commission on 14 April 2005. In accordance with Cabinet Office guidance, an informal EM was sent to the European Scrutiny Committee during the dissolution period, on 4 May 2005, and was followed by a complete EM on 18 May 2005 In the EM I set out the Government’s view that there were grounds for a time-limited extension of the minimum standard rate.

This proposal has been scrutinised and cleared by the House of Lords European Union Committee.

The Commission’s proposal had not been included on the ECOFIN agenda. Because the European Parliament has not delivered its opinion on this proposal, the Council is unable to adopt the Directive.

The Presidency did table their compromise proposal on reduced rates, which included as part of the package extension of the minimum standard rate to 2015, as opposed to the Commission’s proposed date of 2010. EM 9125/05 on the rates package was submitted on 7 June shortly after receipt of the English text of the Presidency paper.

At ECOFIN, initial discussion of the compromise proposal revealed little movement in Member States’ well-established positions on this dossier. The Presidency unexpectedly changed approach and sought Member States’ views on individual elements of the package, including the extension of the minimum standard rate to 2010, thereby picking up the Commission proposal rather than the Presidency compromise text. No Member State spoke against the extension.

As you are aware, the negotiations on the reduced rates dossier have been difficult and lengthy. Because the labour-intensive services reduced rates expire on 31 December 2005, the UK will be expected during our Presidency to make our best efforts to find a solution that all Member States can accept. To have been isolated in blocking the renewal of the minimum standard rate just before the start of our Presidency would have made it impossible to broker a deal.

It was against this background that the Government took the decision to support the agreement reached at ECOFIN and I hope you will understand why it was important for the Government to do so.

15 June 2005
VAT SIMPLIFICATION (14248/04)

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

Thank you for your letter of 3 March 2005 following consideration by Sub-Committee A of my letter of 24 January on the package of measures designed to simplify the operation of cross-border VAT for business. I am pleased that the Committee agrees with the Government that it is important to ensure that the UK’s current level of turnover threshold for domestic VAT registration is safeguarded.

You asked whether the Government could provide assurances that the scope of the current negotiations does not extend to setting a common standard for thresholds for domestic VAT registration across the European Union. I am happy to be able to provide such assurances. The purpose of the proposal is to provide Member States with greater flexibility than they have now.

Under the terms of the proposal, individual Member States would be able to set a domestic VAT registration threshold at whatever level they chose, up to a maximum of £100,000 (£70,510). This would enable individual Member States to move their current levels upwards (to the maximum level) or downwards or to retain their current levels; whichever best suits their domestic situation.

You also asked under what circumstances the UK level would be challenged in these negotiations. As I mentioned last time, this proposal was one element of the package of proposals that attracted particular interest in early discussions. Many Member States take a different approach to the UK and have low registration thresholds and they have indicated they considered the Commission proposal to be rather too high in comparison to the domestic rates currently applied by them. Some anticipate facing domestic pressure to increase their levels if this proposal were to be agreed. As a consequence, during negotiations they might argue for a low maximum threshold which was below the UK’s current level. I can reassure you, however, that the Government would not accept such an argument if that were advanced.

21 March 2005

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you for your letter of 21 March updating the Committee on negotiations relating to the package of measures designed to simplify the operation of cross-border VAT for businesses. Sub-Committee A considered your letter at its meeting on 8 June.

The Committee was pleased to receive your assurance that the current negotiations do not extend to setting a common standard for thresholds for domestic VAT registration across the European Union, as well as your pledge not to accept a level for the maximum threshold that is below the UK’s current level. However, the Committee is concerned that, if the registration threshold is set in euros, fluctuations in the exchange rate between Sterling and the euro could affect the level for VAT registration in the UK. Could the Government provide assurances that the exchange calculation will be fixed? Furthermore, could you provide the Committee with details of how this exchange rate issue is normally handled?

13 June 2005

Letter from Rt Hon Dawn Primarolo MP, to the Chairman

Thank you for your letter of 13 June 2005 following consideration by Sub-Committee A of my letter of 21 March 2005 on negotiations relating to the package of measures designed to simplify the operation of cross-border VAT for business.

You asked whether the Government could provide assurances that the exchange calculation for the domestic VAT registration threshold would be fixed. I am happy to be able to provide such assurances. Under the terms of the proposal, individual Member States would be able to set (and annually revise) a domestic VAT registration threshold of up to a maximum of €100,000 or the equivalent in the national currency at the conversion rate on 1 July 2006.

You also asked for details of how the exchange rate issue is normally dealt with. The current UK domestic VAT registration threshold is not subject to exchange rate fluctuations. It is based on a fixed sterling rate applicable when the UK entered the European Community.

24 June 2005

Letter from Rt Hon Dawn Primarolo MP to the Chairman

In January this year, Sub-Committee A considered Explanatory Memorandum 14248/04 on a package of VAT simplification measures designed to ease the burden of VAT compliance, primarily for businesses involved in cross-border trade. We have since been in correspondence over domestic VAT registration thresholds, about which I last wrote to you on 24 June. In addition, the Committee decided to retain the document under scrutiny pending the results of the consultation with the business community. I am writing to update you on developments since then, including on the consultation process.

Following presentation of the package of measures by the Commission to Ecofin on 16 November 2004, the Dutch Presidency held three Council Working Group meetings to begin discussions before the end of their term. The first of those meetings (26 November) provided a relatively brief and broad overview of the entire package. Although most Member States were able to express support in principle, it was clear that most considered the package to be wide-ranging, with some potentially contentious areas. A number of Member States raised concerns about the proposed level of turnover thresholds for both domestic VAT registration and for the distance selling arrangements.

The second two meetings concentrated solely on the proposed Directive to reform the 8th VAT Directive refund procedure. The conclusion was that while there was pressure from business to improve the current procedure and a general willingness among Member States to work towards that, there was still quite a lot of work to be done on the detail.

Although there were no further meetings held on the package during the Luxembourg Presidency, discussions have now resumed under the UK Presidency. However, it is evident that this dossier is an ambitious and comprehensive package and it will take up considerable discussion time. The aim will be to progress the negotiations as far as is possible during the UK Presidency, in order to get broad agreement on the key principles and on the approach to be followed up by the next Presidency.

UK officials have now carried out extensive consultations on the package of VAT simplification measures, and will continue to do so as the proposals progress through Council. This includes hosting regular meetings with UK businesses and their representative bodies and participation in a number of UK and EU conferences specifically focused on the EU modernisation agenda. There is overwhelming UK (and EU) business support for the entire package of VAT simplification measures, except for the proposed changes to the distance-selling arrangements for goods.

You will recall that the Commission proposed changing the arrangements so that a single threshold, calculated across all Member States, would apply. The rationale was this would be simpler for businesses, as they would only have to monitor one running total rather than separate figures for each Member State. But UK businesses have genuine concerns about the proposed changes and do not find the current arrangements particularly difficult, so would prefer to retain them. This echoes issues raised and the conclusions reached by many Member States.

There is one other important issue that was addressed during the first weeks of the UK Presidency. You will recall that the VAT simplification package comprises two proposed Directives and a proposed Regulation. The Commission put forward one of the Directives and the Regulation under an Article 93 (TEC) legal base. However, the other proposed Directive (on reform of the VAT refund procedure) was put forward under Article 29A of the VAT 6th Directive.

Article 29A is itself a relatively new provision (Explanatory Memorandum 10476/03). The UK and other Member States agreed to it on the understanding that it was to ensure common interpretations of the 6th VAT Directive, such as implementing measures in respect of VAT Committee guidelines. As this proposal does not fall into that changed to Article 93 (TEC), in line with the other two legislative proposals. This was agreed at Coreper in July and this proposal has now been referred to the European Parliament and European Economic and Social Committee.

I hope you find this information helpful.

28 September 2005

WTO MINISTERIAL CONFERENCE, HONG KONG 2005

Letter from the Chairman to Ian Pearson MP, Minister for Trade, Department for Trade and Industry

As you will know, my Committee have taken a keen interest in the latest round of trade talks which took place in Hong Kong last week. We have recently published a report, The World Trade Organization: The Hong Kong Ministerial 13–18 December (17th Report of Session, HL 77). As part of this inquiry, you gave the Committee oral evidence on behalf of the Government.
Given that the Hong Kong Ministerial concluded on 18 December, the Committee would be very grateful for an update on the negotiations which took place and the agreements which were reached. As well as broad comments of the final declaration issued following the Ministerial, the Committee would appreciate your comments in relation to the following:

— Agricultural export subsidies;
— Agricultural market access;
— NAMA and trade in services;
— Support for the poorest countries;
— The position taken in negotiations by the more influential developing countries, in particular by Brazil and India;
— Action the Government intends to take to follow up agreements or significant discussions at the Ministerial, including within the G7; and
— Prospects for and commitment to multinational (WTO) trade negotiations, what the Government now hopes will be achieved as part of the Doha Round, and whether the Government will continue to prioritise multinational agreement over bilateral trade deals.

19 December 2005

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 19 December about the WTO Ministerial in Hong Kong. I am grateful for the keen interest your committee has taken in the negotiations, and found the timely report. The World Trade Organisation: The Hong Kong Ministerial 13–18 December a useful input into policy formation ahead of the Conference. There will be a formal Government response to the report later this month, but in the interim I am pleased to provide some comments on the Ministerial.

Unfortunately, progress towards international agreement on a fairer trading system at the Hong Kong Ministerial was limited. But the talks did agree some modest steps towards delivering the ultimate goal of an outcome to the Doha Development Agenda that will enable developing countries to trade their way out of poverty.

Agricultural negotiations focused on export subsidies, with no progress made in market access or domestic support. However, an end date of 2013 was agreed for export subsidies. While that is later than we would have liked, this will be an important element of the final DDA package. Moreover, there is a commitment to phase out a substantial proportion by the mid-point between the end of the round and the 2013 end-date, ie by around 2010.

The WTO talks also saw some welcome refinements in the European position in respect of liberalisation in developing countries. On services, the UK’s established position is that developing countries should retain in full the right to accept or reject requests for market opening, as enshrined in existing GATS architecture. Prior to Hong Kong the EU had proposed mandatory quantitative targets for the liberalisation of service markets. But at Hong Kong, the EU withdrew this proposal, seeking instead to galvanise discussions on services on a voluntary basis, a development the UK warmly welcomes.

On NAMA, prior to Hong Kong, the EU proposed a formula for the opening of markets with a single “co-efficient” (ie tariff ceiling) for both developed and developing countries (albeit with exemptions for least-developed and other vulnerable developing countries). At Hong Kong, the EU instead indicated it could support a deal with separate co-efficients for developed and developing countries—with developing countries having a higher co-efficient, giving them relatively greater discretion over tariffs. The UK welcomes this change as a step towards delivering on the principle of “less than full reciprocity”—under which developed countries should make bigger concessions in respect of opening their own markets than developing countries are required to make in respect of theirs.

Progress also included agreement on a development package including steps towards duty-free quota-free access for the poorest countries, Aid for Trade and also some modest commitments on cotton, a key issue for West Africa in particular. These are worthwhile steps but not on the required scale to transform opportunities for many of the world’s poorest countries. We will continue to make the case that a genuinely pro-development outcome will require substantially increased market access for developing countries alongside a development package.
In terms of the negotiating position taken by influential developing countries, I was struck by how united Developing and Least Developed Countries were in negotiations, despite their often disparate objectives, with an alliance between the G20 and G90 negotiating groups. There was some sense of frustration that tactics adopted by Brazil and India meant there was little progress on NAMA and Services.

The UK Government remains committed to securing a successful conclusion to the DDA this year, and will continue to engage actively with EU Member States and the broader WTO Membership. The Secretary of State for Trade and Industry will be attending the Davos Economic Forum 26–29 January, where Trade Ministers will aim to set the process and define the political ambition required to allow for conclusion this year.

The Ministerial Declaration from Hong Kong resolved to establish modalities no later than 30 April 2006 and to submit draft schedules based on these modalities no later than 31 July 2006. We hope that the steps taken at Hong Kong will provide a springboard to conclude the Doha round this year. The UK and the EU’s number one trade priority remains a successful conclusion to the DDA. The multilateral rules-based system, under the WTO remains the most effective means to create a fair and free world trading system. The EU has not ruled out a possible future expansion to its network of bilateral and regional agreements after conclusion of the DDA.

23 January 2006
Internal Market (Sub-Committee B)

AIR SERVICES AGREEMENT WITH BULGARIA (8670/05)

Letter from the Chairman to Karen Buck MP, Parliamentary Under-Secretary of State, Department for Transport

Sub-Committee B considered your Explanatory Memorandum at its meeting on 20 June 2005 and decided to clear this document from scrutiny.

Members recognised that this document should help to open markets, encourage fair competition and bring benefits for both passengers and airlines.

22 June 2005

AIR SERVICES AGREEMENT WITH CROATIA (8482/05)

Letter from the Chairman to Karen Buck MP, Parliamentary Under-Secretary of State, Department for Transport

Sub-Committee B considered your Explanatory Memorandum at its meeting on 8 June 2005.

We welcome this Proposal which further liberalises air services and therefore we are content to lift scrutiny on this proposal.

13 June 2005

AIR TRANSPORT: IDENTITY OF OPERATING CARRIER (6624/05)

Letter from the Chairman to Karen Buck MP, Parliamentary Under-Secretary of State, Department for Transport

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 4 July 2005.

We support the document’s aim of providing passengers with more information about their flight carrier. We are therefore content to lift the scrutiny reserve from this document.

In your Explanatory Memorandum, you mention that an RIA on this proposal will be produced as soon as possible. We would be interested to see a copy of this.

8 July 2005

Letter from Karen Buck MP to the Chairman

I refer to my Supplementary Explanatory Memorandum (SEM) 6624/05 of 16 November on the proposal for a Regulation of the European Parliament and of the Council on the information of air transport passengers on the identity of the operating carrier and communication of safety information by Member States.

As the SEM explained, the proposed Regulation became a priority measure in the light of a number of aircraft accidents in the summer. At the time the SEM was submitted the proposal was still undergoing its First Reading in the European Parliament. At the Committee stage MEPs proposed a substantial number of draft amendments to the proposed Regulation in order to put in place a system whereby Community-wide bans of air carriers would be established and publicised in a single “blacklist”. In the light of the priority attached to the Regulation, the Council and the European Parliament, assisted by the Commission, have been working to produce a mutually acceptable text which could be agreed at first reading by both institutions. A draft text was produced early this month and was adopted at the Plenary session of the European Parliament on 16 November and we expect it to be adopted by the Council. We do not expect a depositable text to be issued, however I attach a copy of the European Parliament’s amendments, (not printed).
In the SEM, I explained the UK Presidency’s objectives in the negotiations with the Parliament on the text of the regulation. I am pleased to be able to report that those objectives have largely been achieved. In particular, the draft Regulation:

(i) permits Member States to impose immediate restrictions on airlines in response to unforeseen safety problems and to maintain restrictions on airlines even if they are not adopted at the Community level;
(ii) sets the common criteria for the imposition of restriction on airlines in broad terms allowing Member States and the Commission to make judgements on the specific circumstances of individual cases; and
(iii) revokes Article 9 of Council Directive 004/36/EC on the safety of third-country aircraft using Community airports removing any conflict between the two pieces of legislation.

The amendments needed to meet these objectives were only secured after intense negotiations between the three institutions. In particular, we sought to ensure that the expertise and experience in dealing with the safety of air carriers which currently exists in the Member States is recognised and that this expertise is applied fully for the safety of our citizens.

The text placing obligations on air carriage contractors to inform passengers of the identity of the carrier operating the flight that they have booked could, we felt, have benefited from further clarification. However, we recognised the benefits of securing progress and building on existing momentum and we made a judgement as the Presidency that we should focus on ensuring that the procedures for assessing the safety of carriers set up in the Regulation are the most appropriate. We have secured some important improvements to the text on informing passengers. For example, the obligations placed on ticket sellers, such as travel agents, to make information about the identity of carriers available to passengers is qualified by a provision that they will not be held responsible failing to meet the obligation if the air carrier or tour operator has not informed them of the carrier. Also, we have ensured that the obligations with regards to reimbursement or re-routing is restricted to the air carriage contractor which is party to the contract, thus excluding travel agents.

We will be responding to the formal consultation shortly. We kept in touch with the main stakeholders during the subsequent negotiations and believe the improvements to the text will be welcome. Although we were unable to meet all their concerns we believe that we can work with the industry to agree a practicable way of implementing the requirements of the Regulation, which will mitigate the burdens upon them. The potential economic costs will emerge during those discussions and the Regulatory Impact Assessment will be revised accordingly. Despite the amendments to the proposal we do not expect that any additional costs will outweigh the benefits of the measure.

We believe that the Regulation will make a positive contribution to aviation safety and to consumer information and rights and, therefore, it warrants the Government’s support.

November 2005

Letter from the Chairman to Karen Buck MP

Sub-Committee B considered this Explanatory Memorandum at its meeting on 28 November.

Thank you for sending the Government’s partial Regulatory Impact Assessment (RIA) of this proposal as I requested in my letter of 8 July 2005. We note that in paragraph 17 of the partial RIA, you state that the impacts of some of the amendments proposed by MEPs appear “not to have been fully thought through”. Can you confirm that the impact of subsequent amendments agreed by the European Parliament in plenary on 16 November are acceptable?

I understand that an undated letter was received electronically in the Committee Office on Monday 28 November. This letter provided useful information about substantial amendments to the proposal agreed by the European Parliament in plenary on 16 November. The Sub-Committee should have had the opportunity to consider the letter at its last meeting on 28 November before Political Agreement was due to be secured at the 5 December Transport Council. We regret that in spite of the best efforts of your Department’s officials, the delay in receipt of a dated hard copy of the letter (received on 29 November) made it impossible for the Sub-Committee to consider it formally on 28 November.

It is clear that the draft Regulation has changed significantly since we last considered and cleared it in July 2005. Under these circumstances, we would expect not a letter, but the new version of the draft Regulation to be deposited in Parliament with an Explanatory Memorandum for consideration by the Committee. We would be grateful if you could explain why this did not happen in this case (was it, perhaps, that timing precluded this?). Nevertheless, as the UK Presidency is seeking Political Agreement of this Regulation at the
Transport Council on 5 December, on this occasion we have no option but to take note of your correspondence and raise a few points with you with the proposal in its last stages of consideration.

You say in your undated letter that the UK Presidency is seeking to ensure that the procedures for assessing the safety of carriers set up in the Regulation are the most appropriate. We know that Members would like to be informed, in due course, whether you have been able to achieve this aim, and also what procedures were agreed in Council on 5 December. Further, you write that you will be responding to the formal consultation shortly. We would be grateful to see a copy of the Government response, particularly in view of your remarks that you were unable to meet all the stakeholders’ concerns.

We note that you conclude in your undated letter that the Regulation will make a positive contribution to aviation safety and to consumer information and rights.

1 December 2005

AIR TRAVEL: RIGHTS OF PERSONS WITH REDUCED MOBILITY (6622/05)

Letter from the Chairman to Charlotte Atkins MP, Parliamentary Under-Secretary of State, Department for Transport

Sub-Committee B considered this document at its meeting of 21 March 2005.

The Sub-Committee had also received a letter from British Airways which explained that, whilst the Company supported the principle of the Regulation, they had concerns about the implementation of the Directive. They want an understanding that the airport operator in conjunction with the airlines will establish an adequate service level agreement. British Airways is also seeking to ensure that neither the airport operator nor the airlines should make a profit from the new arrangements and that the costs should be split on a 60/40 basis, with the airline to pay the higher proportion. I enclose a copy of the British Airways letter (not printed).

British Airways is not seeking to continue handling persons with reduced mobility at United Kingdom airports, although a number of other European Union carriers are pressing for such an arrangement. We share British Airways’ view that an “airline service option” should form part of the Regulation to provide an alternative should the airport operator’s service be too expensive or fall below the required standard. As a minimum, we would suggest that there should be some protection in the legislation to ensure that airport operators do not abuse their monopoly position.

We note that the Government is conducting a full consultation exercise on this Proposal. We do not, in a business context, regard some of the issues raised by British Airways as simply matters of detail. We look forward to receiving from you a report on the outcome of your consultation exercise and to receiving your Regulatory Impact Assessment.

In view of the above, we are maintaining the scrutiny reserve.

23 March 2005

Letter from Rt Hon Alistair Darling MP, Secretary of State, Department for Transport to the Chairman

You should by now have received our Supplementary Explanatory Memorandum 6622/05 on the proposed Regulation on the rights of disabled persons and persons with reduced mobility when travelling by air. This SEM was signed by Karen Buck on 13 October and enclosed our completed RIA. I hope that it addresses to your satisfaction the points you raised in your letter of 23 April. Subject to the outcome of the European Parliament’s plenary debate in November, I consider that there is a reasonable prospect of reaching a First Reading deal on this dossier at the December Transport Council. If as a result of this SEM you now consider you can lift scrutiny, that would be most helpful.

I am grateful for your support in the matter of EU-US aviation negotiations. Good progress was made when the talks resumed in Brussels recently on a number of hitherto difficult regulatory issues, including the issue you highlight of government subsidies and support. This demonstrates a clear willingness on both sides to try to reach an agreement. The key issue of opening up market access remains to be tackled, however, along with other outstanding matters. These will be addressed when the negotiations resume in Washington on 14 November. I will of course keep you updated.

1 November 2005
Letter from the Chairman to Karen Buck MP, Parliamentary Under-Secretary of State,
Department of Transport

Thank you for your Supplementary Explanatory Memorandum on this document which Sub-Committee B considered at its meeting on 7 November 2005. Thank you also for your letter dated 1 November 2005. The Committee agreed to lift scrutiny in the light of the information provided by those documents.

We were, however, greatly concerned that we had not received, before your letter dated 1 November, an acknowledgement or response to our letter of 23 March 2005. We remain deeply disappointed that we have not received any explanation or apology for the most unusual delay in this matter. I would be grateful for an explanation of this apparent oversight.

10 November 2005

Letter from Karen Buck MP to the Chairman

Charlotte Atkins submitted Explanatory Memorandum (EM) 6622/05 on the above to you on 10 March 2005. Your Committee considered the EM on 15 March and referred the matter to Sub-Committee B. On 21 March Sub Committee B considered the EM but retained a scrutiny reserve on the Regulation pending the submission of a full Regulatory Impact Assessment (RIA). On 13 October 2005 I submitted a Supplementary Explanatory Memorandum (SEM) enclosing the outstanding RIA.

In considering the SEM, the House of Commons European Scrutiny Committee sought further information on the impact, if any, the Regulation would have on the ability of the Gibraltar Government to require similar provisions at Gibraltar Airport, if its applicability to Gibraltar were suspended pending the outcome of negotiations between the UK and Spain as to the status of the airport. My legal advice is that notwithstanding the suspension clause in the proposed Regulation, the Government of Gibraltar has the necessary autonomy to introduce its own domestic legislation, containing similar provisions applicable to Gibraltar Airport, should it choose to do so.

17 November 2005

Letter from Karen Buck MP to the Chairman

Thank you for your letter of 10 November. I am pleased that your Committee has agreed to lift scrutiny on this proposal.

I assure you that, in not responding earlier to your letter of 23 March, no disrespect was intended towards your Committee. It was not clear to us that this letter expected an immediate reply as it concluded by looking forward to the receipt of a report into our consultation exercise and our Regulatory Impact Assessment. These were of course attached to our recent Supplementary Explanatory Memorandum and took full account of the comments in your letter.

Dr Ladyman touched on this proposal when he wrote to you on 18 July about outstanding transport items. In this he hoped to be able send the RIA by late September. In the event, and in view of the fact that Parliament did not return until after the Transport Council on 6 October, we thought it best to delay our response until after the Council in order to update you as fully as possible on the dossier.

I will ensure that all letters from the Committee receive an acknowledgement in future, so that this kind of misunderstanding does not occur again.

21 November 2005

Letter from the Chairman to Karen Buck MP

Thank you for your letter of 21 November 2005 which Sub-Committee B considered at its meeting on 5 December and for your explanation for the delay in responding to my letter of 23 March 2005.

Members were pleased to note that all future letters from the Committee will be acknowledged even where there is no substantive action or information to impart.

7 December 2005
INTERNAL MARKET (SUB-COMMITTEE B) 93

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

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

Sub-Committee B considered this document at its meeting on 20 June 2005 and decided to maintain the scrutiny reserve.

We are aware of the success of your Department’s knowledge transfer networks. Will any efforts be made to copy the United Kingdom’s knowledge-transfer networks on an EU-wide basis?

We are writing to you separately with a request for more detailed information on the 7th Framework programme: this document is being held under scrutiny pending the receipt of that information.

22 June 2005

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 22 June about knowledge transfer networks. I apologise for the delay in replying.

We will, of course, make every effort to encourage the EU to look closely at the UK knowledge transfer networks and to draw the appropriate lessons when framing a EU dissemination policy. We feel it imperative that the EU policy should result in the advances made in EU funded research progressing into innovative goods and services.

31 August 2005

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letter of 31 August which Sub-Committee B considered at its meeting on 24 October 2005.

Members were pleased to note that you will encourage the EU to look closely at the UK knowledge-transfer networks and to draw the appropriate lessons when framing a EU dissemination policy.

We are maintaining the scrutiny reserve on this document because of its close link to the Seventh Framework Programme on which we are still waiting for some information.

26 October 2005

CIVIL AVIATION SECURITY (12588/05)

Letter from the Chairman to Karen Buck MP, Parliamentary Under-Secretary of State, Department of Transport

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 7 November 2005.

We noted that it is not yet possible to produce a Regulatory Impact Assessment on this proposal. We are maintaining scrutiny on this document until an RIA is available.

We also note a number of issues of Government concern (paragraphs 22–26 of your Explanatory Memorandum). The Sub-Committee will wish to examine closely how these issues are addressed.

9 November 2005

Letter from Karen Buck MP to the Chairman

Thank you for your letter of 9 November in respect of Explanatory Memorandum (EM) 12588/05.

I note that your Committee wishes to maintain a scrutiny reserve on the document until an RIA is produced. However, it is not certain that an RIA will be necessary or appropriate in this instance. I am writing, therefore, to explain this further and also to bring the Committee up to date with negotiations on this dossier.

The proposal is for a Regulation to replace existing Regulation 2320/02 on civil aviation security. It is intended to be a clearer and less detailed text than the original and does not significantly extend its scope. The lack of detail means that it will be extremely difficult to make a realistic assessment of expenditure, while the limited extension in scope means that there will, in any case be few new costs. In the UK, moreover, aviation security requirements already exceed those set out in European legislation, so it is not thought likely that there will be a significant impact in this country.
I am, of course, aware that there will be some extra costs both to industry and government if the legislation is agreed, as detailed in my EM. The area where increases would probably be greatest is industry training. However, as the Commission is planning a separate training Regulation, we are unlikely to be able to make any realistic estimates on the basis of the limited information in the framework text.

Nevertheless, there remain circumstances in which an RIA could and should be completed. This would, for instance, be the case if the European Parliament (EP) were to reject the Commission’s proposal for a less detailed framework Regulation and agreement were reached on a more comprehensive text. The level of detail might then be enough to make it possible to isolate cost elements. There is also the possibility that the EP might propose amendments introducing new costs and that the Council might agree to this new text. Again, a calculable new cost element might then be introduced. In these or any similar circumstances, we would complete an RIA for submission to your Committee.

The proposed Regulation has been considered in Council working groups during November and there is some progress to report on the areas of concern mentioned in my EM, in that each has now been the subject of discussion there. This means that we are now more aware of other Member States’ views and have had some opportunity to consider Presidency proposals for amendments to the text:

— Article 5, on MS’ freedom to implement more stringent measures than those set out in the legislation, has won no support at all from delegates at the working group. The UK would prefer the text in the extant regulation, because it is very unlikely that the Commission would have access to the intelligence information needed to judge relevance and proportionality. Along with many other Member States, however, we could accept the Presidency compromise proposal, to retain the first element of the new text, requiring that any additional measures be “relevant, objective, non-discriminatory and proportional to the risk that is being addressed”, coupled with an exemption for specific flights. The Commission has stated that its intention is only to target measures which are both on-going and had implications beyond national borders. It has not withdrawn its original proposed language;

— in respect of Article 6 on more stringent measures imposed extra territorially by third countries. MS have generally expressed support for the broad intention but also significant reservations about whether the proposal as framed could work in practice. Based on Member States’ suggestions, the Presidency put forward an alternative proposal, that Member States be required to inform the Commission about any such requests from third countries and that the Commission, supported by an advisory committee, should then consider an appropriate response to the third country in question. The Commission appears receptive to this suggested alternative;

— on the issue of agreements with third countries (Article 17) the Presidency asked for clarification on a number of issues. The Commission explained that the intention was to identify third countries where there was an equivalency with Community aviation security standards, such that exemptions from transfer screening for traffic from such countries would become possible. It made clear that there would be no difficulty with Member States continuing with technical assistance and similar programmes, but any bilateral exemption agreements would cease to be valid. Member States would retain the right to request more stringent measures. The Presidency and Member States welcomed this clarification and agreed that there was no need to elaborate the text. A question subsequently arose as to whether the Article is in fact strictly required, being essentially declaratory in nature. The Commission may consider this further;

— discussion of the in-flight measures (Chapter 10) has seen a number of Member States express significant reservations about the inclusion of material which would expand on the scope of the present Regulation 2320/02. Especial difficulties are seen with the text on in-flight security officers, where some Member States—the UK amongst them—are concerned that their national decision-making should not be constrained, and with the related clause on the carriage of weapons. Some alternative drafting advanced by the Commission did not fully allay Member States concerns, and the Presidency concluded that the text needed further thought, including on the scope for closer alignment with existing and imminent ICAO provisions in this same area.

On the general issue of “other entities”, there was a general concern that the term was open to a wider interpretation than could be supported by Member States. Alternative language tabled to address this attracted support, including our own, and seems likely to prove acceptable to the Commission.

In response to a query on cargo, the Commission explained that it intended to allow the same possible exemptions from re-screening as for passengers and hold baggage, but that the relevant text would be included in the implementing rather than (as with passengers and hold bags) in the framework legislation. Neither the Member States nor the Presidency is yet convinced of the logic of this approach.
You may also like to know that as regards Gibraltar, Spain has now formally requested that it be excluded from the scope of the proposed legislation.

This would be achieved by adding text along the lines of the existing Article 3 in Regulation 2320/02. The UK has agreed to this request. In practical terms the exclusion of Gibraltar from EU community legislation has no effect on aviation security or safety matters in Gibraltar. However, we are currently in discussions with both the Spanish and the Gibraltarians within the Trilateral Forum on a number of topics, including the Airport. Although some issues are still to be resolved, the participants are confident that it should be possible to find a solution that will be acceptable and beneficial to all. In terms of the Airport, that would include the Spanish lifting their block on EU aviation legislation relating to Gibraltar.

The European Parliament has begun its consideration of this proposal, and is currently expected to have its plenary First Reading in April 2006. I will, of course, continue to keep your Committee informed of progress on this dossier.

20 December 2005

COMMUNITY AIR TRAFFIC CONTROLLER LICENCE (11484/04)

Letter from Charlotte Atkins, MP, Parliamentary Under-Secretary of State, Department for Transport

You will recall my letter dated 21 December 2004, on the proposed Directive on a Community air traffic controller licence which Sub-Committee B considered at its meeting on 17 January 2005.

I am now writing to update you on the outcome of the European Parliament’s first reading on this dossier. The Parliament supports the purpose of the Directive and has considered ways to strengthen it. At its plenary meeting on 7 March 2005, it approved 21 amendments to the original text of the Directive (issued July 2004) designed to:

— improve the competence of air traffic personnel and the training they receive in safety, security and crisis management;
— clarify the position of existing licences issued by Member States;
— require consultation with social partners;
— set down the language and health requirements for controllers; and
— enable the free movement of air traffic controllers across the Community.

The UK agrees with many of the amendments and the general approach text has already covered such issues as enhancing the language requirements, improving the system for the recognition of licenses, and has set down the health requirements. There is a welcome convergence of views therefore between the Council and the Parliament which bodes well for a satisfactory conclusion to the negotiations on this Directive.

However, the UK is concerned about the Parliament’s attempt to include “flow managers” (staff responsible for ensuring a steady flow of traffic through each individual segment of airspace) within the new proposed licensing regime. The definition of “air traffic controllers”, set down by ICAO, the International Civil Aviation Organisation, does not include “flow managers” since such staff do not directly control aircraft. We do not wish to include such staff in the scope of the Directive as they are not currently licensed and we will push hard in the remaining negotiations to ensure that this continues to be the case. We will also continue to stress that military controllers should not come within the scope of this Directive and to maintain the improvements we have made in the general approach text.

The Council will consider the Parliament’s amendments in the next few weeks and I shall, of course, keep you up to date with progress. There is a chance of a second reading deal before the summer, although it looks likely that the conclusion of the negotiations will be in the UK Presidency.

4 April 2005

Letter from the Chairman to Karen Buck MP, Parliamentary Under-Secretary of State, Department for Transport

Thank you for your letter of 4 April which Sub-Committee B considered at its meeting on 27 June 2005. I apologise that it has taken so long for your letter to be considered.

As you are aware, we have already lifted the scrutiny reserve from this document. However, we note that the European Parliament is now seeking to make significant changes to it particularly relating to the “flow-manager” issue. We ask the Government to supply a Supplementary Explanatory Memorandum describing the changes being discussed, together with any relevant texts. If this is not possible, the Committee may be more reluctant in future to lift the scrutiny reserve and may also wish to invite officials to appear before them to explain why a revised proposal was not deposited.

8 July 2005

COMPETITIVENESS AND INNOVATION FRAMEWORK PROGRAMME 2007–13 (8081/05)

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

Sub-Committee B considered this document at its meeting on 20 June 2005 and decided to maintain the scrutiny reserve.

We share your concern about the possibility of overlap and duplication between the CIP and the 7th Framework Programme for Research and Development and the structural and cohesion funds. Have you raised these concerns with the Commission?

We take your concern that using three discrete sub-programmes could potentially create a situation where there is a danger of them tripping over each other. You state that you will press for improvements to the structure and evaluation process. What improvements will you seek?

How will this Framework Programme mesh with the United Kingdom’s own programme for competitiveness and innovation? Will they be separately managed? Will businesses have to make separate applications to the two programmes?

I am writing to you separately about document 8087/05 COM(2005) 119 + Add 1 & 2 SEC (05) 430 and 431: Decision of the European Parliament and of the Council concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007–13) and a Council Decision concerning the Seventh Framework Programme of the European Atomic Energy Community (EURATOM) for nuclear research and training activities (2007–11). However, we recognise that these documents are closely linked.

22 June 2005

Letter from Rt Hon Alun Michael MP to the Chairman

I am writing to provide further information on progress made on the Competitiveness and Innovation Framework Programme (CIP) and in particular on those aspects on which your Committee has previously expressed an interest.

During the UK Presidency we have completed a first read-through of the proposal and tackled the main areas of concern shared by delegations. These included complementarity with FP7 and with Structural Funds, the need to ensure greater visibility and commitment to support eco-innovation actions, concerns about the management structure of CIP, and the need for a robust evaluation process.

Progress has been slower than ideal, hampered by ongoing uncertainty over the EU budget and the ultimate impact on CIP. Against this background I believe the UK Presidency has done well to deal with these initial key areas of concern and this weekend’s good news of a budget settlement paves the way for further progress.

The Presidency’s report, which I attach to this letter, sets out conclusions we have reached in discussions with Member States and the Commission and our recommendations for amendments. This report was welcomed and endorsed by the Competitiveness Council on 29 November. In it you will note that we did indeed raise concerns with the Commission about the overlap of CIP with both FP7 and Structural Funds, points you raised in your June letter.

On FP7 we have clarified with the Commission where the line will be drawn between CIP and FP7 and confirmed this will be set out in the final text of the proposal. We have also examined the areas of possible overlap and duplication, we have established how information services in CIP will complement and support FP7, and we have clarified that financial instruments, dissemination of project results and cluster support in both programmes will be orientated for different purposes. Additionally, we have agreed that support for businesses wishing to take new innovations to the market should be based on the merit of the project. Projects that have received support from FP7 will not be given preferential treatment.
On structural funds, the Commission have confirmed that Article 53 of the Structural Fund Regulations prohibit the “double-funding” of a project—this will remain the case for the proposed regulations that are currently subject to negotiations. In practice, this means that Member States cannot use structural fund money and funds from other Community instruments such as CIP to co-finance the same stage of a project. They can, however, use both funds for different stages of the same project. For example, structural funds could be used for infrastructure set up and CIP could then be used for ongoing project support and development. Examples to illustrate this point are provided in the Presidency Paper.

In your June letter, you also ask what improvements we will seek on management structure and evaluation process. On management our goal is to ensure that the structure is revised and includes either an overarching management committee, or a clear process that enables close co-operation and co-ordination between the different sub-programmes and Committees. We raised management issues during the Presidency and found that at this stage although other Member States share our concerns over the inadequacy of the proposed model, in the absence of a confirmed budget delegations were not prepared to decide what structure should be accepted. Nevertheless, we are pleased that we have moved this issue forward by agreeing a set of general principles that must underpin any agreement on a revised structure. This will allow the UK to press for an improved model.

With respect to evaluations, we want to strengthen the need for methodologies to provide data on not only the larger actions under CIP but also the smaller ones, showing how these have fulfilled the objectives of both the Framework Programme as a whole as well as the sub-programme objectives. We want to make sure that evaluations will isolate and quantify the impact on competition, innovation and growth. The UK Presidency raised this issue towards the end of our term and delegations have agreed that improvements in the evaluation process for CIP are needed. Latterly, we have agreed with the Austrians that more discussion of evaluations is required during their Presidency.

The final main issue covered during our Presidency was the inclusion of eco-innovation. Delegations, including the UK, have been concerned at the lack of visibility and specificity to actions in support of eco-innovation. The Presidency paper sets out recommendations on how this should be addressed, which have won broad support. Although a few delegations are keen for eco-innovation to be managed as part of a separate sub-programme within CIP (it is currently integrated into the Entrepreneurship and Innovation Programme), I agree with the view expressed by the majority that its integration strengthens the commitment to support and encourage businesses to take new eco-innovation technologies to the market place whilst recognising the specific nature of market failure in this sector.

Overall our Presidency efforts on CIP have effectively cleared the ground of key areas of concern and provided direction for those issues requiring further discussion. This should enable the Austrians to move forward I hope with reasonable speed, subject to the impact of EU budget negotiations.

You have also asked how CIP will mesh with the UK’s own programme for competitiveness and innovation, whether they will be managed separately, and whether businesses will have to make separate applications to the two programmes. The UK does not have an equivalent competitiveness and innovation programme. Rather, in the key areas covered by CIP—entrepreneurship, innovation, eco-innovation, ICT and energy—the UK provides a range of business support measures. Initial work by officials in DTI and DEFRA indicates that in most cases CIP actions will not duplicate UK support. Once we have a more settled CIP budget, officials will undertake a fuller review considering the fit between CIP and existing UK support to inform our final negotiating priorities.

19 December 2005

COMPETITIVENESS COUNCIL, APRIL 2005

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

I represented the UK at the Competitiveness Council held in Luxembourg on Monday 18 April. This letter reports on the outcome of the Council and details the UK position taken on the agenda items where relevant.

The Council briefly discussed the newly reinvigorated Lisbon Strategy following the Spring European Council on 22 to 23 March 2005. The Presidency said that it was important for the Competitiveness Council to work in partnership with ECOFIN and the Employment Council to take forward the integrated guidelines for growth and jobs (2005–08), published by the Commission on 13 April. The Commission highlighted the importance of the Competitiveness Council’s role in respect of the micro-economic guidelines. The Competitiveness Council will have a full debate on the integrated guidelines and next steps at its next meeting on 10 May 2005.
The Commission presented its recent Communication on Better Regulation for Growth and Jobs emphasising the new Commission’s commitment to progressing the better regulation agenda in the EU as an essential element of achieving Lisbon goals. In particular, the Commission highlighted its planned action to improve impact assessment procedures; renew efforts on simplification of existing legislation; and screen proposals that had been tabled before January 2004 with a view to withdrawing or modifying those that were no longer in line with the Commissions’ new better regulation principles. The Commission also highlighted the need for Member States to fulfil better regulation aims domestically and outlined its proposal to establish a group of national experts to share best practice.

The Council had a substantive exchange of views during which Ministers broadly welcomed the Communication and agreed the need to deliver on this agenda. A number of Member States highlighted new better regulation initiatives at national level, some raised the importance of respecting the Community acquis and the respective roles of the institutions in legislative processes, and others stressed the need to take all three pillars (social, environmental and economic) into account in impact assessment procedures.

I strongly welcomed the Communication and its focus on jobs and growth, in particular the Commission’s intention to redouble its efforts on simplification. I said the UK looked forward to working with the Commission during our Presidency to help build a robust competitiveness-based simplification programme for 2006 and beyond. I welcomed the intention to screen proposals tabled before January 2004 with a view to withdrawing or modifying those that were no longer relevant or needed. I highlighted the need for the Commission to take forward the 15 simplification priorities agreed on by the Competitiveness Council last November and stressed the UK’s commitment to progressing these rapidly when the proposals reach Council.

The Commission presented its Communication of 6 April 2005 proposing a Competitiveness and Innovation Programme (CIP) for 2007–13. This brings together a number of existing programmes in a single strategy and proposes new actions to support SMEs. There was no debate. The Competitiveness Council will have its first exchange of views on the CIP at its next meeting on 10 May.

The Council had a brief exchange of views and agreed conclusions on the importance of tourism to the European economy and of developing the tourism industry in a sustainable way. The UK did not intervene.

The Commission presented its proposal for the Seventh Framework Programme (FP7)—the EU’s chief instrument for funding research, technology and innovation for 2007–13. Its importance in achieving Lisbon goals and the proposed doubling of the Framework Programme budget were highlighted. New elements were outlined, including proposals for support though new infrastructures, the introduction of Joint Technology Initiatives and better co-ordination of programmes, and proposals presented to simplify administrative and financial procedures.

In the Council’s first exchange of views on the FP7 proposal, Member States broadly welcomed the Commission’s Communication as a good basis for discussion. I expressed the UK’s view that the proposed new structure gives a greater focus to the objectives of European research funding and welcomed the emphasis on simplifying the programme, which the UK hoped would help increase business participation. I stressed the need for funding to be allocated on a competitive basis in a way that provides maximum added value and expressed our support for establishing a European Research Council to oversee the funding of basic research. The Council will return to the FP7 proposal at its meeting in June.

The Council received an update from the Commission on developments in international negotiations on the International Thermonuclear Experimental Reactor (ITER). Ministers welcomed the progress made and agreed the need to work towards achieving the timetable set out at the European Council meeting of 22 to 23 March 2005 of finalising an international agreement on ITER by July 2005. The Council reaffirmed its support for a six party ITER, the UK’s preferred option.

The Council agreed conclusions on the need for effective human resources policy in Research and Development and its importance in achieving Lisbon goals. I did not intervene.

You may also wish to note that further to the update on EM 10904/03 provided by Gerry Sutcliffe at the end of March, the Council formally adopted the Unfair Commercial Practices Directive with the incorporation of the European Parliament’s second reading amendments as an A point and without discussion. As outlined in Gerry Sutcliffe’s letter, this was originally envisaged for the 6/7 June Competitiveness Council, but was brought forward by the Luxembourg Presidency.

29 April 2005
**Letter from the Chairman to Lord Sainsbury of Turville**

Thank you for your letter of 29 April informing the Committee about the April Competitiveness Councils which Sub-Committee B considered at its meeting on 8 June 2005.

We strongly support your view that progressing the better regulation agenda is an essential element of achieving Lisbon goals. We are very interested in the National Reform Programmes and trust that you will send us a copy of the UK’s NRP (and that of other Member States as they become available) as soon as possible.

13 June 2005

**COMPETITIVENESS COUNCIL, MAY 2005**

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

I represented the UK at the Competitiveness Council held in Brussels on Tuesday 10 May. This letter reports on the outcome, detailing the UK position where relevant.

The Council had a comprehensive exchange of views on the microeconomic aspects of the Lisbon integrated guidelines for growth and jobs (2005–08), and on whether they were adequate to take forward National Reform Programmes (NRPs). The integrated guidelines incorporate the Broad Economic Policy Guidelines (BEPGs) and the Employment Guidelines (EGs) which are to be considered by ECOFIN and EPSCO Councils respectively, before they are forwarded to the European Council on 16–17 June.

I intervened to say that the Competitiveness Council’s key role was to deliver real progress on the Council’s agenda of microeconomic reform—better regulation, completion of the internal market, innovation and research—while providing for exchange of best practice and benchmarking progress on microeconomic reforms.

At the end of the debate, the Presidency adopted conclusions noting that the Council welcomed the Commission’s recommendations on the microeconomic elements of the integrated guidelines. The Council stressed the importance of a flexible approach to enable Member States to tailor NRPs to national situations. The Council also stressed the need for coordination (at national and Community level) and for coherence between the macroeconomic and microeconomic elements and the employment guidelines.

Facilitating innovation; investing in R&D; contributing to a strong industrial base (with a new horizontal and sectoral approach—for both cutting-edge technologies and traditional sectors); and completing the internal market—a big priority for job creation and to meet the challenges of globalisation—were identified as priority actions.

The Council recognised that a weakness of the first phase of the Lisbon Strategy was the lack of national action. The Council agreed to rapidly put in place NRPs. The expectation is for NRPs to be presented in the autumn of 2005, after consultation with national Parliaments and social partners. The Council will review the published NRPs and consider any necessary adjustments in collaboration with ECOFIN. The Presidency will inform ECOFIN of the Competitiveness Council discussions and asked the High Level Group on Competitiveness and Growth, COREPER and the Economic and Policy Committee (EPC) to pursue technical level work on the NRPs.

The Council had an exchange of views on the Commission’s proposal for a Framework Programme for Competitiveness and Innovation (2007–13) (CIP) which brings together a number of existing activities under three sub-programmes with new actions. The three specific sub-programmes are: entrepreneurship and innovation (integrating the existing MAP programme and elements of the LIFE programme); ICT (incorporating the e-TEN, Modinis, e-Content programmes as well as the new i2010 European Information Society Strategy due to be announced in May 2005); and Intelligent Energy Europe (a programme for the development of environmental technologies, particularly in the energy and transport sectors). The Commission proposes a budget of four billion Euros for the period 2007–13. The Presidency asked COREPER to continue to work on the detail of the proposal in advance of the next meeting of the Council. The UK did not intervene.

The Council took note of information from the Commission on the situation in the textile sector—regarding the two-month safeguard investigations opened against nine sectors of textiles and clothing imports from China. The UK did not intervene.
The Council also took note of information from the Commission covering the developments in negotiations with Japan on the project site for the International Thermonuclear Experimental Reactor (ITER). There was no debate.

23 May 2005

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letters of 23 May informing the Committee about the May Competitiveness Council which Sub-Committee B considered at its meeting on 8 June 2005.

We strongly support your view that progressing the better regulation agenda is an essential element of achieving Lisbon goals. We are very interested in the National Reform Programmes and trust that you will send us a copy of the UK’s NRP (and that of other Member States as they become available) as soon as possible.

13 June 2005

Annex A

UNITED KINGDOM RESPONSES TO PRESIDENCY QUESTIONS ON SEVENTH FRAMEWORK PROGRAMME (FP7)

Q1. Bearing in mind that the modalities for setting up the envisaged ERC will be defined in more detail in subsequent legislation, do Ministers agree to the outline organisation and governance structures of the ERC as proposed?

The proposed organisation and governance structures appear to the UK to represent a genuine attempt to establish an ERC which meets our criterion of an institution which would be driven by scientific considerations and operate autonomously at arms length form both Commission and Member States. We agree that more work is needed to define the inter-relationship between the various elements in the structure.

Q2. What are Ministers’ views with regard to the respective roles and responsibilities of the scientific council, of the implementing structure and of the Commission?

The ERC should be science driven. It is therefore vital that the Scientific Council should set the work programme for the ERG. The implementing structure should implement the work programme, as defined by the Council and should therefore in practice be answerable to the Scientific Council for its performance in this regard. The practical role of the Commission should be as guarantor of the procedures, only using its legal powers to intervene in the process of setting the work programme as a last resort and under extreme circumstances.

Q3. Do Ministers consider that in those instances where horizontal actions are dispersed across more than one section of the proposal (eg support for SMEs and international cooperation), there is a coherent strategy for delivery?

The UK believes it is important that horizontal actions are effectively coordinated across the whole of the framework programme. Whilst the proposal and Specific Programme texts recognise the importance of coordination, there is no explanation of how this will be achieved. It would be helpful to have details of how the Commission will ensure that horizontal activities are managed coherently, both internally within the Commission and in dialogue with Member States. Similarly it is also important to ensure coordination with other related activity, such as the Competitiveness and Innovation Programme.

Q4. Can Ministers agree to the basic selection criteria proposed by the Commission for the funding of new research infrastructures?

The UK believes that new research infrastructure should continue to be addressed at national level through multi-lateral agreements between Member States, making use of structural funds where appropriate. We believe that European Framework Programme funding should be directed towards access to infrastructures. In this regard we welcome the continuing efforts of ESFRI to provide a road map of future European infrastructure needs.
Q5. Do Ministers consider that, the activities as proposed under the heading of research potential should form part of the Seventh Framework Programme?

The UK recognises that Europe needs to exploit the full potential of its research base and is sympathetic to the needs of those Member States that wish to use FP7 to unlock their potential. The appraisal and selection of projects funded under the research potential heading should retain a significant focus on excellence and should encourage the use of Structural Funds in eligible regions. The Research Potential action needs to be targeted at supporting existing high potential teams to increase their visibility and participation in excellent projects.

Q6. Do Ministers consider that the proposed arrangements for monitoring and evaluating the outputs of Framework Programme against its objectives will provide a sufficiently robust evidence base to inform future policy making on the Framework Programme?

The UK welcomes the Commission’s positive attitude to improving the process of evaluation and monitoring in the Framework Programme. The new three assessment exercises monitoring, mid-term and ex-post—should be closely coordinated and have a flow of data between them to maximise their benefit and to provide data/results in time to inform future decisions. We also believe that the interim evaluation should be undertaken in 2009, as it would be difficult to undertake a sensible assessment any earlier than this.

Meaningful evaluation is impossible without sound data. The provision of comprehensive data has been a weak area in the current framework programme. We would welcome, therefore, details from the Commission on what steps are being taken to improve its data collection processes.

The UK welcomes the Commission’s positive attitude to improving the process of evaluation and monitoring in the Framework Programme. The new three assessment exercises monitoring, mid-term and ex-post—should be closely coordinated and have a flow of data between them to maximise their benefit and to provide data/results in time to inform future decisions. We also believe that the interim evaluation should be undertaken in 2009, as it would be difficult to undertake a sensible assessment any earlier than this.

Meaningful evaluation is impossible without sound data. The provision of comprehensive data has been a weak area in the current framework programme. We would welcome, therefore, details from the Commission on what steps are being taken to improve its data collection processes.

COMPETITIVENESS COUNCIL, JUNE 2005

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

I writing to give you advance notice of a Commission Communication entitled “European Space Policy—Preliminary Elements”, which we received on 26 May, a copy of which accompanies this letter.

The Communication will be a reference paper for Competitiveness Council on 7 June 2005. The paper itself will not be approved at Council, but Member States will respond to a draft orientations paper to be agreed at the meeting.

The paper follows on from the White paper on European Space Policy (EM 14886/03) and the EU-ESA Framework Agreement (EM 12858/03). The subject matter contains plans for a European Space Policy and Programme, funded by existing instruments, the level of which will depend on the finalisation of the EU Financial Perspectives. The policy implication may include the use of space for security purposes required by ESDP.

I will submit an EM on this document (which is likely to be deposited in Parliament on 27 May or soon after that date) by 6 June. The Space Council (a joint and concomitant meeting of EU Competitive Council Ministers and European Space Agency Ministers) will begin at 1500 hours on 7 June. If it is possible, perhaps your Committee may be able to silt this document on the morning of 7 June and your Committee Clerk might contact Alison Bailey (DTI Scrutiny Co-ordinator) with the result before 1500 hours?

26 May 2006

Letter from the Rt Hon Alan Johnson MP, Secretary of State for Trade and Industry, Department of Trade and Industry to the Chairman

This letter outlines the discussion on each agenda item and the UK position taken at the 6–7 June Competitiveness Council—the last under the Luxembourg Presidency. I attended on 9 June, Lord Sainsbury on 7 June.
At the first day of the Council, Economics Ministers discussed the Services Directive, Better Regulation and REACH (the chemicals Regulation).

Over lunch, the Presidency gave an update on the state of play regarding work on the proposal to establish an internal market for services in the EU. The Council confirmed its intention to continue work on this high priority dossier in conjunction with the European Parliament, which is due to give its views on the proposal in the Autumn. I confirmed that the UK would continue discussions on the Directive under our Presidency. Ministers agreed conclusions on Better Regulation, which welcomed recent developments, included the Commission’s March Communication on Better Regulation for Growth and Jobs, and set out work needed to achieve progress on this agenda over coming months. I emphasised the need to focus on delivery of results and the priority the UK will attach to EU Better Regulations during the forthcoming Presidency. I explained that in addition to devoting formal Competitiveness Council time to reviewing progress, we would have a session on Better Regulation at the informal of the Competitiveness Council meeting in Cardiff in July.

Ministers had a discussion on REACH based on Presidency questions about the role of the planned European Chemicals Agency and impact assessment work carried out on the proposal. There was consensus that the European Chemicals Agency should have a stronger role in evaluating registration dossiers and chemical substances via a network of competent national authorities. The Council asked its preparatory bodies to further examine the options, paying due regard to resource implications. Ministers agreed that the impact assessment work done so far, particularly regarding the impacts on SMEs, provided a good basis for moving forward towards political agreement. I said that the UK would press ahead with negotiations under our Presidency with a view to achieving this goal.

The Council took three Any Other Business points on 6 June. The first was an information point from the Commission on the SOLVIT system for solving problems with the functioning of the Internal Market. Commissioner McCreevy highlighted its benefits and the increase in usage but underlined the need for Member States to devote sufficient finance and staff to the national SOLVIT centres. The second AoB item was a presentation from the Commission on the new proposal for a Health and Consumer Strategy for 2007–13. Finally, as requested by the Danes, the Council had a brief exchange on the situation in the fish processing industry relating to the Commission’s recent decision to impose temporary anti-dumping measures on the import of Norwegian salmon. I did not intervene on any of these AoB points.

The second day of the Council focussed on research issues. Discussion of the proposal for the seventh framework programme for research and technological development (FP7) was based around a set of Presidency questions on thematic priorities, SME involvement, human resources, collaborative research, dissemination, and management and implementation. Ministers also talked about the establishment of a European Research Council over lunch. Commissioner Potocnik highlighted the importance of the financial perspective negotiations for FP7. Lord Sainsbury said that new thinking was needed on how best to meet the needs of SMEs in FP7 and highlighted the importance of developing an effective system for disseminating policy-relevant research to Member States. The Council invited the Committee of Permanent Representatives (COREPER) to continue examination of the FP7 proposal under the co-decision procedure with the European Parliament.

The Commission gave a brief update on the state of play in international negotiations to decide the location of the ITER project (International Thermonuclear Experimental Reactor). The Council invited the Commission to continue pursuing an agreement in line with its negotiating mandate and the 2005 Spring European Council conclusions.

Research Ministers took one point of Any Other Business concerning a proposal to improve admission procedures for third country researchers wishing to work in the EU. The Commission asked that the Council adopt the proposal as soon as possible. The Netherlands supported but there was no discussion. The UK has not opted in to this proposal.

Following the conclusion of Competitiveness Council business, the second ever Space Council meeting was convened—a joint EU and European Space Agency (ESA) meeting. The Luxembourg and German co-chairs outlined progress since the first Space Council meeting in November 2004 and ESA’s achievements during its thirty years in existence. Discussion focussed on the developing priorities for the European Space Programme, roles and responsibilities of the parties involved, identifying industrial policy options, funding and implementation issues. There was broad agreement that the space industry was important to the EU’s future competitiveness and growth and relevant to a range of other EU policies leading to a need for special recognition of the sector’s significance. Lord Sainsbury praised ESA for its many achievements to date but stated that more thought should be given to how its role should develop in an evolving external context. A Set of Orientations was agreed that set out guiding principles for the creation of the European Space Programme.

17 June 2005
Letter from the Chairman to Rt Hon Alan Johnson MP

Thank you for your letter of 17 June 2005 which Sub-Committee B considered at its meeting on 4 July 2005. We find such reports on Councils very helpful.

We noted that the Commission highlighted the need for Member States to devote sufficient finance and staff to the national SOLVIT centres. What staff and resources are devoted to the UK SOLVIT centre? How is its effectiveness assessed? How many issues or cases has it processed in the past year?

8 July 2005

Letter from Rt Hon Alan Johnson MP

Thank you for your letter of 8 July, in response to mine of 17 June, detailing proceedings of the June Competitiveness Council. You raised some questions about the EU “SOLVIT” network.

The UK is a strong supporter of efforts to remove barriers preventing businesses and citizens from exercising their internal market rights—and is therefore an active and respected member of the EU’s SOLVIT network of national administrations in all Member States. SOLVIT is an effective tool that fulfils its role of finding informal and rapid solutions to internal market problems that could otherwise take years before the courts.

I should point out that SOLVIT is only applicable to those cases that involve the misapplication of EU internal market rules by public authorities.

The UK SOLVIT Centre is staffed by two full-time officials from my Department, with a third full-time member devoting approximately half of her time to SOLVIT matters. DTI’s legal services provide support as necessary, as do both a Director and an Assistant Director from the Department’s Europe and World Trade Directorate.

Between 1 May 2004 and 1 May 2005, the UK SOLVIT Centre processed 242 substantive complaints and enquiries. This includes a very wide range of issues: from substantial SOLVIT cases requiring weeks of investigation and negotiation with other Member State authorities, to “non-SOLVIT” cases (such as providing general advice on EU matters or redirecting enquiries to the European Commission, Citizens Advice Bureaux etc.).

During this period, the UK SOLVIT Centre handled 31 SOLVIT cases as “Home” SOLVIT Centre (complaints by the UK against another Member State) and 27 SOLVIT cases as the “Lead” SOLVIT Centre (complaints against the UK by another Member State), making a total number of 58 SOLVIT cases in a 12 month period.

The effectiveness of SOLVIT can be assessed in a number of ways. The most recent relevant document from the European Commission was released on 18 July 2005, in the context of announcements about the “Internal Market Scoreboard”. The data used by the Commission show the UK achieving a SOLVIT case resolution rate of just over 80 per cent and taking an average of 30 days to resolve cases (the deadline set by the system is 70 days).

It may be helpful for me to put the Commission’s tabling of SOLVIT at the June Competitiveness Council into context. This was done in response to staffing issues (in certain Member States—not the UK) that the Commission felt could weaken the effective functioning of the network as a whole. The UK SOLVIT Centre’s performance has always been held in high regard, as was made clear orally by the Commission at its June 2005 SOLVIT workshop.

I would like to assure you that the UK SOLVIT Centre will remain proactive and committed. We continue to promote the service (delivered free of charge) at conferences, through partner organisations, targeted approaches and on our website. I am including a link to the latter (http://www.dti.gov.uk/ewt/diff.htm) should you or other Committee Members know of individuals or businesses who could benefit from it.

20 July 2005

Letter from the Chairman to Rt Hon Alan Johnson MP

Thank you for your letter of 20 July in reply to mine of 8 July which the Chairman of Sub-Committee B considered in advance of the Sub-Committee’s meeting on 10 October. All Members of the Sub-Committee have received a copy of your letter.

The Members were interested to learn more about the EU Solvit network. Thank you for your most helpful response.

6 October 2005
COMPETITIVENESS COUNCIL, JULY 2005

Letter from Rt Hon Alan Johnson MP, Secretary of State, Department of Trade and Industry
to the Chairman

I am pleased to enclose a copy of my written Statement to Parliament on the informal Competitiveness Council, held on 11–12 July 2005 in Cardiff. I have also annexed the Presidency Summary of Debate referred to at the end of the Statement.

20 July 2005

WRITTEN MINISTERIAL STATEMENT, 21 JULY 2005

The Informal Competitiveness Council, Cardiff 11–12 July 2005

The Informal Competitiveness Council hosted by the UK Presidency took place in Cardiff on 11–12 July 2005. Lord Sainsbury of Turville chaired the first day covering research issues and I chaired the second day, which considered EU Better Regulation and the development of the Internal Market. Over dinner on 11 July both research and economics/industry Ministers discussed innovation policy.

On the first day, Research Ministers heard presentations from a number of speakers, including Research Commissioner Potocnik and representatives from industry and science.

The Commission stressed the need for the EU to help fulfil Lisbon goals for growth and jobs by committing more money for EU research, both nationally and for the EU’s next research Framework Programme (FP7). Speakers from academia and business presented on how the framework programme could be made simpler and more accessible for business and how the Scientific Council for the proposed European Research Council (ERC) had been chosen.

Ministers then broke up into five small groups for detailed discussions on: the structure of the European Research Council (ERC); increasing industry and SME participation in the Framework programme; and how to develop the potential of the less research-intensive regions. In addition, Ministers were asked to consider the cross-cutting issue of simplification as it related to their areas.

Group rapporteurs reported vigorous and useful discussions. Lord Sainsbury concluded that while there were still difficult issues to tackle, there was consensus on the need for the ERC to be independent; on the need for effective, practical help for SMEs; that collaborative research should be more user-driven; that help for less research-intensive regions had to be focussed; and on the continued importance and need for simplification.

On the second day, the session on EU Better Regulation opened with presentations from Vice President of the European Commission and Commissioner for Enterprise and Industry Gunter Verheugen, Alain Perroy (Director General of CEFIC (the European Confederation for the Chemicals Industry) and leading member of the Alliance for a Competitive European industry) and Jacek Piechota (Polish Economics Minister).

The Commission’s commitment to progressing the better regulation agenda in the EU and the importance of regulatory reform in achieving Lisbon objectives on growth and jobs were stressed. The Commission also outlined recent initiatives that would contribute to the delivery of regulatory reform, including strengthened impact assessment guidelines that would ensure effects of proposed legislation on competitiveness were taken into account, a new push to simplify existing EU regulation and screening of proposals that were already on the table for their effects on competitiveness. Alain Perroy gave a business perspective on the need for regulatory reform and Jacek Piechota outlined steps that Poland had taken at a national level to improve policy-making processes.

 Ministers then split into four groups to discuss using impact assessments in Council deliberations; maximising the involvement of business in policy-making; simplification; and what Member States can do to improve the regulatory framework at a national level. Ministers reported productive and positive discussions, with a strong consensus on the need to deliver regulatory reform for growth and jobs. In my summary, I welcomed the Commission’s clear commitment to change and recent initiatives, and emphasised the need for the Commission and Member States to work together to achieve results.

Debate on the Internal Market began with presentations from Czech Deputy Prime Minister for economic affairs Martin Jahn, who explained how membership of the Internal Market has benefited the Czech economy, and Internal Market Commissioner Charlie McCreevy, who called for greater efforts to ensure effective implementation of the existing acquis and for progress on opening up the market in services.
Subsequent breakout group discussions concluded that the Internal Market was often taken for granted and should be more vigorously promoted. The perception of enlargement (focused on immigration and social dumping) was at odds with the actual impact (a strengthened global position for the EU, a more varied and flexible EU economy). Ministers also emphasised the need for progress on the Services Directive as key to the future development of the Internal Market. In addition, implementation, enforcement and the provision of advice and assistance to businesses and citizens were seen as crucial.

The Presidency Summary of Debate has been placed in the Libraries of both Houses and can also be found at www.dti.ciov.uk/ewt/compet.htm

Annex

PRESIDENCY SUMMARY OF DEBATE

THE PRESIDENCY IS PLEASED TO NOTE THAT MINISTERS

Research

— Reaffirmed their belief that knowledge is at the heart of the Lisbon economic reform process and that research, technological development and innovation are key drivers of productivity and growth; and that the Community and the individual Member States therefore have a shared responsibility to boost the excellence of the knowledge base in Europe and to ensure optimal exploitation of that excellence by businesses and other users.

— Considered that the Framework Programme, as the primary instrument of Community research and innovation policy, has an essential role to play in meeting the economic, social and health challenges facing Europe in the next decade as well as in tackling urgent environmental issues such as global climate change.

— Noted that there was broad consensus on the direction proposed by the Commission in their proposal for the next Framework Programme (FP7), but that much of the detail still needs to be discussed, and therefore stressed the importance of timely adoption and negotiation of the Commission’s Specific Programme proposals during the UK Presidency.

— Stressed that optimal delivery of the Framework Programme will depend on business (and other user) engagement with, and participation in, the programme. In this respect, they welcomed the Commission’s efforts to engage with users through European Technology Platforms and other analogous groupings to simplify the programme and make it more attractive to scientists and industrialists.

— Discussed the importance of high-tech SMEs to the future of the European knowledge economy and stressed that the Framework Programme needed to be attuned to the research needs of these SMEs.

— Welcomed the work of the European Commission, and that of the Identification Committee chaired by Lord Patten, in identifying the means to foster excellence in basic research, including the possible establishment of a European Research Council in the period of the next Framework Programme and noted that the Commission’s proposal would need to effectively guarantee the independence and autonomy of the ERC.

— Recognised that knowledge potential of the Union as a whole must be carefully fostered and optimally exploited if the ambitious economic goals set at the Lisbon summit are to be met, and considered that the instruments of the Community should be applied to this issue and that, in addition to supporting excellence in research, the next generation of excellent researchers and research teams should be nurtured.
Innovation Policy

— Held a wide-ranging debate on innovation policy, and considered:
  ● Better links and interchanges between industry and the research base to be the key priority for action to enhance the EU’s innovation performance; and that other important factors to be considered were:
  ● A cost effective and efficient system of patent protection, accessible to SMEs;
  ● A strong system of innovation governance, including a wide range of stakeholders (business-led, academia and NGOs);
  ● Better use of procurement policies so that they foster, not inhibit, innovation;
  ● Review of the Community State Aids framework to promote innovation;
  ● The creation of better networks and clusters to facilitate collaboration and a multidisciplinary approach;
  ● An outcome-based approach to regulation that allows business space to come up with new and innovative solutions;
  ● A better balance between risk and reward, with measures to stimulate a less risk averse and moreentrepreneurial culture;
  ● Better communication and innovation messages at all levels: EU, national, regional and local;
  ● Polices to develop, attract and retain skilled knowledge workers;
— and invited the Commission to take account of these points in drawing up its forthcoming Innovation Action Plan.

Better regulation

— Held a productive discussion on delivering the better regulation agenda as a top priority for achieving EU growth and jobs under a revitalised Lisbon strategy.
— Recognised the need for the Commission and Member States to rise to the challenge together and show real results for business and citizens.
— Welcomed the Commission’s strengthened impact assessment system, including competitiveness testing, for all new policy proposals and the commitment to saying no to regulation where there was no strong case or where alternatives could deliver a better outcome.
— Undertook to make systematic use of these assessments in Council discussions as an aid to decision making.
— Underlined the importance of early and systematic engagement with business and other stakeholders in developing policy.
— Welcomed the Commission intention to screen a raft of pending proposals and to withdraw or amend them if impact assessment showed a negative effect on competitiveness.
— Welcomed the Commission’s work to develop a strong competitiveness-focused programme for simplifying the acquis, by October, drawing on contributions from Member States and business.
— Underlined the importance of progress on better regulation at Member State level and the need to share innovative best practice, recognising that this should be a central element of Lisbon National Reform Programmes.

Internal Market

— Endorsed the vision of a vigorous internal market, which enhances growth through increased integration, co-operation and the further removal of barriers, in order to retain and develop our international competitiveness.
— Underlined their commitment to delivering the decisive action necessary to attain the Lisbon Agenda’s growth and jobs targets.
— In line with the Conclusions of the 2005 Spring European Council; remain committed to the completion of a fully operational internal market for services, while preserving a European social model that enhances our ability to compete and helps our citizens confront the challenges of globalisation.
— Recognised that for Europe to maintain its economic position, Member States must continue their efforts to ensure robust implementation of existing internal market measures, through enhancing trust, understanding and communication.

— Shared the view that the Competitiveness Council should vigorously promote European competitiveness across EU policies. Ministers also recognised the key role of Member States in promoting domestic awareness of and support for this agenda.

COMPETITIVENESS COUNCIL, NOVEMBER 2005

Letter from Rt Hon Alan Johnson MP, Secretary of State for Trade and Industry,
Department of Trade and Industry to the Chairman

I am pleased to enclose a copy of my written Statement to Parliament outlining the agenda items for the forthcoming Competitiveness Council on 28–29 November 2005 in Brussels.

23 November 2005

Written Statement: 28–29 November EU Competitiveness Council in Brussels

My hon friend, Lord Sainsbury, Parliamentary Under Secretary of State for Science and Innovation, will Chair the Competitiveness Council for the research items and the Space Council on 28 November. I will be chairing for industry and internal market items on 29 November 2005.

The first item on 28 November will be the 7th Framework Programme for Research and Development. A UK Presidency compromise text has been put to the Council with a view to obtaining agreement from Ministers on a partial general approach. The text covers the whole of the Framework Programme minus the articles relating to the budget, which form part of separate negotiations on Future Financing.

Next, the Council aims to agree Conclusions welcoming the recent Commission Communication “More Research and Innovation—Investing for Growth and Employment. A Common Approach”. I do not expect any substantive debate on this item.

The Space Council will be convened in the afternoon. This will be the third meeting of the Space Council—a joint meeting of the Competitiveness Council and the European Space Agency (ESA) Ministerial Council. Lord Sainsbury will jointly chair this meeting with the current Chair of the ESA Ministerial Council (Germany). Following presentations on European Space activities, including national space programmes, from the Commission and the Joint Secretariat, there will be an exchange of views on International Co-operation based on a UK Presidency discussion paper. The Space Council will then seek to agree a set of Orientations on the Commission’s recent Communication on GMES (Global Monitoring for Environment and Security).

On 29 November, I will open the Council with a report of the discussion at dinner the previous evening on Industrial Policy (based on a short Presidency paper). This follows publication last month of the Commission’s latest Communication on Industrial Policy.

We then hope to agree Council Conclusions on Better Regulation. These will welcome recent Commission initiatives on simplification of existing legislation, the withdrawal of pending proposals, and impact assessment, highlight better regulation activities in Council formations and consider next steps.

The proposed Chemicals Regulation REACH is the next item on the agenda. The UK Presidency’s revised compromise text will provide the basis for a substantive debate. While we are still hopeful of political agreement during the UK Presidency, any actual vote will be delayed until a subsequent Council in response to a German request for more time to consider the proposal, given the delay in forming the new German government.

I will present a Presidency progress report on the Competitiveness and Innovation Programme (CIP). This includes a set of principles to underpin next year’s negotiations on management structure and evaluation, which Ministers will be asked to endorse. There is unlikely to be a lengthy discussion.

At lunch, Ministers will discuss a Presidency progress report on the Services Directive. This will cover the three main political issues: scope; the interaction between the proposal and worker protection rules; and the balance between promoting free movement of services and safeguarding Member States’ public policy objectives.

After lunch, in the main Council meeting, we will have a further exchange of views to draw some conclusions on the way forward.
Next we hope to agree Council conclusions on EU Contract and Consumer Law noting progress on work in these areas. I will then present a progress report on Council considerations to date on the Commission’s proposal for a Health and Consumer Protection Strategy.

Finally, two items will be presented under Any Other Business. I do not expect any debate on these items:

(i) Progress report on the re-launched Lisbon Strategy (Lisbon National Reform Programmes) (at the request of Italy).

(ii) Development of tourism in Europe after Enlargement (at the request of Lithuania).

Letter from the Chairman to Rt Hon Alan Johnson MP, Secretary of State for Trade and Industry, Department of Trade and Industry

I am writing to alert you to a development in the way that European Union Sub-Committee B will scrutinise Council of Ministers meetings under the Austrian and Finnish Presidencies.

Sub-Committee B, has decided to see you, or another appropriate Minister as the case may be, once annually for a public oral evidence session at your earliest convenience after the Competitiveness Council has met. We hope that such sessions will provide an opportunity for an exchange of information and views on the Competitiveness Council to supplement the written material provided before and after the Council and in so doing will mark a significant enhancement of ministerial accountability to Parliament.

The Clerk of Sub-Committee B, Miss Anna Murphy, will liaise with your officials to decide after which Competitiveness Council it would be most appropriate for you to be invited to give evidence to the Sub-Committee.

We understand of course that you might not always be the most appropriate Minister to comment on a particular Council’s area of interest, in which case we trust that you would ensure that another Minister was available.

I trust that you will be able to ensure that you can schedule a time to meet our Sub-Committee.

1 December 2005

Letter from Rt Hon Alan Johnson MP, Secretary of State for Trade and Industry, Department of Trade and Industry to the Chairman


2 December 2005

Written Statement by the Secretary of State for Trade and Industry

28–29 November 2005 Competitiveness Council and 28 November 2005 Space Council

I chaired the second Competitiveness Council of the UK’s Presidency in Brussels on 28–29 November 2005. My noble friend, Lord Sainsbury, Parliamentary Under Secretary of State for Science and innovation, chaired the Council for the research items. He also chaired, with German State Secretary Mr G-W Adamowitsch representing the European Space Agency (ESA) Council, the third meeting of the Space Council on 28 November 2005. The only interventions by the UK national seat were during the Space Council.

Monday 28 November 2005—Competitiveness Council (Research Items)

The Council approved, by a large majority including the UK, a partial general approach on the 7th Framework Programmes (FP7) for research and technological development, based on a Presidency compromise text. The Council debate focused on supporting the participation of small and medium sized enterprises in research projects and the implementation arrangements of the future European Research Council. This partial general approach will provide a good basis for adopting a Common Position once agreement has been reached on the financial perspectives.

The Council adopted conclusions on the recent Commission Communication “More research and innovation—investing for growth and employment”. There was no substantive debate on this item.
MIDAY 28 NOVEMBER 2005—SPACE COUNCIL

The Council adopted orientations on the Commission Communication on global monitoring for environment and security (GMES). It noted that the objective of GMES is to provide, on a sustained basis, reliable and timely information related to environmental and security issues in support of public policy makers’ needs. My honourable friend, Barry Gardiner, who sat in the UK national seat, intervened briefly to stress that it was important to utilise the existing capabilities of GMES alongside developing new ones. The Council also held an exchange of views on international collaboration based on a discussion paper tabled jointly by the EU and ESA presidencies. The debate focused on: the need to develop an overall cooperation strategy; EU/ESA roles and responsibilities; and the financial principles that should apply in funding. The UK intervened briefly to support the development of a collaborative approach but noted that this should pay due consideration to Community competence. Vice-President Verheugen (Commissioner for Enterprise and Industry) and ESA Director-General Dordain provided an oral report to the Council on the progress of European space policy.

TUESDAY 29 NOVEMBER 2005—COMPETITIVENESS COUNCIL (INDUSTRY/INTERNAL MARKET ITEMS)

I provided a Presidency summing-up of an exchange of views on EU industry policy and the recent Commission Communication “Implementing the Community Lisbon Programme: a policy framework to strengthen EU manufacturing—towards a more integrated approach for industrial policy” that was held over dinner on 28 November 2005. Ministers supported the Commission’s approach to industrial policy—at both a sectoral and horizontal level, welcoming, in particular, the new High Level Group on Energy, Environment and Competitiveness. It was agreed that policies should focus on embracing and facilitating structural change.

The Council adopted conclusions on better regulation and recognised progress made at EU and Member State level. In particular, the conclusions welcomed recent Commission initiatives on simplification of existing legislation, screening of pending legislative proposals, impact assessment, and consultation.

The Council held a policy debate on the draft regulation for the registration, evaluation, authorisation and restriction of chemicals (REACH) and instructed the Permanent Representatives Committee to examine the remaining outstanding issues, principally authorisation and scope, with a view to achieving political agreement at the next session of the Competitiveness Council on 13 December 2005.

The Council took note of a Presidency progress report on a draft decision establishing a competitiveness and innovation programme (CIP) for 2007–13 and endorsed the approach to the horizontal issues that it sets out. The Council instructed the Permanent Representatives Committee to use the report as a basis for future discussions following agreement on the financial perspectives.

Based on a Presidency progress report I chaired an exchange of views over lunch and in the Council on a draft directive on services in the internal market. The questions of scope, worker protection and free movement of services were discussed in order to provide political guidance for future discussions once the European Parliament has given its opinion.

The Council adopted conclusions on European Contract Law and the Review of the Consumer Acquis. There was no debate.

The Council took note of a Presidency progress report on a proposal for establishing a programme of Community action in the field of health and consumer protection for 2007–13. The Council decided to return to this issue at a future session, as the programme is dependent on the outcome of the financial perspective negotiations and discussions in the European Parliament.

There were two “any other business” items taken at the Council, on which there was no debate. Vice-President Verheugen (Commissioner for Enterprise and Industry) provided information on the progress of the relaunched Lisbon Strategy related to the National Reform Programmes. Lithuania provided information about a conference they are organising in Vilnius on 1–2 March 2006 on the development of tourism in Europe after enlargement.

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2 A Joint and concomitant meeting of the Competitiveness Council and the Council of ESA at ministerial level.
COMPETITIVENESS COUNCIL, DECEMBER 2005

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

I am pleased to enclose a copy of my written Statement to Parliament outlining the agenda for the forthcoming Competitiveness Council on 13 December 2005 in Brussels.

6 December 2005

WRITTEN STATEMENT—13 DECEMBER EU COMPETITIVENESS COUNCIL IN BRUSSELS

I will chair a meeting of the Competitiveness Council in Brussels on 13 December, which will deal with one agenda item only.

The aim of this meeting will be to achieve political agreement on a common position on REACH, the Chemicals Regulation. Following on from the constructive debate that was held on REACH at the Competitiveness Council on 29 November, the Council is in a strong position to reach agreement.

There are no items scheduled under Any Other Business.

CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT (11911/04)

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

I am writing to you to ask whether the Committee would now consider removing their reserve on the above subject. In common with the Department of Trade and Industry, the Committee was concerned about the original lack of clarification on the division of tasks between the Community and the Member States in these proposals.

The topic was discussed in Council (AQC) on 8 April 2005. The Department is now satisfied that the division of tasks has now been clarified to a sufficient extent in the statement to be attached to the Council minutes. In the statement, which is attached to this letter, the Commission undertakes to liaise with Member States with a view to an efficient cooperation in the implementation of the Conventions.

DRAFT STATEMENT TO THE COUNCIL MINUTES

The Council and the Commission state that the Declarations of competences regarding the accession of Euratom to the Convention on Early Notification of a Nuclear Accident and to the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency are in line with the requirements of these Conventions which, in particular, do not call for an Article by Article analysis of the competences concerned. However, the Council and the Commission note that these Declarations are without prejudice to the exact nature and sharing of the Community and Member States competences and any further analysis of the matter, taking into account relevant developments.

The Council and the Commission acknowledge that, subject to possible evolution of Community law, Member States, Parties to the Conventions, retain their right to remain the priority correspondents to inform the IAEA on nuclear accidents and emergencies on their territories, and receive such information, as well as to request assistance and respond to requests for assistance when giving such assistance falls under the competence of Member States.

The Council and the Commission note that, under present circumstances, the relevant Articles of the Convention on Early Notification of a Nuclear Accident, which apply to the Community or under which action by the Community could be envisaged in implementation of the Convention, are Articles 2, 3, 4, 6, 7, 9, 14 and 15. As for the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency, such Articles are 1, 2, 4, 6, 7, 16 and 17.

The Commission undertakes to liaise with Member States with a view to an efficient cooperation in the implementation of the Conventions. However, such cooperation is without prejudice to Member States’ rights and obligations to promptly act in implementation of the Conventions, as appropriate. On this basis, a more detailed indicative sharing of tasks between Member States and the Commission, under present circumstances, is envisaged in document 7154/1/05 REV 1.

25 May 2005
Letter from Malcolm Wicks MP to the Chairman

I am writing to you to ask the Committee to consider giving scrutiny clearance to the above proposals. The Committee, in common with the Department of Trade and Industry, was concerned about the generalised wording of the draft declarations of competence in these proposals. Regrettably, we have not succeeded in securing more precision in the draft declarations themselves. The Conventions do not call for declarations on an Article-by-Article basis and are regarded as essentially procedural in nature. The Commission was not willing to concede on this point of principle. In the face of this, there has been almost no support or encouragement for greater precision in the draft declarations from other Member States, although we did secure more information from the Commission on the respective roles under the Conventions of the Commission and Member States. There is now no prospect of gaining any such support to press the matter further.

Nevertheless we believe we have made significant and helpful progress in negotiations. First, as mentioned above and in response to our and other Member States’ concerns, a Council document (attached to this letter) has been produced which contains an indicative list of the Articles of the Conventions under which the Community is considered to have functions and an analysis of the way in which it is considered that tasks under the Conventions are to be shared between the Community and the Member States. We consider this to be helpful also in indicating an understanding about matters in respect of which it is considered that the Community does and does not share competence with the Member States. Second, a statement for the Council minutes (also attached to this letter) has been drafted, which states, among other things, that:

“the Council and the Commission note that [the declarations of competence] are without prejudice to the exact nature and sharing of the Community and Member States competences and any further analysis of the matter, taking into account relevant developments”.

The Committee noted, as an example of its concerns, that it assumed that it was not to be inferred from the draft declarations of competence that the Community has any competence in relation to notifications involving nuclear weapons. In this connection we consider the recent decision of the European Court of Justice in Case C-61/03 (the Jason reactor case) to be helpful. The Court held that the Euratom Treaty does not apply to uses of nuclear energy for military purposes.

We support EURATOM accession to the Conventions so whilst we have not been able to secure the sort of declaration of competence we would have preferred, we believe that the texts produced provide sufficient comfort for us to be able to agree to the EURATOM Community’s accession to the Conventions.

29 June 2005

Letter from Malcolm Wicks MP to the Chairman

I am writing to update the Committee about the above proposals and I would like to offer my apologies at the outset for not having done so earlier.

There was concern in relation to these proposals about the generalised wording of the draft declarations of competence in these proposals. Regrettably, we have not succeeded in securing more precision in the draft declarations themselves. The Conventions do not call for declarations on an Article-by-Article basis and are regarded as essentially procedural in nature. The Commission was not willing to concede on this point of principle. In the face of this, there has been almost no support or encouragement for greater precision in the draft declarations from other Member States, although we did secure more information from the Commission on the respective roles under the Conventions of the Commission and Member States. There is now no prospect of gaining any such support to press the matter further.

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We consider this to be helpful also in indicating an understanding about matters in respect of which it is considered that the Community does and does not share competence with the Member States. Second, a statement for the Council minutes (also attached to this letter) has been drafted, which states, among other things, that:

“the Council and the Commission note that [the declarations of competence] are without prejudice to the exact nature and sharing of the Community and Member States competences and any further analysis of the matter, taking into account relevant developments”.
In addition, there was a concern that it was not to be inferred from the draft declarations of competence that the Community has any competence in relation to notifications involving nuclear weapons. In this connection we consider the recent decision of the European Court of Justice in Case C-61/03 (the Jason reactor case) to be helpful. The Court held that the Euratom Treaty does not apply to uses of nuclear energy for military purposes.

We support EURATOM accession to the Conventions so whilst we have not been able to secure the sort of declaration of competence we would have preferred, we believe that the texts produced provide sufficient comfort for us to be able to agree to the EURATOM Community’s accession to the Conventions.

31 October 2005

DRAFT STATEMENT TO THE COUNCIL MINUTES

The Council and the Commission state that the Declarations of competences regarding the accession of Euratom to the Convention on Early Notification of a Nuclear Accident and to the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency are in line with the requirements of these Conventions which, in particular, do not call for an Article-by-Article analysis of the competences concerned. However, the Council and the Commission note that these Declarations are without prejudice to the exact nature and sharing of the Community and Member States competences and any further analysis of the matter, taking into account relevant developments.

The Council and the Commission acknowledge that, subject to possible evolution of Community law, Member States, Parties to the Conventions, retain their right to remain the priority correspondents to inform the IAEA on nuclear accidents and emergencies on their territories, and receive such information, as well as to request assistance and respond to requests for assistance when giving such assistance falls under the competence of Member States.

The Council and the Commission note that, under present circumstances, the relevant Articles of the Convention on Early Notification of a Nuclear Accident, which apply to the Community or under which action by the Community could be envisaged in implementation of the Convention, are Articles 2, 3, 4, 6, 7, 9, 14 and 15. As for the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency, such Articles are 1, 2, 4, 6, 7, 16 and 17.

The Commission undertakes to liaise with Member States with a view to an efficient cooperation in the implementation of the Conventions. However, such cooperation is without prejudice to Member States’ rights and obligations to promptly act in implementation of the Conventions, as appropriate. On this basis, a more detailed indicative sharing of tasks between Member States and the Commission, under present circumstances, is envisaged in document 7154/1/05 REV 1.

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 31 October 2005 in response to mine of 20 October 2004 which Sub-Committee B considered at its meeting on 21 November 2005.

We were disappointed that you were not successful in securing more precision in the draft declarations of competence but understand that there was no support from other Member States and that there is now no prospect of gaining support to press the matter further. We were, however, reassured by the extract from the Council Minutes which you quoted, “the declarations of competence are without prejudice to the exact nature and sharing of the Community and Member States competence”. We were pleased to note that, in response to concerns raised by the UK Government, a Council document had been produced which contained an indicative list of the Articles of the Conventions under which the Community is considered to have functions and an analysis of the way in which it is considered that tasks under the Conventions are to be shared between the Community and Member States.

We are lifting scrutiny at this point.

23 November 2005
DIGITAL BROADCASTING (9411/05)

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

Sub-Committee B considered this document at its meeting on 27 June 2005.

You state correctly that this document will have no financial implications for the United Kingdom. However, the switch off project as a whole will have financial implications for a range of interests, not least those of households. We presume that these will be considered in the Regulatory Impact Assessment which will be published to accompany United Kingdom plans for switchover. We would be most interested to see these documents as soon as they are available.

What percentage of people need to have taken up digital broadcasting for the transition to happen? We believe it may be as high as 98 per cent.

In the meantime, we are maintaining scrutiny on this document.

8 July 2005

Letter from Rt Hon Alun Michael MP to the Chairman

I am writing in response to your letter of 8 July about issues arising from the Explanatory Memorandum on the European Commission’s Communication on digital switchover.

You are right to assume that a broad range of the financial implications of completing switchover (including those to households) will be included in the Regulatory Impact Assessment. This will be available to support the announcement of a firm timetable.

You ask what percentage of households need to have taken up digital broadcasting for the transition to happen, and whether this is as high as 98 per cent.

There is no requirement for 98 per cent of households (or any other target percentage) to have taken up digital television before switchover. The Government commitment since 1999 has been that all those viewers who currently receive analogue public services (BBC1, BBC2, ITV and C4/S4C) on terrestrial television must have access to digital versions of these services before switchover can be completed, and that switchover must be affordable for the vast majority of households.

Analysis by Ofcom’s spectrum planners shows that 98.5 per cent of households can currently access all the analogue public services. A statement by Ofcom on 1 June 2005 sets out how this level of coverage will be achieved at switchover. However, the restrictions placed on the power levels for transmitting digital services before switchover, to avoid interference with the analogue services, mean that only 73 per cent of households can choose to receive digital services through an aerial today. Extending the digital coverage to match the current analogue coverage is a key justification of switchover.

Please let me know if you need any other information

17 July 2005

Letter from Rt Hon Alun Johnson MP, Secretary of State, Department for Trade and Industry

Thank you for your letter of 17 July in reply to mine of 8 July which Sub-Committee B considered at its meeting on 17 October 2005.

Members found the information that you provided helpful. We note that the Regulatory Impact Assessment is not yet available and we are maintaining scrutiny pending receipt of the Regulatory Impact Assessment.

19 October 2005

Letter from Rt Hon Alun Johnson MP to the Chairman

Thank you for your letter of 19 October in reply to mine of 17 July.

The Regulatory and Environmental Impact Assessment (RIA) on the timing of digital switchover was published on 16 September to support the announcement by the Culture Secretary, Tessa Jowell, on 15 September which confirmed the timetable and set out provisional arrangements for targeted assistance.
I enclose a copy of the RIA. Copies have been placed in the Library of the House. I hope, therefore, that the Committee will be able to lift their scrutiny reserve.

2 November 2005

Letter from the Chairman to Rt Hon Alan Johnson MP

Thank you for your letter of 2 November in reply to mine of 19 October 2005.

Sub-Committee B will consider the Regulatory Impact Assessment as soon as possible, this is likely to be on 21 November.

In the meantime, the Committee will find it helpful to know why the RIA was not sent to us until 2 November when it had been published on 16 September 2005.

15 November 2005

Letter from Rt Hon Alan Johnson MP to the Chairman

Thank you for your letter of 15 November in reply to mine of 2 November.

The Regulatory Impact Assessment (RIA) should have been sent earlier. This was due to an oversight by DCMS officials.

The RIA was published during recess and made available on the Government’s Digital Television Website, www.digitaltelevision.gov.uk. However, it should also have been deposited with the House libraries as a matter of course. This was corrected and the RIA was deposited in the House libraries by DCMS on 2 November. I apologise for any discourtesy or inconvenience caused by the oversight.

9 December 2005

DIGITAL CONTENT IN EUROPE: MORE ACCESSIBLE, USABLE AND EXPLOITABLE (6431/04)

Letter from Mike O’Brien MP, Minister for Energy and e-Commerce, Department of Trade and Industry

An Explanatory Memorandum (Ref 6431/04) on the European Commission’s proposal for a Decision to establish a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable (known as eContentplus) was submitted to your Committee on 9 March 2004, as a result of which it was cleared from Scrutiny. Stephen Timms wrote to you on 20 May 2004, outlining the latest position of the negotiations on the eContent+ programme in Brussels, and the UK’s position. We were not supporters of the programme and so were concentrating of keeping the budget level to a reasonable level, lower than that proposed by the European Commission. Your Committee was content with that position and agreed with the Government’s approach. This letter is to update you as to the result of the negotiations, which have concentrated on the budget figure.

The UK, together with like-minded Member States such as Germany, Austria, and France formed a blocking minority against the proposed Commission budget, supported by the European Parliament, of €163 million, and favoured a figure much closer to €135 million that represented the Council Common Position (and the UK made it clear that even this was more than it thought desirable). However, in the spirit of compromise, the UK, along with the other countries seeking to keep the budget lower than that proposed, agreed to the Presidency proposal of going as high as a budget of €143 million during Second Reading negotiations. The European Parliament, in turn, agreed to reduce the budget to €149 million, and made it clear that this was the absolute minimum they would consider. They would be prepared to resort to Conciliation rather than lower the budget any further.

There was a very real danger that during Conciliation the budget would have been increased, perhaps back to that originally proposed by the Commission and supported by the European Parliament. There was also a reluctance, particularly by France, to sacrifice the programme itself rather than agree to a budgetary increase. Lastly, from a UK perspective, it was not clear that Conciliation over such a relatively small amount was worth risking our good relations with the European Parliament so soon before the UK Presidency.

That being the case, the UK and the other Member States agreed to a Second Reading deal at a budget level of €149 million. This was adopted by the European Parliament on 27 January 2005, and the Commission amended its proposal accordingly as set out in Document 6678/05. This is due to be agreed in Council as an “A” Point at an upcoming Council.
Although a little higher than we had hoped, this represents a reasonable outcome. It shaves €14 million from the original budget proposal, and avoids a Conciliation process that could well have been counter-productive. We also succeeded in inserting a “DAPHNE clause” (ie one indicating that projected expenditure for the years after 2006 is only provisional and subject to change) into the programme to ensure that our objective of achieving a 1 per cent EU GNI outcome in the next Financial Perspective is not prejudiced. We will aim to raise the awareness of potential beneficiaries of the programme in the UK to the forthcoming opportunities so that the UK gains the maximum benefit from the programme’s existence.

23 March 2005

DRIVING LICENCES (15820/03)

Letter from David Jamieson MP, Parliamentary Under-Secretary of State, Department for Transport to the Chairman

I am writing to update you on progress of the proposal for a Directive on driving licences. You will remember that the Transport Council reached a General Approach on this dossier on 7 October 2004, following which I sent to you an updated Regulatory Impact Assessment and Supplementary Explanatory Memorandum. The European Parliament (EP) had its First Reading of this dossier on 23 February in its plenary session in Strasbourg, and the outcome of this was in many respects helpful to the United Kingdom. The EP has grasped effectively many aspects of this dossier, so that there were many good outcomes from the vote. The attached Annex provides a detailed summary of the EP amendments, which include:

— measures which would enhance the security of the driving licence system, including the optional application of a microchip which could hold data not already on the face of the card;
— that acquired rights already held by drivers would be protected explicitly;
— that Member States would be free to continue applying their own procedures for testing medical fitness to drive;
— to replace the Commission’s prescriptive proposals for driving examiner qualification and training by a text focussing on competencies gained, which is very similar to the Council text; and
— many of the Commission’s proposals for changes to vehicle categories, for which there was no road safety justification, have been rejected.

Nevertheless, I am still hoping that it will be possible to achieve further improvements in three remaining areas.

— The proposed rules on access to motorcycles. These are complex, yet both less well-attuned to road safety and more restrictive on Member States than they need to be. I should like to preserve key flexibilities for the UK and to establish a sound framework encouraging good practice throughout the European Union (EU) for years to come.
— Size of trailer allowed on a category B licence; and right to drive a motorhome on a category B licence. The proposed rules to facilitate the driving of both larger caravans and motorhomes are too permissive.
— As regards combating “driving licence tourism” I share the EP’s objective of encouraging cooperation between Member States and the Commission. But I believe that the proposals to combat driving licence tourism would still benefit from improvement. The language so far proposed still relies too much on routine checking of a yet-to-be-created database, rather than focussing intelligently on the most suspect transactions.

In addition, you will see from the more detailed summary of the EP’s vote given in the attached Annex that there are several other points which the UK would still like to address. I am still hopeful that it may be possible to secure further improvements in the remainder of this negotiation.

The Council will now consider the EP’s proposals as it prepares for Political Agreement—probably at the Transport Council on 27 to 28 June. Substantial progress has been made. Present indications are that it may be possible to negotiate on the text so as to achieve an agreed Common Position, that is, one to be adopted without further amendment in the EP’s Second Reading. If the negotiated Common Position is successful, we could expect to adopt it sometime early in the UK Presidency. If not we would expect the Second Reading process to start in the second half.

I will, of course, continue to keep the Committee informed of progress on this dossier.

16 March 2005
Annex

EUROPEAN COMMISSION PROPOSALS FOR A DIRECTIVE ON DRIVING LICENCES
SUMMARY OF EUROPEAN PARLIAMENT VOTE ON 23 FEBRUARY 2005

DRIVING LICENCE SECURITY

A1. The European Parliament (EP) voted for sensible measures which would enhance the security of the driving licence system. The UK supports the proposal to allow a microchip on the licence, which could include data not shown on the front of the licence itself, and this is in line with the Council’s General Approach. However, the EP text would require the licence to be made of polycarbonate material and the material to be laser engraved. This is an unwelcome and unnecessary detail which would place an undue burden on some smaller licensing authorities, including Gibraltar.

LIMITED ADMINISTRATIVE VALIDITY

A2.1 Unlike the Council’s General Approach text, the EP voted that all old model driving licences must be exchanged—within 10 years for paper licences and 20 years for plastic card licences. Drivers’ existing acquired rights, however, would not be lost. The UK is taking a neutral position on the withdrawal and replacement of old model licences. There are both benefits and costs, with a different balance in different Member States. The explicit guarantee of drivers’ existing acquired rights may make the proposal more acceptable to some Member States.

A2.2 The UK can also welcome the EP’s text which would give Member States flexibility to limit licence validity in certain circumstances, for example if a medical condition requires more frequent renewal. Again, this is in line with the General Approach text.

A2.3 The EP vote removes the Commission’s proposed blanket restriction on the validity of licences after the age of 65. This flexibility is to be welcomed, as it would allow Member States to apply their own rules. This is similar to the provisions in the Council’s General Approach text, which would allow Member States freedom to apply their own rules in limiting the licence validity of drivers over the age of 50. In the UK, either formula would allow us the flexibility to continue our current practices.

MEDICAL EXAMINATIONS

A3.1 The Commission had proposed linking mandatory medical examinations to the renewal of the licence for all drivers. We saw no justification for this link, and the EP text would separate medical examinations from the validity of licences for the drivers of cars and light vans and for the riders of mopeds and motorcycles. The EP approach is to be welcomed, and it is in line with the General Approach text.

A3.2 The language proposed by the EP would remove the general requirement for mandatory medical examinations at licence renewal for commercial drivers under the age of 45. This is also welcome, as it would allow Member States to guarantee continued compliance with medical standards in a way that best meets their circumstances. It is in line with the Council’s General Approach text.

MOPEDS AND MOTORCYCLES

A4.1 As regards vehicle categories, mopeds and motorcycles are the area of greatest concern to the UK.

A4.2 The EP’s proposals are similar to those agreed by the Council.

- We remain very uncomfortable with the inclusion (proposed both by Council and by the EP) of three and four-wheeled vehicles in the moped and motorcycle categories. The skills needed to ride these are completely unlike those needed to ride a two-wheeled vehicle. In principle, all three-and four-wheelers should be in category B1, not just the largest ones. Other Member States and MEPs do not share our concerns. That being so, we shall now hold out for the freedom for Member States to record on the licence national codes for distinctive tests passed on three- and four-wheelers in both moped and motorcycle Categories.

- We would prefer to see a mandatory practical test as the norm for moped riders, even with scope to Member States to derogate by omitting such a test. This would lend encouragement in the long term for Member States to adopt the practical test for mopeds where possible. Again, other Member States and MEPs do not share our concerns. But we hope to find a well-considered framework for
motorcycles which might for example, by allowing Member States to choose between two carefully-designed parallel tracks for progressive access to the larger machines, properly reflect the two schools of thought on practical testing for moped riders.

A4.3 Comparing key elements of the EP proposals with those in the Council’s General Approach:

— The Council’s General Approach provided for the following access regime to motorcycles:
  - Mopeds from a minimum age of 16 (14 on national territory), without a mandatory practical test.
  - Light motorcycles from a minimum age of 16, with a practical test.
  - Medium-sized motorcycles from a minimum age of 18.
  - Access to the largest motorcycles at an age set by Member States between 21 and 27 (for direct access) or after two years experience on a medium-sized motorcycle.

— The changes now proposed by the EP are:
  - Member States could set the minimum age for mopeds as low as 14 (with no restriction to national territory).
  - Member States would have more flexibility in setting the minimum ages for light and medium-sized motorcycles. In particular, for Category A2—medium-sized motorcycles—the minimum age could be set at 17, as for Category A1—light motorcycles—thus enabling the UK to preserve its existing practice, except that Category A2 would now have as its maximum power 35 kW, instead of the present 25 kW.
  - Riders would be allowed onto the largest motorcycles after three years experience on a medium-sized machine instead of two years.
  - Member States would be forced to set the minimum age for direct access to the largest motorcycles at six years above the minimum age for medium-sized motorcycles, which could in the UK be 23 years of age if 17 adopted as minimum age for A2, instead of the flexibility provided by the Council General Approach text. Staged access to the largest machines could be at age 20, and would require only proof of training, not a practical test of ability to handle the largest machines.

A4.4 Both texts contain flaws. We believe that a better text than either remains achievable, both from a narrow UK perspective and taking a broader view of the EU. For example:

— The proposed maximum power limit for medium-sized motorcycles is too high at 35kW. We believe this can include vehicles too powerful to be ridden by 18 year olds with little experience. We should prefer to see the maximum power of medium sized motorbikes retained at the present lower limit of 25 kW. This would enable a national derogation to allow them to be ridden from 17 (as at present in the UK), with proper testing arrangements.

— We wish to be able to determine and apply an appropriate testing or training requirement for access to the largest machines. But to do so sensibly would require an appropriate upper limit on the power of the small and middle-sized machines. And the test/training for the largest machines ought to pay particular attention to higher-speed riding outside urban areas.

Trailers and Motorhomes

A5.1 The UK Government supported the Council’s General Approach text on motorhomes and trailers, as it largely retained the current provisions (3,500 kg as the maximum mass of vehicle or of tractor/trailer combination to be driven on a Category B licence—car or light van).

A5.2 The EP proposals would rightly provide more flexibility than the Commission’s original very restrictive text (maximum trailer size on a B licence: 750 kg).

A5.3 However, we believe that the EP proposals go too far by allowing normal car licence holders to drive vehicles or car/van and trailer combinations flexibly up to a weight of 4,250kg, so long as this is for non-commercial use and the driver has undertaken training. There are too many significant loopholes in this provision:

— training is no substitute for proof of competence (that is, passing a practical driving test);
— it would be difficult to prove “on the road” when a commercial vehicle is being used for commercial proposes; and
the distinction between “normal” cars and light vans and the larger vehicles driven mainly for commercial use is an important one, where lack of practical clarity is to be avoided.

A5.4 Again, we believe that an appropriate compromise may be achievable here.

**LARGER VEHICLES**

A6.1 The EP amendments would restore the current 7.5 tonne upper limit for medium sized trucks (category C1) which the Commission had proposed reducing to 6 tonnes. This would have had an adverse cost impact on the haulage industry with no corresponding road safety benefit: The proposed reversion to the status quo is therefore very welcome. This is in line with the Council’s General Approach text.

A6.2 The EP text would increase the maximum length of the minibus category from 7m to 8m, which is better suited to the actual vehicles on the market, and will help particularly the users of vehicles designed to ease access for disabled people. This is also in line with the Council’s General Approach text.

A6.3 The Commission’s proposed equivalence between the C1 and D1 categories has also been rejected in the EP’s proposals. This is helpful as it was likely to be detrimental to road safety. Minibuses demand of their drivers different skills from medium sized trucks and vans.

**DRIVING EXAMINER TRAINING**

A7. The EP has adopted a text very similar to that agreed by the Council. It focuses, as we would wish, on competencies which examiners should acquire and demonstrate, rather than the time which they should be obliged to serve in training.

**DRIVING LICENCE TOURISM**

A8.1 The EP amendments introduce language on driving licence tourism which seeks to provide an obligation on Member States to check the records of other Member States where necessary, but which aims at keeping the requirement proportionate to the problem by focussing it on the driver licensing transactions most at risk of abuse. In principle this is to be welcomed, because such an approach is more likely to be effective than is universal but superficial checking. It would also avoid committing Member States to large amounts of nugatory effort.

A8.2 However, to make the measures fully effective, there remains a need to refine the text proposed by the EP, and likewise the different formulation in the Council’s General Approach.

**MISCELLANEOUS**

A9. There are perhaps a dozen other and smaller instances in which both the EP and the Council’s General Approach texts would benefit from further careful consideration and refinement. For instance:

— Amendments are proposed by the EP to Annex III of the Directive which sets out the medical standards for driver licensing. We accept the need to review these standards, which are already under consideration by international working groups of medical experts under European Commission auspices. The findings of these experts should not be pre-empted.

— To avoid obscurity and to “future-proof” the Directive against changes in the type approval requirements which may have no relevance to driving licences, references to type approval legislation throughout the Directive should be replaced by explicit text.

— It is inappropriate in a Directive concerned with driving licences to make reference to the decision in principle to have a penalty points system for motoring offences, or to the criteria for design of such a system. These are matters for the criminal justice systems and road safety policies of Member States.

**CONCLUSION**

A10. An early agreement between the EP and the Council is possible. In seeking to facilitate such agreement, we shall aim for a better text. The resulting Directive is likely to be with us for many years to come, and it is important that the measures should be right both in principle and in detail, and that they should be enforceable in practice.

11 March 2005
Letter from the Chairman to David Jamieson MP

Thank you for your letter of 16 March which Sub-Committee B considered at its meeting on 4 April 2005. We were pleased to note that many of the amendments made by the European Parliament address concerns about this document expressed by the Government and shared by the Sub-Committee.

However, in my letter to you of 20 January 2005, I explained that we were content to lift the scrutiny reserve on the document as it then stood but that we would expect the Government to deposit any revised proposal in Parliament and to provide a further Explanatory Memorandum on it. This would have allowed the Sub-Committee to scrutinise the amended proposal properly. I would be grateful if you could explain why this procedure was not followed on this occasion.

6 April 2005

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

I am writing to update you on the progress of the proposal for a Directive on driving licences. I expect the dossier to come to the Transport Council on 27 June for political agreement on a Common Position, in which most of the UK concerns will have been allayed. Subject to any further informal negotiations between the Presidency and the EP, I therefore intend to support the Common Position. The changes which have been negotiated since the Commission’s original proposal represent an overwhelmingly good outcome for the negotiating line which we have taken.

You will remember that David Jamieson wrote to you in December 2004, providing a Supplementary Explanatory Memorandum and an updated Regulatory Impact Assessment. These set out the very substantial improvements which had been reached in the Council’s General Approach in October 2004. You will also recollect that the European Parliament (EP) had its First Reading of this dossier on 23 February and that David Jamieson wrote to you on 16 March summarising the EP’s views and UK Government reactions to them. Whilst the EP’s consideration was mainly helpful to the UK, there remained concerns about some of its proposed amendments.

The Presidency proposed a compromise text on 25 May which met most of the UK concerns. This letter reflects the compromise proposals made by the Presidency, which include:

**Cars and Light Vans with Trailers**

New drivers would be required to undergo training or take a test before being allowed to drive with a car/trailer combination where the trailer weighed more than 750kg. The maximum weight of such combinations was increased from 3,500kg to 4,250kg. Existing drivers will not be affected.

**Motorcycles, Including Staged Access**

The threshold between medium sized to the largest machines was raised from 25 kW (as now) to 35 kW. The staged access arrangements do not chime with current practice in the UK. Although the minimum age for access to the smallest motorcycles (less than 125cc) remains at 16 the UK applies a higher age of 17 for road safety reasons. Requiring a two year gap between categories as the directive currently proposes would have the effect of raising the minimum age of access to medium sized machines to 19 in the UK. However, we believe that there may be some flexibility in the final agreement with the EP, for example by requiring only a one year gap between the two lower categories of motorcycle, so that access to medium sized machines could be at 18 in the UK.

Whilst Member States are allowed to impose a separate and distinct practical test for riders of the small three- and four-wheelers now included in the moped category, no such specific provision is made in respect of the larger three-wheelers now included in the larger motorcycle categories. However, as we are not specifically prevented from doing this we will examine the possibility of requiring such procedures under the principles of subsidiarity.

ONE DRIVER/ONE LICENCE (COMBATING “DRIVING LICENCE TOURISM”)

The new Presidency compromise text is an improvement both on the Council’s General Approach and on the EP’s proposed Amendments, as it obliges Member States to make checks with other Member States only where there is reasonable doubt that an applicant already holds another driving licence. However, it is still not entirely clear about the circumstances in which international checks will be needed, and it requires Member States in making these checks to use a networking system yet to be implemented by the European Commission. We will continue to work with the Commission and other Member States to ensure that any system which is developed is realistic and practical.

The Presidency will now discuss their proposed compromise text informally with the European Parliament. Present indications remain that it may be possible to negotiate on the text so as to achieve an agreed Common Position, that is, one to be adopted without further amendment in the EP’s Second Reading. If the negotiated Common Position is successful, we could expect to adopt it sometime early in the UK Presidency. If not we would expect the Second Reading process to start in the second half of our term.

Your letter of 6 April pointed out that in your previous letter of 20 January, you said that you expected the Government to deposit any revised proposal in Parliament, and to provide a further Explanatory Memorandum on it. In the event, the Commission did not produce a revised proposal and the letter and attachment which Mr Jamieson sent to you on 16 March was based on the European Parliament’s First Reading of the Commission’s original proposal, and a comparison between the European Parliament’s amendments and the Council’s General Approach. I am sorry that this was not made clear in the letter of 16 March and regret any inconvenience to the Sub-Committee.

I will, of course, continue to keep the Committee informed of progress on this dossier.

13 June 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 13 June in reply to mine of 6 April which Sub-Committee B considered at its meeting on 27 June 2005.

We were interested to learn about the further amendments and improvements to this Directive. We also understand that you were not able to deposit a revised version of this Directive in Parliament and were grateful for your explanation of why this was not possible.

As you know, we have already lifted the scrutiny reserve from this document. Nonetheless we remain interested in further developments on this Directive. We would be particularly interested to learn what the next steps to combat driver licence tourism will be.

I am writing to inform you that this Council Decision was adopted at the Agriculture and Fisheries Council as a “False B” Point on 19–20 September 2005.

8 July 2005

END-OF-LIFE VEHICLES (10894/05)

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

I regret that the associated EM request was overlooked on its arrival on 8 July 2005. This was an exceptional oversight caused by the aftermath of the 7 July terrorist attacks on commuters in central London.

The official deadline for this EM was 22 July and so it is unlikely that the Committees would have been able to consider it before the Summer Recess, and officials were unaware of the September adoption date at this point. Your Committee may, however, have been able to consider the EM on 8 September.

The Council Decision is a routine technical adaptation modifying the heavy metal restrictions in the End-of-Life Vehicles Directive in the light of scientific and technical progress. EM10894/05, containing the full scrutiny history of the Directive, is attached.

30 September 2005
Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 30 September which Sub-Committee B considered at its meeting on 24 October. Members recognised that this was a routine and technical document and that the circumstances in which the Explanatory Memorandum request was overlooked were exceptional. We trust that you will do all that you can to ensure, circumstances allowing, that such errors do not occur in the future.

I would, however, like to take this opportunity to remind you that the Sub-Committee can, and does, continue its scrutiny function during the recess, often through the Chairman acting on behalf of the Sub-Committee. Members were disappointed that you seemed to assume that their scrutiny work did not continue during the recess.

26 October 2005

ENERGY COUNCIL, BRUSSELS, DECEMBER 2005

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

I am pleased to enclose a copy of my written Statement to Parliament, outlining the agenda items for the forthcoming Energy Council on 1 December in Brussels.

28 November 2005

Written Statement

Malcolm Wicks, Minister for Energy

29 NOVEMBER 2005

1 DECEMBER EU ENERGY COUNCIL, BRUSSELS

I will be chairing the Energy Council of the UK’s EU Presidency in Brussels in the morning of 1 December 2005. My hon Friend Alun Michael will occupy the UK seat.

The first item on the agenda will be Better Regulation: implementation and outcomes of the internal market for electricity and natural gas. This item will include presentations from Commissioner Piebalgs on the Commission’s report on progress in creating the internal gas and electricity market and from Commissioner Kroes on the initial findings of the Commission’s sectoral inquiry into the European gas and electricity markets. I will then chair a policy debate. In order to guide the discussion, we have prepared Presidency questions focusing on implementation, enforcement and transparency; the power of regulatory authorities; market integration; and the need for improved third party access to networks. We hope the debate will help influence the future direction of EU energy market liberalisation within a better regulation framework and will make an effective contribution to the emerging findings of the DG Comp inquiry.

The second item will be Climate Change and Sustainable Energy, on which we hope that Ministers will adopt draft Council Conclusions. I will chair a policy debate, which aims to give impetus to the EU’s contribution to international efforts to address climate change and to promote sustainable, cost-effective energy supplies. Again, the Presidency has prepared questions to guide the debate, which will focus on the interaction between the energy, climate change and competitiveness agendas; the role of sustainable energy sources and technologies in helping to achieve climate change objectives; and, following publication of the Commission’s Green paper on Energy Efficiency, Member State priorities for measures to be taken forward in the forthcoming EU Energy Efficiency Action Plan (EEAP) to be adopted in 2006.

These two items will take up the bulk of the Council’s time.

The third and last item consists of information from the Presidency and the Commission, and comments from Ministers, on the EU’s international energy relations—the EU-Russia Energy Dialogue, the South East Europe Energy Treaty, the EU-OPEC dialogue and the Energy Charter Treaty. Although discussion may be brief, we hope it will underline the importance of this subject for the EU’s security of energy supply. The UK can point to some successes in this area during our Presidency. We hosted an energy Permanent Partnership Council on 3 October, which gave impetus to the EU/Russia energy dialogue; progress on the South East Europe Energy Treaty was such that it was signed by Ministers in Athens on 25 October; an EU-OPEC ministerial meeting will be held on 2 December and negotiations on the Transit Protocol to the Energy Charter Treaty made satisfactory progress.
Treaty are continuing. All these initiatives help to promote producer/consumer understanding and enhance energy transit and market opening.

**Letter from Malcolm Wicks MP, Minister for Energy**

I am pleased to enclose a copy of my written Statement to Parliament outlining the discussion at the recent EU Energy Council in Brussels on 1 December.

5 December 2005

EU ENERGY COUNCIL, BRUSSELS, 1 DECEMBER 2005

Malcolm Wicks MP chaired, for the UK Presidency of the EU, the Energy Council in Brussels on 1 December. Rt Hon Alun Michael MP represented the UK.

The Council considered several matters of interest to the UK; chief among these were Better Regulation in the context of implementation of the EU’s liberalised Electricity and Natural Gas market, Climate Change and Sustainable Energy, and EU Relations with Third Countries. There was an important and substantive debate throughout around the energy agenda discussed recently at Hampton Court, and the balance between our three key objectives of competitive markets, security of supply and tackling climate change. Member States recognised the important potential contribution from a European energy policy and supported Commission plans for taking this forward, through a Green Paper early in 2006, with a view to reporting to the 2006 December European Council.

On market liberalisation, there was broad consensus that secure electricity and gas supplies at competitive prices, delivered on open, transparent and competitive markets are crucial to Europe’s competitiveness; and that full implementation of the second electricity and gas directives was crucial. The Commission report on the internal energy market and the competition inquiry into the energy sector highlighted areas for more work, including more effective action by the Commission and national regulators against anti-competitive behaviour. Member States saw no need for further legislation until there had been more investigation into key issues such as market concentration, long-term contracts and the impact of the Emissions Trading Scheme. They agreed that the main issues for developing an effective internal energy market—such as independent and effective regulation, the development of regional markets, effective unbundling, and transparency—could be done within the existing framework.

One Member State rejected the Commission analysis of market shortcomings, claiming that a period of regulatory stability was needed and that competition contributed to the EU’s energy problems as much as it helped to resolve them. Some Member States expressed concern at their dependence on particular energy suppliers, noting that similar liberalisation to the EU’s was needed in such countries.

Council conclusions were agreed on climate change and energy efficiency. Energy efficiency was recognised as making an important contribution to the three primary energy objectives. Member States saw the expected agreement on the Energy End-Use Efficiency and Energy Services Directive as welcome in this respect. Several Member States expressed concerns about the operation of the Emissions Trading Scheme and the need to revise the scheme before the next phase.

On EU-third country relations, the Presidency and Commission summarised progress on dialogues with key energy partners. On Russia, the successful Permanent Partnership Council held in October signalled real hope of progress. There would be a second ministerial meeting with OPEC on 2 December to develop the dialogue begun earlier in the year and promote mutual understanding. The Energy Treaty signed with south-east European countries would establish a neighbouring regional market on the same lines as the EU internal market. A key issue at the Energy Charter Treaty’s annual Conference on 9 December would be how to take forward the negotiations on the Transit Protocol.

5 December 2005

ENHANCING PORT SECURITY (6363/04, 10124/04)

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

Thank you for your letters of 8 June and 13 July 2004 to David Jamieson lifting the scrutiny reserve on the above proposed Directive and requesting to see a partial Regulatory Impact Assessment once the cost implications of implementing the EC Regulation, which the Directive complements, become clearer.

As you may recall, the Council of Ministers reached a general approach on the Directive at the Transport Council on 11 June 2004. Since then, the Luxembourg Presidency has been working hard to make a First Reading agreement possible and has produced a compromise package. The compromise package is agreeable to the UK as our concerns have been satisfactorily dealt with. The key elements of the package are attached as an annex to this letter. The compromise package was agreed without further amendment by the European Parliament at First Reading on 10 May 2005 is expected to be adopted as an “A” point in a Council during the UK Presidency.

I attach a partial Regulatory Impact Assessment (not printed) which has been produced in light of the cost estimates currently available to us. As you know, the Directive seeks primarily to co-ordinate the security measures that were introduced by the EC Regulation and is not necessarily about putting additional security measures in place. As with the implementation of the EC Regulation, we would be seeking to ensure that security measures are proportionate, sustainable and effective. To enable us to meet this objective, we have set up a Working Party to advise the Government on the practical application and cost implications of implementing the Directive. Working Party members include representatives from major ports and Trade Associations. Officials will also be carrying out trial assessments in a small sample of ports of varying sizes over the next few months to ascertain whether additional security measures would be required, and therefore the costs of complying with the Directive.

14 June 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 14 June 2005 which Sub-Committee B considered at its meeting on 4 July 2005. The Sub-Committee found the partial Regulatory Impact Assessment helpful. We noted with approval the steps that the Government is taking to ensure that security measures are proportionate, sustainable and effective.

8 July 2005

eSAFETY COMMUNICATION (12383/05)

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

Thank you for your Explanatory Memorandum on this document which Sub-Committee B considered at its meeting on 24 October 2005. Members noted that the business case for eCall is currently insufficient for a Regulatory Impact Assessment to be produced. We are therefore holding this document under scrutiny until we have received and scrutinised the Regulatory Impact Assessment.

26 October 2005

EU ENERGY COUNCIL, JUNE 2005

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

I represented the UK at the EU Energy Council in Luxembourg on 28 June. The Council considered several matters of interest to the United Kingdom. Chief among these were the Energy End-Use Efficiency and Energy Services Directive, the Commission’s draft Green Paper on Energy Efficiency and the EU’s international energy relations.

Political agreement was reached on a Council Decision laying down guidelines for Trans-European Networks—Energy, subject to one Member State’s parliamentary scrutiny reserve; this will delay adoption of the common position for transmission to the European Parliament (EP). The Commission made a declaration reinforcing its position on projects of European interest and the role of European coordinators that had prevented a first reading agreement with the EP. The Presidency responded that the Council was trying to reduce excessive bureaucracy.

There was unanimous support for the proposed text for political agreement on the Energy End-Use Efficiency and Energy Services Directive. The Commission maintained its position, together with the EP, in favour of mandatory targets and hoped a second reading deal could be reached during the UK Presidency. Only one Member State said it was prepared to consider mandatory targets.
The Commission gave a presentation of its yet to be translated new Green Paper on Energy Efficiency. All Member States welcomed the Green Paper. For the UK, I welcomed its principles and ambition, on which we would take the debate forward during our Presidency, and emphasised the importance of engaging individual citizens.

In discussion of International relations on energy, the Presidency reported on the first EUOPEC dialogue meeting on 9 June, noting common interest identified on predictability of supply and demand, transparent markets, and investment in technologies relevant to the climate change agenda. One Member State expressed concern over lack of transparency and over the need to address issues such as relations with non-OPEC producers and the IEA. The Presidency and Commission emphasised that it would be for the Council to decide on future process. Draft Council conclusions of a procedural nature were agreed.

On EU-Russia, the Commission reported on progress at the May Summit and the thematic groups associated with the energy dialogue. One Member State welcomed the Commission’s more transparent approach and that it would be a UK Presidency priority. Procedural Council conclusions were agreed with an amendment to reflect the importance of the Presidency’s role alongside the Commission in keeping Member States involved. I informed Council of my aim to hold an EU-Russia Permanent Partnership Council on Energy during the UK Presidency.

Poland presented a paper on the Baltic Sea Regional Cooperation.

On the Energy Treaty for South East Europe, the Commission was confident that participant Member States’ concerns over the Treaty’s consistency with the acquis and the protection of their position within the Treaty could be resolved in EU internal procedures. One Member State emphasised that its reservation was still in place, but hoped that any issues could be resolved. The draft Council decisions on signature and conclusion would be available soon and signature should be possible before the end of the year. The Commission noted that the model might be replicated for other regional cooperation.

4 July 2005

EU MARITIME EMPLOYMENT INITIATIVE

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

When Alistair Darling wrote to you on 18 July about our priorities and expectations for the UK Presidency he mentioned the proposed maritime employment initiative, and his intention that there should be a debate, with Conclusions, at the December Transport Council. I am writing to give your Committee sight of the draft Conclusions that the UK Presidency is hoping to put to the Council on 5 December. These are non-legislative Conclusions, which would outline an action plan that Member States and social partners should follow in order to boost the numbers of Europeans employed in the maritime sector.

The proposed Conclusions focus on:

— Recognising the importance of the European merchant fleet to the economy of Europe and the need to maintain a quality shipping industry staffed by competent and able officers and ratings.

— Recognising currently declining numbers of EU seafarers, and the consequent effects on shore-side maritime industries.

— Action on improvement of working and living conditions on-board and on improving the overall image and attractiveness of the industry.

— Identifying and rectifying skills-gaps preventing movement from on-board to on-shore employment.

— Improving training at, and cooperation between, maritime colleges.

— Need for professional development programmes for active seafarers at maritime colleges, including in shore-side skills.

— Investigating a possible positive role for maritime clusters in planning and delivering future skills supply.

This initiative follows on from the work of the 2003 Greek Presidency. You may recall the Secretary of State’s 29 May 2003 letter, notifying you of draft Conclusions for Council approval on improving the image of the community shipping and attracting young people to seafaring professions. The June 2003 Transport Council Conclusions provided for subsequent monitoring of progress, and the UK committed itself to revisiting the issue during our 2005 Presidency.

In preparing the draft Conclusions, the UK undertook an energetic consultation process. We held workshops for experts from Member States in London on 10 March and 8 July and in Brussels on 12 September 2005, to share good industry practice and identify promising actions which could be recommended for attention.
across the EU as a whole. Findings were presented, as part of the Presidency programme, to Member States, the Commission and leading industry representatives at the Seatrade International Maritime Convention in London on 5 October.

A key message throughout has been that shore-side industries need to be closely involved in sector-wide actions on recruitment and training. Maritime clusters (geographically concentrated firms that are interrelated, amongst others because of buyer-supplier and knowledge exchange relationships), as practiced for example in the Netherlands, should be encouraged as a way to formalise cooperation between different branches of the maritime community.

We furthermore hope that the forthcoming Council Conclusions could feed into the forthcoming Commission Green Paper on a future European Union Maritime Policy, which is due in the first half of 2006.

I attach a copy (not printed) of the current draft of the Council Conclusions, which are addressed to Member States, the Commission, social partners and to the owners and managers of ships.

27 October 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 27 October 2005 providing us with sight of the draft Conclusions that the United Kingdom Presidency is hoping to put to the Council on 5 December.

We note that these are non-legislative Conclusions and we were pleased to see the progress that you have made in developing an action plan to boost the number of Europeans employed in the maritime sector.

15 November 2005

EU SPECTRUM POLICY PRIORITIES FOR THE DIGITAL SWITCHOVER (12817/05)

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 7 November 2005.

You state that this document does not raise “any new issues of subsidiarity” which seems to imply that there are existing issues of subsidiarity. We would be most grateful if you could explain what these are.

In the meantime we are maintaining scrutiny on this document.

9 November 2005

Letter from Rt Hon Alistair Darling MP, Secretary of State, Department of Transport to the Chairman

I am writing to update you on progress in EU-US aviation relations.

Considerable progress was achieved at the November talks in Washington. Subject to consideration of US proposals on airline control (on which see below), provisional agreement was reached on a wide range of hitherto difficult issues including application of competition law, state aid, security, safety, the environment, wet-leasing and handling of code-share applications. The negotiations, in which the Commission performed well, were noticeable for the extent to which the US was finally prepared to depart from its traditional “Open Skies” text and to engage in serious discussions of what a modern air services agreement should contain.

I consider there is now a prospect that an acceptable first stage deal can be struck during 2006. However, a key component of such a deal is currently missing—access for European air carriers to the US domestic marketplace. As we have accepted that cabotage rights for EU carriers will not be possible in a stage one deal, the EU has been pressing the US hard on reform of its rules on airline ownership and control.

The US side has concluded that there is no early prospect of persuading Congress to change the law on ownership and control, but the Administration has recently initiated a rule-making process to change the criteria it uses to judge where control of an airline resides. On the face of it, this proposal appears to be a genuine attempt to make progress within existing legal constraints, but Member States and the Commission will need to make a thorough assessment of the commercial value of the proposal to EU airlines and, importantly, its robustness in the face of possible legal challenge.
We are currently scrutinising the proposed new Rule with the assistance of US lawyers, and the Commission and a number of industry interests are doing likewise. However we will not be able to conclude our evaluation until the US publishes its final Rule, probably around March. Sometime after that date the Transport Council will make a final assessment of whether a Stage One deal should be agreed.

At the Council on 5 December we will receive a report from the Commissioner on progress at the talks, and by means of Presidency Conclusions we will send a signal to the US that a deal is possible provided we are convinced of the practical value and the legal certainty of the final Rule.

I will ensure that you are kept up to date with developments.

30 November 2005

Letter from the Chairman to Rt Hon Alistair Darling MP

Thank you for your letter of 30 November 2005 on EU-US Aviation Relations which Sub-Committee B considered at its meeting on 12 December 2005.

As you will be aware, the Sub-Committee is particularly interested in this area and carried out a substantial inquiry on it in 2003 which led to the report, “Open Skies” or Open Markets? The Effect of the European Court of Justice (ECJ) Judgments on Aviation Relations Between the European Union (EU) and the United States of America (USA).

We view with great concern the European Union’s failure to secure a deal on cabotage rights for European Union carriers in the United States at stage one. Now that the European Union has lost this strategic negotiation position, how do you believe it will be possible for the European Union to achieve cabotage rights for its carriers at a later stage?

Lastly, what implications would the present agreement have for access to Heathrow airport? Would it render the bilateral Bermuda 2 accord between the United States of America and the United Kingdom defunct?

Members noted that the Commission would give a report on the recent talks at the Transport Council which took place on 5 December 2005. The Sub-Committee would welcome as full a report as possible from you on this particular item.

14 December 2005

EURATOM SAFETY AND SECURITY—ACTIVITIES 2003 (5377/05)

Letter from the Chairman to Nigel Griffiths MP, Parliamentary Under-Secretary of State, Department of Trade and Industry

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 21 March 2005 and decided to keep it under scrutiny.

We share your concerns about the so-called “nuclear package” because of the likelihood that that this would blur lines of responsibility and leave national bodies uncertain as to whether regulatory decisions were for them or should be referred to a body of Commission officials. What steps are you taking to resolve this disagreement with the Commission?

23 March 2005

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

On 23 March you wrote to Nigel Griffiths asking what steps the Government was taking to resolve the disagreement with the Commission on the “nuclear package”. The letter has been passed to me for reply as Minister for Energy.

As outlined in the Explanatory Memorandum, whilst the Government does not support the nuclear package, it does support the Action Plan For Implementing The Council Conclusions. The Action Plan aims to link Community activity to the global regime and to considerable efforts being made by Europe’s national nuclear safety regulators to harmonise safety requirements by first developing a model of best practice in a number of key nuclear safety areas, testing this model against EU current practices and agreeing to the adoption of the best practice on a voluntary basis, but to a strict timetable. Work on the Action Plan has already begun under the Luxembourg Presidency and will continue under ours. While the Commission has not withdrawn its proposals, it is fully engaged in this work. A better judgement on the future of the package can be taken once that work is complete.
Joan MacNaughton, Director General of the DTI’s Energy Group, met Commissioner Piebalgs on 9 February this year. Mindful of the need for clarity on this subject, she took that opportunity to emphasise that the Government has no intention of ending its opposition to the nuclear package and urged Mr Piebalgs to review the Commission’s position. Patricia Hewitt, the then Secretary of State for Trade and Industry, subsequently met with Mr Piebalgs on 3 March. The subject was not raised at that meeting. Given the high priority the Commissioner attaches to pushing forward an ambitious energy efficiency agenda which can contribute to meeting climate change objectives of Member States, our understanding is that he will not turn his attention to question of the nuclear package until later next year. This would fit better with the timetable for the Action Plan.

Finally, the UK will continue to work with the other Member States that oppose it in ensuring an appropriate outcome on the nuclear package.

16 May 2005

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 16 May which Sub-Committee B considered at its meeting on 4 July 2005.

The Sub-Committee has maintained a keen interest in this topic over a long period of time. Members would find it helpful if you were to remind them of precisely what the nuclear package is and why there has been such opposition to it.

In the meantime, the scrutiny reserve remains in place.

21 July 2005

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 21 July in connection with 5377/05 COM (05)—Explanatory Memorandum on a European Community document (Communication from the Commission to the European Parliament and the Council on European Safety and Security—Activities 2003) asking me to remind Select Committee members about the nuclear package and the background to the opposition to it. I also set out briefly where things currently stand and how it is intended that matters will be dealt with under the UK’s Presidency.

The Nuclear Package refers to proposals from the Commission for a Directive on setting out basic obligations and general principles on nuclear installation safety and for a Directive on the safe management of radioactive waste and spent fuel.

Arrangements for regulating nuclear safety on a global basis reflect the over-riding principle that responsibility for the safety of nuclear installations rests with individual nation states. This principle is enshrined in the international Convention on Nuclear Safety (CNS) to which all EU Member States and the Euratom Community belong. It recognises that the setting of nuclear safety standards involves a trade-off between cost, risk and benefit—a balance that can only be struck at the national level.

Despite the Commission’s claim that it is not their intention to assume the responsibilities currently discharged by national safety authorities, the adoption of such legal requirements at the Community level would inevitably lead to a situation under which the decisions of national regulators could be called into question by the Commission and ultimately the European Court of Justice. This would have the affect of blurring lines of responsibility, leaving national bodies uncertain as to whether regulatory decisions were for them or should be referred to a body of Commission officials.

The UK has opposed the Nuclear Package on the following grounds:

— the development of EU standards alongside a process of national reporting and review would be a wasteful duplication of the existing global mechanism; it would drain resources from our national regulator (HSE/NII), making it harder for them to enforce nuclear safety nationally and to support the international regime on which we would still have to rely for countries outside the EU (eg Russia and Ukraine);

— we see no added value in a legally binding instrument; the IAEA’s member countries have taken the view that it is important not to have international legally binding standards so that regulators may be free to ensure that responsibility for safety remains with the operators within their jurisdiction;

— peer review can only be effective if the participants can come together in a spirit of trust and openness; this would not be possible under the Commission’s proposal as the national regulators would, in effect, become agents for the Commission in a legal process that could lead to court action against a Member State.
Last May, COREPER considered the Commission’s initial draft Directives as amended following discussion in the Council’s Atomic Questions Working Group (AQG). A formal vote was not taken as it became clear from the discussion that a qualified majority could not be secured for either of these measures. Instead, AQG was asked to draw up Conclusions as a basis for developing an agreed Council approach. These Council Conclusions, adopted in June, made it clear that any Euratom instruments in these two areas should be developed following a wide-ranging process of consultation involving stakeholders and should take account of future developments in the international arena running through at least into 2006.

Notwithstanding this, in September 2004 the Commission adopted revised draft Directives that purported to take account of the views of both the Council and the European Parliament. The Dutch Presidency arranged for these revised drafts to be discussed in AQG and each of the countries that had opposed the original measures confirmed that their position had not changed. Instead, it was agreed that an Action Plan should be drawn up to implement the June Council Conclusions and, on 3 December 2004, this was adopted by AQG. The Council Conclusions set out a programme of activities for the Member States, acting individually and collectively, linked to the standards-making work of the IAEA, the peer review processes under the relevant international Conventions and the efforts to harmonise regulatory approaches currently being undertaken by Europe’s nuclear safety authorities. During the UK’s Presidency, it will be our intention to continue the work envisaged under the Action Plan.

26 August 2005

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 26 August in reply to mine of 21 July which Sub-Committee B considered at its meeting on 7 November 2005.

The Committee shares the Government’s concerns over whether the European Commission might seek to take over functions currently dealt with at Member State level.

Members were grateful for your explanation of precisely what the “nuclear package” is. We noted that work on the Action Plan will continue during the UK’s Presidency of the European Union and we look forward to receiving an update on this from you in due course.

In the meantime we are maintaining the scrutiny reserve.

9 November 2005

EURATOM: SEVENTH FRAMEWORK PROGRAMME 2007–11
FOR NUCLEAR RESEARCH AND TRAINING ACTIVITIES (12732/05, 12734/05)

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

Thank you for your Explanatory Memorandum of 13 October which Sub-Committee B (Internal Market) considered at its meeting on 7 November 2005. The Committee decided to retain the scrutiny reserve on this document.

We note you remain concerned that the proposed nuclear security work in this programme is not compatible with EURATOM Treaty safeguards. Now that these detailed proposals for the 2007–11 EURATOM programme for nuclear research and training activities have been published, what issues is the Government particularly concerned about?

Does the Government believe that €3.1 billion is a realistic proposed financial allocation for the EURATOM nuclear research and training activities? We are concerned that there appear to be few hard facts on how beneficial R&D spending of this kind at Community level is. Are you assured that the Commission can add sufficient value in these areas? Has analytical work been done which proves that such spending does add value to national R&D policies? If such evaluation exists, we would be interested to consider it.

9 November 2005
Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 9 November, seeking clarification on some areas covered in the Explanatory Memorandum I submitted on 13 October covering the two proposals named above.

As the Explanatory Memorandum states we are generally content with the proposals. However, we are concerned that the Commission should not expand its role under the Euratom Treaty from one of traditional safeguards to one of “nuclear security” through its continuing use of the latter term. The Commission has no competency in the protection of nuclear facilities and nuclear material. The protection of facilities and material remains a Member State’s responsibility, and we will continue to scrutinise proposals to ensure that there can be no misinterpretation or dilution of a Member State’s responsibility for nuclear security.

The budget for Euratom will need to be considered in the context of the overall budget for the next Financial Perspective and for R&D as a whole. The Government recognises an a priori case for an increased focus on R&D within a budget of no more than 1 per cent GNI and consistent with the principle of EU value added, subsidiarity, sound financial management and the European Commission’s ability to manage and absorb the funds.

The largest proposed allocation of funding under FP7 Euratom is the fusion budget of almost €2.2 billion consisting of two components: European International Thermonuclear Experimental Reactor (ITER) construction costs (to which EU is committed); and funding for a European fusion science and technology programme in support of ITER. Both are thought necessary to ensure the rapid and successful exploitation of ITER, and that Europe is positioned to lead work at ITER and the longer-term development of fusion power. Also, without an adequate accompanying programme of research, the continued operation of the Joint European Torus (JET) programme at Culham, Oxfordshire would be uncertain.

In your letter you asked if there were any concrete facts available to support the pooling of research at a European level. In 2004 the Office of Science and Technology commissioned a study on the impact of the Framework Programmes on UK research and development as part of last year’s consultation process designed to inform the UK’s approach to the negotiation of the Seventh Framework Programme. This can be accessed at http://www.ost.gov.uk/ostinternational/fp7/pdfs/Impact of EU FP.pdf and the annexes to this report can be found using the following link http://www.technopolis.co.uk/fpuki/

The report found that Framework produces added value for UK research and policy communities by augmenting national funds and tackling common questions of a European nature. In fact all categories of UK participant endorsed the need for a European fund to strengthen the science and technology base of European industry. In addition the Framework programme funds activity not supported through national schemes eg collaborative research performed by intermediate technology organisations on behalf of innovative SMEs and funding for companies performing industrial R&D.

28 November 2005

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your Explanatory Memorandum (EM) dated 15 November 2005 providing the Committee with information about the UK Presidency compromise text on the Seventh Framework Programme for Research, Technological Development and Training activities; and the Programme for EURATOM nuclear research and training activities. Sub-Committee B considered this document at its meeting on 21 November 2005.

The Sub-Committee decided to lift the scrutiny reserve.

However, we will wish to return the Commission’s Research plans by considering in more depth the detailed programme proposals for FP7 covered by your EM 12736/05. We continue to hope that you will be able to speak with us early in the New Year about the detailed proposals covered in your Explanatory Memoranda 8087/05 and 12732/05.

23 November 2005

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter dated 23 November.

I would be pleased to accept your Committee’s invitation to appear before you in the New Year to discuss the detailed proposals covered in the Explanatory Memorandum 8087/05 and 12732/05. I have asked my diary secretary, David Simmonds, to liaise with the clerk to your Committee to arrange a suitable date.

9 December 2005
EUROPEAN ELECTRONIC COMMUNICATIONS REGULATIONS AND MARKETS 2004
(15714/04, 15726/04)

Letter from the Chairman to Mike O’Brien MP,
Minister for Energy, e-Commerce and Postal Services Department

Thank you for your letter of 25 February 2005 which Sub-Committee B considered at its meeting on 7 March. You answered the Sub-Committee’s questions in a most clear and helpful manner for which we are grateful.

We were pleased to note that most of the charges associated with LLU had fallen so that the prices in the UK are, in the main, below the EU average. However, we remain concerned that the prices charged in the UK for rental for full LLU are still significantly higher than the EU average. Are you taking steps to lower these prices?

We look forward to receiving your response an in the meantime the scrutiny reserve remains in place.

I am copying this letter to Jimmy Hood MP, Chairman of the Commons European Scrutiny Committee, Dorian Gerhold, Clerk to the Commons Committee, Michael Carpenter, Legal Adviser to the Commons Committee, Les Saunders (Cabinet Office) and to Alison Bailey, Departmental Scrutiny Co-ordinator.

11 March 2005

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

I am replying to your letter of 11 March to my predecessor, Mike O’Brien MP, on the issue of prices in the UK for Local Loop Unbundling. In your letter you thanked DTI for our previous explanations on the pricing issue but asked what steps were being taken to lower prices further in relation to how UK prices fared with the EU average. I am sorry that this is such a late reply and I have asked my officials to do all they can to avoid such delays in the future.

I am pleased that we have some good news about the progress made. In just the last six months the UK market has witnessed some dramatic changes in terms of Broadband provision. These including the trend towards ISPs upgrading their subscriber’s access speeds (typically from 512kbits to 1Mbits) at no additional cost, the availability of fully unbundled lines at 8Mbits in many parts of the country and, most significantly, BT’s announcement on 23 June that their prices for a fully unbundled line (where a single company takes responsibility for all services) would decrease from £105 to £80. A graphical indication of the progress being made is shown in the attached slide from Ofcom.

What we have seen is an increase in Local Loop connections to 71,437 in June 2005, up from 13,850 a year ago. This also means that the UK has one of the most competitive Broadband markets in the European Union with some of the lowest prices for fully unbundled lines. We believe that the latter will figure strongly in the Commission’s next Communication (the so-called 11th Report) on the Electronic Communications Markets due out later in the year.

I hope the above helps to demonstrate the continued involvement of Ofcom in this important part of the telecommunications market. Ofcom clearly understands the important role that Local Loop Unbundling plays in furthering competition in the market, and enhancing the ability of companies and citizens to take advantage of the new services and technologies on offer. This also being an important theme for us during the UK Presidency of the European Council.

20 July 2005

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter of 20 July in response to mine of 11 March which Sub-Committee B considered at its meeting on 17 July 2005.

Members noted recent developments in the UK broadband market in terms of price, provision and uptake but believe there is still room for considerable improvement in LLU and in the provision, price and quality of broadband in the United Kingdom. Nevertheless, we are content to lift the scrutiny reserve from both of these proposals.

19 October 2005

EUROPEAN SPACE POLICY (9032/05)

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

Sub-Committee B considered this document at its meeting on 20 June 2005 and decided to maintain the scrutiny reserve.

We would be very interested to receive a report on the Space Council of 7 June 2005 at which Member States were asked to respond to a draft orientations paper. We note your concerns about the possible “blurring” between the definition of security and defence and the common applicability of space technology. We would find it most helpful if you were to elucidate further these concerns and explain what steps you are taking to prevent that. We would also welcome confirmation of previous assurances given to the Sub-Committee (in connection with Galileo) that you will do your utmost to prevent any creep towards the use of space technologies for specific military operations.

22 June 2005

Letter from Lord Sainsbury of Turville to the Chairman

I am writing to inform you of the outcome of Space Council, the second joint and concomitant meeting of EU Competitiveness Council and the European Space Agency. The Council adopted Draft Orientations on the Commission Communication 9032/05 on 7 June 2005.

For your information I attach the final version of these Draft Orientations, which you may wish to form part of your debate on the Commission Communication. In your letter of 22 June you asked some specific questions on EM 9032/05. In this letter I am responding.

As Minister for Science and Innovation I am responsible for civil space activities only. Therefore I must reassure you regarding your concerns about the possible “blurring” between the definition of security and defence. There are certain areas that can fall under the definition of “security”, where the European Commission is active and has competence, for example environmental security and civil security. The
Commission’s proposals “Global Monitoring for Environment and Security” and the “European Security Research Programme” are examples of this kind of work. However, it is clear that where the term security is used to denote defence (military activities), the Commission has no competence—decision making remains firmly with the Member States. The Government continues to monitor the Commission’s activities carefully and raise its concerns at every opportunity. On 22 April, Commissioner Verheugen replied to a letter from Charles Clarke on the European Security Research Programme, confirming that it would have a “clear and exclusive focus on civil research”.

Regarding the “common applicability of space technologies”, there are of course “dual use” technologies that potentially have an application in both the civilian and military spheres. Both civilians and the military can already use existing satellite technology, such as GPS. The Government will maintain, however, that the decision to design or to use, in the EU, a space capability with a specific military intent must be taken under pillar II, where decision making is by unanimity, and Member States retain a veto. Regarding Galileo, the Committee will be aware, from correspondence from my colleague David Jamieson on 19 January 2005, that the Transport Council Conclusions of 10 December 2004 confirmed Galileo as a civil system under civil control, and the Conclusions also contained a clause whereby any decision with defence implications would have to be taken under pillar II, where decision making is by unanimity. This type of governance mechanism might be used more widely, and we are suggesting to the Commission that it be used, for example, to regulate projects proposed under the European Security Research Programme.

With regard to “the use of space technologies for specific military operations”, decisions regarding EU military operations are also taken under pillar II, so Member States again retain a veto. Under the European Security and Defence Policy (ESDP), Member States who contribute to EU operations provide their own enabling capabilities, and if necessary are able to use their own existing national or commercially-available space technologies in support of these operations. There are currently no plans for the EU to develop its own space technologies in support of specific military operations.

I would also like to take this opportunity to issue a corrigendum to EM 9032/05. The word “, India” in paragraph 3 should be deleted. Please accept my apologies.

5 July 2005

Annex 1

DRAFT ORIENTATIONS FROM THE SECOND SPACE COUNCIL 7 JUNE 2005

1. The first joint and concomitant meeting of the Council of the European Union and of the Council of the European Space Agency at ministerial level (“Space Council”) identified the need to prepare a European Space Programme for end 2005. The Joint Secretariat, in consultation with the High Level Space Policy Group, prepared a document on the Preliminary Elements of a European Space Policy, which addresses the orientations of the first “Space Council”. The second meeting of the “Space Council” takes note of the approach outlined in this document and reaffirms its objective to endorse at its next meeting, planned for end-2005, a European Space Policy and Programme covering the period to 2013. This will be drawn up by the Joint Secretariat in close association with the Member States, in particular in the High-level Space Policy Group, and in consultation with private and public stakeholders.

2. In particular, the “Space Council” confirms that the European Space Policy should contain the following main elements:

   (a) the European Space Strategy outlining the objectives;
   
   (b) the European Space Programme, listing the priority activities and projects to achieve the strategy and reflecting the costs and funding sources of these;
   
   (c) a commitment by the main contributors to their respective roles and responsibilities; and
   
   (d) key principles of implementation.

The European Space Programme will be the common, inclusive and flexible programmatic basis for the activities of ESA, EU and their respective Member States. Existing capacities will have to be used to their maximum extent and complementarity ensured.

3. The “Space Council” recommends that the fully elaborated draft of a European Space Policy is developed on the basis of these orientations, in accordance with the Framework Agreement between the European Community and ESA and the ESA Convention. It notes in particular:
ON STRATEGY

Space is strategic for Europe, a tool to serve the policies of the Union, European governments and European citizens. Many European and national policies already benefit from operational space systems, integrated with related terrestrial systems. Space-based systems shall increasingly be developed on the basis of user requirements, taking into account the benefits of using broadly supported European solutions contributing to the strategic importance of space for Europe. The European Space Policy will seek to ensure continuity of these benefits and that they are shared by all.

ROLES AND RESPONSIBILITIES

EU contributions to ESA-led activities and vice versa will be further elaborated before the third “Space Council”.

The EU will use its full potential to lead in identifying and bringing together user needs and to aggregate the political will in support of these and of wider policy objectives. Subject to the requirements of strict budgetary discipline and to objective evaluation, it will be responsible for ensuring the availability and continuity of operational services supporting its policies, and will contribute to the development, deployment and operation of corresponding dedicated European space infrastructure, in particular for Galileo and GMES. It will also pursue an optimum regulatory environment to facilitate innovation, access to international markets and the effective coordination with ESA of the European position in international fora.

ESA and its Member and Co-operating States will develop space technologies and systems, supporting innovation and global competitiveness and preparing for the future. Their activities will focus on exploration of space and on the basic tools on which exploitation and exploration of space depend: access to space, scientific knowledge and space technologies. They will pursue excellence in space-based scientific research. On a voluntary basis, they will support the technological preparation, including validation, of space systems responding to user needs, including those relevant to EU policies.

Most Member States of the EU and of ESA are already investing in operational infrastructures through their membership of EUMETSAT and will consider the experience of similar organisations and Eumetsat’s role in relation to wider operational services.

ON PRIORITIES WITHIN THE EUROPEAN SPACE PROGRAMME

The EU will focus on space-based applications to contribute to the achievement of its policies, particularly Galileo and Global Monitoring for Environment and Security (GMES).

ESA activities will focus on securing a guaranteed and competitive access to space through a family of launchers, pursuing excellence in science of space, from space and in space, exploiting its know-how in exploration of the solar system, and developing technologies to maintain a globally competitive European space industry equipped to meet Europe’s future space system needs, including in all elements of the value chain.

Individual EU or ESA Member States will be responsible for identifying their national contribution to the European Space Programme and provide this input to the Joint Secretariat for consideration of its inclusion in the overall European Space Programme to be presented to the next “Space Council”.

ON KEY PRINCIPLES OF IMPLEMENTATION

The implementation of the European Space Policy requires an industry policy tailored to the specificities of a sector subject globally to government influence. This policy should provide all stakeholders in Europe with the motivation:

(i) to maintain and reinforce their scientific and technological expertise and capacities; and
(ii) to encourage Member States and stakeholders to make the necessary investment to maintain know-how, independence in selected critical technologies and a globally competitive space industry. This is central to the achievement of Europe’s economic and political objectives, thus contributing to Growth and Employment.

Key instruments for delivery will be, for the EU, in particular the 7th Framework Programme of Research, Technology and Development, the trans-European network programme and the Competitiveness and Innovation Programme; and for ESA, a combination of mandatory and optional programmes. Programme
costs will be estimated in the European Space Programme, which should highlight that user policies will in the future need to be more adequately reflected in the funding scheme.

The management of EU space-related programmes will be based on efficiency, in line with the EC-ESA Framework Agreement and drawing on the management and technical expertise of ESA, in cooperation with the relevant agencies and entities in Europe, and taking into account factors such as the integration of space with terrestrial systems and the diversity of sources of funding. The management of ESA programmes will be based on the rules laid down by the ESA Convention.

4. The “Space Council” notes that decisions on future programmes to be taken at the coming ESA Ministerial Council and the decision on the EU Financial Perspectives will determine the ability of the Programme to match the ambitions of the European Space Policy.

5. The “Space Council” invites the Joint Secretariat in close consultation with the High-level Space Policy Group to identify possible cost-efficient scenarios for optimising the organisation of space activities in Europe in the future and to initiate a wide-ranging appraisal of these in comparison to present processes, taking all relevant factors into account. It invites the Joint Secretariat to report back on the outcomes of this appraisal.

Letter from Lord Sainsbury of Turville to the Chairman

In response to Commons European Scrutiny Committee’s Report of 4 July on Commission Communication 9032 + ADD1 “European Space Policy—Preliminary Elements” and its request for further information. It raised four points in its conclusions, some of which I have already addressed in my letter to the Committees of the same date, the remainder of which I am responding to in this letter.

Firstly, regarding the outcome of Space Council: the second joint and concomitant meeting of EU Competitiveness Council and the European Space Agency adopted Orientations on the Commission Communication 9032/05 + ADD1 on 7 June 2005. My previous letter included a copy of the Draft Orientations—these were agreed without change. For your information I attach the final version of these Orientations, which you will see do not differ from the Draft Orientations. Space Council orientations are not unlike council conclusions and as you know these are not routinely deposited for scrutiny. But since your Committee have asked that in future we make these documents available, I will make every attempt to comply with that request. However, the timescale of events will not always make it possible for orientations to be deposited for scrutiny before council. The draft orientations received on 23 May, two weeks before 7 June Space Council, were typical in their timing and this demonstrates the difficulties such a request may create. It is also worth noting that there is currently no Treaty basis for the orientations and they are seen as non-binding instruments.

As you note, the Government is working to ensure that the distinction between security and defence is observed, as explained in my previous letter. The Government continues to monitor the Commission’s activities carefully, and will raise our concerns at every opportunity, including during discussion of future draft orientations.

On launcher capabilities, I confirm that the UK will continue to argue that these should be funded through ESA, as stated in the Orientations, and that no EU funding should be directed into ESA’s launcher programmes.

18 July 2005

Orientations From The Second Space Council 7 June 2005

1. The first joint and concomitant meeting of the Council of the European Union and of the Council of the European Space Agency at ministerial level (“Space Council”) identified the need to prepare a European Space Programme for end 2005. The Joint Secretariat, in consultation with the High Level Space Policy Group, prepared a document on the Preliminary Elements of a European Space Policy, which addresses the orientations of the first “Space Council”. The second meeting of the “Space Council” takes note of the approach outlined in this document and reaffirms its objective to endorse at its next meeting, planned for end-2005, a European Space Policy and Programme covering the period to 2013. This will be drawn up by the Joint Secretariat in close association with the Member States, in particular in the High-level Space Policy Group, and in consultation with private and public stakeholders.

2. In particular, the “Space Council” confirms that the European Space Policy should contain the following main elements:

(a) the European Space Strategy outlining the objectives;
(b) the European Space Programme, listing the priority activities and projects to achieve the strategy and reflecting the costs and funding sources of these;

(c) a commitment by the main contributors to their respective roles and responsibilities; and

(d) key principles of implementation.

The European Space Programme will be the common, inclusive and flexible programmatic basis for the activities of ESA, EU and their respective Member States. Existing capacities will have to be used to their maximum extent and complementarity ensured.

3. The “Space Council” recommends that the fully elaborated draft of a European Space Policy is developed on the basis of these orientations, in accordance with the Framework Agreement between the European Community and ESA and the ESA Convention. It notes in particular:

On strategy

Space is strategic for Europe, a tool to serve the policies of the Union, European governments and European citizens. Many European and national policies already benefit from operational space systems, integrated with related terrestrial systems. Space-based systems shall increasingly be developed on the basis of user requirements, taking into account the benefits of using broadly supported European solutions contributing to the strategic importance of space for Europe. The European Space Policy will seek to ensure continuity of these benefits and that they are shared by all.

Roles and responsibilities

The EU will use its full potential to lead in identifying and bringing together user needs and to aggregate the political will in support of these and of wider policy objectives. Subject to the requirements of strict budgetary discipline and to objective evaluation, it will be responsible for ensuring the availability and continuity of operational services supporting its policies, and will contribute to the development, deployment and operation of corresponding dedicated European space infrastructure, in particular for Galileo and GMES. It will also pursue an optimum regulatory environment to facilitate innovation, access to international markets and the effective coordination with ESA of the European position in international fora.

ESA and its Member and Co-operating States will develop space technologies and systems, supporting innovation and global competitiveness and preparing for the future. Their activities will focus on exploration of space and on the basic tools on which exploitation and exploration of space depend: access to space, scientific knowledge and space technologies. They will pursue excellence in space-based scientific research. On a voluntary basis, they will support the technological preparation, including validation, of space systems responding to user needs, including those relevant to EU policies.

Most Member States of the EU and of ESA are already investing in operational infrastructures through their membership of EUMETSAT and will consider the experience of similar organisations and Eumetsat’s role in relation to wider operational services.

On priorities within the European Space Programme

The EU will focus on space-based applications to contribute to the achievement of its policies, particularly Galileo and Global Monitoring for Environment and Security (GMES).

ESA activities will focus on securing a guaranteed and competitive access to space through a family of launchers, pursuing excellence in science of space, from space and in space, exploiting its know-how in exploration of the solar system, and developing technologies to maintain a globally competitive European space industry equipped to meet Europe’s future space system needs, including in all elements of the value chain.

Individual EU or ESA Member States will be responsible for identifying their national contribution to the European Space Programme and provide this input to the Joint Secretariat for consideration of its inclusion in the overall European Space Programme to be presented to the next “Space Council”.

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INTERNAL MARKET (SUB-COMMITTEE B) 135
On key principles of implementation

The implementation of the European Space Policy requires an industry policy tailored to the specificities of a sector subject globally to government influence. This policy should provide all stakeholders in Europe with the motivation (i) to maintain and reinforce their scientific and technological expertise and capacities and (ii) to encourage Member States and stakeholders to make the necessary investment to maintain know-how, independence in selected critical technologies and a globally competitive space industry. This is central to the achievement of Europe’s economic and political objectives, thus contributing to Growth and Employment.

Key instruments for delivery will be, for the EU, in particular the 7th Framework Programme of Research, Technology and Development, the trans-European network programme and the Competitiveness and Innovation Programme; and for ESA, a combination of mandatory and optional programmes. Programme costs will be estimated in the European Space Programme, which should highlight that user policies will in the future need to be more adequately reflected in the funding scheme.

The management of EU space-related programmes will be based on efficiency, in line with the EC-ESA Framework Agreement and drawing on the management and technical expertise of ESA, in cooperation with the relevant agencies and entities in Europe, and taking into account factors such as the integration of space with terrestrial systems and the diversity of sources of funding. The management of ESA programmes will be based on the rules laid down by the ESA Convention.

4. The “Space Council” notes that decisions on future programmes to be taken at the coming ESA Ministerial Council and the decision on the EU Financial Perspectives will determine the ability of the Programme to match the ambitions of the European Space Policy.

5. The “Space Council” invites the Joint Secretariat in close consultation with the High-level Space Policy Group to identify possible cost-efficient scenarios for optimising the organisation of space activities in Europe in the future and to initiate a wide-ranging appraisal of these in comparison to present processes, taking all relevant factors into account. It invites the Joint Secretariat to report back on the outcomes of this appraisal.

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letters of 4 July and 18 July 2005 in reply to mine of 22 June which Sub-Committee B considered at its meeting on 17 October 2005.

Members were pleased to receive a copy of the Orientations agreed at the Space Council on 7 June and welcomed your undertaking to deposit such documents for scrutiny where possible.

Sub-Committee B were satisfied by your reassurances that the Government is working to ensure that the distinction between security and defence is observed. Members were also pleased to be reminded that any proposals for the use of space technologies for specific military operations would be taken under Pillar II and so Member States would retain a veto.

We are therefore content to lift scrutiny from this document.

19 October 2005

EUROPEAN SPACE POLICY: GALILEO RESEARCH
SATELLITE RADIO NAVIGATION (11834/04)

Letter from Tony McNulty MP, Minister of State, Department for Transport to the Chairman

I promised in my letter of 16 November7 to update your Committee on the issues arising from Explanatory Memorandum 11834/04. Your Committee referred the document to sub Committee B on 7 September 2004 (1190th sft). Lord Grenfell wrote to Kim Howells on 14 September 2004 maintaining the scrutiny reserve. I wrote to you on 22 September 2004 regarding the financial management of the programme and noting the scrutiny reserve. None of these issues has yet been finalised and discussions between Member States, the European Commission and Council Secretariat are continuing. My letter of 21 December and David Jamieson’s of 19 January informed you of the outcome of the Transport Council on 9 December. We have the support of a significant number of other Member States in ensuring that the selection of the concessionaire for the deployment and operation of the Galileo system is carried out in a fair and transparent way, on the basis of a robust assessment of the costs, benefits and risks. We will continue to press for this.

THE SELECTION OF A CONCESSIONAIRE

The Galileo Joint Undertaking (GJU) postponed the selection of a preferred bidder from September last year and instead launched a further evaluation of the two bids. They sought information, in particular, on the allocation of risk between the public and private sectors. It was expected that a preferred bidder would be announced at the end of this process.

At a meeting of the GJU Supervisory Board on 1 March, Member States were informed that both the bids were now compliant with the evaluation criteria and an acceptable contract could be negotiated with either. There was little to differentiate them on a quantitative assessment. However, there were significant differences between some of their proposals, with useful ideas being presented by each. The GJU Director had therefore recommended that, to ensure that the best aspects of each bid were incorporated in the concession, initial contract negotiations should be opened with both consortia. Selection of the preferred bidder would then be made in about three months.

The GJU expected that the contract negotiations with the preferred bidder could still be completed by the end of 2005. The programme for the two test satellites—both with significant UK industry involvement—is not affected.

The UK and other major Member States pressed the GJU hard to defend their position. We were particularly concerned about the impact on the timetable, the costs of delay, and the impact on the competitive process, should the two consortia decide to merge, completely or partially. We have followed up these points with the GJU and taken advantage of the opportunity for one official, in confidence, to examine the two bids. We are now commenting on their proposals for the next phase of negotiations.

ARRANGEMENTS FOR THE FUTURE

Work is continuing to establish the European GNSS Supervisory Authority to oversee the concession. A meeting of the Administrative Board of Member States’ representatives is planned for 4 May to make a recommendation on the shortlist for the post of executive director. Once appointed, he or she will be involved in the selection of the concessionaire, and we will seek an early opportunity for a meeting to ensure that the UK position is clearly understood.

NEGOTIATIONS WITH NON-MEMBER STATES

The procedures for Member States’ supervision and approval of these activities are now well established. The UK will continue to participate actively and follow up any departures from the agreed principles. Further draft negotiating mandates are expected to be adopted shortly, and I will write again to keep you informed of these. Discussions with Israel and India are continuing, with the dual aim of making best use of scientific and technological expertise, and extending the opportunities for applications of Galileo services. Technical discussions with the US have restarted, as foreseen in the EU/US agreement of last year.

TRANSPORT COUNCIL

We have just been informed that, contrary to expectation, Galileo will feature on the agenda for the Transport Council on 21 April. It is not yet clear what form the discussion will take: it is not, however, in prospect that a policy commitment will be sought.

I will, of course, continue to keep you informed of developments

1 April 2005

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

Tony McNulty last wrote to you on 1 April 2005 to update your Committee on issues arising from Explanatory Memorandum 11834/04. He promised to keep you informed of progress and I am writing now to fulfil this undertaking.

Your Committee has maintained a scrutiny reserve on the above Explanatory Memorandum, and also on EM 13300/04 which addresses the funding of the programme and the services it will provide.
THE SELECTION OF A CONCESSIONAIRE

The Galileo Joint Undertaking (GJU) has been conducting a competitive evaluation of the bids tabled by the two consortia competing for the contract to operate the Galileo concession. Having postponed the selection of a preferred bidder for the second time in March 2005, the GJU began parallel negotiations with both bidders in order to develop their proposals further. The intention was to make a recommendation on a preferred bidder by the end of June.

The two consortia then came forward with a proposal in May that they should merge and submit a new combined bid. The GJU in giving its permission for the two consortia to pursue this, set out its criteria for such a combined bid: it should deliver a better value for the public purse, which could only be achieved through a merger; it should be legally acceptable and a clear decision making structure for the new consortium should be established.

The combined consortia subsequently delivered a new proposal to the GJU on 20 June. At a meeting of the GJU Supervisory Board of Member States on 27 June, the GJU announced that the new bid had met all the criteria that had been set. Most pertinently the bid, in the GJU’s view, would deliver better value for the public purse, in that it showed a significant reduction in the financial contribution from the public sector and estimated an increased level of revenue generation arising from a better exploitation of commercial opportunities. On the basis of this joint proposal the GJU announced that it was content to start negotiations on the concession contract.

Member States expressed concern about the lack of prior consultation, and insisted that they be allowed an opportunity to submit more considered comments at a further meeting. It was agreed that a further meeting be arranged at which they would be able to submit comments. It is hoped that this meeting will take place by the end of July. In the meantime the GJU would start preparatory talks with the merged consortia as part of the negotiation process, and as part of this it has invited Member States to nominate PPP (Public Private Partnership) experts to participate in an informal expert group which will be allowed to see the merged bid in confidence and which it would call upon to assist it during the contract negotiations with the merged consortia.

Although there is little appetite for rejecting the merger, the UK is supported by other Member States in pursuing a bid that delivers value for money (vfm). We are also working towards an assessment of the cost benefits and risks of the concession, which will be presented to the Council in December. There is scope therefore, particularly through the Experts Group, for us to continue to exert our influence in the negotiations in order to ensure they produce a contract that delivers on vfm and competitiveness. We will continue to explore options that will seek to deliver on this.

FINANCE

On 21 June the European Parliament’s Industry Committee backed the European Commission’s plans to provide €1 billion over the period 2007–13 to fund the final two phases of the Galileo programme, covering deployment and commercial operations. The Industry Committee went on to recommend that the Galileo Programme be subject to the budgetary approval of Parliament and Council; as the Community will probably have to provide financial guarantees and take on liability commitments because of the nature of the programme ie that it would be a PPP concession. However final decisions on funding the Galileo programme will not be taken until there is agreement on the financial perspectives for 2007–13.

NEGOTIATIONS WITH NON-MEMBER STATES

Consideration of the participation of Non-Member States in the Galileo programme continues. Agreements have been signed with China, Israel, and the Ukraine. Further draft negotiating mandates continue to be drafted by the Commission with the aim of extending the opportunities for applications of Galileo services and developing markets and also making best use of technological expertise by developing industrial cooperation. Draft negotiation mandates have been produced for discussions with Norway, India, Argentina, South Korea and Morocco. Authorisation for the Commission to open negotiations with Norway and the Republic of Korea was adopted as an “I” point at Coreper. The UK continues to participate actively in the consideration of these and along with other Members States is keen to ensure that this process takes due consideration of its concerns about security, not only over intellectual property rights but also over export controls as they relate to many non-EU countries. During our Presidency, we will take forward a policy discussion on agreements with Third Countries. We will ensure that the respective roles of the EU, ESA (European Space Agency) and other Third Countries are both transparent and fully understood by all parties.
The Supervisory Authority

On 2 May 2005 Member States having considered four candidates, decided on the appointment of Pedro Pedreira (from Portugal) as the Executive Director for the European GNSS Supervisory Authority (GSA)—which will be set up to manage the concessionaire on behalf of Member States.

Mr Pedreira took up his appointment on 1 July. The GSA will take over from the GJU on the conclusion of the concession negotiation. Officials will discuss UK objectives with Mr Pedreira shortly. In the meantime, he will participate in the contract negotiations with the merged consortia.

Transport Council

In his letter of 1 April Tony McNulty indicated that Galileo had been included as an agenda item for discussion at the Transport Council meeting of 21 April. In the end it was removed and no discussion took place. During the UK Presidency the Galileo Programme is not expected to be discussed until Transport Council in December.

Arrangements for the Future

The UK will continue to press for a financially robust and value for money outturn from the contract negotiations and to maintain UK objectives, including ensuring that Galileo remains a civilian programme. There is every indication that our approach is paying off from the level of support we are seeing from other Member States and in the attitude of the GJU.

The GJU has said that it expects to have concluded negotiations with the merged consortium by January 2006. However, a report will be made to the Transport Council in December 2005.

18 July 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 18 July 2005 in which you provided a progress report on Galileo which the Chairman of Sub-Committee B considered in advance of the Sub-Committee’s meeting on 10 October. All Members of the Sub-Committee have received a copy of your letter.

We noted that there have been delays with the selection of an operator for the Galileo concession. Will lead to an overall delay in the project? In any case, we would be grateful for a reminder of the overall timetable for the project.

6 October 2005

Letter from Stephen Ladyman MP to the Chairman

I last wrote to you on 18 July 2005 to update your Committee on issues arising from Explanatory Memorandum 11834/04 and also offered to keep you informed of progress on this dossier.

Your Committee has maintained a scrutiny reserve on the above Explanatory Memorandum, and also on EM 13300/04 which addresses the funding of the programme and the services it will provide. Your letter of 6 October noted the delays that there have been with the selection of an operator, and asked for further information on potential overall delay to the project.

20 November 2005

The Selection of a Concessionaire

In my July letter, I reported that after the Galileo Joint Undertaking (GJU) failed to decide on a preferred bidder for the public private partnership (PPP) concession for Galileo, the two bidding consortia proposed that they merge and submit a joint bid. The GJU will require the merged consortium to confirm that a joint bid would deliver better value for the public purse and would be legally acceptable. It will also require a clear decision making structure for the new merged consortium. It has begun exploratory talks with the merged consortium and hopes to start negotiating in detail when the merged body meets the preconditions and provides it with a sufficiently robust and comprehensive bid proposal.

The UK Presidency has continued to stress, as a priority, the need for a robust and affordable PPP, transparent procurement, and a value for money solution. Like other member states, we have been concerned that the merger could reduce the possibility of achieving this.
In July, the UK called an informal meeting of member states to discuss the proposed merger. We argued strongly for a robust negotiating process and a strong commercial focus in the concession agreement, with protection for the Community against future risk. We continue to stress that effective negotiation of the contract remains the best means of delivering a robust and viable PPP.

Successive meetings during summer and early autumn between the concession partners has failed to deliver the consensus necessary to meet the guidelines laid down by the GJU. A number of issues remain outstanding, particularly the lack of a clear governance structure. There is also disagreement over where to locate the small number of facilities and infrastructure required for the Galileo programme. We have stressed that the consortium partners should be free to make these decisions on a commercial basis without political influence. There was also delay, now bypassed, to the development phase of the programme in the European Space Agency (ESA).

Vice-President Barrot asked Karel Van Miert, the former Competition Commissioner, to act as a facilitator between the interested parties. Before the October Transport Council, the Vice-President also wrote to the Secretary of State, as President of the Council on the delay. The Secretary of State subsequently wrote to all member states, drawing attention to the costs of delay and the importance to the Community of a robust PPP.

These disputes within the consortium are not yet resolved, with the result that contract negotiations have not formally begun. The Commission is optimistic that a solution may be found before the Transport Council on 5 December. We will examine any deal very carefully for its justification in commercial, not political, terms, and its impact on the costs and risks of any future concession contract. As Presidency, we will also consider whether the solution is acceptable to the majority of member states not involved with the partners in the consortium.

**Assessment of the Galileo Contract**

The UK has taken a lead in a group of experts organised by the GJU to consider the negotiating basis for the contract. This has proved successful in influencing the GJU position, and in increasing transparency in the process.

Officials also organised a workshop to discuss the potential terms of the PPP contract and the criteria for the assessment that has to be made by the Transport Council. This assessment, a UK priority, was requested in the conclusions of the Transport Council in December 2004, and requires the Commission to provide: “a reasoned analysis of the results of the Galileo negotiations, including on risk allocation and final costs, to the Council in good time prior to the signature of the [concession] contract.”

The majority of member states attended the workshop, as did the GJU, the Commission and the financial consultants that will be performing this assessment on their behalf. Through HM Treasury we have also started to lobby the Finance ministries of other like-minded states.

**Finance**

Final decisions on funding the Galileo programme will not be taken until there is agreement on the Financial Perspectives for 2007–13. However at a first reading by the European Parliament of the provisional Galileo financial framework in September 2005, MEPs offered clear support for the Galileo programme but were also keen to ensure that the contract delivered value for money, and made recommendations about the need for a prior robust assessment of the costs, benefits and risks of the concession. They also urged that the concessionaire be closely managed to ensure that it keeps to time and budget.

**Negotiations with Third Countries**

The interest shown by third countries in the Galileo programme continues to grow. An Agreement between India and the European Union was initialled on 7 September 2005 and a further Agreement is expected to be signed with the Ukraine shortly. The Department’s Explanatory Memorandum on the proposed Ukraine Agreement (11669/05—COM (2005) 350 Final) has been cleared by the Scrutiny Committees of both Houses: at the 1,226th sift of the Lords Select Committee on the European Union on 11 October and by the House of Commons on 2 November.

During our Presidency, the UK has led member states in seeking clarification of the underlying principles for third country agreements. Whilst discussions are ongoing, the Commission has confirmed that it will not seek mandates to pursue new third country agreements. The market development opportunities offered by third
country participation in the Galileo programme have commercial potential. At the same time it is essential that the framework for these agreements and the way in which they are managed are effectively designed from the outset. Further discussions have been promised by the in-coming Austrian Presidency.

THE SUPERVISORY AUTHORITY

The GJU is charged with developing the Galileo concession contract but it will be for another body—the European GNSS Supervisory Authority (GSA)—to sign the final contract and manage the concessionaire on behalf of member states. The Executive Director of this new body—Pedro Pedreira—took up his post in July and has been engaged in staffing his new Agency and in preparing a detailed work plan for the new organisation.

The GJU was expected to close in May 2006, but may now continue for longer because of the delays in the concession process. A number of member states oppose this and believe the handover of responsibilities to the GSA should not be delayed. We have not taken a formal view yet, because the Commission has not made a firm proposal.

The GSA is likely to be located in Brussels for the initial years of its existence, as it will need to work very closely with the Commission, but its permanent location will have to be agreed at a future Transport Council. The UK bid to host the GSA, by the Welsh Assembly Government, is for Cardiff. Other bids have also come from the Netherlands and France. We have been working with the Welsh Assembly Government and the Foreign Office to ensure that Cardiff’s bid for the EU agency is put forward in the most positive terms with other member states.

It seems unlikely that the Austrian Presidency will put the decision process in hand during their Presidency. Their stated initial focus will be on getting the Galileo programme back on track.

TRANSPORT COUNCIL

At Transport Council on 6 October, member states were urged by Vice President Barrot and the Presidency to work together to resolve the difficulties that were delaying progress on the PPP. At the December Transport Council we expect the Commission to offer a brief statement on the progress in finding a resolution to the delay in the Galileo Programme.

ARRANGEMENTS FOR THE FUTURE

The UK will continue to stress the need for commercially justifiable decisions and press for value for money in the PPP concession, including open procurement and fair competition, and to maintain Galileo as a civil programme, with no military creep.

We will also continue to work with the Commission and the GJU on the terms of the concession contract, and on the criteria for the assessment to Council. If the negotiations commence shortly, the GJU expects to conclude negotiations with the merged consortium by the second quarter of 2006. It does however admit that this does present it with a tight schedule. This would mean that the assessment comes to Council during the Austrian Presidency.

I will continue to keep you informed of progress on this programme.

29 November 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 20 November which was received on 1 December and considered by Sub-Committee B at its meeting on 12 December 2005. We are maintaining scrutiny on document 13300/04 which addresses the funding of the Galileo programme and the services it will provide.

In my letter to you of 6 October 2005 (copy attached for reference) I asked whether the delays with the selection of an operator for the Galileo concession would lead to an overall delay in the project and for a reminder of the timetable for the whole project. The Sub-Committee would also be grateful if you could remind Members of the ways in which the Galileo Project will add value to the advantages already available from similar commercial systems.

14 December 2005
EXTERNAL AVIATION POLICY (7214/05, 7369/05, 12044/05, 12045/05, 12276/05, 12752/05)

Letter from the Chairman to Stephen Ladyman MP

Sub-Committee B considered your Explanatory Memorandum at its meeting on 8 June 2005 and welcomed the Commission’s plans to liberalise air services because they will help to open markets and encourage fair competition and benefits for both passengers and airlines.

I am writing to you at the Sub-Committee’s request on three points:

— Firstly, have you raised with the Commission the misapprehension contained in one of the documents you attached which seems to suggest that the EASA oversees all safety matters in the EU?
— Secondly, we would be very interested in the results of your consultations with other Member States and stakeholders about the proposals to negotiate comprehensive agreements with other third countries. These will help us to form a complete view on the document.
— What are the implications of this policy in relation to EU-US aviation agreements? We are particularly keen to learn how this policy will affect the UK’s interest in this area.

In the meantime we are maintaining scrutiny on this document.

13 June 2005

Letter from the Chairman to Karen Buck MP, Department of Transport

(Australia—12044/05)

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 17 October.

We welcome the market-opening opportunities that these Community Civil Aviation agreements with third countries represent. However, it seems from your Explanatory Memorandum that you have some doubts as to whether such an agreement with Australia is a realistic possibility. We would be grateful if you could explain the reasons for this doubt and if you will forward a copy of the Commission’s Impact Assessment. Has the United Kingdom Government commissioned an initial Regulatory Impact Assessment of its own, given its concerns about the realism of moving forward on this, and the possible impact of the proposed changes upon United Kingdom aviation and consumer interests?

We should also like to know what steps the Government is taking to ensure that Member States would be able to maintain and develop their bilateral agreements until negotiations are successfully concluded on the Community’s agreement with Australia.

In the meantime we are maintaining scrutiny on this document.

19 October 2005

(India—12045/05)

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 24 October 2005.

We welcome the market-opening opportunities that these Community Civil Aviation agreements with third countries represent. However it seems from your Explanatory Memorandum that you have some doubts as to whether such an agreement with India is a realistic possibility. We would be grateful if you could explain the reasons for this doubt and if you will forward a copy of the Commission’s Impact Assessment.

Has the Government commissioned an initial Regulatory Impact Assessment of its own, given its concerns about the realism of moving forward on this, and the potential impact of the proposed changes upon United Kingdom aviation and consumer interests? We would find it strange, given that the United Kingdom has 31 per cent share of the non-stop scheduled traffic between the European Union and India, if the Government has not commissioned an Impact Assessment.

We should also like to know what steps the Government is taking to ensure that Member States would be able to maintain and develop their bilateral agreements until negotiations on the Community’s agreement with India are successfully concluded.

In the meantime we are maintaining scrutiny on this document.

26 October 2005
Letter from the Chairman to Karen Buck MP

(NeW ZeAlAnd—12276/05)

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 7 November 2005.

We welcome the market-opening opportunities that these Community Civil Aviation agreements with third countries represent. However, it seems from your Explanatory Memorandum that you have some doubts as to whether such an agreement with New Zealand is a realistic possibility. We would be grateful if you could explain the reasons for this doubt and if you will forward a copy of the Commission’s Impact Assessment.

Has the Government commissioned an initial Regulatory Impact Assessment of its own, given its concerns about the realism of moving forward on this, and the potential impact of the proposed changes upon United Kingdom aviation and consumer interests?

We would like to clarify a matter mentioned in paragraph 5.3 of the Commission’s Communication. Does the reference to “the EU’s ability to apply regulatory or economic instruments” in your view mean that the European Commission is seeking clauses in agreements to permit the EU to impose charges and/or taxes on aviation, particularly on flights between the EU and partner countries?

We should also like to know what steps the Government is taking to ensure that Member States would be able to maintain and develop their bilateral agreements until negotiations on the Community’s agreement with New Zealand are successfully concluded.

In the meantime we are maintaining scrutiny on this document.

9 November 2005

Letter from the Chairman to Karen Buck MP

(RuSsIa—7369/05)

Sub-Committee B considered your Explanatory Memorandum at its meeting on 8 June 2005 and welcomed the Commission’s plans to liberalise air services because they will help to open markets and encourage fair competition and benefits for both passengers and airlines.

We noted that you plan to consult other Member States and stakeholders before forming a view on whether the Commission should be asked to negotiate a comprehensive air services agreement with the Russian Federation. We would be very interested to see the results of this consultation before taking a view ourselves. The document therefore remains under scrutiny.

13 June 2005

Letter from the Chairman to Karen Buck MP

(UkraiNe—12752/05)

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 7 November 2005.

We welcome the market-opening opportunities that these Community Civil Aviation agreements with third countries represent. However it seems from your Explanatory Memorandum that you have some doubts as to whether such an agreement with Ukraine is a realistic possibility. We would be grateful if you could explain the reasons for this doubt and if you will forward a copy of the Commission’s Impact Assessment.

Has the Government commissioned an initial Regulatory Impact Assessment of its own, given its concerns about the realism of moving forward on this, and the potential impact of the proposed changes upon United Kingdom aviation and consumer interests?

We note that your Explanatory Memorandum states that “no new issues of subsidiarity are raised”. Could you clarify whether this means that there are, however, existing issues of subsidiarity?

We would also be grateful for a fuller account of what implications you expect for the aviation industry in Ukraine.
We should also like to know what steps the Government is taking to ensure that Member States would be able to maintain and develop their bilateral agreements until negotiations on the Community’s agreement with Ukraine are successfully concluded.

In the meantime we are maintaining scrutiny on this document.

9 November 2005

**Letter from Karen Buck MP to the Chairman**

You have written in relation to each of the above documents with questions arising from sub-Committee B’s consideration of the Department’s Explanatory Memoranda. Since the documents are all related, and some of the questions overlap, I thought it may be helpful if I respond to these questions together, and also give some further background on recent developments.

Taking first documents 7214/05 and 7369/05 and your two letters of 13 June, you asked whether we had raised with the Commission the mistakes in the working document concerning the role of EASA. We did indeed draw these to the attention of the Commission, and I am happy to say that they subsequently corrected the document.

You asked for an account of the results of consultations with other Member States and stakeholders. A series of discussions about 7214/05, the Communication setting out a proposed agenda for the future development of external relations in this area, took place between Member States in the Council working group and other forums.

Member States were generally supportive of the Commission’s proposed first aim of “continued steps to bring existing bilateral agreements into line with Community law”. They did, however, press upon the Commission the need to take a flexible and collaborative approach to the achievement of this objective, by entering into negotiations themselves with third countries under the “horizontal mandate”, and by avoiding actions which could jeopardise the continued operation and development of Member States’ bilateral agreements.

Member States expressed a range of views about the Commission’s proposed second objective of “gradual adoption of ambitious agreements between the Community and third countries”. They were generally supportive of measures to extend the common aviation area to neighbouring countries. They also recognised the potential merits of further global agreements between the Community and third countries, where these are based on the twin objectives of market opening and regulatory convergence (including fair competition), but they have stressed the need for the Commission to demonstrate, case-by-case, the added value of action in this area at the Community level before any new negotiating mandates should be granted. They also stressed the importance of enabling Member States to continue negotiating the bilateral expansion of traffic rights with any such third countries until the point where fully open arrangements are agreed at Community level, in order to avoid freezing the development of important bilateral traffic routes.

The Government also held informal discussions about the Commission’s communication with stakeholders, including UK airlines. These indicated a broadly similar range of concerns and views, with a strong emphasis on the importance of demonstrating added value in action at Community level, and on the need to ensure a level competitive playing field as a basis for market opening.

The meeting of the Council of Transport Ministers on 27 June agreed a set of conclusions about the Commission’s communication. This reflected the views of Member States as summarised above. A copy of those Conclusions is enclosed for your Committee’s information.

You also asked what implications this policy had in relation to the proposed EU-US aviation agreement. As you know, the negotiations on a comprehensive aviation agreement between the EU and the US were suspended last summer following the discussion at the June 2004 Transport Council and the subsequent US elections, but have now resumed. The Commission’s communication has had no direct bearing on the continuation of those discussions, which are taking place under the negotiating mandate given to the Commission by the Council in 2003.

The other documents listed at the head of this letter are all communications that propose the opening of negotiations for EU aviation agreements with particular countries in line with the general external relations policy as proposed in 7214/05. Document 7369/05 on aviation relations with Russia, together with another communication relating to China, was published at the same time as the broader communication.

Documents 12039/05, 12276/05,12044/05, 12045/05 and 12752/05 were all published later and subsequent to the Council’s conclusions on 7214/05. Your letters of 19 October, 26 October and 9 November raise a number of questions further to the Department’s Explanatory Memoranda on some of these documents.
In our Explanatory Memoranda, the Government indicated that we would wish to gain some assurance that an agreement along the lines described by the Commission is a realistic possibility. This reflected a wish to be assured that, on the basis of initial contacts with the other country concerned, the Commission expected to be able to secure agreements that are based on both a reciprocal opening of markets and achieving a high level of regulatory convergence.

Information presented by the Commission and other contacts suggests that for most of these countries there would appear to be a reasonable prospect of achieving an agreement along these lines were the Commission to be granted a mandate to negotiate. However, the period necessary to secure this would be likely to vary considerably from country to country. Australia, New Zealand and Chile, for example, already operate relatively liberalised regimes in a regulatory environment reasonably close to that in the EU. By contrast, regulatory convergence with some of the other countries seems unlikely to be achievable in the near future, although progress towards that end would in itself be a desirable goal, and a possible objective in itself for a Community-level agreement. At the same time, the rapid pace of change in the aviation sectors of some of these countries, notably China and India, means that the prospects for regulatory convergence and market opening may well increase markedly in the near future.

The Government’s Explanatory Memoranda also indicated that we would wish to ensure Member States’ ability to maintain and develop their bilateral arrangements with the relevant country would not be frozen for a lengthy period whilst EU-level negotiations were in progress. The Council has yet to discuss in detail possible mandates to open negotiations with any of the countries listed above. However, there have been discussions about a possible mandate to negotiate an aviation agreement between the EU and China. In the course of those discussions Member States and the Commission have agreed in principle that the former should remain responsible for negotiating traffic rights on a bilateral basis until there was a genuine prospect of securing fully open markets. Such an arrangement would meet the Government’s concerns in this area.

On the question of subsidiarity, the Government believes that bilateral aviation agreements should be replaced by Community level agreements only where there are clear benefits in doing so. This view was reflected in the Council Conclusions agreed on 27 June, which refer to the need for added value to be clearly demonstrated in each case before negotiating mandates will be granted to the Commission. The Government believes that there may well be cases where the Community may be better able to achieve the objectives set out in those conclusions than individual Member States. There are many aspects of aviation where regulation is now subject to Community legislation. And the Community and its Member States acting collectively may also enjoy increased negotiating power. However, this is an assessment that needs to be made case-by-case on the basis of evidence supplied by the Commission when specific mandates are under discussion.

The question of impact assessments by the Commission has been raised by the Committee. In preparing their communications on specific countries, the Commission has, except in one case, circulated extracts from reports produced by consultants which set out in general terms the potential impacts of possible aviation agreements with these countries. The exception is Ukraine, where the relevant report is understood to be still in preparation. Copies of the Executive Summaries of the other reports are enclosed for information. The Government has not commissioned Regulatory Impact Assessments of its own in connection with these communications, which set out general principles only, and which do not in themselves constitute legislative or regulatory proposals. Insofar as they envisage the future liberalisation of aviation relations with important UK markets, we would expect any future agreements along the lines discussed in the communications to lead to long-term benefits for the UK’s aviation industry and its customers.

Finally, in your letter of 9 November you asked about paragraph 5.3 of the Commission’s communication on New Zealand (12276/05) and the reference to “the EU’s ability to apply regulatory or economic instruments.” In our understanding, this refers to the Commission’s wish to ensure that any new agreement with New Zealand should not impede the ability of the Community and its Member States to take action to reduce the environmental impacts of aviation. Such actions could include localised measures to address air pollution and noise at airports, actions under directive 2003/96/EC (which allows member states to introduce fuel taxation for domestic flights or—subject to mutual agreement—flights between member states), or measures to bring aviation within the EU’s emissions trading scheme. The same concern is likely to apply in the consideration of a possible agreement with any other third country.

13 December 2005
FINANCIAL SERVICES POLICY 2005–10 (8823/05)

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury

Thank you for your Explanatory Memorandum of 18 July 2005 which Sub-Committee B considered at its meeting on 10 October 2005.

We endorse the Commission’s focus for developing the single market in financial services in the period 2005–10. The commitment to consolidate existing legislation and to introduce few new initiatives is particularly welcome. We are content to lift scrutiny at this point and look forward to receiving the White Paper in due course.

Members were, however, disappointed that a document published at the start of May 2005 had an Explanatory Memorandum dated 18 July 2005, almost 11 weeks later. This meant the Sub-Committee could not consider it before the 1 August consultation deadline. What was the cause of the delay? What steps are you taking to ensure that future documents, in particular the White Paper due to be published in November, are deposited more quickly?

12 October 2005

Letter from Ivan Lewis MP to the Chairman

In response to your letter of 12 October, your endorsement of the approach set out in the Commission’s Green Paper on Financial Services Policy is very welcome. You will be aware that the ECOFIN Council considered the Green Paper at its meeting on 11 October and agreed very positive council conclusions on endorsing the Commission’s approach in this area, and in particular their determination to operationalise the principles of “better regulation” in financial services policy.

It is regrettable that the delay in our supplying an Explanatory Memorandum meant that the Committee was not in a position to consider the Green Paper in detail ahead of the Commission’s deadline for consultation responses. For this I apologise on behalf of the department; unfortunately it seems that an administrative error meant that in this case scrutiny processes did not run as effectively as they should. I can assure you that we take our scrutiny obligations very seriously, and we are working to ensure that this remains an isolated case.

I look forward to what we hope will be an excellent White Paper from the Commission later this year, and my officials will ensure that this is deposited for scrutiny and an EM provided at the first opportunity.

18 October 2005

Letter from the Chairman to Ivan Lewis MP

Thank you for your letter of 18 October, in reply to my letter of 12 October, which Sub-Committee B considered at its meeting on 7 November 2005.

I am grateful to you for your explanation of the delay and for providing an Explanatory Memorandum on the Financial Services Green Paper.

You will, nevertheless, understand that the Sub-Committee remains greatly concerned that an administrative error could have resulted in a delay of a paper of such considerable importance to the financial services industry.

9 November 2005

FREIGHT TRANSPORT SYSTEM—“MARCO POLO II” (11816/04)

Letter from Tony McNulty, MP, Minister of State, Department for Transport to the Chairman

I am writing to update your Committee on EU developments on the Marco Polo II proposal which was the subject of an Explanatory Memorandum dated 26 August 2004. This EM was considered by Sub-Committee B at its meeting on 13 September 2004, and you wrote to me on 15 September8 to advise of your intention to maintain the scrutiny reserve on this document until the Financial Perspective is agreed.

In our EM we stated that, while the Government generally welcomed the Commission’s proposal, we reserved our position on the proposed increased budget of €740 million (£490.32 million) for Marco Polo II until the overarching negotiations on the new Financial Perspective have been agreed. The Government sought to ensure that the criteria for evaluation of successful project proposals were in line with UK transport policy and represented EU wide value for money.

The text has been subjected to detailed negotiation in the Council working group, most recently on 16 March. Apart from issues relating to the budget, broad agreement is now within reach on all other elements. While there have been changes to the details of the proposal, the broad thrust remains as proposed by the Commission and the Government is satisfied that the current text is consistent with our objectives. In particular, the UK has been instrumental in gaining recognition of the need for EU wide value by securing its inclusion in the text of Article 1 of the proposal, and in suggesting the more stringent text in Article 14 concerning the evaluation of the Programme in order to assess its contribution to the objectives of Community transport policy and the effective use made of the appropriations.

The outstanding issue is the budget where a number of Member States, including the UK, refuse to agree until the negotiations on the Financial Perspective are concluded (which is officially scheduled to occur by June of this year, but may well be delayed). The Presidency recognises that this issue will not be settled yet, but would like to reach a partial general approach on the remainder of the text at the Transport Council on 21 April.

I should also mention that the UK (supported by other Member States) has registered a formal reservation on the text of Article 1 which sets out the scope of the measure as this can be interpreted as implying a certain level of funding.

The European Parliament’s First Reading of the proposal is not expected to take place before May. I will, of course, write again to inform the Committee of the outcome of the European Parliament’s First Reading, and will seek final scrutiny clearance when we know the outcome of the Financial Perspective negotiations.

1 April 2005

GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL (GAERC), JUNE 2005

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

I thought you and your Committee would like to be made aware of decisions taken at the General Affairs and External Relations Council on 13 June on language policy in the EU.

The most important decision was the Council’s adoption of conclusions, on a proposal from Spain, for a degree of official recognition in the EU of all languages that have official status in Member States, either through their constitutions or national law. These conclusions allow Member States to enter into an arrangement with the EU institutions over which languages may be used in relations with them, with the requesting Member State meeting all the direct or indirect costs incurred. The purpose of this is to allow, in the first instance, Spanish citizens to communicate with the Institutions in Spanish regional languages. The texts make clear that this can only happen if there is no effect on the otherwise efficient functioning of the Institutions. I attach the conclusions and related texts.

The Council also agreed to add Irish as an official and working language of the EU. (It is of course already a Treaty language.) This was done by means of an amendment to Regulation 1/58, which can be done without a Commission proposal. The cost will be €3.5 million per year, to be met from the annual administrative ceiling, with a separate one-off cost for introducing a new language of €960,000. This will have to be met from within the next financial perspective ceiling.

The Government supports both decisions. In particular, the Spanish-inspired proposals offer a way, at no cost to anyone apart from Spain, of helping bring citizens closer to the EU, by allowing them to use the language with which they are most familiar when dealing with it. It is of course possible that there will be pressure from speakers of other EU regional languages to have the same treatment.

20 June 2005

GROWTH AND JOBS: A NEW START FOR THE LISBON STRATEGY (5990/05)

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

Sub-Committee B considered this document and your EM at its meeting on 21 March and agreed to clear this document from scrutiny. The Members of the Sub-Committee shared your view that many of the remaining barriers to the full implementation and enforcement of measures agreed under the FSAP should be tackled by non-legislative means.

We agree with the Government that tax bases should remain a national preserve and that “fair tax competition is the way forward for Europe not tax harmonisation” (paragraph 20 of your Explanatory Memorandum). We also share the view, expressed in the document, that the increasingly competitive global environment is of major significance and that European Union policies, as well as those of Member States, should respond to that challenge.
23 March 2005

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

I recently wrote to the European Scrutiny Committee in response to its report number 10, held on 2 March, regarding my recent Explanatory Memorandum of the Commission’s Communication to the spring European Council: Working together for growth and jobs—a new start for the Lisbon strategy. Please find my response below, which may be of interest.

The Report is accompanied by two documents: “Lisbon Action Plan Incorporating EU Lisbon Programme and Recommendations for Actions to Member States for Inclusion in their National Lisbon Programmes”; and “Delivering on Growth and Jobs: A New and Integrated Economic and Employment Co-ordination Cycle in the EU”. The first document outlines actions that could be taken by Member States and at EU level to advance the pace of reform, for potential inclusion in the proposed Lisbon National Action Programmes. The second outlines the Commissions proposals for improving and streamlining the governance of the Lisbon strategy.

The Report is a formal Communication, and is the result of an ongoing review by the Commission of progress made against the Lisbon goals and outlines the Commission’s proposals for refocusing the Lisbon Strategy with the aim of advancing the pace of reform. Its companion documents give an illustrative guide of initiatives that could be undertaken at Community level and by Member States in the context of their national Lisbon Action Programmes. While the Commission has the right of initiative, it is the responsibility of the Council to consider its proposals on a case-by-case basis.

The Government has welcomed the Commission’s priorities for a revised Lisbon Strategy detailed in its companion document. It reflects many of the UK’s economic reform priorities, such as regulatory reform; labour market flexibility; a single market for services as well as goods; and increasing external openness to trade and investment. The Government particularly welcomes calls for action to implement and enforce internal market legislation; reform of the state aid architecture; the effective and efficient application of EU public procurement rules; competitiveness testing of new Community legislation as well as simplification of regulation; progress towards EU leadership in technology through the new R&D framework programme; an increase in the female participation in the labour market; the development of active ageing strategies; and completion of an ambitious agreement in the framework of the Doha Round.

However, Government cannot endorse the companion document in its entirety: the Report includes proposals that we would not accept, such as the proposal for agreement on a common consolidated corporate tax base; the proposal for fiscal incentives for R&D; and the proposal for an EU target on employment. Government remains clear that tax policy is a matter for Member States, and that fair tax competition is the way forward for Europe, not proposals for tax harmonisation. The decision whether or not to use employment targets to pursue domestic policy is strongly within the domain of each Member State.

The Government also welcomes the Commission calls for the governance of the Lisbon strategy to be simplified, and agrees that fewer and clearer priorities are needed to address the challenges of global competition. It believes that this can be achieved through the presentation of national Lisbon Action Programmes comprising annual, forward-looking reforms based on the Community’s Broad Economic Policy Guidelines (BEPGs), as proposed by the European Commission. The March Spring European Council will agree on overall reforms to the governance of the Lisbon Strategy and on establishment of national Lisbon Action Programmes.

The Government will discuss more detailed proposals for action and delivery in partnership with Member States, and submit them for scrutiny as and when they materialise.

22 March 2005

HARMONISED RIVER TRAFFIC INFORMATION SERVICES ON INLAND WATERWAYS

Letter from David Jamieson, MP, Parliamentary Under-Secretary of State, Department for Transport to the Chairman

I am writing to update your Committee on the results of the European Parliament’s consideration of the above dossier. You will recall that the proposal was the subject of my Explanatory Memorandum submitted on 21 June 2004. Your Committee referred this to Sub-Committee B on 29 June 2004 (1,186th sift), who considered the document on 12 July 2004.
In your letter of 13 July 2004,9 you sought further information on the extent to which we would seek exemption for the UK from the proposed Directive. I wrote to you on 5 October 2004,10 reporting that in Council working group we had succeeded in negotiating clearer wording on the Directive’s scope. The revised wording made it explicit that harmonised River Information Services (RIS) need only be established on those inland waterways of the relevant classes that are linked to inland waterways of other Member States. As the UK does not have any linked inland waterways of the relevant classes, the Directive would not place any obligations in relation to UK waterways.

While supporting the concept of RIS, we have been concerned to ensure that there was no obligation to implement RIS on inland waters that are not linked to those of other Member States. Such an obligation would have imposed an unnecessary burden on Member States without linked commercial waterways, (eg UK), where there is no or negligible cross-border traffic and where the costs of introducing harmonised RIS would outweigh the benefits in terms of facilitating the transboundary movement of goods.

The European Parliament held its first reading on the proposal between 21 and 24 February 2005. It made a number of amendments to the proposal which reflect a compromise agreement reached with the Council. However, it remains the case that, as UK does not have inland waterways of the relevant classes falling within its scope, the measure will not apply to us.

I am therefore able to confirm that the UK will not need to transpose the Directive into UK law and that, accordingly, there will be no cost burdens imposed on UK industry.

4 April 2005

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

Sub-Committee B considered this document at its meeting on 27 June 2005.

In your Explanatory Memorandum, you say that some Member States may be unhappy with some of the specific proposals mentioned in the single European Information Space policy area, particularly those under interoperability and digital rights management. We would be grateful if you could explain these in more detail.

We would also be grateful to know what measures are being taken, at both national level and EU level, to facilitate SMEs bidding for public sector contracts? We are concerned about the inadequate financing of many SMEs in the IT sector. Will you press for better funding of SMEs in the IT sector?

In the meantime we are maintaining scrutiny on this document.

8 July 2005

Letter from Rt Hon Alun Michael MP to the Chairman

Thank you for your letter dated 8 July 2005, which asks a number of questions about the document above, and its respective Explanatory Memorandum dated 20 June 2005.

Your letter firstly refers to a paragraph in the Explanatory Memorandum which says that some Member States may have concerns about proposals in the areas of interoperability and digital rights management.

The proposals referred to relate to the Commission’s intention, as stated in the Communication, to identify and launch targeted actions on interoperability, particularly digital rights management in 2006–07. At this point in time, we do not have any further information on the exact nature of the actions proposed by the Commission. However, we believe that some Member States (including perhaps the UK) will have concerns about any indication that the Commission should take a lead on proposing regulatory solutions to technical or business issues of interoperability and legislation on digital rights management.

Member States and industry have broadly welcomed past Commission initiatives in this area, such as the creation of the High Level Group on Digital Rights Management.

However, the view may well be that whilst there is a role for the Commission to facilitate dialogue on this issue, it should be for the market to promote and take the lead on interoperability and digital rights management. Indeed, the new EU regulatory framework has been very much about loosening constraints in this area, and allowing markets to drive the overall direction and they have been doing a lot of work to develop tools and utilise them in new business models. There was also a very good discussion on this issue earlier this month when I hosted a meeting of 10 CEOs from the EU’s leading ICT and media companies. Our discussions point

to a strong commitment to a market based approach and a desire for the dialogue on industry standards to be given more time to reach a consensus outcome. I will continue to follow closely developments in this area over the next year.

Your letter also asks what measures are being taken to facilitate SMEs bidding for public sector contracts and asks whether I will be pressing for better funding of SMEs in the ICT sector.

During the UK Presidency, the DTI and OST are working together with the Commission and other Member States to ensure that the 7th Framework Programme (including the ICT elements) are more friendly and responsive to the needs of SMEs, by undertaking a systematic examination of processes, procedures and financial support mechanisms. Although the ICT programme has so far achieved the target set for SME participation under the 6th Framework Programme, the UK is anxious that in the new Framework Programme, we will be able to return to the higher levels of SME participation, across the board, that were evident under previous Framework Programmes. In particular, we are pleased to see the proposed increase in budget for the SME-specific measures in FP7.

We have also been doing some work at the national level in order to facilitate access to existing European ICT programmes. In particular, we have funded a National Contact Point (NCP) service as part of our overall promotional service (FP6UK) to assist those organisations wanting to take part in the Framework Programme and in other European ICT programmes. The NCP service is run by a consortium which includes Beta Technology (an SME). It provides information and advice to participants through a website, helpline, information days and specialist seminars, amongst others. In addition, many Regional Development Agencies and Devolved Administration offer complementary services for organisations in their areas to aid participation in EU programmes. Indeed some offer small grants (mainly to SMEs) to reduce the costs in preparing and writing the proposals.

21 July 2005

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter of 21 July in reply to mine of 8 July which Sub-Committee B considered at its meeting on 17 October 2005.

Members were pleased to receive details of the steps that you had taken at European Union and national level to facilitate SMEs bidding for public sector contracts and were reassured that important and useful work is being done in this important area.

We note that some Member States (perhaps including the UK) will have concerns about any indication that the Commission should take a lead on proposing regulatory solutions to technical or business issues of interoperability and legislation on digital rights management. You say in your letter that you do not have any further information yet on the exact nature of the actions proposed by the Commission. We are maintaining scrutiny on this document until we have more information on these actions.

19 October 2005

Letter from Rt Hon Alun Michael MP to the Chairman

Thank you for your letter of 19 October in which you note that you are maintaining scrutiny on the document above until we have been able to obtain more information on the nature of the Commission’s actions in the areas of interoperability and digital rights management.

On 1 December 2005, I will be chairing the Telecoms Council in which I hope to agree Council Conclusions on the i2010 Strategy. The i2010 Strategy is an umbrella document which makes clear the importance of effective EU ICT policy and provides details of the Commission’s work programme in this area over the next five years. It is therefore merely an indication of intent and its endorsement through Council Conclusions in December will place no obligations on Member States. All it will do will be to demonstrate the commitment Member States place on the overarching concept of the i2010 Strategy, rather than the specific proposals contained therein.

As part of the i2010 Strategy, the Commission has indicated that it plans to “identify and promote targeted actions on interoperability, particularly digital rights management” and has also stated that it intends to do this sometime in 2006–07. Until this time, we will be unable to gain further information from the Commission as to what specific actions they intend to undertake in these areas.

As I have said in the past, whilst we do believe that there is a role for the Commission to facilitate dialogue on this issue, it should be for the market to promote and take the lead on interoperability and digital rights management, as they are currently doing. Therefore when the proposals do come out sometime in 2006–07,
I will be looking at these closely to ensure that they are market-orientated. The Committee will also have a chance to scrutinise these proposals at this time.

In light of this information, I would be most grateful if you could agree to endorse the i2010 Strategy in advance of my taking up the Chair of the Telecoms Council on 1 December. I would like to re-assure you again that such an endorsement does not equate to an endorsement of proposals on interoperability and digital rights management, which the Committee will be able to scrutinise in due course.

2 November 2005

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter of 2 November 2005 and for your explanation that the i2010 Strategy is an umbrella document committing Member States to an overarching concept rather than to specific proposals therein. We note that the Commission plans to identify and promote targeted actions in 2006–07 and then we will have the opportunity to scrutinise the proposals at that time.

In the light of the above, we are content to lift scrutiny on the document.

15 November 2005

INTERNAL MARKET STRATEGY, 2003–06 (5868/05)

Letter from the Chairman to Rt Hon Douglas Alexander MP, Minister of State for Trade, Investment and Foreign Affairs, Foreign and Commonwealth Office

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 21 March 2005 and cleared it from scrutiny.

We support measures which will improve the functioning of the Internal Market. As you know we are currently undertaking an Inquiry into the draft Services Directive which you rightly identify as one of the key documents to complete the legal framework of the Internal Market.

We note that the United Kingdom’s priorities for action include liberalising services, reaching agreement on the Community Patent and trying to achieve synergies with consumer policy. Does the Government expect to achieve significant progress in these three areas during the United Kingdom’s Presidency of the European union?

23 March 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 23 March about your Committee’s interest in what progress the Government is expecting to achieve during the UK Presidency of the EU on liberalising the services sector, on the Community Patent, and trying to achieve synergies with consumer policy.

During our Presidency of the EU, the UK will hold two formal meetings of the Competitiveness Council. At these Councils, we plan to hold discussions on the Services Directive, as well as scheduling working groups in preparation for the Council. The Government considers the Services Directive as key to completing the Internal Market framework and contributing to the goals of the Lisbon Agenda. We therefore hope to make substantial progress on agreeing some of the key issues, and we will work closely with Austria to ensure the momentum is maintained going into their Presidency.

Negotiations on the Community Patent Regulation have remained deadlocked over the last year. As a result, there has been little additional discussion in that time of the proposal for a Council Decision establishing the Community Patent Court and concerning appeals before the Court of First Instance, and of the proposal for a Council Decision conferring jurisdiction on the Court of Justice in disputes relating to the Community Patent. We are committed to improving the patent system in Europe and we continue to seek a way forward in a constructive and imaginative fashion. However, we must be realistic about the prospects of moving the Community Patent forward during the UK Presidency. The UK continues to support a Community Patent that meets the needs of industry in being low cost and effective. However, the Government remains committed to improving the European patent system, even in the absence of a community patent. To that end, the Patent (Translations) Rules 2005 were laid in March covering the Agreement on Translations made in London in 2000.

We hope to achieve synergy between consumer and Internal Market policy during the UK Presidency notably by working with the Commission to develop its new Health and Consumer Protection Strategy 2007–13. Furthermore, we will continue to support the modernisation and simplification of existing EU consumer
legislation which will facilitate the internal market, through the reform of the “consumer acquis”, although this exercise will not be completed under the UK Presidency.

6 April 2005

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter of 6 April in response to mine of 23 March which Sub-Committee B considered at its meeting on 8 June.

You answered our queries in a clear and helpful manner. We are pleased to note that you hope to achieve a synergy between consumer and Internal Market policy during the UK Presidency. As you know we are currently engaged in an inquiry into the Services Directive and so we remain particularly interested in your expectations for its progress during the UK Presidency.

13 June 2005

Letter from Ian Pearson MP, Minister of State for Trade, Investment and Foreign Affairs, Foreign and Commonwealth Office to the Chairman

Thank you for your letter of 13 June to Alun Michael, concerning expectations for progress on the Services Directive during the UK Presidency. As the Services Directive falls within my portfolio, as Minister of State for Trade, Investment and Foreign Affairs your letter has been passed to me to respond.

We will be taking forward discussions during our Presidency with the aim of making as much progress as possible. As I am sure you are aware this is a difficult and controversial dossier that has attracted negative coverage in several Member States.

There are a number of external factors, not least the progress of the dossier in the European Parliament, which will impact on our scope to make progress. Nevertheless I can assure you that removing barriers to the free movement of services in the Internal Market remains a high priority for the Governement and one that we will pursue vigorously during our Presidency.

23 June 2005

MACHINERY DIRECTIVE (5557/01)

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

I am writing to you to update you on the latest position on Explanatory Memorandum 5557/01.

Political agreement in the Council of Ministers on a base text in English was secured in September 2004 and since then that text has been prepared in all of the official languages of the EU for transmission to the European Parliament for its Second Reading. It is now expected that the various texts will be approved by the Council for transmission as a common position in September. It is impossible to say at this stage exactly how second Reading will proceed after that—a period of three months with the optional extension of a further month is allowed—but, as the Presidency of the Council during most, if not all, of the period in question, we will be working especially closely with all of the other players involved to secure adoption of the new directive as soon as can be arranged.

2 August 2005

MARINE FUEL (7952/05)

Letter from Ben Bradshaw MP Parliamentary Secretary, Department for Environment, Food and Rural Affairs to the Chairman

Following the recent deposit of Council document 7952/05, which sets out the result from the Second Reading in the European Parliament, I am writing to inform your Committee of the current position on this dossier. The Parliament proposed a number of amendments at First Reading, particularly in relation to whether more stringent limits should be set for sulphur in marine fuel (see Explanatory Memorandum 12142/03 of 17 September 2003 and its Supplementary 12142/03 of 30 November 2003), and came back to these points during their Second Reading consideration. However their proposals went further than had been agreed in the Council’s Common Position, and the Presidency and the Commission were instrumental in negotiating a compromise that was acceptable to both the Parliament and the Council.
The Council Common position has been amended to include recitals that better represent the concerns of MEPs about air pollution from shipping. Improvements have also been made to the procedural arrangements for enforcing the amended Directive. Review provisions have been included that require the Commission by 2008 to come back to the issue of air pollution from marine.

The new text agreed by the Parliament at Second Reading did not alter the limits on sulphur in marine fuel agreed in the Council Common Position. Nor did it alter the provisions there providing for the alternative of using abatement technology, subject to an environmental test, as a means of reducing emissions from shipping.

The Government endorses, and I expect the Council to agree in due course, the changes proposed by the Parliament at its Second Reading. The new Directive is expected to enter into force later this year.

24 May 2005

MARKET ACCESS TO PORT SERVICES (13681/04)

Letter from the Chairman to David Jamieson MP, Parliamentary Under-Secretary of State, Department for Transport

Thank you for your letter of 1 March which Sub-Committee B considered at its meeting on 4 April 2005. We were pleased to note that the Commission have accepted the validity of the UK concerns about this draft Directive. When do you expect the Commission to complete its own Regulatory Impact Assessment? How does that timetable relate to the production of your preliminary Regulatory Impact Assessment?

We are maintaining scrutiny on this item pending examination of the two Regulatory Impact Assessments to which you refer.

6 April 2005

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

In November 2004 we submitted an Explanatory Memorandum on European Community Legislation 13681/04, COM (2004) 654 final entitled “Proposal for a Directive of the European Parliament and of the Council on Market Access to Port Services”. As the draft Directive had only just been issued by the Commission we did not have time to consult potential stakeholders or undertake a thorough economic analysis of the proposal at that point. However, we undertook to provide you with an initial Regulatory Impact Assessment as soon as our enquiries were completed.

We have now undertaken a thorough consultation with all interested parties including the UK ports sector, other Government Departments, colleagues in other Member States and the European Seaports Organisation. The results of this are incorporated within the partial regulatory impact assessment attached to this letter (not printed).

Since we last wrote to the Committee on 10 January a significant number of other Member States and the Commission have followed the UK lead in beginning work on impact assessments. Many (including the Commission and the European Seaports Organisation) have used the questions posed by the UK consultation exercise as a model. During our Presidency we hope to use these analyses to underpin further informed consideration of the draft text. In the European Parliament the Rapporteur for this dossier held a public hearing on Tuesday 14 June. He aims to deliver an opinion to the Parliament in time for a debate on the directive later this year. Current information suggests that there may be considerable opposition to the current text.

We will keep you informed at key stages through the process and propose to deliver a revised impact assessment to you once we have sight of the European Parliament’s first reading position on the Directive.

28 June 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter and attached partial regulatory impact assessment of 28 June which Sub-Committee B considered at its meeting on 10 October 2005.

You state that there is likely to be considerable opposition to the current text. We would be grateful for a summary of these oppositions: do other Member States share the UK’s concerns, or do they have different concerns?

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We note that this document is likely to undergo significant changes and therefore we maintain the scrutiny reserve.

12 October 2005

MEASURES TO SAFEGUARD SECURITY OF ELECTRICITY SUPPLY AND INFRASTRUCTURE INVESTMENT (5118/04)

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

I am writing to report developments since my Ministerial predecessor, Mike O’Brien, informed you of developments in the negotiations on the above proposal for a Directive on 14 October 2004. Scrutiny clearance was granted on 27 October 2004.

ITRE Committee of the European Parliament has considered the Directive and adopted amendments on 23 April 2005 that were broadly in the same direction as the Council general approach. The Luxembourg Presidency hence took the decision to push for a first reading agreement on the Directive and COREPER adopted the compromise amendments (enclosed) on 15 June 2005. The compromise amendments must now be adopted by the plenary of the European Parliament and then by the Council. The compromise amendments are broadly in line with the Council general approach.

30 June 2005

Letter from Malcolm Wicks MP to the Chairman

I am writing to report developments in the negotiation of the above proposal for a Directive of 14 October 2004 since my letter to you of 30 June.

In my last letter I set out how ITRE Committee of the European Parliament had considered the Directive and adopted amendments on 23 April 2005 that were broadly in line with the Council's general approach. These compromise amendments have now been adopted by the plenary of the European Parliament. I attach a communication setting this out (not printed). The next and final stage—since there is already inter-institutional agreement on the text—will be formal adoption by the Council. I will write once this final stage has been completed.

26 August 2005

MOTOR INSURANCE

Letter from David Jamieson MP, Parliamentary Under-Secretary of State, Department for Transport to the Chairman

I am writing to update you on the progress of the proposal for a Directive on motor insurance. A Common Position was adopted by the Council on 26 April 2004, and the EP at its second reading adopted seven amendments, on which the attached documents give the Commission’s Opinion and our Explanatory Memorandum.

This negotiation is now reaching a successful close. In arriving at the Common Position, we have been successful in removing the principal potential sources of cost and difficulty which I identified in the comprehensive Regulatory Impact Assessment (RIA) provided with my letter of 30 October 2003. You will recollect that Kim Howells, in his letter of 4 November 2004, took the view that the proposals for a Common Position were quite acceptable. I will shortly provide you with an updated RIA setting out the hugely reduced cost implications of the proposed measures as they now stand.

4 April 2005

MOTOR VEHICLES: FRONTAL PROTECTION SYSTEMS (13693/03)

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

The above proposal was the subject of EM 13693/03 (submitted 3 November 2003). Your Committee cleared the document at its meeting on 17 November 2003.

Since the original Explanatory Memorandum was submitted, there has been significant progress on the development of this Directive and I am now writing to advise you of the current situation.
The original Commission document proposed that new designs of frontal protection system, intended for fitting to a new vehicle or supplied as an after-market accessory, should be subject to tests that would effectively outlaw all bull bars; both metal and softer plastic ones. It was considered that this approach would be counterproductive since the use of the new designs of soft plastic bull bars can improve the pedestrian friendliness of many of the vehicles to which they are fitted. The revised proposal will have the effect of allowing the approval of well designed plastic units whilst still outlawing the traditional metal bull bars. We believe that the overall effect of this change is an improvement in pedestrian safety.

The original proposals have been discussed extensively within European Council Working Groups and in European Parliamentary Committees, and agreement has now been reached on a revised proposal. The latest draft would effectively outlaw aggressive systems such as rigid metal “bull bars” whilst permitting the use of compliant (non-rigid) systems that offer broadly equivalent levels of protection to the vehicle to which they are fitted (the “base vehicle”). In cases where the base vehicle is not subject to the Pedestrian Protection Directive, the fitting of a frontal protection system that satisfies the proposed requirements may improve the level of head protection offered.

The revised proposal was approved at the 1st European Parliament plenary reading on 26 May 2005, and is now expected to go before the Council in the near future. We believe the proposal offers the potential for casualty savings (as detailed in the attached RIA) and should be supported.

5 July 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 5 July advising of significant changes to this document. Sub-Committee B considered your letter at its meeting on 10 October 2005.

We regret that the Government did not deposit this revised proposal in Parliament. The current version of the text is substantially different from the text we scrutinised. The Sub-Committee would be grateful for a full explanation of why the document was not deposited.

The Regulatory Impact Assessment which you mentioned in your letter was not attached to the letter. We would be interested in seeing this as soon as possible.

We note that soft plastic bull bars are to be allowed as they “can improve the pedestrian friendliness of many vehicles to which they are fitted”. Do motor manufacturers and road safety groups agree with this assertion? Have you carried out any consultation in the UK on these proposed changes to the draft Directive? We understand that these questions may be covered by the Regulatory Impact Assessment but we would be most grateful if you could answer these questions specifically.

12 October 2005

MULTI-ANNUAL PROGRAMME FOR ENTERPRISE AND ENTREPRENEURSHIP (16026/04)

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

I am writing to inform your Committee, as requested, of developments in negotiations for the proposed extension of the MAP. This includes details of a revision to the budget recommended by the EU Parliament.

Further to the Commission’s proposal for MAP to be extended by one year to the end of 2006 and with a budget of €81.5 million, the European Parliament’s Committee on Industry, Research and Energy (ITRE) circulated a draft report on 10 March 2005 recommending an increase to the budget. ITRE argued that as MAP is the key element in the Community’s policy to promote entrepreneurship and support innovation in European SMEs, the budget should be raised by €9.5 million to €91 million, equal, they argued, to the figure budgeted in 2004. A copy of the draft report is attached.

ITRE’s draft report (attached) was debated by the Competitiveness and Growth Working Group on 28 April and at COREPER on 4 May. A primary concern of Member States and the Commission was for the MAP extension to be approved quickly. Any delay could have the knock-on effect of preventing a seamless transition from the current programme to the extension on 1 January 2006 resulting in a gap in the provision of financial support to business. Accordingly, the Luxembourg Presidency negotiated with the Parliament and agreed a compromise budget increase of €7 million. This was accepted at COREPER.

A plenary discussion in the Parliament is now expected to agree to the proposed MAP extension and budget at first reading on 25 May. It is likely that it will be presented to the Competitiveness Council as an “A” point on 6 June.
Although the UK had some reservations about the rise in the budget given our concerns about the balance of spending on the financial instruments in MAP, we did not resist the proposal for two reasons. Firstly, because the Commission have received written assurance from the Parliament that they were content for the additional funds to be used for the purpose of increasing the provision of risk capital—which is a step in the right direction to improve the balance of financial instruments; and secondly, in the interests of reaching agreement at first reading.

This latter point has limited the UK’s ability to press for wider changes to the financial instruments in the extended MAP as outlined in the EM 16026/04. However, the Commission’s Competitiveness and Innovation Programme (CIP) (see EM 8081/05 + ADD 1 submitted separately), which is intended to replace MAP on 1 January 2007, presents the best opportunity to influence substantive change. Accordingly, the Government will place a strong emphasis on achieving the right balance of access to finance measures.

I note that the Committee was interested in the views on financial instruments expressed by respondents to the UK’s consultation exercise on the Commission’s initial December consultation document. Twenty-one stakeholders with an existing interest in the programmes to be merged under CIP responded to this informal consultation. As the Commission’s consultation document was not detailed, stakeholder views focussed on the big picture, rather than suggesting specific ideas for financial instruments.

There was wide agreement that there are market failures in the provision of risk capital of up to £2 million for businesses with high growth potential. More venture capital support is required to help innovative businesses take new products from the research and development phase and into the markets to drive up innovation and productivity. There was also agreement that in addition to providing more risk capital, work needs to be done to raise awareness, amongst SMEs in particular, of the different financial tools available to them to leverage investment and encourage greater equity uptake.

I agree that it is important that CIP focuses on bridging market gaps in risk capital provision and stimulates commercially driven investment in innovation and growth and disseminates best practice in public-private partnerships. Furthermore, it is important that there is adequate flexibility to respond quickly and effectively to changing market conditions. Financial markets are innovative and dynamic and it is important the CIP has the ability to be as relevant in 2013 when the CIP ends as it is in 2007 when it begins.

The Commission published its final CIP proposal in April. This does show an increased priority for risk capital that is encouraging and the UK will continue to make a strong case for improved financial instruments than those available under MAP.

Lastly, in the EM 16026/04, following advice from DTI lawyers, Nigel Griffiths noted that in addition to the required amendments to Articles 7 and 8 of Decision 2000/819/EC, Article 1 should be amended too, to reflect the extension of MAP from five years to six years. Officials have brought this matter to the attention of the Commission who are confirming details with their own lawyers.

PROVISIONAL
2004/0272(COD)

10.3.2005

***I

DRAFT REPORT


Committee on Industry, Research and Energy

Rapporteur: Britta Thomsen

Symbols for procedures

* Consultation procedure
  majority of the votes cast

**I Cooperation procedure (first reading)
  majority of the votes cast
**II Cooperation procedure (second reading)**
majority of the votes cast, to approve the common position
majority of Parliament’s component Members, to reject or amend
the common position

*** Assent procedure
majority of Parliament’s component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty

***I Codecision procedure (first reading)
majority of the votes cast

***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament’s component Members, to reject or amend
the common position

***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in bold italics. Highlighting in normal italics is an
indication for the relevant departments showing parts of the legislative text for which a correction is proposed,
to assist preparation of the final text (for instance, obvious errors or omissions in a given language version).
These suggested corrections are subject to the agreement of the departments concerned.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a decision of the European Parliament and of the Council amending Council Decision
2000/819/EC on a multiannual programme for enterprise and entrepreneurship, and in particular for small

(Codecision procedure: first reading)

THE EUROPEAN PARLIAMENT

— having regard to the Commission proposal to the European Parliament and the Council
(COM(2004)0781);12
— having regard to Article 251(2) and Article 157(3) of the EC Treaty, pursuant to which the
Commission submitted the proposal to Parliament (C6-0242/2004);
— having regard to Rule 51 of its Rules of Procedure;
— having regard to the report of the Committee on Industry, Research and Energy and the opinion of
the Committee on Budgets (A6-0000/2005).

1. Approves the Commission proposal as amended.
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal
substantially or replace it, with another text.
3. Instructs its President to forward its position to the Council and Commission.

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendments by Parliament</th>
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<tr>
<td>ARTICLE 1(1)</td>
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<tr>
<td>Article 7, paragraph 1 (Decision 2000/819/EC)</td>
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<tr>
<td>(1) In Article 7(1), the financial reference amount of EUR 450 million is replaced by EUR 531.5 million.</td>
<td>(1) In Article 7(1), the financial reference amount of EUR 450 million is replaced by EUR 541 million.</td>
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12 Not yet published in OJ.
JUSTIFICATION

The budget for the original multiannual programme was EUR 450 million over five years, ie EUR 90 million per year. The budget for 2004 (the first financial year adjusted for enlargement) was EUR 91 million. Given that this is an extremely important and smoothly operating programme in a key area of policy, the annual budget for the extension of the programme should be at least the equivalent of the appropriation for 2004.

EXPLANATORY STATEMENT

THE COMMISSION’S PROPOSAL AND JUSTIFICATION FOR INCREASING THE BUDGET

The background to the proposal to extend the multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (SMEs), by one year to 31 December 2006 is that the functions of the programme will in future be performed by its successor programme, the “Framework Programme for Competitiveness and Innovation” (CIP), which is planned to run from 2007–13 to coincide with the financial perspective. The time-frame will therefore also coincide with the 7th Research Framework Programme, which creates scope for better coordination between the programmes. To bridge the gap between the existing and the new framework programme, the Commission proposes extending the existing framework programme by one year and raising the total budget by €81.5 million, equalling the planned expenditure for 2006.

Your rapporteur believes that this extension of the existing multiannual programme is necessary and should be supported. Your rapporteur finds, however, that the proposed budget is inadequate. It should be remembered that the multiannual programme for enterprise and entrepreneurship is the key element in the Community’s policy to promote entrepreneurship and support innovation in European SMEs. Moreover, the original five-year appropriation was for €450 million, ie €90 million per year, and the budgeted amount for 2004 was €91 million. As the programme shows no sign of a low take-up rate of appropriations—on the contrary, the take-up rate is increasing despite it being a “front-loaded” programme—the Commission’s proposed budget for the extended programme would seem unnecessarily conservative. Your rapporteur therefore proposes that the budget be increased to €91 million, which is equal to the budgeted amount for 2004.

Several factors justify an increase in the budget. Firstly, it is a multiannual programme which both users and external evaluation experts regard as smoothly operating and achieving its objectives. Secondly, it is important to maintain and extend aid to entrepreneurs and SMEs in Europe because they are the backbone of Europe’s economy and their continued growth is a condition of achieving the Lisbon objectives. In general, therefore, the budget for such aid should be increased. Finally, the external evaluation report carried out by INFYDE Consultants (SEC(2004)1460) stresses that the financial instruments in the existing programme in large measure cover the needs of the new Member States. Restricting funds will therefore impede the integration of those countries into the European economy.

TRANSITION TO CIP

The experience gained during implementation of the existing programme must be used in preparations for the new CIP programme. The above-mentioned evaluation report emphasises that there must be better coordination between the new programme and the Community’s Structural Funds and the 7th Research Framework Programme in order to achieve the necessary synergies. This presupposes a greater degree of coordinated thinking on regional development, research and the development of businesses, which establishing partnerships between local and regional players can help achieve.

Awareness of the existing multiannual programme has been lacking. As regards the new programme, several initiatives should be taken to raise awareness of the various instruments under the programme, particularly in the new Member States.

At the same time, your rapporteur would point out that the current programme has still not brought about a sufficient strengthening of the internal market. greater emphasis on cross-border business activity in the new programme. Such activity can be achieved, for example, by promoting contacts between capital providers involved in the programme in various Member States.

According to the Commission’s action plan (COM(2004)0070), the EU is not exploiting its entrepreneurial potential. The new programme must therefore place greater emphasis on the promotion of entrepreneurship. In that connection, it is important to create better conditions so that particular groups such as women, ethnic
minorities and immigrants are helped to start and run their own businesses. One way of achieving this is to facilitate access to micro-loans.

At the same time, the new programme should address both entrepreneurship and established businesses within the social economy.

NANOSCIENCES AND NANOTECHNOLOGIES:
AN ACTION PLAN FOR EUROPE, 2005–09 (10013/05)

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

Thank you for your Explanatory Memorandum on this document which Sub-Committee B considered at its meeting on 10 October.

In my letter to you of 23 June 2004 on 9621/04 COM(2004) 338 Final—Communication from the Commission: Towards a European strategy for nanotechnology, I mentioned that a European strategy for nanotechnology was clearly an aspect of the Seventh Framework Programme for Research and Development. How does this current document relate to the Seventh Framework Programme for Research and Development?

The Sub-Committee noted that the biggest policy implication for the United Kingdom related to the proposal to create a Joint European Technology Initiative and that you intend “to explore how this initiative will add value at the European level and to examine suitable funding and governance mechanisms”. We would like to be kept informed of any developments in this area.

In the meantime, we are content to lift the scrutiny reserve.

12 October 2005

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 12 October about “Nanosciences and Nanotechnologies: An action plan for Europe 2005–09”. Thank you also for lifting the scrutiny reserve on the Explanatory Memorandum.

The original Commission document only makes two specific references to the Seventh Framework Programme for Research and Development. These are contained in the first section of the Action plan headed “1. RESEARCH, DEVELOPMENT AND INNOVATION: EUROPE NEEDS KNOWLEDGE”:

“1.1 The Commission will:

(a) Reinforce N&N R&D in the European Union’s seventh framework programme for research, technological development and demonstration activities (FP7), and has proposed a doubling of the budget compared to FP6. Interdisciplinary R&D should be strengthened along the entire chain for knowledge creation, transfer, production and use;

(b) Propose specific support to research in nanoelectronics under the Information and Communication Technology (ICT) priority of FP7. In line with the research agenda of the European Technology Platform on Nanoelectronics, this will stimulate industrially-relevant research in a technologically mature field, provide the foundation for the next generation of electronics and enable many new ICT applications, whilst drawing on complementary research in other thematic areas.”

Although some of the Commission’s actions will be implemented under a mixture of FP6 and FP7, we expect that these specific actions will be covered by the FP7 Specific Programme on Cooperation, Thematic Priority 4: Nanosciences, Nanotechnologies, Materials and new Production Technologies.

You will be aware that negotiations on the Financial Perspective are not complete so no budget has yet been agreed for FP7. If the Commission’s proposal for a doubling of the budget for nanotechnology is not realised the Specific Programmes will be revised accordingly. The basic shape of the Programmes have been presented and work continues on the text of the proposal, including the role of and funding for the Joint Technology Initiatives. I will keep you informed of progress.

However, I am happy to tell you that we are making progress on taking forward the Action Plan through the cross-Departmental Nanotechnology Issues Dialogue Group which I formed to implement the Government response to the Royal Society/Royal Academy report on nanotechnology. As a UK Presidency initiative we have invited the Commission and Member States to an informal meeting on 24–25 October 2005 to discuss some of the topics which can be progressed in advance of agreement of FP7. The agenda will cover the last four topics from the Action Plan:

— Integrating The Societal Dimension: Addressing Expectations And Concerns.
— International Cooperation.
— Implementing A Coherent And Visible Strategy At European-Level.

The Commission response has been encouraging with the participation of Health, Environment, Enterprise and Research Directorates General and we look forward to a constructive meeting.

2 November 2005

OUTSTANDING TRANSPORT ITEMS

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

I thought you might find it helpful to have an update on a number of outstanding transport proposals ahead of the summer Recess.

Further to my letter of 13 June about progress on the proposed Directive on driving licences (EM 15820/03), I regret to say that in the event it proved impossible to arrive at a Political Agreement on the proposed Presidency compromise text in the Transport Council on 27 June as there remain a small number of issues of some concern to some Member States. However, the informal indications both with the European Parliament and with Member States remain generally favourable, and it is the Government’s intention to revisit this dossier, building on the work of the outgoing Luxembourg Presidency, with the aim of coming to a Political Agreement at 6 October 2005 Transport Council.

Working Group discussions on the proposed Directive on the approval of motor vehicles and their trailers, and of systems, components and separate technical units for such vehicles (EMs 11641/03 and 14469/04) continued during the Luxembourg Presidency. Although progress has been made on several aspects of this complicated dossier, there has not been any further Working Group discussion on the “small series” type approval issues that are of particular concern to the UK; and only inconclusive debate about the lead times for the new arrangements, which also will have an impact on UK industry.

We have, however, recently made good progress in bi-lateral discussions with the Commission on “small series” approvals and have agreed in principle mutually acceptable proposals to be tabled during the UK’s Presidency. We are hopeful that the outstanding issues will be resolved satisfactorily in the next few months and it is our objective to reach a common position and then seek political agreement on the complete dossier at the November 2005 Competitiveness Council meeting.

You will recall that a partial general approach was reached on the Proposal for a Regulation of the European Parliament and of the Council establishing the second “Marco Polo” programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system (EM 11816/04). The outstanding issue is the budget, where a number of Member States refuse to agree until the negotiations on the Financial Perspective are concluded. As you will know, discussion on the Financial Perspective will continue during the UK Presidency. In the meantime, this dossier will be considered by the European Parliament in its First Reading stage, which is currently expected to take place in October. Negotiations to finalise the dossier will resume once agreement on the budget has been reached. I will, of course, write again to let you know the outcome of the European Parliament’s consideration.

The proposed Directive on Intermodal Loading Units (EM 9265/04) was discussed in the Council Working Group of 27 September 2004. Following this, the Dutch Presidency concluded that the proposal appeared to lack sufficient support amongst Member States to progress it any further. Although there has been no further discussion of the proposal since then, the Commission has not yet given any indication that it has formally withdrawn it.

The proposal for a Regulation on the information of air transport passengers on the identity of the operating carrier and on communication of safety information by Member States (EM 6624/05) is not expected to be discussed again at Working Group until the outcome of the European Parliament’s First Reading is known. The Transport and Tourism Committee is expected to issue a report in August, voting in Committee is expected between September and November and the dossier could be considered at the plenary in December. Meanwhile, we have had some informal discussions on the proposal with stakeholders and our formal Consultation began on Monday 11 July. The Consultation will end on 30 September, and a Supplementary EM and Regulatory Impact Assessment will be produced in the light of the comments received. We expect to be able to send this to the Committee in October.

The first substantive Working Group discussion of the proposed Regulation concerning the rights of persons with reduced mobility when travelling by air (EM 6622/05) took place on 12 July, and the dossier will continue to be a focus of the UK Presidency. Our Consultation exercise was launched on 18 May and will close on
12 August. We expect to be able to send a Regulatory Impact Assessment to the Committee in late September. The proposal is currently being considered by the European Parliament, and it is thought that First Reading may be completed in September.

Finally, I can report that the Recommendations from the Commission to the Council in order to authorise the Commission to open and conduct negotiations with the International Civil Aviation Organisation (ICAO) and with the International Maritime Organisation (IMO) on the conditions and arrangements for accession by the European Community (EM 7826/02) have had no further discussion, and, because of the lack of support for this proposal from Member States, the UK Presidency does not intend to allocate Council or Working Group time to it during our term.

I hope you find this information useful. I will, of course, continue to keep you informed of progress on these dossiers.

18 July 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 18 July 2005 providing an update on outstanding transport items which Sub-Committee B considered at its meeting on 10 October.

Much of the information contained in your letter will inform the Sub-Committee’s more detailed future considerations of each of the items mentioned. However, Members would like me to raise one specific issue relating to 11641/03 Proposed Directive on the approval of motor vehicles, and of systems, components and separate technical units for such vehicles.

In September 2003 the Sub-Committee raised with you its concerns about this Directive’s possible negative impact on the UK’s independent low-volume car manufacturers. Have these now been addressed?

PASSENGER RIGHTS (6623/05)

Letter from the Chairman to Charlotte Atkins MP, Parliamentary Under-Secretary of State, Department for Transport

Sub-Committee B considered this document at its meeting on 4 April 2005 and agreed to lift the scrutiny reserve.

However, we would like to know whether this document relates to international travel only or to all travel within the European Union? If the document relates to all travel, we are concerned that it may raise issues of subsidiarity.

Members agree that it is essential to ensure that the legislation is necessary and that proper account has been taken of its possible effect on the competitiveness of the industry. We look forward to scrutinising the specific proposals for legislation in due course.

6 April 2005

PROTECTION OF MINORS AND HUMAN DIGNITY IN THE EUROPEAN ONLINE AND AUDIOVISUAL INFORMATION SERVICES INDUSTRY (9195/04)

Letter from James Purnell MP, Minister for Creative Industries and Tourism, Department for Culture, Media and Sport to the Chairman

I thought I should write to you again about this draft EU Recommendation, which the European Commission first published in May 2004 and which your Committee cleared from scrutiny at your sit in on 8 June 2004.

As Andrew McIntosh reported to Jimmy Hood in his letter of 10 December 2004 (which was of course copied to you) the Council of Ministers considered the recommendation on 16 November last year, and agreed on the general approach which it outlines. The UK welcomes the stress which the Recommendation lays on media literacy and the protection of children and young people from undesirable Internet and other media content.

The Government does, however, have some important objections of principle to the Council’s general approach, and we submitted a Minute Statement which set them out. I am attaching that again for convenience. We were, however, the only Member State which expressed reservations at last year’s November Council.
Since then, the Recommendation has been considered by the Parliament, first in the Education and Culture Committee and then in a plenary session on 8 September this year. The Parliament eventually agreed on 38 separate amendments to the Commission’s original May 2004 version of the Recommendation. These are of varying degrees of substance but still cause us greater concern in terms of the Recommendation’s potential impact on the e industries, which was one of the concerns which we notified in our Minute Statement to the Council. I attach a copy of the European Parliament’s First Reading report (not printed).

Faced with this series of suggested amendments from the Parliament, the Commission said in September that it would undertake a revision of its original May 2004 proposal. The Commission should make the results of this work known shortly.

We will, of course, submit a formal Explanatory Memorandum to your Committee at that point, in the usual way.

We must wait to see what the Commission’s revised version of the text contains, but it seems to us at the moment that this may not be an issue on which the UK Presidency can make any further progress. We had wished if we could to seek political agreement between the Parliament and the Council by the end of our term, but we now anticipate that this task will fall to the succeeding Austrian or possibly Finnish Presidency.

31 October 2005

Letter from the Chairman to James Purnell MP

Thank you for your letter of 31 October 2005 and for the copy of the Minute Statement together with the European Parliament’s First Reading Report.

We share your concern that your reservations on these matters have not found greater support from other Member States. How have the industries in the United Kingdom responded to these developments?

15 November 2005

Letter from James Purnell MP, Minister for Creative Industries and Tourism, Department for Culture, Media and Sport

Thank you for your letter of 15 November. You asked how the industries in the UK had responded to developments recorded in my letter of 31 October.

The first thing I should say is that consideration of the draft Recommendation is taking place in parallel with the development of a revised “Television without Frontiers” Directive (TVWF). Indeed some elements of the Recommendation are close to elements of the Commission’s internal draft Directive (which appears to have become available to a number of stakeholders), most obviously extension of a “right of reply”. Our principal concerns about the Recommendation related to its potential impact on legislation and that impact is now evident in the draft Directive.

Action to influence these instruments is therefore much of a piece. My officials held their most recent meeting with UK industry stakeholders on 27 October, to update them on the developments on the draft EU Recommendation on the protection of minors and on the revision of the TVWF Directive. The meeting also involved colleagues from the Department of Trade and Industry (DTI) and the Office of Communications (OFCOM).

The industries’ views were very clear at the joint Presidency/Commission Liverpool Audiovisual Conference and have not changed. Most are opposed to the extension of regulation to the Internet and of the introduction of a mandatory, statutory right of reply at the European level.

We are also aware that a number of UK stakeholders have lobbied individually or through their European organisations. For example, a joint letter was sent by the European Publishers Council (EPC), the European Newspaper Publishers’ Association (ENPA) and the European Federation of Magazine Publishers (FAEP) to the Members of the EU Culture and Education Committee, asking them to reject the report by Marielle De Sarnez MEP. We have made clear to industry that the Presidency requires a certain restraint by the UK Government itself.

On the detail of the Recommendation, the UK industries are, like us, waiting for the Commission’s revised version, which is expected very shortly. The only detailed comments we have received recently were from the Advertising Association, who were concerned with a European Parliament plenary amendment on encouraging the regulation of food advertising to children.

You may like to be aware that at an Audiovisual Working Group meeting on 15 September, which considered the European Parliament plenary amendments, some delegations objected to many of the Parliament’s amendments as too prescriptive, detailed and lengthy. They suggested that the Commission’s amended
internal market (sub-committee b)

Proposal should be much closer to the Council general approach rather than the Parliament’s position, if the Commission ever hoped to reach a final agreement on this text. When we receive the revised draft Recommendation, we shall of course update the Scrutiny Committees accordingly.

30 November 2005

PUBLIC TRANSPORT SERVICES BY RAIL AND ROAD (11508/05)

Letter from the Chairman to Derek Twigg MP, Parliamentary Under-Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum on this document which Sub-Committee B considered at its meeting on 17 October 2005.

We note that you believe that this Proposal does not offer the same prospects for significant market opening as the 2000 and 2002 Proposals did. We are most concerned about this. The Proposal appears to accept and entrench a lack of openness to competition and transparency where services of general economic interest are sourced from contractors. We noted that you plan to carry out a full public consultation on this Proposal. We would be very interested to receive a copy of this as soon as it is available.

You also stated that a Regulatory Impact Assessment is being prepared. We are maintaining scrutiny on this Proposal until we have had the opportunity to examine both the Proposal and the Regulatory Impact Assessment.

19 October 2005

Letter from Derek Twigg MP to the Chairman

I am writing further to my Explanatory Memorandum 11508/05 of 28 September on the above proposal from the European Commission.

Your Committee considered this EM on 17 October and commented that it was concerned about the lack of prospects for market opening, a lack of openness to competition and transparency where services of general economic interest are sourced from contractors and that you should like to hear the outcome of the Government’s consideration on the full effect of the draft Regulation and of its public consultation and to see its Regulatory Impact Assessment (RIA).

The Department launched a full public consultation exercise, accompanied by a partial RIA, on 21 October ending on 13 January 2006. Following the results of the consultation my officials will produce a summary of responses and a full RIA. I will ensure that you are sent a copy of both of these documents and will set out in full how the UK proposes to handle negotiations when the proposal is discussed under future Presidencies.

In the meantime, please find enclosed a copy of the Department’s partial RIA and associated public consultation documents to help further the Committee’s consideration. I would like to outline how the Department has handled this proposal during the UK Presidency and bring to your attention some of our headline concerns set out in more detail in the enclosed RIA.

In its initial assessment the UK Presidency noted the linkages between the proposal for a Regulation on Public Passenger Transport Services by rail and by road (“Public Service Obligations proposal”) and the proposal for a Directive on the Development of Community’s railways (the liberalisation of international rail passenger services proposal, EMs 7170/04, 7147/04, 7172/04, 7149/04, 7148/04, 7150/04). It is clear that provisions in the PSO proposal are relevant for the liberalisation of international rail passenger services proposal because they intend to increase transparency and consequently, improve the assessment of the impact of opening the market for international passenger services on public services.

As a result on 6 October 2005, on the basis of a UK Presidency questionnaire, the Transport Council had an exchange of views on the link between the two proposals. A majority of Ministers expressed the opinion that even though the liberalisation of international rail passenger services proposal and the PSO proposal need to be treated in parallel, the subject matter of both proposals would not require parallel agreement. On the basis of the responses by the Ministers, the UK Presidency concluded that COREPER was instructed to examine the liberalisation of international rail passenger services proposal and the relevant aspects of the PSO proposal with a view to enabling a political agreement on a common position on the liberalisation of international rail passenger services proposal at Transport Council on 5 December. In line with that approach identified by Ministers, the Working Group on Land Transport discussed the liberalisation of international rail passenger
services proposal and, as far as it concerns public passenger transport services by rail, the PSO proposal, at its meetings of 11 and 25 October 2005 and 8, 14 and 18 November 2005.

As a result of these discussions it may be possible to reach political agreement on 5 December. Should this be the case it will be accompanied with a progress report setting out the initial discussions that have taken place on the relevant parts of the PSO proposal. A Ministerial Statement on the outcomes of Transport Council will be placed in both Houses as is usual practice.

Your Committee noted that this proposal does not offer the same prospects for significant market opening as the 2000 and 2002 proposals did. The results of the Department’s full public consultation will provide a clearer picture but let me draw out the headline concerns the Department has initially raised, in the attached RIA. In particular, the revised proposal would not require authorities to tender services requiring financial support or exclusive rights. Rather, it would give them discretion to provide the services themselves or directly to award a contract to an internal operator (which would then be precluded from seeking to tender for services elsewhere).

Additionally in the case of regional or long-distance rail services, an authority would be free directly to award a PSC to any operator without competitive tendering. This is a significant change from the earlier Commission proposals which would have required competitive tendering in most cases. With regard to each of the UK transport modes that would be affected by the proposed regulation my Department’s specific concerns are as follows:

— the most serious potential implications would seem to be for existing and pipeline light rail schemes. The draft proposal would limit contract lengths for light rail to 15 years extendable to 22.5 years where the operator provides assets. This does not fit well with UK Design Build Finance and Operate (DBFO) schemes where long contract lengths typically 30 years or more—are seen to make the schemes more affordable. Under the proposal, it might be necessary to renegotiate some existing contracts which could trigger significant compensation payments. It could also impact on the procurement of pipeline schemes;

— there are three main issues in relation to London Underground. First, the draft would require Transport for London (TfL) and London Underground Limited (LUL) to formalise their relationship, which could be a substantial exercise. The second issue hinges on the interpretation of the word “influence”. The draft proposes that where an internal operator is directly awarded a contract then any organisation over which it exerts even a “minimal influence” may not participate in competitive tenders outside the jurisdiction of the awarding authority. It could be argued that LUL has an influence over many organisations including the members of the PPP and PFI consortia. The third issue arises from a provision in the draft proposal which would only allow an authority directly to award a contract to an internal operator if all the services are within the jurisdiction of the authority. The Underground extends beyond the Greater London Authority (GLA) boundary;

— there should be no significant impact on current heavy rail franchising arrangements. But the provision limiting the duration of a directly awarded or extended contract in an emergency to one year could be problematic were a franchisee to default;

— with one exception our current bus arrangements would seem to be compatible with the proposal. The only slight area of difficulty might be in London where TfL has a subsidiary used as an “operator of last resort” to respond to emergencies or tendering failures. TfL’s subsidiary sometimes operates services beyond the GLA boundary so it could fall foul of the provision described above as the third issue for London Underground; and

— the draft proposal would probably not create major opportunities for UK firms to tender for contracts in other member states because tendering would not be compulsory. However, it might improve fairness among firms with new provisions on transparency and new defences against hidden subsidies. It might therefore make a modest contribution to market opening.

My officials’ current understanding is that the forthcoming Austrian Presidency will be taking forward the proposal and will discuss it in full during Land Transport Working Group sessions from January 2006. The UK will be looking to negotiate changes in Council to ameliorate the potentially adverse affects of the proposal on UK public transport arrangements as set out above and anything further raised during the public consultation. I will write again after the public consultation has closed on 13 January.

24 November 2005
PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PUBLIC PASSENGER TRANSPORT SERVICES BY RAIL AND BY ROAD

This consultation paper seeks views on a European Commission proposal of 20 July 2005 for a new Regulation to replace the existing Community legislation governing the procurement and funding of inland public transport (Regulation (EEC) 1191/69), in order to inform the Government’s negotiating position in the Council of Ministers and with the European Parliament. A copy of the proposal is enclosed.

A summary of the proposal is at Annex A. A partial Regulatory Impact Assessment setting out the perceived effects of the proposal is at Annex B. The proposal potentially affects both public and private sector operators of bus, rail, coach, light rail and metro services as well as Central and Local Government authorities which procure or intervene in the provision of such services.

A list of questions to which we would particularly welcome responses appears at Annex C. However, please feel free to comment on any aspect of the Commission proposal and the environmental, economic or social effects the proposals may have in the UK or for UK businesses and individuals. To assist us in the negotiations, it would be particularly helpful if you were able to provide evidence and examples in support of your views, especially if responding to anything in the Regulatory Impact Assessment: and to be as specific as possible in identifying matters of concern in the proposal and how they might be satisfactorily addressed through changes to the text.

This exercise and the Regulatory Impact Assessment have been prepared in consultation with officials from the devolved administrations and the Northern Ireland Office, with whom you are welcome to make direct contact about any implications for devolved responsibilities.

TIMING AND HOW TO RESPOND

The consultation period will run until 13 January 2006. Initial discussions in the Council’s Working Group have already begun on elements of the proposal and more will take place in the run-up to the Transport Council on 5 December. We would therefore be grateful to receive early responses to the consultation—even if they are provisional—to ensure that the UK position is fully informed as soon as possible and, particularly, before the Transport Council.

We are happy to discuss these proposals with individual organisations if this would help them to respond to the consultation. Please contact Rod Paterson at the address below if you would like to be briefed in this way.

When responding please state whether you are responding as an individual or representing the views of a larger organisation. If you are responding on behalf of a trade association, or another form of representative group, please include with your response a summary of the people and organisations you represent. Please also indicate if you are a small business with less than 50 employees or £4.44 million annual turnover.

Views are being sought from a wide range of people and organisations with possible interests. A list of those to whom this document has been sent is at Annex D. If you have any suggestions as to others that may wish to be consulted, please let us know.

This document is also being published on the DfT website: http://www.dft.gov.uk

All responses should be sent (preferably by email) to: ipsr.consultation.gsi.gov.uk

Lec Napal
Europe Division
Department for Transport, 4–13 Great Minster House, 76 Marsham Street, London SW1P 4DR.
Tel: 020 7944 4493 Fax: 020 7944 5811

If you have any questions about the substance of this consultation document, please contact John Carr or Rod Paterson at the above address (or alternatively on 020 7944 5308/5414).

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that
confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

Consultation Criteria: Code of Practice

This consultation exercise is being undertaken in accordance with the criteria issued by the Cabinet Office and which are reproduced in this document at Annex E.

If you have any complaints or comments about the way that this consultation has been conducted, these should be sent to the Department’s Consultation Co-ordinator:

Andrew D Price
Consultation Co-ordinator
Department for Transport, Zone 9/9 Southside, 105 Victoria Street, London SW1E 6DT.
e:mail: consultation@dft.gsi.gov.uk

Links

Useful links for further background information are:
Department for Transport (http://www.dft.gov.uk)

Annex A

SUMMARY OF THE MAIN ELEMENTS OF THE PSO PROPOSAL

Introduction

On 20 July 2005, the European Commission published a proposal for a Regulation to replace the existing Community legislation governing the procurement and funding of inland public transport (Regulation 1191/69). This document replaces earlier proposals for a new Regulation adopted by the Commission in 2000 and 2002, on which member states could not reach an agreement. The extant legal framework is no longer considered fit for purpose in an increasingly open public transport market. Recent European Court of Justice cases, including “Altmark”, have provided some clarification of the relationship between public service contracts (“PSCs”) and EU competition law. However, substantial areas of uncertainty remain, placing at risk of legal challenge both private operators and public authorities. The Commission’s draft proposal is intended to provide greater clarity and reduce risk.

The revised proposal would not require authorities to tender services requiring financial support or exclusive rights. Rather, it would give them discretion to provide the services themselves or directly to award a contract to an internal operator (which would then be precluded from seeking to tender for services elsewhere). Additionally, in the case of regional or long-distance rail services, an authority would be free directly to award a PSC to any operator without competitive tendering. This is a significant change from the earlier Commission proposals which would have required competitive tendering in most cases.

The main features of the revised proposal are set out below.

Purpose and Scope of the Regulation (Article 1)

To define the conditions under which authorities would be able to intervene in the delivery of public passenger transport by road and rail (unlike Regulation 1191/69 and the earlier proposals to revise it, the scope of this draft does not include inland waterways) to ensure the provision of services which are more frequent, safer, of higher quality or more affordable than those that pure market forces would provide.

Public Service Contracts and General Rules (Article 3)

A PSC would have to be concluded for the award of all exclusive rights or the payment of compensation which are in return for the discharge of public service obligations (PSOs). The only exception would be where the payment was for a general PSO applying to all services in an area and which aimed to limit maximum fares for certain categories of passengers, when net cost general rules could apply instead.
Mandatory Content of Public Service Contracts and General Rules (Article 4)

PSCs and general rules would have to:
- clearly define the PSOs with which the operator must comply;
- establish in advance the parameters for calculating compensation which would not be allowed to exceed net costs taking into account revenue kept by the operator and a reasonable profit; and
- define the arrangements for allocating the various costs of supplying services and for allocating ticket revenues.

The duration of PSCs would not be allowed to exceed eight years for bus services and 15 years for rail services except where the operator provided significant assets linked exclusively to the services, when the maximum duration could be extended by up to 50 per cent.

Award of Public Service Contracts (Article 5)

PSCs would have to be awarded by an open, transparent and non-discriminatory tender process except where:
- an authority chose to provide services itself to or to award a PSC directly to an internal operator. Here, direct award would only be allowed where all the activities of the operator were exercised within the jurisdiction of the authority. And, the operator and any undertaking over which the operator exerted influence would not be allowed to participate in competitive tendering processes outside the jurisdiction of the authority;
- the annual value was estimated at less than €1 million or concerned the annual provision of fewer than 300,000 km of services, as a result of which the PSC could be directly awarded to an operator;
- there was an emergency, in which case an authority would be able directly to award or extend a PSC but not for a period of more than one year; or
- the PSC concerned regional or long-distance rail transport, in which case it would be able to be directly awarded.

Public Service Compensation (Article 6)

All compensation connected with a directly awarded contract or a general rule would have to conform not only with Article 4 but also with the provisions of the annex (see below).

Publicity (Article 7)

Authorities would have to publish an annual report on their PSOs, compensation payments and exclusive rights to allow monitoring of performance and quality and to ensure value for money. Authorities would also have to publish details of proposed PSCs in the EU Official Journal at least one year before the award or tender.

Transition (Article 8)

Following the entry into force of the Regulation, authorities would have to ensure that PSCs were awarded in accordance with the Regulation within the following periods:
- at least 50 per cent by value of coach and bus PSCs within four years;
- at least 50 per cent by value of rail PSCs within five years;
- all coach and bus PSCs within eight years; and
- all rail PSCs within 10 years.

Existing PSCs awarded following fair competitive tendering would be allowed to continue for the contract period provided this was limited and comparable to the periods set out in the Regulation.

During the second half of the transition periods, authorities could bar from participation in competitive tendering any operator receiving more than half of its public transport service revenues from public transport services not awarded in accordance with the Regulation.
**INTERNAL MARKET (SUB-COMMITTEE B)**

**Repeals (Article 10)**

Regulations (EEC) No 1191/69 and (EEC) No 1107/70 would be repealed.

**Follow-up (Article 11)**

The Commission would have to present a report:

- two years after the adoption of the Regulation, on developments in the provision of public passenger transport in Europe; and
- two years after the longest transition period (10 years), on the implementation of the Regulation.

**Rules Applicable to Compensation Referred to in Article 6 (Annex)**

Among other things, for PSCs awarded directly or general rules:

- compensation would not be allowed to exceed an amount corresponding to the net cost to the operator of complying with a PSO compared to the cost of not meeting the obligation if the services had been operated commercially; and
- to increase transparency and avoid cross-subsidies, an operator which engaged in activities other than the compensated PSO services would have to operate the PSO services with separate accounts.

**Annex B**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PUBLIC PASSENGER TRANSPORT SERVICES BY RAIL AND BY ROAD—INITIAL REGULATORY IMPACT ASSESSMENT**


**Purpose and Intended Effect of Measure**

(i) Objective

The proposed regulation would replace the existing Community legislation governing the procurement and funding of inland public transport, which is no longer considered fit for purpose in an increasingly open public transport market. Recent European Court of Justice cases, including “Altmark”, have provided some clarification of the relationship between public service contracts (“PSCs”) and EU competition law. However, substantial areas of uncertainty remain, placing at risk of legal challenge both private operators and public authorities. The Commission’s proposal is intended to provide greater clarity and reduce risk.

(ii) Background

The existing Community framework applicable to inland public passenger transport is set out in Regulation (EEC) No. 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as last amended by Regulation (EEC) No. 1893/91. This allows Member States to impose public service obligations (PSOs) aimed at guaranteeing the provision of services and to compensate operators for the costs incurred. It also sets out the procedures to be followed and methods for calculating the amount of compensation. Compensation granted in accordance with the rules is deemed to be compatible with Treaty state aid rules and does not require notification to the Commission.

The current proposal supersedes earlier proposals for a new regulation adopted by the Commission in 2000 and 2002 on which Member States could not reach an agreement.

The proposal would not require authorities to tender services requiring financial support or exclusive rights. Rather, it would give them discretion to provide the services themselves or directly to award a contract to an internal operator (which would then be precluded from seeking to tender for services elsewhere). Additionally,
in the case of regional or long-distance rail services, an authority would be free to award a PSC directly to any operator without competitive tendering. This is a significant change from the earlier Commission proposals which would have required competitive tendering in most cases.

(iii) Rationale for Community intervention

The current Regulation defines how authorities may act in the field of public passenger transport to guarantee the provision of services which are among other things more numerous, safer, of a higher quality or at a lower cost than those the market would provide of its own accord.

At the time the Regulation was adopted in 1969—and even when it was amended in 1991—public transport service providers were almost exclusively public sector authorities operating at national, regional or local level. Now, with the emergence of operators providing services in more than one Member State and many authorities choosing to tender services, the legislation is inadequate.

Implementation of the Regulation is particularly problematic in a constantly evolving market and it fails to specify the procedures for awarding PSCs. It has become a source of legal uncertainty with increasing numbers of disputes and reluctance of operators to commit major investment while the rules are unclear.

The risks in the UK, where most services are either competitively tendered or provided by operators on a commercial basis, are thought to be relatively low. But there are potentially significant risks for UK companies providing services in other Member States.

Consultation

(i) Within government

The Department has informally consulted Her Majesty’s Treasury, the Department of Trade and Industry, the Northern Ireland Office, the Scottish Executive and the Welsh Assembly and will continue to seek their views and those of other interested government departments as this proposal is taken forward.

(ii) Public consultation

The Department is conducting a full public consultation of stakeholders and other interested parties. The results of this consultation will help to inform the final full Regulatory Impact Assessment.

Options

Option 1: Do nothing

The first option is to do nothing, that is the existing Community legislation remains in force. This would mean there was no need to change existing public transport arrangements in the UK in response to new Community legislation. But the significant legal uncertainty that exists in the market at the present time would remain. And, while, these risks are not thought significantly to threaten current UK arrangements, there are potentially substantial risks for UK companies providing services in other Member States.

Option 2: Adoption of the EC Regulation as proposed by the Commission

This option assumes that the Regulation proposed by the Commission is adopted in its entirety by the Council of Ministers and the European Parliament. This option would be likely to require some changes to the current and proposed UK public transport arrangements. Among other things:

— it might be necessary to renegotiate existing light rail contracts where the contract length exceeds that which is proposed by the Commission;
— it might be necessary to reduce the proposed contract lengths of any new light rail schemes;
— it would be necessary to put in place public service contracts where such contracts do not currently exist (as discussed in section 5 below this does not apply to commercial bus services);
— any organisation over which any internal public transport operator in the UK which is directly awarded a contract exerts an influence might be barred from competing for tenders outside the jurisdiction of the awarding authority;
— the provision which would only allow an authority directly to award a contract to an internal operator if all the services are within the jurisdiction of the authority could be a problem, particularly in London and Northern Ireland; and
— the provision limiting the duration of a directly awarded or extended contract in an emergency to one year could be problematic were a heavy rail franchisee to default.

The Regulation proposed by the Commission would probably not create major opportunities for UK firms to tender for contracts in other member states because tendering would not be compulsory. However, it might improve fairness among firms with new provisions on transparency and new defences against hidden subsidies. It might therefore make a modest contribution to market opening.

FURTHER OPTIONS

Further options would arise were it possible to amend the Commission’s proposals during the negotiations between the Council and the European Parliament. For instance, it might be possible to reduce the exceptions from competitive tendering contained in the Commission’s proposal which might in turn offer new business opportunities for UK public transport operating companies. We shall seek to develop such further options in the light of responses to the public consultation exercise and as the proposals are developed during negotiations.

COSTS AND BENEFITS

(i) Sectors and groups affected

The proposed Regulation would affect both public and private sector operators of bus, rail, coach, light rail and metro services as well as Central and Local Government authorities which procure or intervene in the provision of such services.

(ii) Benefits

Option 1: Do nothing

There would be no benefits to operators and prospective operators of public passenger transport from doing nothing. However, a small number of authorities might avoid having to make changes to existing arrangements (see under “Costs” below).

Option 2: Adoption of the EC Regulation as proposed by the Commission

The main benefit of the new Regulation proposed by the Commission would be that it would bring greater legal certainty for operators of bus, rail, coach, light rail and metro services as well as authorities which procure or intervene in the provision of such services. Additionally, it should improve fairness among operators with new provisions on transparency and new defences against hidden subsidies. This might provide some new opportunities for UK public transport operators seeking business in other member states.

(iii) Costs

Option 1: Do nothing

There would be no direct costs to operators or authorities arising from the “do nothing” option. But, with the present legal uncertainty concerning the payment of subsidy and the award of exclusive rights to public transport operators, there is the possibility that current UK arrangements, or arrangements in other member states in which UK companies are providing services, could be challenged in the courts. In the worst case, such arrangements could be found to be illegal and operators could be required to repay all of the subsidy they had received over a number of years.
**Option 2: Adoption of the EC Regulation as proposed by the Commission**

**Light Rail and Metro**

The most serious potential cost implications would seem to be for existing and pipeline light rail schemes. The proposed transitional arrangements would require all light rail schemes to be awarded under the rules of the regulation within 10 years (and at least 50 per cent of them within five years). Because the maximum contract length allowed under the proposal would be 15 years extendable to 22.5 years where the operator provides assets, this could require the renegotiation of several existing light rail concessions: notably, Croydon Tramlink, Nottingham Express Transit, Midland Metro, and Sheffield Supertram. A number of these have been procured using private finance and such renegotiation could trigger significant compensation payments. Costs of buying out existing concessions are likely to vary considerably. Nevertheless, the net cost of termination or reduction in years is likely to be a material issue in most cases.

The proposed Regulation would also have a significant impact on future schemes. A number of new tram schemes and extensions to existing schemes are under development at the moment. These potentially include Merseytram, South Hampshire Rapid Transit (SHRT), Leeds Supertram, Midland Metro extensions, Manchester Metrolink Phase III, Nottingham Express Transit (NET) Lines 2 and 3 and Sheffield Supertram extensions. If the proposed Regulation were to apply, without suitable transition arrangements, to schemes currently in development, but not finally procured, there could be significant timing and hence cost implications, particularly for those schemes where proposed procurement routes are at an advanced stage. The proposed restrictions on rail concession durations would appear to prohibit some of the procurement models that have been previously used in the UK for light rail projects and hence limit flexibility for the development of future projects. In particular, the ability to match the operating concession length to that of the infrastructure concession (typically a minimum of 30 years) would be difficult unless some form of competition at the sub-contract level was possible and deemed compliant.

The proposed regulation would require a formal contractual arrangement between London Underground Limited (LUL), as internal operator, and Transport for London (TfL), as competent authority awarding a contract for Underground services. It would also require a formal contractual arrangement to be put in place for the light rail systems in Glasgow and Tyne & Wear. The draft specifies areas to be included in contracts, such as costs of staffing, energy and maintenance of rolling stock. Putting in place such arrangements could be a significant task especially in relation to London Underground.

The draft regulation would also allow a service contract to be directly awarded to an internal operator only if that operator exercises all of its activities within the jurisdiction of the awarding authority. London Underground has a number of lines that extend beyond the GLA’s boundary. This problem would need to be addressed during negotiations.

The draft regulation proposes that where an internal operator is directly awarded a contract then any organisation over which it exerts even a “minimal influence” may not take part in competitive tendering procedures outside the jurisdiction of the awarding authority. There is no definition of “influence” but, using London Underground as an example, it could be said that LUL has a far reaching influence over a number of organisations. These could include its suppliers, including the PPP and PFI companies and consortia, individual companies that make up these consortia or supply LU direct, and other companies who operate further down LUL’s supply chain.

**Bus Services in Great Britain**

Just under 80 per cent of bus services outside London are “commercial” services provided and determined by private sector operators responding to market demand, rather than under a public service contract. There are no exclusive rights to run a particular route. It seems unlikely that the proposed regulation would affect the operation of this commercial “deregulated” regime (though see below on concessionary fares).

The remaining 20 per cent of the network is subsidised by local authorities and is provided by operators under contract to a local authority. Domestic legislation already requires that bus subsidy contracts generally be subject to competitive tender. The rules do, however, include de minimis arrangements that allow most authorities to spend up to 25 per cent of their annual bus support expenditure on contracts which they did not consider it necessary or appropriate to tender. Use of these arrangements would in principle be affected by the Commission’s proposals. But in practice flexibility is safeguarded by the freedom included in the proposals directly to award contracts of a value of less than one million euros per year—a high figure in the context of bus subsidy contracts.
Wales operates a different service subsidy arrangement, where The Service Subsidy Agreements (Tendering) (Amendment) (Wales) Regulations 2002 allow local authorities to apply de minimis for up to 40 per cent of their total budgeted expenditure for service subsidies for any particular financial year. Initial and informal sounding of local authorities in Wales suggests that this may well become a difficult issue for several authorities.

Operators of local bus services are required to participate in local authority concessionary fares schemes giving reduced fares for older people and some other groups. Operators are reimbursed for their participation on a revenue foregone, “no better, no worse” principle. The new EU proposals state that where an operator is required to participate in tariff concession schemes compensation should reflect the net financial effect on the operator, consistent with the principles underlying our current arrangements. However, stakeholders will need to advise on any implications for existing reimbursement arrangements of the precise terms of the proposals.

London has different arrangements for the delivery of bus services. All London bus services are controlled by Transport for London (TfL) who specify routes and timetables etc; services are provided by operators under five-year contracts to that body. All contracts are put out to competitive tender. An initial assessment suggests that the only potential difficulty in the current proposals might be the provision which would only allow a contract to be awarded directly to an internal operator if that operator exercises all of its activities within the jurisdiction of the awarding authority. TfL has a bus subsidiary—“London Buses Ltd”—used as an “operator of last resort” to respond to emergencies or to tendering failures which sometimes operates services outside the GLA boundary. The problem might need to be addressed in negotiations.

HEAVY RAIL

The proposed Regulation would not appear to have any significant impact on existing heavy rail services in Great Britain as current policy already respects the principles underlying the proposal. Equally, the emphasis on encouraging competition in Great Britain, achieving value for money and avoiding inefficient levels of public funding, it is unlikely that any future policy decisions on the award of contracts would run counter to the principles proposed by the European Commission. This said, there are a couple of areas of uncertainty about the potential impact of new EU rules, which should be addressed during negotiations:

— the proposal includes provision for direct award of a public service contract or extension of an existing contract in an emergency. However, any provisions introduced in these circumstances are time-limited to the duration of the problem and at the longest to one year. Experience with the South East Trains franchise is that a full competition takes about two years from start to finish. In the event of a franchise being terminated early, therefore, public authorities might need up to two years to organise a replacement; and

— the draft proposal suggests that a parallel State Aids Regulation—1107/70—is to be repealed. This would create uncertainty about public funding of future rail construction projects unless clarification is established through different instruments.

HEAVY RAIL AND BUS IN NORTHERN IRELAND

In Northern Ireland, all rail services and the majority of bus services are provided by a statutory public corporation, the Northern Ireland Transport Holding Company (NITHC), through its Translink subsidiaries. Should the Regulation be adopted, it would be necessary to establish a more formal relationship, by way of public service contracts, between the Department for Regional Development (DRD) and the NITHC bus and rail subsidiaries. While some work has already started to improve public service obligation specification and to increase transparency in the allocation of funding, it is probable that additional staff resources will be required to develop and monitor PSCs for rail and bus services.

Depending upon further clarification of the rules in the Annex to the Regulation governing “compensation rules”, there might be additional costs to NITHC involving re-structuring and separating accounts for those activities other than compensated PSO services. It is not possible to quantify such costs at this point in time.

Clarification is also needed in relation to the restrictions on the activities of internal operators who enjoy directly awarded public service contracts. At first sight, it would appear that NIR and Ulsterbus could be restricted from operating their cross-border services into the Republic of Ireland or running coach tours and scheduled bus services into other parts of the UK. Whilst it may be the intention of the Regulation to restrict internal operators from taking part in competitive tenders outside their territories, it would be unduly onerous if the interpretation of this Article were to inhibit current arrangements for cross-border travel, particularly where these involve short local bus journeys.
SMALL FIRMS IMPACT TEST

It seems unlikely that the proposed Regulation would have any significant impact on small firms. There will be some small firms operating in the bus market. But, as has been explained in section 5 above, the potential impact on the bus sector is likely to be small.

COMPETITION ASSESSMENT

The proposed Regulation would not appear likely to affect competition in the UK where the majority of public transport is already provided following competitive tendering or, in the case of buses, via “commercial” services provided and determined by private sector operators responding to market demand.

While the proposal would not require competitive tendering of services, it might make a modest contribution to market opening in some member states where the public transport market is currently closed.

ENFORCEMENT, SANCTIONS AND MONITORING

(i) Enforcement and sanctions

The Regulation would have direct affect in Member States. The Community has exclusive competence in relation to state aid matters.

(ii) Monitoring

The proposed Regulation provides that:

— two years after it is adopted, the Commission shall present a report on developments in the provision of public passenger transport in Europe; and
— no later than two years after the end of the transitional periods specified in the Regulation, the Commission shall present a report on the implementation of the Regulation.

Annex C

PUBLIC CONSULTATION QUESTIONS

GENERAL

Do you agree with the Commission that there is an urgent need to replace Regulation (EEC) No 1191/69?

Do you believe the Commission’s proposal if adopted as drafted would:

— provide legal certainty for authorities and operators?
— sufficiently strengthen transparency and fairness?

The Commission highlights the need to modernise public transport and increase its efficiency in order to maintain or increase its market share. Do you believe the proposal if adopted as drafted would deliver this?

Do you agree with the Commission that, on subsidiarity grounds, authorities should be free to:

— provide services themselves or to award contracts directly to internal operators?
— award relatively small contracts directly to operators?
— award contracts for regional and long-distance rail services directly to operators?

REGULATORY IMPACT ASSESSMENT

Enclosed with this public consultation document is a partial Regulatory Impact Assessment (RIA). We are looking to those we are consulting to help us to develop this document. We would welcome any views on the regulatory impact of this proposal. But set out below are a number of specific questions about elements of the Commission’s proposals.

Where relevant, we would encourage you to provide estimates of the overall compliance costs to your organisation. For example, are you able to establish any costs involved in making your organisation compliant with this proposal as currently drafted? This could include, among other things, increased administrative, legal, accountancy or consultancy costs.
Where relevant, we would equally welcome details of any benefits you believe your organisation might derive from adoption of these proposals. It would be particularly helpful if you could estimate the monetary value of any such benefits.

We would be particularly interested to determine the likely impact of the proposal on small firms. So we would encourage responses from such firms or their representatives.

The Commission’s proposals could impact on both existing public transport arrangements and on arrangements that authorities/operators are planning to put in place. Where appropriate, it would be very helpful if, when answering questions, respondents could make clear whether they are referring to the impact on existing or new arrangements.

PUBLIC SERVICE CONTRACTS AND GENERAL RULES (ARTICLES 3 AND 4)

How far do you believe the terms of these provisions are compatible with the current way in which exclusive rights and/or compensation are granted in the UK?

What changes would be required to the way in which exclusive rights and/or compensation are presently granted? Where possible please supply estimates of any additional costs that are likely to result including ongoing administrative costs where these are identifiable.

Do you believe the proposed maximum contract lengths are reasonable?

Would longer contract durations—e.g., for light rail schemes—be likely to reduce the costs the public sector has to bear over the life of a contract and, if so, are you able to estimate by how much?

AWARD OF PUBLIC SERVICE CONTRACTS (ARTICLE 5)

Are the conditions (in paragraph 2) which would govern the direct award of a contract to an internal operator likely to present problems in the UK? Specifically, where (other than in London) might:

— the requirement for the operator—and any entity over which it exerts even a minimal influence—to perform all public passenger transport activity within the territory of the competent authority constrain an authority from directly awarding a contract?

— the proposal to bar any operator awarded a contract directly—and any entity over which that operator exerts influence—from tendering competitively elsewhere create particular difficulties?

Are the provisions (in paragraph 5) which would govern the direct award of a contract in an emergency satisfactory? In particular, is the contract duration limit of one year likely to be sufficient in all circumstances?

The exceptions from tendering in this Article clearly have the potential to keep much of the EU public transport market closed. What impact might this have on the business prospects of UK companies which operate—or plan to operate—public transport services in other member states vis-à-vis their prospects were these exceptions to be removed? In answering this question, it would be very helpful if respondents were able to identify the potential impact of each of the exceptions separately.

PUBLIC SERVICE COMPENSATION (ARTICLE 6 AND ANNEX)

What would be the implications of complying with Article 6.1 and the Annex? In particular, paragraph 5 of the Annex sets out accounting requirements. Would these raise any serious issues or concerns and would they impose new costs? If they would impose new costs, is it possible to quantify them?

PUBLICITY (ARTICLE 7)

What would be the implications for authorities of complying with the requirement (in paragraph 1) to publish an annual report on their public service obligations? It would be very helpful if authorities could estimate what new costs they might incur in satisfying this requirement.

Might there be any potentially adverse implications for authorities arising from the proposed requirement for authorities to advertise their intention to invite tenders or directly award contracts at least one year before so doing?

Might the provision which would require authorities to advertise their intention directly to award a contract in any way open up new business opportunities for UK public transport operating companies?
TRANSITION (Article 8)
The proposed transitional arrangements would require authorities to ensure that their public transport arrangements were made compliant with the Regulation within given periods of time. For the purposes of the RIA, we need authorities to identify current public transport arrangements which might be affected and the costs they might incur in making those arrangements compliant:

Which existing public transport arrangements in the UK would need to be adapted to comply with the proposed Regulation?

For each affected arrangement, what would be the main changes that would need to be made?

How much might it cost to make these changes?

Would the periods specified for making arrangements compliant provide sufficient time for carrying out the necessary work?

If you are responding on behalf of a competent authority, would the authority concerned be likely to make use of the provisions of paragraph 6 to exclude certain operators from invitations to tender?

We would also like to hear from operators whether they believe the requirement for authorities to make their public transport arrangements compliant with the Regulation are reasonable and might present new business opportunities or other benefits.

Are the periods specified for making arrangements compliant reasonable?

Are the provisions to exclude certain operators from invitations to tender in paragraph 6 reasonable?

Would these requirements to make current arrangements compliant be likely to offer UK operators new business opportunities or other benefits?

REPEAL (Article 10)
Do you agree with the Commission that Regulation 1107/70 on the granting of aids for transport by rail, road and inland waterway is obsolete and should be repealed?

Annex D

LIST OF CONSULTEES

Association of Train Operating Companies
Eurotunnel
London and Continental Railways
Network Rail
ASLEF
Rail Safety and Standards Board
Rail Freight Group
Rail Passengers Council
Railway Forum
Railway Industry Association
RMT
TSSA
ORR
Channel Tunnel Safety Authority
EWS Railways
GB Rail Freight
Direct Rail Services
Arriva Trains Wales
Central Trains
c2c
Chiltern Railways
Eurostar
First Great Western Link
First Scotrail
Gatwick Express
GNER
Heathrow Connect/Express
Hull Trains
Island Line
Merseyrail
Midland Mainline
Northern Rail
One
Silverlink
South Eastern Trains
South West Trains
Southern
Thameslink
Transpennine Express
Virgin Trains
Wagn
Wessex Trains
Docklands Light Railway
Blackpool Tramway
Manchester Metrolink
Midland Metro
Sheffield Supertram
Tyne and Wear metro
Nottingham Express Transit
UK Tram
Association of British Insurers
AA (or via Motorists' Forum)
Freight Transport Association
Low Carbon Vehicle Partnership
Motorists Forum
Road Haulage Association
Road Safety Advisory Panel
Society of Motor Manufacturers and Traders
UK Petroleum Industry Association (UKPIA)
Royal Automobile Club (or via Motorists' Forum)
Energy Savings Trust
Forum for the Future
Friends of the Earth
Greenpeace
CPRE
British Chambers of Commerce
Small Business Service
UITP EU-Committee (International Association of Public Transport)
CBI
Institute of Directors
Local Government Association
Mayor of London
CPT UK
First Group
Freightliner
GO Ahead Group PLC
Gtr Manchester PTE
Strathclyde PTE
Passenger Transport Executive Group
Stagecoach Group
Blazefield Holdings Ltd
Southern Vectis PLC
Traction Group Ltd
Wellglade Ltd
Arriva PLC
Bus Users UK
Association of Transport Co-ordinating Officers
National Express Group
TfL
TfL—London Underground
TfL—Buses and surface transport
TfL—London Rail
Greater London Authority
Docklands Light Railway
Croydon Tramlink
London Transport Users Committee
Tube Lines
Metronet
DHL
Institute of European Environmental Policy
SERA
HMT
DTI
RDAs
Group of Regional Assemblies
Government Offices
CPT in Wales
Bus Users UK in Wales
Welsh LGA
ATCO Cymru
N Ireland Committee of the Irish Congress (NIC-ICTU)
N Ireland Transport Holding Company (NITHCo)
Rail Passengers Group NI
Railway Preservation Society of Ireland
Transport Advisory Committee
Northern Ireland Independent Coach Operators Association (NIICOA)
General Consumer Council for Northern Ireland (GCCNI)
Northern Ireland Chamber of Commerce & Industry
PACTS
Centro
Sustrans
Transport 2000

Annex E

CODE OF PRACTICE ON CONSULTATION
The code of practice applies to all UK public consultations by government departments and agencies, including consultations on EU directives.
Though the code does not have legal force, and cannot prevail over statutory or other mandatory external requirements (eg under European Community Law), it should otherwise generally be regarded as binding unless Ministers conclude that exceptional circumstances require a departure.
The code contains six criteria. They should be reproduced in all consultation documents. There should be an explanation of any departure from the criteria and confirmation that they have otherwise been followed.

Consultation criteria
Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
Be clear about what your proposals are, who may be affected, what questions are being asked and the time-scale for responses.
Ensure that your consultation is clear, concise and widely accessible.
Give feedback regarding the responses received and how the consultation process influenced the policy.
Monitor your department’s effectiveness at consultation, including through the use of a designated consultation co-ordinator.
Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
A full version of the code of practice is available on the Cabinet Office web-site at: http://www.cabinet-office.gov.uk/regulation/consultation/code.asp

Letter from the Chairman to Derek Twigg MP
Thank you for your letter of 24 November which Sub-Committee B considered at its meeting on 12 December.
We are maintaining the scrutiny reserve on this proposal pending sight of the full RIA which your Department will produce after the public consultation finishes on 13 January 2006. We share your concerns about this proposal and are confident that you are doing all you can to address them.
14 December 2005

REDUCING THE CLIMATE CHANGE IMPACT OF AVIATION (12790/05)

Letter from the Chairman to Elliot Morley MP, Minister of State for Climate Change and Environment, Department for Environment, Food and Rural Affairs
Thank you for your Explanatory Memorandum on this document which Sub-Committee B considered at its meeting on 7 November 2005.
As you know, the Sub-Committee is currently engaged in an inquiry into the merits of including the aviation sector in the European Union Emissions Trading Scheme. We are therefore maintaining the scrutiny reserve on this document.

We note in Paragraph 10 of your Explanatory Memorandum that you have some concerns for subsidiarity. In what ways could the implementation of the proposals in relation to the Emissions Trading Scheme breach subsidiarity?

9 November 2005

AIRPLANE EMISSIONS

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

Following my oral evidence session of 31 October, I attach the additional information that I promised to provide regarding:

— The cost impact of auctioning.
— The inclusion of ultra peripheral regions (UPR) and overseas countries and territories (OCT).
— Design factors influencing the allowance price.
— Details of the ICF study examining the impact on allowance prices.

AUCTIONING

1. Whilst the Government has not reached an agreed position on allocation methodology, there has been some external work on the cost of auctioning.

2. In “Giving Wings to Emissions Trading” (p 90), CE Delft estimate that auctioning could raise €600 million, based on the following assumptions:

   (i) An allowance price of €10 per tCO2e.
   (ii) That only the climate impact of CO2 is covered.
   (iii) Only intra-EU flights are covered.


4. They assume that the market price of EUAs is the lowest marginal carbon dioxide abatement cost which is estimated by Trucost to be €13.80.

5. Using this figure and assuming that the scheme only covers CO2 emissions from intra-EU flights, they estimate that the cost of auctioning sums to around €42 million for BA, €13 million for KLM and €17 million for SAS.

INCLUSION OF ULTRA-PERIPHERAL REGIONS AND OVERSEAS COUNTRIES AND TERRITORIES

6. The extent to which Ultra-Peripheral Regions (UPR) and Overseas Countries and Territories (OCT) would be covered by the scheme depends on the definition of the geographic scope and will be subject to discussion with other Member States. We have yet to reach a Government position on this issue.

7. However, in “Giving Wings to Emissions Trading”, CE Delft set out the definitions for their five geographic scenarios.

   — Scenario 1, Intra-EU—Only the European part of the 25 EU MS territories. This excludes UPR and OCT.
   — Scenario 2a, Intra EU and 50 per cent of emissions to and from EU—As above, but would include 50 per cent of emissions to and from UPR and OCT.
   — Scenario 2b, All departing flights—This would include 100 per cent of emissions from flights to UPR and OCT.
   — Scenario 3, EU airspace—Defined by EUROCONTROL Flight Information Regions and includes areas of seas and oceans. This would cover the element of flights to and from UPR and OCT that is within EU airspace.

— Scenario 4, All departing flights and remaining emissions in EU airspace—This combines scenarios 2b and 3.
— Scenario 5, Intra EU and routes to and from third Countries that have ratified the Kyoto Protocol—This excludes UPR and OCT.

8. Annex A sets out CE Delft’s definition of these regions. You will note that in their methodology, they have not set out how they have treated flights to and from the Falkland Islands and British Antarctic Territory. The reason for this omission is unclear.

**Design Factors Influencing the Allowance Price**

9. In an emissions trading scheme, a key driver for the allowance price is the level of effort required by participants. This comes from the overall cap within the scheme. As such, the allowance price will be dependent on the overall cap within the EU ETS, which includes the Phase II National Allocation Plans as well as the number of allowances that are allocated to the aviation sector. In general, if there is a generous allocation, then prices will be lower and vice versa.

10. The forecasting of allowance prices is complex and highly uncertain, however, other key factors that influence the price include:
   — The cost of abatement.
   — Availability of credits from Joint Implementation and the Clean Development Mechanism (JI/CDM, known as project credits). This provides a further source of supply and depending on availability could have a downward effect on prices.
   — Oil and gas prices.

**Study into the Impact on Allowance Prices**

11. Following a Request For Quotation, five proposals were received and a contract was let to ICF Consulting on 6 September to conduct a study into the impact of the inclusion of aviation into the EU ETS. The specification is attached at Annex B. The final report was due for the 14 October, a draft has been delivered and is currently being considered by the steering group.

12. The study was intended to be to a short timescale, designed to give an indicative feel to inform further work, rather than attempt to conduct a precise quantified assessment of the impact of aviation on allowance prices, which would be challenging, particularly given the uncertainty in forecasting prices.

*14 November 2005*

Annex A

**Overview of Countries Under Scope Scenarios (From Giving Wings to Emissions Trading)**

**Ultra-Peripheral Regions**
1. Azores
2. Canaries
3. French Guiana
4. Guadeloupe
5. Madeira
6. Martinique
7. Reunion

**Overseas Countries and Territories**
8. Anguilla
9. Aruba
10. Bermuda
11. British Indian Ocean Territory
12. Cayman Islands
13. French Polynesia
14. Greenland
15. Mayotte
16. Montserrat
17. Netherlands
18. Antilles
19. New Caledonia
20. Saint Helena
21. Saint Pierre and Miquelon
22. Turks and Caicos Island
23. Virgin Islands, British
24. Wallis and Futuna

Annex B

INCLUDING AVIATION INTO THE EU ETS: IMPACT ON ALLOWANCE PRICES

AIM
To analyse how, and the extent to which, the inclusion of aviation emissions into the EU Emissions Trading Scheme is likely to affect the allowance price.

BACKGROUND
The EU Emissions Trading Scheme (EU ETS) is a major new policy measure that aims to reduce emissions of carbon dioxide at least cost to industry. Participants are allocated tradable emissions “allowances” (similar to quotas) that they can trade to help them in meeting their emissions reductions targets. The EU Emissions Trading Scheme came into force on 1 January 2005.

The European Commission is considering ways of reducing the climate change impacts of aviation, one of which is the inclusion of aviation emissions into the EU ETS. At present Phase I of the scheme does not include emissions from aviation and, in addition, international aviation emissions are not covered by the Kyoto Protocol. The Commission has carried out a study (by CE Delft) that assesses the climate change impact from emissions trading by aviation in the commitment period 2008–12. This has been recently published on the Commission’s website.14

It is generally considered that the aviation sector is likely to be a net buyer of allowances because its abatement costs are relatively high when compared to other sectors. We need to understand what the implications of this are for the traded carbon price and therefore the impacts on other industries in the EU ETS during Phase II (2008–12).

There are other factors that will influence the allowance price, including the number of allowances issued in Phase II of the EU ETS and the number of project credits (JI/CDM) introduced into the market.

OBJECTIVES AND REQUIREMENTS
In order to inform our policy development and response to any Commission proposal, it is necessary for us to understand the impacts of including aviation in the EU ETS. The prime objective of this study is to quantify the likely impact of the inclusion of aviation in the EU ETS on the EU allowance price.

The study should be based on three base-case scenarios (for the EU ETS without aviation) and the assessment of increased demand for allowances that CE Delft made in their 2005 report “Giving wings to emission trading”.

Specific outputs are:

— A critical analysis of CE Delft’s assessment of likely increased demand for allowances based on their assumed allowance prices.

— An estimate of the allowance price in Phase II with aviation joining the EU Emissions Trading Scheme from 2008. This should estimate the impact in relation to three base-case scenarios of the allowance price in Phase II without aviation.

Proposers should have:

— A detailed understanding of the emerging carbon market and factors affecting the price of EUAs.
— A detailed understanding of the EU ETS directive.
— A detailed understanding of the industries covered by the UK National Allocation Plan, and contacts with EU ETS service providers based in the UK.
— An understanding of the broader climate change, competitiveness and energy policy objectives of the UK.

Quotation Requirements

Quotations should contain:

— an explanation of the proposed approach that shows how the objectives and requirements of this specification will be met, specifically setting out the three base case scenarios for the allowance price in Phase II without aviation.
— a schedule of the main tasks and milestones that will be used to monitor progress, including written progress reports and meetings as necessary.
— Details of the project team, including the relevant experience of individuals involved and the days and grade of staff allocated to specific work areas.
— Estimated cost of the work, including rates for named individuals (should be a fixed cost tender on basis of specification as above).

Quotations will be evaluated on overall value for money. This will be based on cost; the extent to which quotations clearly address the study objectives and present a sound approach; specify outputs that are in line with requirements; proposed team composition and expertise; and effective management.

Steering Group

The Steering Group for this study will involve officials from DEFRA and DfT.

Timescale

The Departments expect the duration of the study to be of the order of one month but proposers are free to submit their own estimate of the study’s timetable. The final report is required by Friday 14 October 2005.

Please send an electronic copy of your quotation to Daniel Yeo (daniel.yeo@defra.gsi.gov.uk) by 12:00, 2 September 2005. Appointment of the contractor will be made by 6 September, with an inception meeting envisaged for 7 September.

Contractors will be expected to work under the standard terms and conditions of Defra service contracts, as attached to the Request for Quotation.

9 November 2005

Letter from Elliot Morley MP to the Chairman

Thank you for your letter of 9 November requesting further information on how the implementation of the proposals in relation to the Emissions Trading Scheme might breach subsidiarity.

Perhaps the drafting of the Explanatory Memorandum did not make it clear enough, but the original intention of paragraph 10 was not to indicate a potential breach of subsidiarity, but to highlight that the relative roles of Member States and the Commission have not been discussed as yet and that the Commission’s Aviation Working Group will consider this issue further.

There is not an agreed position yet on how the allocation for aviation should be calculated and implemented. This will be subject to discussion with other Member States and the Commission, as will all the other details of aviation’s participation in the EU ETS. As the Committee will be aware this Communication is not a legislative proposal, its recommendations will be discussed by the Aviation Working Group, whose report will feed into the Commission’s ongoing review of the existing EU ETS. This will in turn inform their legislative proposal, which we expect by the end of 2006.
However, in theory, a harmonised allocation methodology would be in line with existing approaches to aviation regulation (such as the Single European Sky agreement) and should not breach subsidiarity. It would provide more consistent treatment across the EU25 and would reflect the largely homogenous and integrated nature of the industry. We will await the emergence of clearer roles and responsibilities before making a more detailed assessment of subsidiarity issues.

You may like to note that within the existing EU ETS, we are working towards a more harmonised scheme across the EU25 as we feel that this will reduce many competitive distortions, increase simplicity and transparency, improve environmental effectiveness by capturing additional emissions from major industrial emitters; and will facilitate rigorous assessment of NAPs. We are working with other Member States and Commission to discuss scope for harmonisation and joint action on range of non-aviation Phase II issues.

20 November 2005

REDUCING THE CLIMATE CHANGE IMPACT OF AVIATION (12790/05)

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

Sub-Committee B first considered this document at its meeting on 7 November 2005 and held it under scrutiny in the context of its inquiry into the merits of including aviation in the EU ETS. The Sub-Committee considered this document again at its meeting on 28 November.

Members noted that the document was due to be considered at the Environment Council on 2 December and that this document set out the overall policy strategy and would, in due course, be followed by a full impact assessment and legislative proposal. We would normally have lifted scrutiny on such a matter at this point, but as we are currently drafting our report into the inclusion of the aviation sector in the EU ETS, for which the document forms the basis, we cannot lift scrutiny at this stage.

However, as this is a non-legislative document, we hope and expect that this will not in any way prejudice progress in the Council as we would not wish to hold up the Council’s business.

1 December 2005

REGIONAL AID GUIDELINES (0432/04)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

Further to your Committee’s consideration of the above explanatory Memorandum, I am writing to inform you of further developments in the European Commission’s review of the regional state aid rules, and the position the UK is taking in response.

The regional aid guidelines provide the legal basis for many investment aid programmes (such as Selective Finance for Investment in England) traditionally used by Member States to tackle regional decline and underperformance. Following a difficult review process, the Commission has proposed a revised package which makes significant concessions to the concerns we, and others, had about the original proposals. While there are points that we like better than others, overall the new package is very welcome and delivers the great majority of our negotiating objectives.

BACKGROUND

The regional aid guidelines, which run in seven-year cycles, determine where and how much regional investment aid may be paid. The Commission’s review has been driven by the need to reduce regional aid coverage overall whilst increasing support for Central and Eastern Europe and persuading Member States to focus, outside of the poorest areas, on state aid of the kind designed to promote competitiveness (for example, R&D or SME support programmes). This is an important element of the European economic reform process to which we are strongly committed. While we supported the aims, however, we were not well served by the original proposals which did not accurately target coverage and would not have allowed us adequate scope to tackle continued regional underperformance in the UK.
INTERNAL MARKET (SUB-COMMITTEE B)

LATEST PROPOSALS

The Commission’s latest proposals provide a much more flexible approach to regional aid, while still reducing coverage overall and ensuring that the greatest scope for intervention is targeted on the poorest areas of the EU. In particular, they allow for additional coverage for the UK and other Western European countries, with a broad measure of discretion on the selection of eligible areas. In the UK’s case this means that around 23.5 per cent of the population will fall within assisted areas, as opposed to just over 9 per cent under the Commission’s original proposals and 30 per cent currently—besides the areas earmarked by the Commission (Cornwall and the Scillies, West Wales and the Valleys and the Highlands and Islands) a wide range of other areas, including Northern Ireland, are likely to be eligible for coverage when the final statistics are published. This means that we will continue to be able to use regional investment aid as a tool to tackle the problems of areas which are still underperforming against national averages. This is particularly welcome to external stakeholders whose feedback on the new package has been generally very positive, but who were in many cases hostile to the original proposals.

NEXT STEPS

The package was discussed at a multilateral meeting in Brussels on 15 and 16 September where most Member States supported the proposals as an acceptable compromise. The Commission asked Member States to comment on the package by 30 September in order to take account of any points raised when they finalise the new guidelines and I am attaching a copy of the UK response (not printed). We expect the Commission to produce the final version of the guidelines in December this year, to be adopted in December or early next year, and to come into force in January 2007. We are preparing a Regulatory Impact Assessment on the Commission’s revised proposals and I will send this to the Committees.

27 October 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter of 27 October 2005 informing Sub-Committee B of further developments in the European Commission’s review of the regional state aid rules.

In your letter under the heading “Next steps”, you say you are attaching a copy of the UK response to the new guidelines. The copy was not attached and we would welcome a copy as soon as possible.

In my letter of 9 September 200415 we asked for a copy of the Regulatory Impact Assessment but did not receive a copy.

We note that you are preparing a Regulatory Impact Assessment on the Commission’s revised proposals and look forward to receiving that document as soon as possible.

15 November 2005

Letter from Gerry Sutcliffe MP to the Chairman

Further to my letter of October 27, I am writing to advise you of the latest position on the revision of the State Aid rules for Regional Aid.

On a confidential basis, we have received what we expect to be the text of the Guidelines that will be ultimately adopted by the European Commission. There are no changes to the key elements of the draft that I outlined in my earlier letter, in terms of intervention rates and assisted area coverage. We expect adoption either at the Commissioners’ meeting on 21 December or in January next year. A copy of the text is attached together with the RIA.

We support the Commission’s latest proposals, which we see as a fair and balanced package that will help the poorest regions of the EU while at the same time helping the UK to tackle regional underperformance. We will maintain almost 80 per cent of the coverage that we had under the existing Guidelines prior to EU enlargement. This is a significant improvement compared to the earlier draft, which would have significantly reduced UK coverage to less than a third of current levels.

The flexibility the current text provides (within limits) will better enable us to target market failure, consistent with our approach to state aid reform more broadly.

7 December 2005

15 Correspondence with Ministers; 4th Report or Session 2005–06, HL Paper 16, p94.
Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 15 November. I am attaching a copy of the UK response to the Commission’s revised Regional Aid Guidelines. I apologise that it was not attached to my earlier letter. We are currently preparing a Regulatory Impact Assessment on the Commission’s revised proposals and I will send this to the Committees as soon as it has been finalised.

29 November 2006

REVIEW OF THE REGIONAL AID GUIDELINES—UK RESPONSE TO DRAFT RAG

The UK would like to thank the European Commission for its latest draft Regional Aid Guidelines issued on 18 July 2005.

We recognise how difficult it is for the Commission to achieve workable Guidelines in this area, which meet EU state aid policy imperatives but are acceptable to all Member States. We are pleased that the Commission has, within these constraints, listened to our views on its original proposals. The latest proposals are a considerable improvement and go a long way to meeting our concerns.

Subject to some specific points below we believe the new proposals represent a balanced and workable package which meets the economic reform objective of less and better targeted state aid, yet gives Member States scope to tackle regional underperformance through investment aid, while still targeting the poorest areas of the EU.

Our comments below reflect our views on some key elements of the new package on:

— assisted area coverage;
— national mapping;
— Northern Ireland; and
— aid intensities.

We have also set out some detailed comments on the provisions in the draft on:

— the form of aid and eligible costs;
— aid for large investment projects;
— aid to sensitive sectors;
— operating aid; and
— enterprise aid for small start ups.

Assisted area coverage

We welcome the new proposals for additional coverage at 87(3)(c) which will enable Member States to tackle ongoing disparities in regional performance while still reducing overall population coverage to significantly below current levels; this addresses one of the UK’s major concerns about the Commission’s original proposals. We support the methodology proposed by the Commission for allocating additional coverage to Member States.

National Mapping

The framework proposed for national allocation of the additional coverage allows Member States a wide degree of discretion and between them the categories set out in the draft Guidelines cover a comprehensive range of the problems which member states may need to address. We strongly support this principle and we believe the approach adopted in the draft Guidelines is broadly right. The scope to target coverage in smaller blocks of 100,000 or lower in relation to SME assistance only is also welcome.

Although we support in principle the filter mechanism, it is important that this, with the other categories set out in paragraph 26, ensures that coverage is allocated to genuinely underperforming regions. We welcome the Commission’s decision to issue a guidance note setting out the information that member states should supply in support of their proposed maps. Member States should be required to explain how their allocation criteria meet the principles set in the Guidelines, including in particular paragraph 8 which points to the need for regional aid schemes to be integrally linked to regional development strategies.
Northern Ireland

The Commission’s new proposals also cover Northern Ireland where the proposal is to include the province in the areas that can be covered by 87(3)(c) by treating it as an economic growth area. This is a constructive approach which takes account of Northern Ireland’s unique situation and the fact that current aid intensities there are at the same level as in many 87(3)(a) areas. We are very grateful for the consideration which the Commission has given to the arguments put forward on this.

We are also grateful for the Commission’s indication that Northern Ireland is also eligible to benefit from a phasing in of the generic “economic development” aid intensity. However, it is likely under current statistics that different aid intensity rates would apply to the different NUTS III areas within Northern Ireland and this would pose particular problems in the political climate there as the lower rates would probably apply only to areas from one predominant Community and this may be seen as some kind of political favouritism of the other Community. It is important that for NI the eventual aid intensity applies to NI at the NUTS II level (NI as a whole) and not on a sub-regional NUTS III basis. It is also important for obvious political reasons that the aid intensity level be the same as in neighbouring regions of the Republic of Ireland with a similar economic profile.

Aid intensities

In our previous responses we have argued the case for effective discipline on spending per project both through qualitative controls in assessing aid proposals and aid intensity ceilings. This is important both to the broader objective of less and better targeted state aid and in the context of concerns about relocation of projects between assisted areas in Europe. We have been particularly concerned about the rates proposed at the top of the assisted area scale and we therefore regret that the Commission’s latest proposals revert to the rates originally proposed for the top two categories of 87(3)(a).

We recognise that the effect on the differential with statistical effect areas (and during the phasing in period for economic growth areas) has been mitigated by beneficial changes to aid rates for those areas. We nonetheless believe that the rates proposed in the last round represented a better balance although we recognise the broader context in which this has to be seen.

Finally, we note that the levels of aid intensity proposed for the new discretionary 87(3)(c) areas, particularly where the lower 10 per cent rate applies, will represent a significant drop from current rates. One of the triggers for the lower (10 per cent GGE) intensities applies where NUTS III regions have below EU average unemployment. We strongly believe the unemployment measure here should be national rather than EU level, consistent with the terms of application of the filter.

Form of aid and eligible costs

Subject to some concerns (see below), we think that the redrafting of the text in the current Guidelines works well and has resulted in much clearer provisions.

As signalled in our response to the Commission’s previous proposals, we welcome the decision to leave the definition of initial investment and eligible costs largely unchanged but to clarify the distinction between initial and replacement investment—we believe the new wording in paragraph 31 strikes the right balance.

The new text proposes the introduction of additional safeguards on the incentive effect of aid (paragraph 35). We support the changes proposed but would suggest that these should be taken further (and simplified) by a straightforward prohibition on aid where there has been a commitment to project expenditure before the aid offer has been made, perhaps with limited exceptions to permit revocable commitments, such as registering non-binding options on land/building purchase or leases, or for equipment orders which are not location specific, that is for internationally mobile investment. These could be picked up in a revised version of footnote 27 eg:

“start of work” means either the start of construction work or the first firm commitment to expenditure on physical assets associated with the project such as land and buildings or plant and machinery. It does not include feasibility studies, revocable commitments such as the registering of non-binding options on land/building purchase or leases, or equipment orders which are not location specific ie for internationally mobile investment.

We agree with the continued five-year minimum stay requirement for large firms and the proposed scope for a shorter (three year) stay requirement for SMEs, (paragraph 37) although we would argue that parallel changes should also be made to the provisions in the SME block exemption to ensure consistency and simplicity.
would support further clarification in the text of the Guidelines on the clawback rules that should be applied where the minimum stay requirements are not met, as proposed in the Commission’s earlier paper. We note also that paragraph 37 now specifies that the minimum stay period begins only with completion of the investment. Given that some projects may take years to complete, this proposals would mean that qualifying assets would need to be retained for a very long period. We would propose instead that the minimum stay period should begin at the start of work; if this is not agreed, we would argue that the new requirements will need to be closely monitored to ensure compliance.

We welcome the continued eligibility of land costs (paragraph 47) and believe that the Guidelines should, as drafted, impose no separate restriction on the percentage of aid for land costs per grant, given that in some areas and sectors land will constitute a higher proportion of the costs of any investment than in others.

We also support the explicit inclusion of feasibility studies and consultancy advice, up to a limit of 50 per cent of the actual costs incurred, in line with the provisions of the current SME block exemption, (paragraph 48), but would argue that this should not be restricted to SMEs for the purposes of the Guidelines. As proposed previously, we think the eligible consultancy costs should be externally provided only.

On paragraph 50, we are not clear about the application of the Commission condition in respect of leases for assets other than land or buildings. If this relates to finance leases, they should not be subject to a minimum lease period (and in our experience the standard period for plant and machinery finance leases is three years). If it refers to operating leases, then we would prefer to see the continued exclusion of these (with the exception of land and buildings).

We have serious concerns about the exclusion of second hand assets as eligible expenditure. At the multi-lateral meeting in September you explained that this was intended at least partly to give effect to the proposals floated in the previous round to exclude the transfer of plant or equipment within multinationals from eligibility. While we would support this, with some reservations, the new text goes a lot further and seems an unnecessary hindrance to businesses (paragraph 51); second hand assets have not been excluded previously and many businesses are often able to acquire them at advantageous prices that help to reduce the costs of both the investment and the grant aid. We believe this new requirement could put companies in assisted areas at a competitive disadvantage, result in unnecessary and unwelcome government interference in business planning, and work against the EU objectives on sustainability. In many sectors there is a well developed trade in previously used plant and equipment which does not prevent firms undertaking initial investment within the terms of the current guidelines, and for some sectors, the absence of this scope could be a significant drawback. This condition could also disincentivise use of previously occupied premises if “assets” includes land and property.

Paragraph 51 also excludes previously assisted assets. This provision, which applies in the current guidelines, means that many management buy-outs or other resurrection measures following plant closures can not be aided, and this in our experience can have a detrimental effect on employment and GDP. We would strongly urge reconsideration of both elements of this paragraph therefore.

Aid for large investment projects

As outlined in our earlier responses, we welcome the integration of the Multi-Sectoral Framework into the Regional Aid Guidelines; this creates a more coherent and user-friendly framework and provides an opportunity to look again at the controls applied to large investment projects. We support the proposed introduction of stricter notification requirements on projects over 100 million, which are consistent with the philosophy of the Commission’s Roadmap consultation and the need to focus resources on the largest and most potentially distortive aids. Under the new formulation, however, the notification requirement will apply even to grants which are very small in absolute terms despite the size of the recipient project. We think it would be worth considering an exemption for grants below a certain level—for example 7.5 million. As the competition is the same irrespective of the project location, it would be reasonable for this requirement to apply to all aids above this amount. As we have commented in earlier responses we think there is also scope to lower the adjusted aid intensity ceilings and would urge the Commission to consider this.

We support the continued application of special rules to the synthetic fibre sector (as well as steel and shipbuilding) under the new Guidelines. However, we note that the stricter ceilings which currently apply to the automotive sector under the MSF are to be dropped under the new Guidelines, and moreover, that the passenger car sector is to be exempted from the individual notification requirement, despite continued global overproduction and overcapacity in Europe in particular. We would urge the Commission at the very least not to apply more favourable terms to the passenger car sector than to other sectors in terms of lighter notification requirements.
Even if under current market conditions it is unlikely at present that any large passenger car grant recipient will breach the 25 per cent market share ceiling or the 5 per cent production capacity test, the notification process helps to ensure that broader aid terms are being complied with and we do not believe that there is a strong case for waiving these requirements for the passenger car sector (alone among all sectors). It is quite plausible that there will be found to be several distinct passenger car market segments in future rather than one integrated market and the 25 per cent market share level may well be exceeded in some cases. It is important also to consider the potential impact on related markets (for example, auto components).

Operating aid

We support the approach taken in the draft Guidelines including the introduction of stricter controls on aid intensities (paragraph 72) operating aid in the financial services sector, (paragraph 73) and reporting (paragraph 76), as well as the new provisions on transport and operating aid in least populated and outermost areas, which were floated in the Commission’s earlier proposals.

Enterprise aid

The draft text includes proposals for a new form of enterprise aid to assist the running costs of small start-up enterprise. We welcome the Commission’s decision to focus on the aid regime which applies to new businesses. However, while we support this initiative, which should be pursued, we have concerns about the proposals as formulated in the draft Guidelines (in particular on the range of cost and aid ceiling levels) and believe these need further work and consideration.

More fundamentally, we believe it would be more consistent with the approach set out in the Roadmap consultation to locate provisions on start-ups in the horizontal state aid regime. This kind of aid is about developing the viability and competitiveness of the SME sector by combating market failures and should not be restricted to assisted areas (see the UK’s response to the Commission’s Roadmap consultation for a fuller explanation of our position on incubators and other forms of SME and start-up aid). While we welcome the initiative, therefore, we would propose further, separate consultation under the Commission’s broader review process.

Other issues

While we recognise the need for the Commission to be satisfied that national maps comply with the framework set in the Guidelines, we do not believe that the three month deadline set will allow enough time for member states to consult on and finalise their maps. Given that the amount of time needed is likely to vary between member states depending on national procedures—we therefore suggest removing the formal notification deadline (this is on the understanding that the Commission will in turn need time to consider maps once submitted).

We note the proposed introduction of a requirement on member states to publish details of aid schemes online, which we see as a welcome initiative. We support the proposal floated at the multilateral that this should be a condition of validity of new schemes.

Finally, we have a couple of drafting suggestions and points for clarification on the new text:

— References should be to “tangible” and “intangible costs” rather than “material” and “immaterial” throughout the text (eg in paragraphs 33, 36 and 68). Alternatively, it would be helpful if these provisions cross referred to the definition of eligible costs in section 4.2

— In paragraph 34, we would prefer the sentence on the purchase of share-holding or alternative provision of capital to read:

“The form of aid . . . may take the form of . . . purchase of a share-holding on favourable terms or an alternative provision of capital on favourable terms” (insertion in italics).

— Our understanding is that the 10-year maintenance requirement set in paragraph 62 applies to the keeping of records, rather than the maintenance of the investment itself.

— On paragraph 100, our understanding is that the 31 December 2006 deadline for grants to be made under the current Guidelines applies to legally binding offers rather than actual payments (so that payments at the aid intensities or in areas authorised under the current Guidelines may still be made after that date provided that the relevant grant offer was made before).

We welcome the opportunity to comment on the proposals and would be happy to discuss further any of the points raised in this response.
Letter from Gerry Sutcliffe MP to the Chairman

Further to my letter of 27 October, I am writing to advise you of the latest position on the revision of the State Aid rules for Regional Aid.

On a confidential basis, we have received what we expect to be the text of the Guidelines that will be ultimately adopted by the European Commission. There are no changes to the key elements of the draft that I outlined in my earlier letter, in terms of intervention rates and assisted area coverage. We expect adoption either at the Commissioners’ meeting on 21 December or in January next year. A copy of the text is attached together with the RIA.

We support the Commission’s latest proposals, which we see as a fair and balanced package that will help the poorest regions of the EU while at the same time helping the UK to tackle regional underperformance. We will maintain almost 80 per cent of the coverage that we had under the existing Guidelines prior to EU enlargement. This is a significant improvement compared to the earlier draft, which would have significantly reduced UK coverage to less than a third of current levels.

The flexibility the current text provides (within limits) will better enable us to target market failure, consistent with our approach to state aid reform more broadly.

7 December 2005

ROAD TRANSPORT ACTIVITIES (12168/03, 15688/03)

Letter from Stephen Ladyman MP, Minister of State, Department of Transport

I am writing to update your Committee on the progress of two legislative proposals currently going through the conciliation process:

(i) the European Commission’s proposal to replace Council Regulation (EEC) 3820/85 on drivers’ hours (the details of which were set out in Explanatory Memorandum 12168/03 which was cleared by your Committee on 20 November 2003); and

(ii) the European Commission’s proposal for a Directive to replace Directive 88/599/EEC on minimum enforcement levels (the details of which were set out in Explanatory Memorandum 15688/03 which was cleared by your Committee on 8 June 2004).

I should perhaps offer a brief summary of the process so far. The Council reached a Common Position on both proposals on 11 June 2004, and the Common Positions were formally adopted on 9 December 2004. On 13 April 2005, the European Parliament adopted opinions on each proposal, requesting 43 amendments to the Regulation on driver’s hours and 35 amendments to the enforcement Directive.

Formal conciliation will take place on 6 December. In advance of this officials have been trying to resolve with the European Parliament, through a series of informal trilogues, the many technical points raised in the European Parliament’s opinions. These discussions are being led on the Council side by the UK, as part of our Presidency responsibilities.

Copies of the formal Council tables setting out the current position on the European Parliament’s amendments for both dossiers are attached for information. As you will see, some useful progress has been made. The Council and the European Parliament have resolved many of the technical issues without substantially altering the two Common Positions.

Subject to an overall agreement being reached on both dossiers, the European Parliament has also agreed a revised implementation date for digital tachographs using the formula “entry into force [of the Regulation] plus 20 days”. In practice, this should be around May 2006. Although this is still quite challenging for industry, we believe it should be manageable. The industry has been informed and are making preparations accordingly.

To date, however, no agreement has been reached on the main issues namely:

— weekly rest, where the European Parliament opposes the Council text which will require all drivers in scope to have a full 45 hour rest every fortnight; and

— the working time Directive, where the European Parliament is insisting on enforcement requirements to be included alongside quantified requirements to enforce the driver’s hours rules.

One other outstanding issue relates to infringements and penalties. There is strong Council resistance to specifying penalties, but as Presidency we are exploring the categorisation of infringements, sticking rigidly to the approach adopted recently for rules on the transport of dangerous goods.
A formal date for a conciliation meeting between Council and the European Parliament has now been set for 6 December. While I currently think it unlikely that we will be under pressure to agree a text that raises significant concerns for the UK or differs substantially from the Common Position, I will write to you again if contacts with the European Parliament in the next couple of weeks suggest otherwise.

18 November 2005

Letter from Stephen Ladyman MP to the Chairman

Further to my letter of 18 November 2005, I am writing to inform your Committee of the outcome of conciliation between the European Parliament and the Council on two legislative proposals:

(i) the European Commission’s proposal to replace Council Regulation (EEC) 3820/85 on drivers’ hours, the details of which were set out in Explanatory Memorandum 12168/03 which was cleared by your Committee on 20 November 2003; and

(ii) the European Commission’s proposal for a Directive to replace Directive 88/599/EEC on minimum enforcement levels, the details of which were set out in Explanatory Memorandum 15688/03 which was cleared by your Committee on 8 June 2004.

The formal conciliation committee met in Brussels on 6 December and was able to endorse an agreed text for both proposals. I am pleased to be able to report that the outcome was entirely satisfactory for the UK in respect of both texts.

The agreed texts are in substance little different from the Common position agreed by transport ministers in June 2004. The key differences are:

— The inclusion, in the Directive, of an annex listing infringements. This can be developed by the Commission through a comitology procedure. This approach is the same as was previously adopted for enforcement of rules relating to the transport of dangerous goods. (The European Parliament’s request for a list of penalties was dropped).

— New text to make clear that time spent travelling to collect a vehicle at a remote location may not be counted as rest and, more specifically, that time spent driving a car to collect a vehicle at a remote location must be counted as “other work”. This is an improvement to the text and embodies the effect of a judgement by the European Court of Justice in 2001 (Case C-297/99).

— The reinstatement of some exemptions that the Council had removed, notably in relation to vehicles used by utility companies. It will be up to member states whether to grant these exemptions.

On the issue of weekly rest, the European Parliament dropped its opposition to the Council text in the Regulation which will require all drivers in scope to have a full 45 hour rest period every fortnight.

Moreover, the Council stood firm in its opposition to the European Parliament’s requests in relation to working time. The European Parliament had wished to include in the Directive a requirement to carry out specified checks on compliance with the recent working time Directive for mobile workers (2002/15). But some member states strongly opposed this arguing that, as a Directive, 2002/15 leaves enforcement to member states.

In addition, it was agreed that digital tachographs would become mandatory for new vehicles 20 days after the new text is published in the Official Journal of the European Communities. In order to give the industry a clear indication of when this might be, the Council and the European Parliament agreed a statement saying that they would work towards publication in April, making digital tachographs compulsory from early May for new vehicles.

It is not yet known how quickly the approved joint text will be issued, but I would be happy to deposit a copy of it (with an EM) when available, if your Committee would find it helpful to have this.

19 December 2005

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 19 December 2005 which Sub-Committee B considered at its meeting on 16 January 2006.

The Sub-Committee was pleased to learn that the conciliation process on these two dossiers had produced a text which was entirely satisfactory to the UK. The Sub-Committee would like to accept your offer to deposit the final text, with an EM, when it becomes available.

18 January 2006
INTERNAL MARKET (SUB-COMMITTEE B) 191

SEVENTH FRAMEWORK PROGRAMME 2007–13: RESEARCH, TECHNOLOGICAL, DEVELOPMENT AND DEMONSTRATION ACTIVITIES: “CO-OPERATION”, “IDEAS”, “PEOPLE”, “CAPACITIES” (12727/05, 12729/05, 12730/05, 12731/05, 12736/05)

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

Thank you for your EM dated 13 October which Sub-Committee B (Internal Market) considered and decided to hold under scrutiny at its meeting on 7 November 2005.

The Committee broadly welcomes these detailed proposals on the specific programmes for research over the next Financial Perspective. We understand that political agreement is expected to be reached on these proposals at the Competitiveness Council on 28 and 29 November. We would be grateful if you could come before the Committee to give a read-out of this Council’s conclusions of the research proposals on either Monday 5 or 12 December 2005.

In the meantime, Members would be grateful if you could outline in greater detail what the Government’s position on these proposals is. What concrete facts are available to prove the case for the pooling of research as the Commission proposes instead of applying the principle of subsidiarity and undertaking R&D policies at national level?

Does the Government believe the proposed doubling of the present FP6 budget to €75.8 billion (including EURATOM related initiatives) for these proposals can be spent effectively by the Commission between 2007 and 2013 and is good value for money? We note that you recognise an a priori case for an increased focus on R&D but that this must be within an overall EU budget of no more than 1 per cent of EU GNI. The Committee has repeatedly supported the Government in its argument for this 1 per cent of EU GNI budget cap. However, we would be interested to know which of these R&D programmes the Government would prioritise in negotiations of the overall budget for the next Financial Perspective.

We understand that the proposal for Joint Technology Initiatives has hit some resistance from certain Member States. What are the main issues for these other countries and what is the Government’s view of this innovation? The Commission defines these as “long-term public private partnerships”. What exactly does the Commission have in mind?

Does the Government support the proposal to establish a European Research Council? Is the Government content that the proposed Scientific Council which will be responsible for choosing the research projects to be funded, will be sufficiently independent of the Commission?

Could you give the Committee some more information on the question relating to the proposal to co-finance “national mobility programmes” and explain exactly what the aim of such programmes will be? What practical issues of implementation are Council members concerned about and what is the United Kingdom’s Government’s position?

You write in your EM that the “Capacities” programme deals with a number of politically sensitive issues, including the involvement of SME’s in the programme and international co-operation activities. We would be grateful if you could give us further information on this and inform us whether there are politically sensitive issues for the UK Government as well. The development of new science is essential to the growth of the EU economy, but it is only through companies that science is translated into economic profit. How will action at Community level ensure that new R&D is put into practice and the full benefits are reaped?

Finally, we understand that the Seventh Framework Programme for Research and Technological Development was the subject of discussion at the Competitiveness Council on 11 October 2005. Members would be interested to learn what the outcome of this meeting was and whether any of the points raised above were resolved.

9 November 2005

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 9 November.

I understand from your correspondence that your Committee might be under the impression that political agreement is sought on the above documents at the Competitiveness Council on 28 November. This is not the case and I apologise for any confusion caused. We will be seeking political agreement, in the form of a Partial General Agreement, on the UK Presidency compromise text, which revises the Commission’s proposal for the European Community’s next Framework Programme for Research and Technological Development for the period 2007–13, and the Framework Programme for the European Atomic Community (EURATOM) for
the period 2007–11. An Explanatory Memorandum (EM) was submitted on the Commission’s high-level proposal in May 2005 (8087/05) and a subsequent EM has been submitted by my department on the Presidency compromise text and the plans for the November Council (OTNA EM, submitted November 2005). Discussion on the Specific Programmes is likely to fall to the Austrian Presidency in the first half of 2006.

I would, however, welcome the opportunity, should you still wish, to come and give a read-out of the Council’s discussion on the Presidency Compromise text, to your Committee, on Monday, 12 December 2005.

In your letter you asked if there were any concrete facts available to support the pooling of research at a European level. In 2004 a study was commissioned by the Office of Science and Technology and undertaken by Technopolis Ltd to assess the added value of funding R&D at European level. They found that the Framework Programme produces added value for UK research and policy communities by augmenting national funds and tackling common questions of a European nature. In fact all categories of UK participant endorsed the need for a European fund to strengthen the science and technology base of European industry. In addition the Framework programme funds activity not supported through national schemes eg collaborative research performed by intermediate technology organisations on behalf of innovative SMEs and funding for companies performing industrial R&D.

As you noted in your letter the Government recognises an a priori case for an increased focus on R&D within a budget of no more than 1 per cent GNI and consistent with the principle of EU value added, subsidiarity, sound financial management and the European Commission’s ability to manage and absorb the funds. Funding for R&D should therefore be a greater priority within a 1 per cent budget. However, a doubling of the budget for R&D is unlikely to be realistic and it would also be unlikely that the Commission could manage and absorb this level of funding effectively. The Government has therefore not considered in any detail whether such a budget would represent good value for money.

You asked for more details on UK priorities for budget allocation within Framework Programme 7 (FP7). The UK position on the budgetary allocation within FP7 cannot be reached until the headline budget is agreed as part of the ongoing negotiations on the Financial Perspectives. We believe that spending proposals should be considered in terms of the European Added Value of any activity.

You also asked for details on the UK position on some specific aspects of FP7, which I address below. We are continuing to work closely with stakeholders in preparation for the detailed negotiation of the Specific Programme documents in the New Year. We will keep you informed on the progress of these discussions.

As you note in your letter, the Commission’s proposal to establish Joint Technology Initiatives has been one of the more contentious issues amongst Member States in discussions of the FP7 proposal to date. The concerns amongst Member States stem mainly from a lack of information from the Commission about how JTIs will be chosen and established. The Commission has during negotiations thus far gone some way to reassure Member States and the FP7 proposal incorporates a clear set of criteria which will be used to assess potential JTIs. The Commission has also made clear that JTIs will only be set up in a very limited number of cases and only when there is a failure of existing instruments to achieve the same objective. The Commission has yet not tabled any formal proposals to establish Joint Technology Initiatives.

The Commission’s proposal to co-fund national mobility programmes remains one of the less clear elements of the overall Framework Programme package. There are concerns over, for instance, how programmes would qualify for funding and over what impact co-funding might have on the management of national schemes (eg organisation of peer review, eligibility criteria, management of relations with institutions hosting fellows etc). The UK is encouraging the Commission and national funding agencies to discuss in practical terms how the Commission’s schemes might work in practice.

The UK Government continues to support international cooperation in the Framework programme, which we feel is particularly important for tackling global problems such as climate change. We support the Commission’s intention to continue funding for international co-operation in FP7.
We fully recognise the importance of ensuring that science is translated into economic profit through putting in place the correct measures to promote innovation. The UK has continued to underline the importance of ensuring that research carried out under Framework Programme is driven by its user-community so as to build in the necessary preconditions for increasing exploitation, knowledge transfer and innovation resulting from research. We also support enhancing the Marie Curie schemes to promote knowledge transfer between academia and industry. The Commission also proposes to support innovation at European level through the establishment of a Competitiveness and Innovation Programme (CIF) which will incorporate some innovation and knowledge transfer activities that are currently funded under the Framework Programme.

Finally, regarding your request for information on the outcome of discussions at the Competitiveness Council on 11 October 2005. I understand that Alan Johnson MP sent you a letter on 14 October giving details of this Council. Prior to this Council the UK Presidency circulated a number of questions to ministers relating to unresolved issues on the “Ideas” and “Capacities” chapters of the high-level FP7 proposal and in light of these discussions we have drawn up the Presidency Compromise text which will be discussed at the Competitiveness Council on 28 November 2005, with a view to agreeing a Partial General Approach. The Specific Programme documents were not discussed at the Council on 11 October. For information I attach the letter from Alan Johnson dated 14 October (not printed).

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your detailed response dated 25 November 2005 on progress made in negotiating the Specific Programmes of the Seventh Framework for Research 2007–13 and for including in your letter the Secretary of State’s written statement on the 11 October Competitiveness Council which documents Sub-Committee B considered at its meeting on 12 December 2005.

Thank you also for agreeing to see the Committee at its meeting on 12 December. We did not take you up on this kind offer because we were not able to consider your letter before the meeting on 12 December and because we are particularly interested in learning about negotiations of the Specific Programmes which you write are likely to fall to the Austrian Presidency in the first half of 2006.

Nevertheless, we hope that you would be available instead on Monday 6 February 2006 to discuss the progress of negotiations of the detailed FP7 proposals. To inform this session, we have asked for written comments on the proposed FP7 from Research Councils UK, the CBI, the Commission and the Parliamentary Office for Science and Technology.

As the issues concerning the size of the budget for FP7, Joint Technology Initiatives, the European Research Council and national mobility programmes are yet to be fully resolved, Members agreed to retain the documents under scrutiny.

If you agree, Members would also like to take the opportunity on 6 February 2006 to discuss wider European issues within your competence. We shall of course give you warning of the matters of interest to us by sending a list of possible questions in advance of the meeting.

14 December 2005

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 14 December.

I would welcome the opportunity to speak with your committee on 6 February 2006. I would be happy to use this opportunity to discuss wider European issues within my remit, in addition to the negotiations on Framework Programme 7. I would be grateful for additional information on possible areas of interest ahead of the meeting.

9 January 2006
SEVENTH FRAMEWORK PROGRAMME FOR RESEARCH, TECHNOLOGICAL DEVELOPMENT AND DEMONSTRATION ACTIVITIES (2007–13) (8087/05)

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

Sub-Committee B considered this document at its meeting on 20 June 2005 and decided to maintain the scrutiny reserve.

We share your concern about the possibility of overlap and duplication between the Framework Programme and the proposed Competitiveness and Innovation Programme and structural funds. How will they mesh together? Have you raised the concerns about overlap and duplication with the Commission?

You also state that you will be keeping under close review the extent to which the proposed work on nuclear security is compatible with or otherwise affects the Euratom Treaty’s safeguard provisions. How are you doing this?

I am writing to you separately about 8081/05 COM(05) 121 + Add 1 SEC (05) 433: Proposal for a decision of the European Parliament and of the Council establishing a Competitiveness and Innovation Framework Programme (2007–13); plus Commission Staff Working Document (Annex thereto). However, we recognise that these documents are closely linked to each other.

22 June 2005

Letter from Lord Sainsbury of Turville to the Chairman

You noted that you shared our concern about the possibility of duplication between the Framework Programme, Structural Funds and the proposed Competitiveness and Innovation Programme. UK officials wrote to the Commission on these points in May. Their reply explained that FP7 would support research by SMEs and the dissemination of research results, whereas CIP would primarily provide support services for innovation. They also gave assurances that appropriate co-ordination mechanisms would be established between the two programmes. We will continue to monitor the development of the programmes to ensure that they are coordinated effectively.

The issue of whether the proposed work on nuclear security is compatible with the Euratom Treaty’s safeguard provisions continues to be discussed by Member States and the Commission. We will be better able to judge whether and how the proposals reflect the Commission’s ambitions to enlarge its nuclear regulatory “footprint” once the detailed proposals on the Euratom Framework Programme are issued in September.

We will endeavour to keep you up to date on developments on these issues and others relating to the documents above.

25 July 2005

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letter of 25 July 2005 in reply to mine of 22 June which Sub-Committee B considered at its meeting on 17 October.

Members noted that the Commission take seriously the need to monitor the Framework Programme and the Competitiveness and Innovation Programme to prevent overlap and duplication of effort. There are a range of these type of programmes coming out of the European Union. What specific steps do Government Departments take to ensure there is a specific point of contact for SMEs?

We note that the detailed proposals on the Euratom Framework Programme are not yet available and we are maintaining scrutiny until we have received these.

19 October 2005

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 19 October about these documents.

You enquired as to the specific steps undertaken by Government Departments to ensure there is a specific contact point for SMEs.

All Member States, including the UK, operate National Contact Point (NCP) systems to help their domestic bidders into the Framework Programmes with expert advice and assistance. In the UK, Government Departments and Research Councils fund the provision of NCP services for all parts of the current
Framework Programme (FP6), including the SME-specific programmes. SME participation in the thematic areas of FP6 is supported by the NCPs responsible for particular thematic areas. Further support for SMEs is currently available from a number of the Regional Development Agencies and the Devolved Administrations in Scotland and Northern Ireland, which have support schemes enabling SMEs to apply for financial assistance towards the cost of preparing proposals to FP6. Official support for all UK bidders into FP6 can be accessed via the FP6UK service (http://fp6uk.ost.gov.uk/default.aspx). This includes details of the services offered by the current DTI funded SME NCP. It is anticipated that the DTI funded SME NCP will continue in FP7.

The promotion of SME involvement in RTD is to be further strengthened under proposals for both FP7 and the Competitiveness and Innovation Programme (CIP). In addition to a likely significant increase in the budget for the SME-specific programmes in FP7, the Commission’s proposal for a Competitiveness and Innovation Programme, also includes the measures for the development of a new pan-European network of one-stop-shop service providers for businesses. This new network will pull together support currently available from NCPs, Innovation Relay Centres and Euro Information Centres. The intention is to ensure that SMEs, wherever located, can be guaranteed help from whichever network provider they approach. The new network will be responsible for promoting SME participation in FP7 and providing support services. We will be taking care in our negotiations to ensure that this network compliments existing thematic NCP actions appropriately.

We will endeavour to keep you up to date on developments on these issues and others relating to the documents above.

7 November 2005

SHIP-SOURCE POLLUTION AND POLLUTION OFFENCES (7312/03)

Letter from the Chairman to David Jamieson MP, Parliamentary Under-Secretary of State, Department for Transport

Thank you for your letter of 21 February 2005. In it you referred to the European Parliament’s Second Reading which was due to take place on 22 February, I would be grateful if you could update the Committee on the outcome of that Second Reading; and what the next steps will be.

At its meeting on 4 April 2005, Sub-Committee B agreed to defer consideration of this document until the results of the Second Reading are known.

6 April 2005

SPECTRUM MANAGEMENT (12393/05)

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

Thank you for your Explanatory Memorandum on this document which Sub-Committee B considered at its meeting on 24 October 2005.

In general we support a market-base approach to this issue but we share your concerns that such action should not stifle national innovation. What are OfCom’s views on this?

Members noted your assessment that this document raises “no new issues of subsidiarity” which implies that there are existing issues of subsidiarity. If this is so we would welcome an explanation of these subsidiarity issues.

We are holding this document under scrutiny pending a reply to our concerns about the possible subsidiarity issues raised by this document.

26 October 2005

STATE AID FOR INNOVATION (12695/05)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry

I am attaching a copy of the UK response to the Commission’s consultation document on State aid for innovation. I can confirm that the UK Presidency’s view of the Communication is also the UK Government’s view.

20 December 2005

COMMISSION CONSULTATION ON STATE AID FOR INNOVATION: UK RESPONSE

The UK would like to thank the Commission for consulting the Member States on their proposed reform of State aid for innovation. The Commission paper issued on 21 September contained a number of thought-provoking ideas, which have stimulated great interest in the UK. The UK shares the Commission’s view that State aid for innovation is an important topic, related to pursuit of the Lisbon objectives.

Our responses to the Commission questions follow.

INTRODUCTION AND PRINCIPLES GOVERNING CONTROL OF STATE AID FOR INNOVATION (SECTIONS 1 AND 2)

Commission’s questions

Q1. Do you think it is appropriate not to create a separate framework for innovation and that the new possibilities for state aid target selected innovation-related activities?

Q2. Do you think that the problems presented in the Annex and the market failures identified by the Commission as hampering the innovation process are accurate? If so why? If not why not?

Q3. The measures described in this Communication provide ex-ante criteria on the basis of which State aid for innovation would be approved. Do you think such an approach is adequate?

Q4. Stakeholders are invited to provide empirical evidence about the appropriateness of authorising state aid to large companies, in particular in connection with the objective of developing clusters around poles of excellence in the EU. Do you think that the Commission should develop ex-ante rules allowing state aid for innovation to the benefit of large companies or that such type of aid should always be subject to a case-by-case stricter analysis on the basis of a notification to the Commission? As far as support to innovation (or other state aid) is concerned, would it be appropriate to distinguish between different categories of large companies? If so on the basis of which criteria? And for which purpose?

Q5. Stakeholders are invited to provide empirical evidence about the appropriateness of authorising State aid to non-technological innovation, notably in services sectors.

Q6. Should the rules on state aid for innovation include regional bonuses for cohesion purposes? Should they differ according to the geographical situation of the region, irrespective of cohesion issues?

Q7. Are there some types of aid more suited to specific situations and specific innovation activities (eg tax rebates, secured loans, repayable advances)?

UK response

We are encouraged by the Commission’s overall approach, which recognises the importance of innovation to the achievement of the Lisbon goals. The UK agrees that the preservation of competition should be the first priority when designing effective systems to foster innovation in the EU.

We also welcome the Commission’s acknowledgement that state aid is but one of many tools that are available to target market failures and stimulate competition—there may also be the need for regulatory reform etc. However, the UK agrees there may be specific market failures that warrant public intervention (although we note that most of the Annex to the Commission’s paper is about barriers rather than market failures) and we would like to focus our response on how best this can be achieved.

The UK would support changes to the rules on State aid that increase legal certainty, establish criteria to target aid more effectively, and simplify the regulatory framework. There are also a number of issues that require further consideration and clarification. These are explored in more detail in subsequent sections responding to the Commissions specific proposals.
We support the focus on first improving the general business environment, which should accommodate university/business collaboration, and second the focus on supporting risk-taking.

In relation to innovation, the question is how to address the shortcomings in the current legal framework so as to promote activities that support risk-taking and experimentation, entrepreneurship, and help bridge the gap between technological knowledge and the market; and activities that improve the general business environment for innovation? We agree that the Commission should build on the existing framework for R&D, but also the Risk Capital Guidelines, the Environmental guidelines, and the general Block Exemption. This should target most areas of market failure effectively and at relatively low risk, as opposed to devising a new instrument specifically for innovation, which is itself not always inhibited by market failure, which would therefore be a high-risk option. This would also largely avoid having to define the term innovation.

We would question relying exclusively on a rules based approach to aid for innovation, as the market failure will vary widely according to the barrier to innovation, and the state payment should generally be the minimum necessary to overcome this. Ultimately we recognise that there exists a trade off between a case-by-case approach and a rules based approach. For small aids to SMEs that are unlikely to distort competition, for instance, or other aids of a kind that can easily be assessed against the set criteria, we would favour a block exemption to avoid the need for notification in such cases. There must, however, also be scope for aid schemes to be agreed rapidly on a case by case basis even where they do not fit neatly within existing framework, provided they respond to a demonstrable market failure and meet the key state aid principles. No state aid instrument can ever be completely future proof, especially one that deals by its very nature with innovation.

While promotion of innovation and entrepreneurship is an important element of regional economic policy, the provisions put forward in the Commission’s paper are primarily horizontal and should be designed to tackle market failures wherever they arise and allow the minimum necessary funding to address them. In principle, assisted area bonuses should only apply where there is a specific and demonstrable regional element to market failures.

We accept the importance of poles of excellence and clusters to an economy but feel that these largely develop organically often around public-sector research facilities, centres of academic excellence and sometimes the existing locations of large company “magnets” or industrial strengths. We support the concentration of public science spending on centres of global excellence and we support measures to improve technology transfer and networking between such centres and the business community, but we have strong reservations about focusing the emphasis on any rules on innovation aid to businesses themselves on poles of excellence as this departs from the principle of addressing market failures and may also run counter to regional policy. Where businesses cluster around poles of research excellence the market may well be functioning properly making it difficult to justify state intervention. In fact there is the risk that state intervention could inhibit organic development of centres less favoured by public authorities and lead to greater dispersal of resources, rather than more clustering.

Our comments on the Commission’s specific proposals for new aid categories are set out in detail in our response to sections three and four but in general, based on the principle, acknowledged by the Commission, that start-ups and SMEs are more affected by market failures than more established and larger firms, we agree that the main focus should be on aids to SMEs. While state aid will sometimes be justified for large enterprises, the incentive effect and the link to specific market failures need to be convincingly demonstrated, given the greater danger of distortion. The Commission’s paper makes no mention of support for the production, processing and marketing products listed in Annex 1 of the Treaty, although the Community framework for state aid for research and development does currently apply to such activities. It would be helpful if the Commission could clarify the extent to which any new rules as discussed in this paper are intended to apply to the agriculture and fisheries sectors, and if so, provide an analysis of the impact, in order to allow further consideration.

We welcome the encouragement of innovation intermediaries and we believe that such intermediaries should not be considered recipients of state aid where they act only as conduits of benefits to SME end users. Where state aid is involved, it should be easily approvable provided that certain basic safeguards are met, particularly in ensuring that the aid flows through to SMEs.

Finally, the concept of innovation is an organic one, that is difficult to define, and the approach to aid for innovation will need to evolve over time to reflect this. We look forward to the opportunity to comment on more detailed proposals as they emerge from the Commission. We would also suggest that the Commission keep any new innovation related provisions under regular review.
Supporting Risk Taking and Innovation Section 3

Commission questions

Q8. Do you agree with the proposed criteria to define innovation start-ups, with the approach of not defining eligible costs, with the amounts of aid and cumulation rules? Do you think that different eligibility criteria should be established for high-tech sectors like biotech and pharmaceuticals which have a long time-to-market and product development cycles?

Q9. Beyond the proposed rules, empirical arguments are welcomed that demonstrate the need for state aid (i) for start-ups independently of the innovativeness criterion and (ii) for innovative SMEs established for more than five years?

UK response

We support some expansion of the scope for aid to small start-ups, provided these are backed up by evidence of market failures. The provisions should not encourage unsustainable expansion by start-ups or subsidise them to an extent that will damage competing businesses, including other non-assisted start-ups or SMEs or crowd out commercial SME finance suppliers, for example. Aid should be focused on the areas where start-ups face particular market failures (for example, finance for investment or research, availability of premises or equipment on short term leases, or advisory/networking services to compensate for lack of short term experience) and should not feed into general running costs.

Any new provisions here need to be seen in the context of the aids allowed under the broader state aid regime: the SME block exemption, for instance, which already allows aid towards investment, R&D, and some other costs within set aid intensity limits, for both start ups, and established businesses, and the Risk Capital framework, together with the other new provisions proposed under this initiative. The Commission will need to address cumulation between any new aid for start-ups and the other forms of aid from which such companies may benefit.

Finally, while we support the broad aim of stimulating innovation and entrepreneurship, it will be difficult to devise a definition of “innovative” which will be legally robust and fair without imposing undue restrictions on beneficiaries and aid giving entities. Given this, it will be particularly important to ensure that any aids allowed under this heading are subject to effective safeguards to ensure that they are proportionate and that any distortive effects are limited to the minimum necessary.

In answer to questions 8 and 9:

We agree that start ups in this context should be restricted to small and micro enterprises only and start up-related aid should be limited to the first five years of the enterprise’s existence as proposed; following the initial five year period, innovation and investment in R&D would be more effectively supported by other initiatives, both state aid and non-state aid. We would not support sector specific rules here. Although in some sectors, notably the pharmaceutical and life sciences, products may take considerably longer than five years to reach commercial launch this does not in itself imply that there are market failures which aid of the kind proposed here would effectively address after the initial start up period; businesses in these sectors may for instance be able to derive an income from sale of IPR and/or licensing agreements, or obtain venture capital on the basis of projected sales; ongoing R&D work may be subsidised under the existing state aid framework.

Given the difficulty of producing a definition of innovation that is both robust and encompasses a wide enough range of activities, it may be worth considering a two or more tier approach in relation to the provisions proposed in section 3. For innovative start-up aid, the focus should be on R&D as a measure of technological innovation, as new innovative enterprises are likely to face particularly high start up costs in high-tech sectors, requiring substantial R&D investment.

We would like to find a way to allow support also for innovative service-based industries whose R&D may be low or non-existent in some cases, but no obvious metric presents itself and it is not clear anyway that such companies face market failures of the kind, which are now well-documented for R&D intensive start-ups.

We would propose a higher proportion of spending on R&D expenses in order to qualify (perhaps 25 per cent) and that this should be the sole qualifying criterion. For other forms of aid proposed by the Commission, or which emerge from the review process a broader definition, which extends to innovative service sector enterprises may be appropriate.

In terms of the forms of aid allowable, we believe that Government intervention should be targeted first on ensuring a supportive environment (for example, in terms of the availability of finance, incubator and high tech support services, and other infrastructure), and only exceptionally on direct grants to start-ups. We do
not believe that allowing start-ups a temporary holiday from social contributions and other taxes, as proposed in the paper’s first option, would be effective or proportionate, even if linked to a requirement to recycle the saving into the business or convert the saving into a repayable loan; it would remove incentives to reduce taxes or tackle over-regulation and would risk becoming a subsidy of running costs. We strongly oppose this as a specific category of allowed aid.

We would see some merits in the second option proposed of a one off start up aid without specific restrictions on eligible costs, but with a lower cap on aid per recipient than the €1 million proposed; we would propose £500,000 (twice the de minimis limit proposed by the UK response to the Roadmap consultation). We agree that this option should be available only where there is no cumulation with other aids over the same period ie only where there is a particular need which is not going to be met through the categories specified in the rest of the state aid framework. Because of the potentially distortive nature of this, only enterprises, which have the higher proportion of R&D spend, should be eligible.

3.2 Tackling the equity gap to increase the provision of risk capital in the EU:

Commission Questions
Q10. Do you think that other types of State aid apart from those currently granted in respect of risk capital are required in order to help European SMEs grow beyond the start up phase? If so, which ones?

UK Response
We welcome the Commission’s proposals to review the risk capital framework. As we have previously argued, the risk capital guidelines should enable faster scheme approval where there is persuasive evidence of market failure, the intermediaries and funds suppliers are chosen competitively, the measures are aimed at SMEs, the funds are commercially managed and where private capital must be put at risk alongside any Government funds (see UK’s response to the Roadmap consultation and the comments submitted to the Commission in March 2005 on the risk capital review). Specifically, we would favour greater flexibility over safe-harbour limits. We also believe that provided that schemes ensure that private investors bear a proportionate share of the risk there is also scope for higher state ownership levels.

There is a related issue about the current definition of SME which we raised in our Roadmap response: under the current definition, enterprises lose SME status if they are more than 25 per cent owned by a business angel holding more than a €1.25 million stake (but not if a similar investment is held by venture capitalists). This impacts on the ability of business angels to protect their investment in high-growth companies seeking capital increases and therefore deters business angel investment at the lower end. This is particularly significant for technology and R&D based enterprises with significant external funding needs, for whom aid is often critical.

3.3 Supporting technological experimentation and the risks of launching innovative products:

Commission Questions
Q11. Do you think that the provisions proposed by the Commission would produce the expected effects in terms of encouraging SMEs to launch innovative products in the market? If not, what changes should be made to these rules?
Q12. Is there evidence that these provisions should be extended to large companies? Do you think that notification should be required for measures granting substantial amounts of aid to individual firms or individual sectors? If yes, above what amount? What empirical evidence should then be requested by the Commission?

UK Response
Aid towards the production of commercially usable prototypes may be useful in certain circumstances, in particular in relation to environmental technology. However our current experience is that market failures at this level are in most cases linked to financing and where this is the case they will be most effectively targeted by changes to the risk capital rules or by improved access to debt finance, for example through something similar to the proposed Risk Sharing Finance Facility (RSFF) associated with FP7.
Any new provisions on this form of aid even at the SME level must therefore ensure strict safeguards on additionality and be closely linked to market failures; otherwise Member States may use this support simply to bolster favoured companies in launching new models, or incremental enhancements of existing products. Such aid would cover costs, which the businesses would normally have to cover themselves and would simply be investment or even operating aid.

In view of the danger of abuse this form of aid should not be covered by block exemption provisions at any level, so that the onus is always on member states to make the case for the schemes they want to promote, what market failure is being addressed, the incentive effect of the proposed grant, and how the activities being aided fall short of full commercial launch. Schemes should contain clawback mechanisms such that funding only covers the net cost of meeting the market failure and excludes commercial benefit for the recipient.

Guarantees might be a suitable form of aid for this sort of project.

In return for public funding, recipients should as proposed be required to show that the activities funded were linked to a specific R&D project carried out by themselves or another enterprise, and that the products involved are technologically new. In addition, individual aid grants over a certain level should require individual notification even where they are granted under approved schemes, in line with the existing R&D framework; the thresholds currently set in the framework (the project must be over €25 million and the proposed grant over €5 million) are relatively low, however and higher thresholds may now be appropriate.

With these provisos the new provisions could encompass aid to large firms and at be offered at higher intensities than those proposed. We would suggest a 2.5 per cent maximum.

Finally, we believe that there is a particular public interest in securing demonstration projects for certain new environmental technologies. Such projects often require massive upscaling of research models to test costs and performance on an industrial scale. This is both expensive and risky, but important for public policy reasons, quite independent of the commercial motivations of the businesses involved. We comment on how we believe the State aid rules should apply to such projects in our paper on Environmental aid, submitted to the Commission as an attachment to our response to the State Aid Action Plan.

SECTION 4—A SUPPORTIVE BUSINESS ENVIRONMENT FOR INNOVATION

Commission Questions

Q13. How would you regard specific support for innovation intermediaries, which merge or develop a joint venture to reach critical mass in a technological field of specialisation? Should investment aid be permitted in this context? If so on what conditions? What other measures could be envisaged?

UK Response

Current state aid rules inhibit support for small business incubators and other intermediary infrastructure, including that aimed at high-tech start-ups. While the Commission’s recent decision on the incubator scheme proposed by the German authorities is welcome (C(2005)1315 Final), it leaves some uncertainties on the boundaries between schemes where no aid to the intermediary is involved, and schemes where there is aid, but of an approvable nature. The Commission’s decision to address these issues here is therefore to be applauded, and the general direction of the proposals, which clarify the scope for incubation, high tech open access facilities and related services is very welcome. In general:

— We support the proposed new scope for intermediary bodies to provide infrastructure and services, whether on a “no-aid” basis in cases where there is demonstrably no advantage beyond the normal course of trade to the intermediary itself, or on a compatible aid basis provided the activities involved will not distort competition with commercial entities.

— The intermediaries could be either public or private bodies. In either case, the support service or infrastructure provided should be on a non-profit basis or with profit capped at, for example 15 per cent, and there should be safeguards to ensure no direct or indirect advantage beyond the normal course of trade to any of the intermediaries’ commercial activities (eg in the scenario set out in question 13). Where the intermediary is not a state owned entity, it should be selected according to transparent and competitive processes.

— Basic incubation facilities (the provision of short term accommodation, and advisory/networking services) should be available to all start-ups, provided that these are small enterprises and that the facilities are available on a time limited basis. There is no need to limit these services to “innovative” businesses.
— Intermediaries should also be allowed to provide high tech laboratory services as proposed, provided that these are on an open access basis—this would address one of the key obstacles that businesses, particularly though not exclusively SMEs, face in exploiting new technologies.

— Eligible services should include manufacturing at least up to the “experimental development” phase described in part three, but only in sectors where such facilities are not yet generally available on a purely commercial basis and end users should be charged at market rates, as closely as they can be estimated. As markets develop and commercial competitors emerge, state support should be withdrawn—this could be achieved by requiring intermediaries to pay back state funding when service usage and income exceeds pre-agreed levels; this should follow from the requirement to ensure that there is no advantage to the intermediary.

— The price of facilities/services should only be subsidised where end users are SMEs, as proposed. In general, where the problem is the high cost of services rather than lack of availability of eg short term leases/open access facilities, direct grants to the SMEs concerned may be preferable, and the voucher system proposed here looks useful, provided that the vouchers must be spent with approved innovation intermediaries (for instance, Member States could be required to list the intermediaries involved when they report on approved schemes). The risk of abuse of such vouchers might dictate that they could only be spent with pre-defined innovation intermediaries, whether public sector or private sector run. They should not be used to subsidise businesses’ normal consultancy or professional service use.

— Intermediaries should not be required to produce both services and infrastructure—local needs and structures will legitimately vary.

4.2 Encouraging training and mobility.

Commission Questions

Q14. Is there evidence that the recruitment by SMEs of other types of highly skilled personnel should also be aided?

Q15. Should the Commission adopt specific rules for cases where a researcher chooses not to return to his/her home university or where the university no longer intends to hire him/her back?

UK Response

Creative schemes to assist knowledge transfer and allow SMEs to access highly skilled personnel can be of real value. SMEs can find it particularly difficult to attract new, highly skilled staff when they are at the early stages of expansion—recruiting their first key specialist employee may open the door to further growth. It will be important to ensure that any new provisions here, however, do not become a form of aid towards operating costs and genuinely address a market failure in a way that is not already done by current state aid instruments (such as the block exemption provisions for training, which allow for job related training, or the new provisions on intermediaries discussed earlier in the Commission’s paper). Shortages of highly educated workers need to be addressed at many levels of government policy (eg higher education, immigration), and state aid will not always be the appropriate answer. In general we would argue that:

— any subsidies for the recruitment of specialist staff and for short-term placements should be limited to the two categories proposed (highly qualified researchers and engineers). The beneficiaries should be SMEs of a technologically innovative kind. The Commission should consider requiring that subsidies can only be paid for the first specialist to be taken on by the business who should then be expected to carry the full cost of further employees in that area. As proposed by the Commission, subsidies should be limited to a three-year maximum period. The UK would in principle prefer to limit such support to cases where businesses receive only an indirect advantage and the direct incentive goes to the individual researcher or engineer involved; and

— secondment programmes can be a valuable component of knowledge transfer support and Member States should be allowed to incentivise secondment schemes for university/large enterprise employees to work on short-term placements with SMEs. The SMEs concerned should be technologically innovative, and the placements should be project related, as proposed; subsidies should only be available for the period of the placement.
4.3 Supporting the development of poles of excellence through collaboration and clustering:

**Commission Questions**

Q16. What definition of cluster/clustering activities should be followed and what criteria should be used to distinguish clusters from the broader category of innovation intermediaries?

Q17. Do you think that state aid should be allowed to promote European Centres of Excellence? If so, what type of state aid, for what reasons, and subject to what conditions? What other, possibly better, measures could be envisaged?

Q18. Are additional criteria needed to avoid state aid being fragmented and to encourage the concentration of resources in a limited number of poles of excellence?

Q19. What are your views more generally about the need for additional provisions for infrastructure that supports innovation (e.g., in the field of energy, transport, etc.)?

Q20. Do you think that large firms should be entitled to state aid, e.g., to establish research facilities in a European pole of excellence? Should the Commission try to develop specific criteria to control such state aid? What type of economic evidence should be requested to analyse the necessity of such state aid?

**UK Response**

Clusters have a demonstrated value in driving the application of research and the development of high tech industry, but we agree with the Commission’s reservation that they should not be treated as a substitute for regional investment aid. The UK supports the development of clusters, but the most effective clusters are likely to grow organically round existing research centres; attempts to create them artificially are likely to fragment rather than concentrate specialist enterprises (and attempts to encourage industry based sectoral clusters around one or two large players may be extremely vulnerable to market changes).

Where state intervention is needed, the most appropriate vehicles are likely to be the new intermediary provisions proposed earlier in this section which will allow aid to make incubation and high tech support services available to business users, together with continued and expanded support for public sector centres of research excellence and for networks to allow such centres to collaborate effectively with the private sector in collaborative projects.

As argued in our Roadmap response, universities and other research organisations can have a key innovation role in addition to their research and teaching functions. Universities invest in proof of concept studies, for example, to test the commercial potential of technological innovation then license the technology to businesses. They also supply advice to and initial investment in spin-out companies and provide valuable support for small businesses by supplying incubation and sometimes grow-on space and also open-access research facilities.

All of the above are potentially “economic activities” which can result in universities being classified as undertakings in certain circumstances, and their funding classed as state aid. The universities (and university-owned non-profit subsidiaries with these functions) are, however, performing all such activity in the public interest with a view to furthering their academic research and teaching functions. Any revenue is ploughed back into the public function activity of the university.

With a few basic safeguards, any competitive distortion from this activity should be minimal while the benefits to European competitiveness are substantial. Clarity over the application of the State aid rules to this activity would allow Member States to enhance university performance in these areas with greater legal confidence.

Ideally the Commission would clearly state that any such activities be block exempted to the extent that they might involve state aid at the level of the university. In order to prevent abuse there could be Block Exemption limits on amounts to be invested in spin-out companies, for example, and rules to ensure that users of incubators and science parks be charged market rates.

External businesses collaborating with universities or receiving services from them will be in receipt of state aid if not charged commercial rates for services received. The UK favours the maintenance of robust rules on subsidies for competitive businesses. Clearly the spinouts will be subject to the rules as well, once established, and aid to them must fit within the relevant frameworks.

We would also support rules that facilitate innovation and research collaboration between companies and the public sector (and also between companies).

Both the UK Treasury’s Lambert Review of university-business collaboration and the DTI’s Innovation
In answer to the Commission’s questions:

— While Member States should be able to support the development of clusters, we would argue against creating a new category of allowable aid to businesses for this purpose. Rather the Commission should clarify how the state aid rules apply to universities and other research establishments for innovation as well as research activities and focus on facilitating networks for technology transfer and collaboration on innovation between businesses and public sector bodies. The UK believes that it is through the world-class excellence of public research facilities and the provision of facilities for technological expertise to be disseminated, combined with maximum competition between businesses, that the EU has the best chance of building successful business clusters in the high-technology sectors.

— The current R&D framework continues to work effectively in many respects, and rightly focuses most scope for aid on the categories of research furthest from the market. Collaborative public/private research and collaborative innovation networks can be particularly valuable, however, and we would support more flexible provisions on the assessment of the state aid involved in the contribution of public partners in collaborative research projects; there may be instances where the value of the public partner’s contribution in state aid terms may be limited even where the private partner retains some or all of any resulting IPR and where additional direct funding should therefore be allowed, and we welcome the Commission’s commitment to consider a more tailored approach.

— As indicated earlier in our response, the R&D Framework should continue to require individual notification of large project grants even where they originate from approved schemes, given their potentially greater distortive effect. However, we believe the thresholds for the individual notification requirement (grants of €5 million or more to projects over €25 million) are now too low and need to be reviewed.

— State aid should continue to be allowed under Article 87(3)(b) for R&D projects of common European interest (which may qualify for funding of up to 100 per cent aid intensity) and to be allowed at higher than basic intensity rates for joint or cross border projects, as under the present R&D framework rules for projects approved under Article 87(3)(c). Higher rates should continue to be allowed where competitors based outside the EU are receiving aid of equivalent levels, as allowed under WTO rules.

— The Commission should continue to authorise the provision of infrastructure in circumstances where this will constitute state aid, but is necessary in order to address market failures and to ensure the availability of services which businesses need to access in order to modernise and innovate; broadband is a good example of an area where the state can legitimately intervene with minimum
distortive impact providing certain basic safeguards are met. Such infrastructure support will be relevant in the context of supporting clusters, although it may also be relevant and appropriate in other contexts.

— Large firms should continue to be eligible for R&D support, but at lower rates than SMEs, as in the current framework. We believe that large firms should also be eligible for funding as intermediaries, provided that there is effective ringfencing between their intermediary activities and any other commercial functions.

STATE AID REFORM 2005–09 (10083/05)

Letter from the Chairman to Mr Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department for Trade and Industry

Thank you for your Explanatory Memorandum on the Commission’s State Aid Action plan 2005–09 which Sub-Committee B considered at its meeting on 11 July 2005.

The Sub-Committee decided to clear the document from scrutiny. However, the Committee will be interested to consider individual proposals for state aid reform once they are published by the Commission and deposited in Parliament for scrutiny. The Sub-Committee would also like to see a copy of the Government’s comments on the document which the Commission has asked to receive by 15 September 2005.

19 July 2005

Letter from Mr Gerry Sutcliffe MP to the Chairman

Further to your Committee’s consideration of the above Explanatory Memorandum, I am writing to provide the additional information requested in your letter of 19 July.

I am attaching a copy of the Government’s response to the Commission on the State Aid Action Plan (not printed). I am also attaching papers on environmental aid and aid for regeneration (not printed). These papers elaborate on the points made in our main response and have also been sent to the Commission.

26 September 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter of 26 September in reply to mine of 19 July which Sub-Committee B considered at its meeting on 24 October 2005.

Members found the Government’s comments on the Commission’s proposals for less and better targeted state aid very interesting and join you in welcoming the Commission’s recognition that there is a need for reform in this area. We look forward to scrutinising any resulting proposals for legislation when they become available.

26 October 2005

TELECOMS COUNCIL, BRUSSELS, DECEMBER 2005

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

I am pleased to enclose a copy of my written statement to Parliament outlining the agenda items for the forthcoming Telecoms Council on 1 December which is taking place in Brussels, (Annex A).

Annex A

I will be chairing the Telecoms Council of the UK’s EU Presidency in Brussels in the afternoon of 1 December 2005.

The first item on the agenda will look at the important theme of better regulation, focusing specifically on the 2006 review of the regulatory framework for Electronic Communications markets and on the future of EU spectrum policy. I will chair a policy debate on these issues and we have produced a Presidency policy paper to help guide the debate. This discussion is important in the wider context of EU economic reform. I hope to achieve a steer from the Council on the key issues that need to be addressed within the 2006 review and on the role of market based mechanisms in EU spectrum management.
I will then introduce a policy debate on the i2010 Strategy which I believe can play a key role in achieving the Lisbon goals of economic growth and productivity. With the help of a Presidency paper, I will ask my colleagues to explore the key issues that need to be the focus of attention in the area of information and communication technologies over the next five years and to discuss how best to ensure that ICT policy is appropriately reflected in wider national economic discussions both at EU and national level. I also hope that as part of this agenda item, we will be able to agree the set of Council Conclusions responding to the Commission Communications on the i2010 Strategy and on e-accessibility.

The third agenda item will look at the transition from analogue to digital broadcasting, focusing specifically on the spectrum gains from digital switchover and on a timetable for digital switchover in the EU. I hope that we will be able to agree the Council Conclusions responding to the Commission Communication on this issue, but I do not anticipate a substantive policy debate.

Finally, together with Viviane Reding, European Commissioner for Information Society and Media, I will report back on the outcome of the World Summit on Information Society which took place between 14 and 18 November and parts of which I attended.

**Letter from Rt Hon Alun Michael MP, Minister of State for Industry and the Regions to the Chairman**

I am pleased to enclose a copy of my written statement to Parliament providing a summary of the Telecoms Council which took place in Brussels on 1 December (Annex B).

*5 December 2005*

**Annex B**

I chaired the Telecoms part of the Transport, Telecommunications and Energy Council of the UK’s EU Presidency in Brussels on 1 December 2005.

The Council began informally over lunch, where I chaired a policy debate on the 2006 Review of the regulatory framework for Electronic Communications markets. The Council agreed that the Framework plays a key role in the development of open and competitive ICT markets. There was broad consensus that its implementation needs to be improved and that the Review of the Framework is a high priority for 2006. I was pleased that the Council gave a steer on the key issues for the Review. These included the importance of competition and investment in next generation networks, ensuring a light-touch regulatory approach and the importance of the needs of consumers.

The policy debate then continued in formal session with a focus on the future of EU spectrum policy. The Council agreed that spectrum is a valuable economic and social resource and that its management needs to be more flexible and efficient. However, views were divided about the role that market-based mechanisms and harmonisation should play in determining spectrum policy. There was broad support for further discussion and analysis on this important issue, particularly in light of the spectrum which will be released by the switchover from analogue television.

I then chaired a policy debate on the Commission’s i2010 Strategy. This was a public open session. I reported on the successful events held as part of our presidency, including the gathering of Chief Executives on 8–9 July and the i2010 and e-accessibility conferences held in London on 6 September and 21 October respectively. Evidence from the Disability Rights Commission prepared for the second of these conferences showed that websites that failed to meet the e-accessibility standards were 50 per cent more difficult for all individuals to use, demonstrating that accessibility is an economic issue as well as an equalities issue. There was broad support for the i2010 Strategy and its three objectives to promote open and competitive markets, to strengthen ICT research and to achieve an inclusive information society. The Council discussed particular priority areas within the i2010 Strategy’s three themes. These included the need for appropriate policy actions in the regulatory field, on broadband and content and on e-government and e-accessibility. There was agreement that the i2010 Strategy needs to be implemented effectively if its contribution to the Lisbon agenda is to be realised. I am pleased to report that at the end of this debate the Council adopted Council Conclusions on the i2010 Strategy and on e-accessibility.

The Council also adopted Conclusions without debate on the subject of the transition from analogue to digital broadcasting. These Conclusions highlight the intention of Member States to complete the switchover, as far as possible, by the end of 2012.

Finally I reported on the successful outcome on internet governance at the World Summit on Information Society and I highlighted the key role of the EU under our presidency in facilitating the compromise position. The agreement reached will provide a sound basis for delivering enhanced cooperation, and the response from the Commissioner and the Council was very positive indeed.
TENS TRANSPORT PROJECTS (7280/05, 7281/05, 7282/05)

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

Sub-Committee B considered these documents and your Explanatory Memorandum at its meeting on 20 June 2005.

The TENS loan guarantee instrument could have significant financial implications. Has either the Government or the Commission carried out a Regulatory Impact Assessment of the Proposal? Specifically, we would like to know how much the subsidy would amount to, over what period it would be given and any other relevant budgetary factors.

We share your dissatisfaction with some aspects of the loan guarantee instrument. We also believe that this Proposal risks undermining the PPP principle of appropriately assigning, managing and mitigating risks because, under this instrument, underperforming projects would have repayments guaranteed in the early years even if they did not deliver the output required. We accept that there may be a case for providing some fallback for TENS projects in the current economic climate but we are concerned that the underlying structure and desirability of the projects themselves has not been properly considered. There is also a lack of clarity as to why private sector entities cannot, or will not, provide such guarantees as that explained in the document at a reasonable price. How will you register this dissatisfaction?

In the meantime, we are maintaining scrutiny on this document.

22 June 2005

THAI SHRIMPS: ACCESS TO THE EUROPEAN UNION MARKET

Letter from Rt Hon Alan Johnson MP, Secretary of State for Trade and Industry, Department of Trade and Industry to the Chairman

I am writing to inform you that the European Commission intend to bring forward a draft Regulation for Council approval to temporarily reduce the common customs tariff duties for certain tropical fisheries products.

Over the past year, the European Union has been renegotiating the Generalised System of Preferences (GSP), which gives developing countries preferential access to the EU market for their exports. The importance of the renegotiation was underlined by the Indian Ocean tsunami in December, and the Council agreed in February to accelerate the introduction of the new scheme as many of the countries affected by the tsunami stood to benefit from the new arrangements. Sadly, the new scheme will not come into effect from 1 January 2006 because of delays in the negotiations. The new arrangements were the subject of EM6153/05, which cleared scrutiny in April.

The delay in implementing the new scheme will adversely impact Thailand’s shrimp industry in particular. Since preferential access was removed in 1997, Thai shrimp exports to the EU have fallen by 90 per cent. Under the new GSP, Thailand will regain preferential access to the EU for its shrimp exports.

The Commission propose a Regulation to waive the common customs tariffs on shrimps until the end of the year, to enable Thailand to benefit immediately. As Presidency, we will seek to adopt the Regulation by written procedure as soon as we receive the official text of the Regulation.

The Government believes that, given the need to assist Thailand following the tsunami, it is clearly desirable for the proposal to be adopted as soon as possible. It is unfortunate that Parliament is not in session to enable scrutiny of the proposals. We will of course submit the text of the Regulation, along with an Explanatory Memorandum once we receive the official text.

25 July 2005

Letter from the Chairman to Rt Hon Alan Johnson MP

Thank you for your letter of 25 July 2005 which Sub-Committee B considered at its meeting on 10 October 2005.

The Sub-Committee noted that you intended to adopt a Regulation by written procedure to enable Thailand to benefit immediately from preferential access to the EU market for its shrimp exports. We accept that there are a small number of occasions when it will prove necessary to move forward without Parliamentary approval. This is one such occasion. We look forward to receiving the text of the Regulation and an Explanatory Memorandum as soon as the official text is received.

12 October 2005
Letter from Lord Sainsbury of Turville, Parliamentary Under-Secretary of State for Science and Innovation, Department of Trade and Industry

Thank you for your letter of 12 October to Alan Johnson about the proposed Regulation on preferential access to the European Union market for Thai shrimps.

We have received the text of the Regulation and attach a copy, along with a copy of an Explanatory Memorandum (11536/05) on the Regulation submitted by the Department for Environment, Food and Rural Affairs on 5 August, which you cleared at your sift on 8 September.

Whilst paragraph 12 of the Explanatory Memorandum states that the Regulation would be approved by the Agriculture and Fisheries Council before the end of the year, the Regulation was agreed by written procedure on 31 August to enable Thailand’s fisheries industry to benefit as soon as practicable and to support reconstruction following the Indian Ocean tsunami. With Alan Johnson writing about agreement during the summer and Ben Bradshaw providing the corresponding EM, I can appreciate that there may have been some confusion in tying the two together which I regret.

I am grateful for the Committee’s understanding of the need to make rapid progress on European Regulations on a small number of occasions, and their consideration in this instance.

7 November 2005

THIRD RAILWAY PACKAGE

Letter from the Chairman to Tony McNulty MP, Minister of State, Department of Transport

COSAC agreed at its XXXII meeting in the Hague in October 2004 to conduct a “pilot project” on the 3rd railway package in order to assess how the subsidiarity early-warning mechanism provided for in the Constitutional Treaty might work in practice. COSAC agreed that the 3rd railway package should be examined as if the “Protocol on the application of the principles of subsidiarity and proportionality” in the Constitutional Treaty were in force.

The Protocol gives national parliaments six weeks to examine proposals from the date of transmission of the draft legislative acts by the Commission. COSAC decided that the pilot project should start on 1 March, which means that national parliaments should seek to complete their examination of the package by 12 April.

I am therefore writing to ask whether, in your view, any elements of the 3rd Railway Package do not comply with the principle of subsidiarity. As you are aware, Sub-Committee B has, by co-incidence, already looked at this Package during the course of its recent inquiry into the liberalisation of rail freight. We are particularly concerned about the document on train crew licensing but welcome your view on all the documents contained in the package. Given the tight time constraints of this pilot project, I should be most grateful if you were to respond to this request by 16 March.

9 March 2005

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 9 March on the subject of the COSAC “pilot project”, asking whether any elements of the Third Railway Package do not comply with the principle of subsidiarity.

As stated in the Explanatory Memorandum submitted by the Department for Transport on 30 March 2004, the Government is satisfied that there is a case in principle for Community action in relation to all the issues the Commission has identified for further action, all of which have a strong transnational element. However, the Government has concerns as to whether the nature and extent of proposed Community action is appropriate in all cases—in particular whether the likely burdens on the rail industry from the proposals on international passengers’ rights, train driver licensing and freight contractual quality requirements are proportionate to the objectives to be achieved. Some of these issues have been addressed in the course of negotiations, but some elements of the Package have so far had very little discussion in Working Group, and the Government will continue to press for acceptable solutions to our remaining concerns.

The passenger rights proposal rightly challenges train operators in certain countries to deliver a better service to customers in terms of, for example, delay compensation, handling of claims, and services for persons of reduced mobility that they can reasonably expect in the 21st century. However, our Regulatory Impact Assessment (RIA), which I sent to Jimmy Hood and copied to you on 14 January, indicated that all options other than “do-minimum” result in significant costs and no material benefits in implementation. Article by article discussions are progressing slowly under the Luxembourg Presidency, and there is nothing that can be usefully reported at this stage.
The train driver licensing proposal addresses, in part, a legitimate need, confirmed by relevant UK stakeholders, for a more transparent and objective, and less onerous, process for train operators to get their staff licensed for operation in other Member States. The RIA suggested that costs in all options outweighed the benefits. This proposal reached “general approach” in the December 2004 Transport Council, and you may recall from my letters of 10 and 11 January that this included a derogation provision regarding drivers working only on routes within their home State, which I believe is fully consistent with the principle of subsidiarity.

The freight contracts proposal, as you will be aware from previous exchanges, has little merit in our view, and our RIA suggested that costs would outweigh benefits in all options other than an alternative “key performance indicators” strategy. Initial discussion has revealed very little support for the proposal among Member States. The UK will continue to press for withdrawal.

The passenger liberalisation proposal rightly, in our view, creates a presumption that international operators should be able to start new services to the benefit of passengers unless the finances of publicly-supported services would be compromised. This proposal has not yet made substantial progress in the Working Group, and is not expected to be discussed at Council during the Luxembourg Presidency.

I hope this is helpful. I will of course continue to keep your Committee informed of progress with these proposals.

18 March 2005

Letter from Derek Twigg MP, Parliamentary Under-Secretary of State, Department for Transport to the Chairman


As you may recall, the Train Driver Licensing proposal has been substantively discussed (letters to the Committee of 29 November 2004 and 14 January 2005 referred) and on 10 December, the Council of Ministers reached a “general approach” on a revised text of this proposal. The general approach text would permit individual Member States to seek a 10-year derogation (which is extendable) from the licensing system for drivers working only on domestic routes in that State, should a cost benefit analysis show that its application to such drivers would not be worthwhile. Tony McNulty was able to accept this compromise, which reflected and met concerns that the UK and others had expressed.

Under the Luxembourg Presidency from 1 January–30 June 2005, progress has been made on just one of the Package dossiers: the International Passengers’ Rights Regulation. There were a number of detailed discussions of the proposal in the working group, which revealed a wide diversity of views from delegations.

A small number of Member States—probably no more than three—would prefer to see no change from the “existing” COTIF 1999 CIV (Uniform rules on contracts for international carriage of passengers by rail. This provides uniform rules on contracts for international rail journeys, covering liability and minimum compensation limits for death or personal injury to passengers and liability and compensation for delays.) These Member States would therefore prefer that there was no Regulation at all.

Other Member States’ concerns about the scope of the proposal principally reflect their concerns about the costs of the substantive provisions included in it. The latest compromise text of the Regulation would apply to international services—in other words just the train services that run across national boundaries—whereas the existing COTIF 1999 CIV regime applies to contracts for international journeys—ie to individual point-to-point trips, which could involve a leg on a domestic train service. In fact, we would prefer to see a combination of both: broadly speaking, the provisions on compensation (eg for delays and cancellations) would be more appropriately applied to individual services, while those on information and ticketing and persons with reduced mobility would be more appropriately applied to journeys.

Luxembourg’s April 05 Transport Council, therefore, focussed on what it considered to be the main areas of concern: scope, liability and interaction with the COTIF 1999 CIV rules. The clear message received in April Council was that the inter-relationship with the COTIF CIV rules needed to be addressed. Since the April 05 Council there has been only one further working group meeting on this dossier focussing on a text which clearly builds on, rather than parallels the existing COTIF convention, but which resulted in minimal progress.
At the June 05 Transport Council, the Luxembourg Presidency gave a progress report on the International Passengers’ Rights proposal. The Presidency highlighted the following as their assessment of the main outstanding issues for member states: availability of tickets and travel information; train operators’ liability and compensation obligations in the event of delays and cancellations to international services.

On the remaining dossiers of the Package at the April 05 Council, the Luxembourg Presidency noted that there was no Member State support for the freight quality contracts proposal. There was no discussion of this proposal at the June 05 Council. The international passenger service liberalisation proposal has not been discussed at all under the Luxembourg Presidency.

The European Parliament has yet to schedule its plenary First Reading of the Third Package. It has, however, been discussed in the Transport and Tourism Committee which voted in April this year on a number of amendments. The most significant of these are:

— **Train Driver Licensing:** a provision that Member States are not obliged to extend the scheme to cover their purely domestic train drivers if they can demonstrate that the costs of so doing will significantly outweigh the benefits (the UK successfully negotiated a similar provision into the text of the general approach in the Council).

— **Passenger Rights:** amendments that would extend the scope of this Regulation to cover domestic as well as international journeys. The Committee has also approved some amendments to strengthen accessibility for persons of reduced mobility, and on changes to ticketing systems, that would impose significant costs on UK industry. On the other hand, a number of the amendments the Committee has approved provide a welcome simplification of the Commission’s proposals, in particular on the interface with existing international obligations.

— **Freight Quality Contracts:** the Parliament Committee has voted to reject it outright. The Government welcomes the Committee’s vote, which indicates that the Council and the Parliament have a common view on this dossier.

The UK Presidency will aim to reach a general approach on the passenger rights proposal at the October Council of Ministers, paying close attention to the potential impacts of the proposed requirements on train operators and users. The UK Presidency will initiate discussions on the proposal for the liberalisation of international passenger services, in tandem with the linked forthcoming Commission proposal for a Regulation on public service obligations.

I will of course continue to keep the Committee informed of progress in the negotiation of these dossiers.

13 July 2005

**Annex A**

**Letter of 14 January 2005 from Tony McNulty MP to the Chairman**

I am writing further to my previous correspondence between the Committee and the Government relating to the continuing progress of the European Commission’s 3rd Railway Package, which was published 3 March 2004.

As you may recall only one aspect of the Package—the Train Driver Licensing proposal—has been substantively discussed so far. My letters of 29 November 2004 and 10 January 2005 referred. On 10 December, the Council of Ministers reached a “general approach” on the Train Driver Licensing proposal. The general approach compromise text allows individual Member States to seek a 10-year derogation (which can be extended) from the licensing system for drivers working only on domestic routes in that State, should a cost benefit analysis show that its application to such drivers would not be worthwhile. This compromise reflects concerns, which the UK and others had expressed, regarding its application to those drivers (98 per cent of the UK total). With those concerns met, I was able to accept the proposal.

The Freight Quality proposal was discussed in working groups in July, but those discussions revealed that there was little support for it among Member States. The Luxembourg Presidency plan to start discussions on the international passenger rights proposal in January. We do not, however, anticipate that they will start work on the Passenger Liberalisation proposal.

A partial RIA for the Train driver licensing proposal was submitted with my letter of 29 November 2004. Partial Regulatory Impact Assessments have now been finalised for the remaining three dossiers and are enclosed for the Committee’s consideration.
Running alongside the Government’s preparation of these RIAs was the public consultation exercise on the 3rd Railway Package. A summary of the responses to the Consultation is included in each of the RIAs (freight quality—p 23, international passenger rights—p 19; passenger liberalisation—p 11). In brief, there was substantial support for the initial views expressed by the Department in the Consultation document.

In summary the RIAs’ conclusions are as follows:

**Freight Quality Contracts**

This proposal related to the implementation of performance clauses to be incorporated into contracts for the transport of freight by rail.

In addition to the do minimum option three other options were considered:

- Full implementation of the Commission’s proposal (option 2), reduced scope of the proposal to cross border freight (in the UK this would mean services through the Channel Tunnel (option 3) and implementation of an alternative strategy of requiring publication of key performance indicators (option 4).
- Under options 2 and 3, the costs of implementing the proposal either fully as proposed or with some reduced scope, outweigh the benefits relative to the “do minimum”. For option 2 the annual costs are assessed to be in the region £2.4 million–£18.4 million plus a sum of up to £300 million awarded for consequential losses, whereas benefits may be £2 million–£18 million, plus unquantified payments for consequential losses. For option 3 the annual costs are assessed to be in the region of £400k–£3 million plus payments for consequential losses, whereas benefits may be £250k–£3 million plus a sum of up to £50 million awarded for consequential losses. Under option 4 it is thought that in certain circumstances benefits may exceed costs.

**International Passengers’ Rights and Obligations**

This Regulation details passengers’ rights and obligations when they are making international journeys by rail and includes such matters as compensation and liability provisions for delayed or cancelled services.

Five options were considered. These were:

(i) “do minimum”;
(ii) full implementation of the Commission’s proposal;
(iii) implementation of the Commission’s proposal for international services only;
(iv) implementation of the Commission’s proposal but with compensation as per current GB practice; and
(v) implementation of the Commission’s removal of the clause related to consequential loss.

The analysis shows there will be significant costs and no material benefits for implementation under any of the options 2–5.

The costs to benefits relative to “Do-minimum” were:

- £0.6 million–£1.6 million costs compared with £0.4 million benefits;
- £0.1 million–£0.5 million costs compared with £0 benefits;
- £0.6 million–£1.6 million costs compared with £0–£0.4 million benefits; and
- £0.6 million–£1.2 million costs compared to £0–£0.4 million benefits.

**Liberalisation of International Passenger Services**

This proposed Directive allows open market access for international passenger services, including cabotage; but allows Member States to restrict competition against public services where this is strictly necessary to maintain their economic equilibrium.

The options considered were:

(i) “do minimum”;
(ii) full implementation of Commission’s proposal; and
(iii) implementation of the Commission’s proposal but without any restrictions on cabotage.
The analysis concluded that none of the “do-something” options was likely to have any significant costs or benefits to the UK. However, the third option poses an increased risk of competitive market entry against franchised domestic services on the CTRL.

The Government’s conclusions are set out in more detail in each RIA (freight quality—p 27, international passenger rights—p 21; passenger liberalisation—p 13). In summary, however, they are:

— Freight quality: continue to resist this proposal in principle; and
— International passenger rights: seek substantial changes to reduce the anticipated additional costs and disbenefits to users.

International passenger liberalisation: support the Commission’s proposal as drafted but resist weakening of the provisions allowing Member States to restrict competitive entry against public services in certain circumstances.

I will, of course, continue to keep the Committee informed of progress in the negotiation of these dossiers.

Letter from the Chairman to Derek Twigg MP

Thank you for your letter of 13 July 2005 which Sub-Committee B considered at its meeting on 10 October 2005. Members found the update that you provided very helpful.

The Sub-Committee share your satisfaction that the General Approach text on train crew licensing contains a temporary derogation for those Member States who can show, through a cost-benefit analysis, that its application to all drivers would not be worthwhile. We trust that you will seek to ensure that this provision remains in place and that the UK would exercise its right to such a derogation were the Directive to be passed. It appears to the Sub-Committee that a permanent derogation should be granted on this matter. We would be grateful if you could explain why this derogation is only a temporary one.

We are less satisfied that it appears as if the freight quality contracts dossier may be lost. As you will know we considered this issue very carefully during the course of our inquiry and report, Liberalising Rail Freight Movement in the EU and concluded that:

“Whilst recognising the difficulties involved, we come down in favour of the customer having the option of compensation. We therefore recommend that the proposed Regulation should permit an opt-out from a compulsory compensation regime and that the United Kingdom Government should support this recommendation.”

We believe that the unreliability of some freight services is a source of real concern to customers. How will these concerns be met if this Directive is lost?

In the meantime we maintain scrutiny on 7170/04 (Further integration of the European rail system), 7147/04 (development of the Community’s railways), 7148/04 (certification of train crews) and 7150/04 (freight quality contracts).

12 October 2005

Letter from Derek Twigg MP to the Chairman

I am writing to update you on the continuing progress of the European Commission’s 3rd Railway Package (published 3 March 2004), including the outcome of the European Parliament’s First Reading. I last wrote to you on 13 July 2005, when I advised that the UK Presidency would continue to take forward the Regulation on International Passengers’ Rights and would initiate discussions on the proposal for the liberalisation of international passenger services, in tandem with the linked forthcoming Commission proposal for a Regulation on public service obligations (since published on 20 July 2005, and the subject of EM 11508/05).

You will recall also that I had previously reported that the Train Driver Licensing proposal (7148/04) had already been discussed at Council resulting in a “general approach” being reached on a revised text of this proposal on 10 December 2004.

Since July the UK Presidency has made good progress on the International Passengers’ Rights Regulation (7149/04), building on the progress made in discussions at the April 2005 Council. Although this dossier was not ready to submit for general approach at the October Council of Ministers, sufficient progress on the outstanding issues has since been made, so allowing the prospect for political agreement to be reached at the Transport Council on 5 December.

In the course of the discussions at the April Council, most Member States expressed the view that the Regulation should be based on the existing COTIF 1999 CIV (Uniform rules on contracts for international carriage of passengers by rail) but additionally that the Regulation would build on those areas absent from,
or poorly developed by, COTIF 1999 CIV. These include provisions for persons with reduced mobility and compensation regimes for delays, missed connections and cancellations. Discussions under the UK Presidency have focussed on individual Member States’ remaining detailed concerns over issues of scope, ticketing and information, and insurance obligations. The Presidency’s compromise text on Member States’ detailed concerns have been further refined in negotiations subsequent to our last advice to you. For instance, disparate Member State views on scope have now been addressed in the Presidency’s compromise text.

The Presidency commenced discussions on the liberalisation of international rail passenger services directive (7147/04) with a policy debate in Council on 6 October. This debate also took account of the publication of the European Commission’s revised proposal for a Regulation on public service obligations. In the light of the debate, the Presidency concluded that the links between the two dossiers needed to be discussed but that there was no need to agree the two proposals in tandem. Subsequent discussions have therefore concentrated on the proposal for liberalisation of international rail services. Only those elements of the proposed Regulation on public service obligations that are of specific relevance to the liberalisation of international rail services have been considered in the discussions.

While most Member States, like the UK, support the principle of opening the market for international services, many have specific concerns on the proposal. These particularly arise from the proposal to include the right of cabotage—allowing railway undertakings to pick up and set down passengers at stations within one Member State as part of an international service. Without proper safeguards, this could compromise the financial position of domestic services that are subject to public service obligations and compensation. A small number of Member States also see the need to agree in parallel whether long distance and regional rail public services can be directly awarded without competition (as proposed in the Commission’s proposal on public service obligations). The Presidency is seeking to address Member States’ concerns in a compromise text on the liberalisation proposal and a progress report on issues of concern to delegations regarding the Public Service Obligation proposal, but it is not yet clear whether there will be sufficient support to achieve a political agreement at the December Council.

The European Parliament has now had its plenary First Reading of all but the Freight Quality Contracts Regulation of Third Rail Package. The Freight Quality Contracts Regulation has been formally rejected by the European Parliament and our understanding is that the next two Presidencies at least do not intend to take it forward. The Commission has not confirmed whether the proposal will be withdrawn. Referring to the points you made in your letter of 12 October, the Government is of the view that, in the meantime, the most effective way to safeguard freight customers interests is to ensure the effective implementation of the liberalisation measures already agreed, which will see the international rail freight market completely open by January 2006 and the domestic market by 2007.

The plenary First Reading amendments to the rest of the Package are largely consistent with the Council’s emerging views on these three dossiers. The main areas of divergence are:

- Train crew licensing: the EP text provides for automatic extension of licensing—to a specification to be determined by the European Rail Agency (ERA)—from drivers to other safety critical train crew, whereas the Council’s general approach requires only an ERA report on such an extension. This reflected concern about the benefits and costs;
- International Passenger Rights: the EP text extends the scope to all rail journeys, not just international journeys as proposed by the Commission and broadly supported in the Council;
- International Passenger Liberalisation: the EP text extends the scope, in a second stage, to domestic services. The October Transport Council discussion indicated that very few Member States could support such an extension in scope.

It is not yet known whether the European Commission will issue an amended proposal in response to the European Parliament’s amendments, but if it does so my officials will contact the Clerk of your Committee to confirm that the text should be deposited for an Explanatory Memorandum.

Subject to final discussions on these dossiers ahead of the December Council, the UK Presidency hopes to be able to seek political agreement on the draft Regulation on passenger rights and on the draft Directive on the liberalisation of international passenger services at the December Council. The Presidency is also now in a position, following the EP’s First Reading, to progress the Train Crew Licensing proposal to political agreement at the December Council, and will do so if time allows.

Your letter of 12 October asked for further explanation of the temporary derogation included in the text of the Train Crew Licensing proposal since the General Approach was reached. I confirm that the UK would expect to exercise the derogation should this Directive come into effect. The derogation is temporary in that its duration is 10 years; however the derogation is renewable indefinitely. This accommodates the Commission and certain Member State concern that the economic case for the Directive should be reviewed periodically
against the state of the market. For example, it could be reviewed if there were substantial increases in the number of UK drivers who wanting to work outside the UK.

I will of course continue to keep the Committee informed of progress in the negotiation of these dossiers.

25 November 2005

Letter from the Chairman to Derek Twigg MP

Thank you for your letter of 25 November 2005 which Sub-Committee B considered at its meeting on 5 December 2005.

Members noted that the UK Presidency would seek to address Member State’s concerns about the Liberalisation of International Rail Passenger Services proposal in a compromise text. Sub-Committee B would be grateful if you could forward a copy of this compromise text as soon as possible along with a report of the meeting.

Members noted further that Political Agreement on the Train Driver Licensing Directive was a real possibility. We welcome your assurance that the UK would expect to exercise the derogation negotiated and that this derogation is renewable indefinitely. We are therefore content to lift scrutiny at this stage.

We look forward to receiving similar updates from you on the progress of the Third Railway Package.

7 December 2005

TRANS-EUROPEAN ENERGY NETWORKS (10010/05)

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

I attach an Explanatory Memorandum covering the above proposal (not printed), which is expected to reach political agreement at the Energy Council in Luxembourg on Tuesday 28 June. This would endorse the general approach agreed at the June 2004 Council and involve keeping removed some intrusive and bureaucratic elements that were in the original proposal.

Although it was not possible to reach agreement in first reading with the European Parliament, this latest text of the draft Decision contains several amendments adopted by Parliament and some compromise proposals developed during informal trilogue. In its current form, the text is acceptable to all EU delegations.

I regret that the Department did not update your Committee earlier at various stages, particularly after the proposal reached general approach and more recently. I will, of course, continue to keep the committee informed of further developments.

27 June 2005

Letter from the Chairman to Malcolm Wicks MP

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 4 July 2005.

We note that the Government is concerned that the text, as it currently stands, leaves open the possibility of olefins projects being funded with TEN-E finance in future. Why does the Government believe that olefin projects should be excluded from the scope of this Proposal?

The Committee is most disappointed that the scrutiny reserve was overridden on this occasion. We would be most grateful for a full explanation of why this happened.

12 July 2005

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 12 July. I am most sorry you have not had a reply to it before now—there seems to have been some administrative muddle here which I have asked senior managers to ensure does not happen again.

I regret that your Committee had so little time to consider this proposal and that this resulted in an override. Efforts by the Presidency to reach a first reading agreement with the European Parliament, which ultimately failed, resulted in the relevant text for political agreement at the Energy Council on 28 June not emerging until after 15 June. The text was very much along the lines of the general approach agreed at the June 2004 Energy
Council, which followed the clearance from scrutiny in your letter of 8 June to my predecessor, Stephen Timms, of the previous Explanatory Memorandum (EM 6218/04).

The Council is waiting for the European Parliament to complete its consideration of the text. This may result in further amendments. We will keep you fully informed of developments.

The agreed text refers to olefin projects. We would have preferred to have this reference removed as the TEN-E budget is very limited and should olefins ever become eligible for funding, this would reduce funding for genuine energy projects. However, we were isolated in the Council in our view on this and felt obliged to concede the point.

18 October 2005

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 18 October in reply to mine of 12 July 2005.

Sub-Committee B remain disappointed that scrutiny was overridden on this occasion but accept that the timing was difficult. We trust that you will do all you can to avoid further scrutiny overrides and that you will put in place systems which allow Explanatory Memoranda to be produced at short notice since the texts of EU documents can, and often do, change at short notice.

We are content to formally lift scrutiny at this point, as the olefins question we raised has been answered. I should, however, make clear that this document has nonetheless been the subject of a scrutiny override and should be recorded as such by the Cabinet Office.

2 November 2005

TRANS-EUROPEAN TRANSPORT AND ENERGY NETWORK: FINANCIAL AID
(11740/04, 13688/05)

Letter from Rt Hon Alun Michael MP, Minister for Industry and the Regions, Department of Trade and Industry to the Chairman

The purpose of this letter is to give you an update on this Regulation following your letter to Jacqui Smith dated 14 September 2004.17

The Regulation was the subject of an Explanatory Memorandum (ref 11740/04), which was submitted by the Department of Trade and Industry on 1 September 2004.

There have been no new proposals from the Commission in this area. The Regulation was discussed in the EcoFin Working Group on 20 September 2005. However, the Presidency stated at that meeting that the levels of financial support referred to in Article 7(2) and Article 20, which were the subject of your scrutiny reserve, would be discussed at a later meeting. The date of this will depend on the outcome of the negotiations for the next Financial Perspective, 2007–13.

I will continue to keep you up to date as we move forward.

19 October 2005

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter of 19 October 2005 which Sub-Committee B considered at its meeting on 7 November 2005.

Members found the update that you provided useful. We are maintaining the scrutiny reserve and look forward to hearing from you in the future about any developments in this area.

9 November 2005

Letter from Rt Hon Alun Michael MP to the Chairman

I am writing to update your committee on progress on this dossier in the light of the European Parliament’s First Reading, the results of which were published on 7 November.

There have been several meetings of the ECOFIN official level working group and progress has been made on some of the more technical provisions. But it has been agreed that there can be no meaningful discussions on either the size of the proposed budget for TENs projects, or on the intervention rates to be applied, until there has been a settlement on the EU budget as a whole.

The UK Presidency is still working towards agreement on the new Financial Perspective at the December European Council. Substantive discussions on the TENs financial regulation are unlikely to resume until January, under the Austrian Presidency. We expect that the working group will look at the Parliament’s amendments and also take the opportunity to discuss the Commission’s parallel Communication about the design of an EU loan guarantee mechanism for TENs projects, which was the subject of a separate EM submitted by the Department for Transport on 25 May this year.

I will continue to keep you up to date as we move forward. If you require any further information, please let know.

10 December 2005

TRANSPORT, TELECOMMUNICATIONS AND ENERGY COUNCIL, APRIL 2005

Letter from Tony McNulty MP, Minister of State, Department for Transport to the Chairman

I am writing to provide you with an update on some of the agenda items for the forthcoming Transport Council on 21 April. Separate letters are on their way to you on Galileo and Marco Polo II.

The agenda for the Council is relatively light, with political agreement being sought on the proposed Eurovignette directive, a general approach on information for air transport passengers and partial general approaches on Marco Polo II, and Galileo. There will be an orientation debate on part of the Third Railway Package; the proposal for a Regulation of the European Parliament and of the Council on International Rail Passengers’ Rights and Obligations.

The Council will also feature presentations by the Commission on the recent draft regulation concerning the rights of persons with reduced mobility when travelling by air, and on progress on international aviation issues. We expect that this will include information from the Commission on progress in the EU/US aviation negotiations, and that there will be a report from Commissioner Barrot on his talks with Secretary Mineta in Washington.

The Secretary of State and I both wrote to the Committee last year to inform on progress with agreeing the Eurovignette Directive, the aim of which is to establish a framework for lorry tolls on the Trans-European Transport Network. To recap, on three occasions in March, June and October 2004, Ministers failed to reach an agreement in Council on the amended Directive. On the first two occasions agreement was not secured because peripheral Member States and the Commission insisted on mandatory hypothecation while transit countries and the UK opposed earmarking as a matter of principle and pressed for hypothecation of revenues to be an option for Member States: the last because some Member States did not like the impact of provisions in the proposals relating to existing and future concessions contracts; the possible development of a methodology for calculating tolls and the use to be made of toll revenues.

Luxembourg have considered the Eurovignette Directive to be a high transport priority during their Presidency and are keen to secure an agreement at the Council. In order to achieve this they are working hard to resolve the key issues and the latest Presidency text goes a long way towards addressing individual Member States’ concerns, particularly the concerns over motorway concessions. Discussions at the last working group in March were encouraging and provide a positive foundation for reaching an agreement. The last most significant issue is the concept of an urban mark up which is very unpopular amongst most of the peripheral Member States and is viewed with opposition by most of the transit countries.

As far as the UK’s position is concerned we are broadly content with the current text which secures our key negotiating objectives, in particular: no mandatory hypothecation of revenues from tolling; greater flexibility for varying tolls to combat environmental damage and congestion; and on entering a minute statement on the Treaty base to protect the UK’s wider position on taxation. In the run-up to Council we will maintain an active dialogue with the Presidency, Commission and key Member States taking the opportunity to emphasise that agreement should be secured in April as we believe a new directive is good for the EU.
I hope you find this update helpful. I will of course continue to keep your Committee up to date with any further developments.

1 April 2005

**Letter from John Stevens, Divisional Manager, Europe Division, Department for Transport to the Chairman**

A transport session of the Transport, Telecommunications and Energy Council met in Luxembourg on 21 April. The Minister of State, Tony McNulty, represented the UK. The Council reached political agreement on the proposal to amend the extant directive on charging of heavy goods vehicles for the use of certain infrastructure (Eurovignette), on the basis of a Presidency compromise text, which the UK was able to accept. Most other Member States could also accept it with varying degrees of reluctance, but a small number remained opposed. However, the political agreement was reached with a substantial qualified majority in favour.

The Council considered two of the proposals constituting the Commission’s Third Rail Package. It noted a report which identified almost no support amongst Member States for the proposal for a Regulation on compensation in cases of non-compliance with contractual quality requirements for rail freight services. The UK has been among Member States arguing that this proposal should not progress further.

Member States responded to a Presidency questionnaire on the proposed Regulation on International Rail Passengers’ Rights and Obligations. The Presidency concluded that the best basis for progress would be a basic Regulation that did not go against the provisions of COTIF (the existing inter-governmental convention on International Carriage by Rail to which most EC Member States are signatory), but which might include some additional provisions, especially for passengers with reduced mobility. The UK was among Member States which were able to support in principle this proposal for enhanced rights.

The Council reached a partial general approach on a draft regulation establishing the second Marco Polo programme, intended to fund projects for improving the environmental performance of freight transport by shifting a significant proportion from road to other modes. The programme is subject to a budget to be agreed as part of the overall negotiations on the Financial Perspectives. A Council minutes statement made clear that the budget did not form part of the partial General Approach and that it would be possible to return to other elements, especially the overall quantitative objective, at a later stage. The UK was able to accept the text.

In a progress report on EU-US aviation relations, Commissioner Barrot reported on his recent visit to Washington. The visit had renewed contacts, and US Transportation Secretary Mineta seemed open to reaching a solution. The Commission said that it would pursue negotiations with the US using the June 2004 draft agreement as a starting point. There would be a stock-take at the next Transport Council in June. The UK welcomed the proposed stock-take and undertook to do all it could to help move the process forward so as to achieve a balanced first stage agreement. The UK objective throughout has been to achieve a balanced deal which is good for users and the European industry.

Also planned for the June Council are Conclusions on developing the wider external aviation agenda. The Commission saw the priorities as expansion of the Community regulatory environment into neighbouring countries and agreements with major trade partners such as India and China. The focus with EU neighbours would be to increase regulatory convergence on safety, security and competition as a pre-condition to a sustainable market.

The Council reached a General Approach on a Regulation ensuring greater transparency to passengers about the air carrier operating the flight on which they have booked, and dissemination of information about airlines judged unsafe by Member States. The UK was able to accept the text.

The Commission presented its proposal to ensure non-discrimination and assistance for persons of reduced mobility travelling by air. The UK has welcomed this proposal from the Commission.

Under Other Business, the Commission made a statement on relations with the International Maritime Organization (IMO), arguing that it was in the mutual interest of the Community and IMO to work well together, and that the Council should look again at the issue of Community membership of IMO, which has not received general support from Member States.

The Commission also stated that it would be seeking a mandate for negotiations within the International Labour Organisation (ILO) on the consolidation of existing conventions on maritime employment. The Commission would be aiming to safeguard existing EC legislation.

27 April 2005
TRANSPORT, TELECOMMUNICATIONS AND ENERGY COUNCIL, JUNE 2005

Letter from Rt Hon Alistair Darling MP, Secretary of State, Department for Transport to the Chairman

A transport session of the Transport, Telecommunications and Energy Council met in Luxembourg on 27 June. I represented the UK. The agenda was light, with agreement reached on only one Directive.

You will recall from Stephen Ladyman’s letter of 16 June that the Presidency had hoped to be able to reach political agreement on the proposal for a Third Directive on Driving Licences. In the event, the Presidency did not press for agreement on this as there remain a small number of issues of concern to some Member States. Instead, the Council noted a progress report from the Presidency. The UK is content with the current compromise text and there is a good chance that agreement can be reached on it during our Presidency.

The Presidency gave a progress report on the proposal for a Regulation on International Rail Passengers’ Rights, part of the Third Rail Package. In line with discussion at the April Transport Council, the Presidency had continued working group discussions on a text more in line with the existing COTIF convention. The Presidency noted that any further progress will be for the UK Presidency.

There was an exchange of views on the European Road Safety Action Plan. This showed that the main priorities are better enforcement and vehicle technology. Other measures mentioned by Member States included better research, especially on driver behaviour, better public information, education and training, and new technologies for enforcement. Several Member States noted the need for appropriate funding for many of these to be successful. The Commission is preparing a mid-term review of the EU road safety programme, using individual reports for each Member State.

The Council agreed Conclusions on developing the Community’s aviation external relations. The Commission reported on the progress made in regularising aviation relations with third countries in the light of European Court rulings that rights granted in a bilateral agreement with one Member State should be available to all. Some 300 bilateral agreements have so far been amended either through Community-level or bilateral negotiations. The Council reached a Decision to approve an agreement on aspects of aviation relations which had been negotiated with Chile. The UK is content with the Conclusions on the general external relations agenda and with the EU/Chile agreement.

On EU/US Aviation, the Commission reported on developments in the efforts to negotiate an Open Aviation Area with the US. The Commission would renew contacts with the US and keep in close touch with the UK Presidency. I told the Council that the UK would be ready to help bring about a first-stage agreement during its Presidency, provided that any such deal was balanced in itself and that it retains real incentives for subsequent stages.

The Council reached political agreement on the Directive on a Community Air Traffic Controller Licence. The text, which was agreed without debate, differs little from the general approach reached at the December Council and is acceptable to the UK. It is hoped that it will be possible to achieve a second reading deal with the European Parliament during the UK Presidency.

Among statements under other business were the following:

— The Presidency informed the Council that the text on aviation operating requirements (EU-OPS) had been finalised, but once adopted could be updated through comitology.
— The Commission suggested that the current moratorium on fitting digital tachographs to new commercial vehicles should be extended until 1 January 2006. Until then, relevant new vehicles could be fitted with either a digital or analogue tachograph. The Commission would write to Member States setting out the detail.
— The Commission announced that it would be seeking Community observer status with the International Maritime Organisation.
— The Presidency announced that the Environment Council had reached conclusions on the environmental and human health aspects of ship dismantling on 24 June.

No votes were taken at this Council.

6 July 2005

TRANSPORT, TELECOMMUNICATIONS AND ENERGY COUNCIL, OCTOBER 2005

Letter from Rt Hon Alistair Darling MP, Secretary of State, Department for Transport to the Chairman

On 6 October I will be chairing a transport session of the Transport, Telecommunications and Energy Council in Luxembourg, the first of the two Councils which will take place during the United Kingdom Presidency.
The Minister of State in the Department for Transport, Dr Stephen Ladyman, will occupy the UK national seat at the Council. The agenda is light, with only three substantive items, on one of which the Council will be aiming to reach a General Approach. These items are as follows:

**LAND TRANSPORT**

The one land transport agenda item is an exchange of views on two recent legislative proposals having a bearing on the issue of market access for international rail services. They are:

- Revised proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail and by road.

The first proposal above would introduce a substantial measure of liberalisation of the international passenger rail market. The proposal was published as part on the Third Railway Package of dossiers in March 2004, but this will be the initial debate on it in the Council. The second proposal, also known as the “Public Service Obligations” or “PSO” proposal, was published in July 2005 and sets out harmonised rules for the granting of contracts to passenger transport operators, including rail operators, to provide public services. The link between the two proposals arises because the international rail liberalisation Directive provides that Member States may, under certain conditions, limit the right of access to provide international rail passenger services between stations where such services are also provided under a public service contract procured in accordance with the relevant Community legislation. The PSO proposal would change the relevant Community legislation.

The Council debate, combined with consultation of Member States in preparation for the Council, will guide our handling of the extent to which we need to make progress on the PSO proposal in parallel in the remainder of the UK Presidency in order to reach agreement on international rail liberalisation.

**AVIATION**

The first aviation agenda item will be a report by the Commissioner on the state of play on EU-US negotiations and external relations policy with other third countries.

EU-US negotiations have been in abeyance since the June 2004 Council rejected the latest US offer. The Commission has been engaged in informal discussions with the US at official level since April this year and we expect the Commissioner to report on the most recent of these and to seek the blessing of the Council to resume formal negotiations in October. My aim remains to achieve a deal which is both path-breaking and balanced.

The Commissioner will also report on developments in relations with other third countries, notably the conclusion of an agreement with Chile which will be signed in the margins of Council.

The second aviation item concerns the proposal concerning the rights of persons with reduced mobility when travelling by air. We aim to reach a General Approach on this dossier, as a prelude to reaching an agreement with the European Parliament following their First Reading in November. I will furnish the Committees with further details of the text and our completed Regulatory Impact Assessment following the Council.

Items under Any Other Business will be as follows:

- A statement from the Italian Minister Pietro Lunardi, about the Informal Ministerial Conference on road safety, which will be held in Verona in November. The Minister of State, Stephen Ladyman, will co-chair with Mr Lunardi.
- A statement by the French Minister Dominique Perben, on the impact of the increase in fuel prices on road transport.
- Reports from the Commissioner on aviation safety, following a recent series of accidents, and on the extension of the role of the European Aviation Safety Agency.
- A statement from the Commissioner about their recent report on the effectiveness of the aviation security Regulation 2320/02, and a draft revision of the Regulation.
— The Commissioner will make a statement on Revised state aid guidelines in the aviation sector. The focus of the statement is expected to be on airports.
— Finally, the Presidency and the Commission will report on latest developments in the Galileo satellite radionavigation programme. As Presidency we will note the Commission’s report. Our principal focus on Galileo this autumn will be at the December Council, when we anticipate a discussion on long term costs and benefits.

I will of course report to your Committee on the outcome of the Council.

4 October 2005

Letter from Rt Hon Alistair Darling MP to the Chairman

On 6 October I chaired a transport session at the Transport, Telecommunication and Energy Council in Luxembourg.

Please find enclosed a copy of the written ministerial statement which I have laid today (Annex A).

14 October 2005

Annex A

The Lord Davies of Oldham: My Right Honourable Friend the Secretary of State for Transport (Alistair Darling) has made the following Ministerial Statement.

My letters of 4 October to the Chairmen of the Lords and Commons Scrutiny Committees, placed in the Library of each House, outlined prospects for the Transport Council on 6 October which I chaired and which Stephen Ladyman attended for the UK. This statement summarises the outcome of that Council.

The Council had an exchange of views on the proposed Directive extending market access to international rail passenger services (part of the Third Rail Package). This would allow licensed rail companies to run such services, including carrying passengers between stations in the same country (cabotage). A large majority of Member States supported the principle of opening the market for such services. Most also supported the proposition that market access should only be limited where necessary to safeguard public services, as the Commission proposal envisages. Most Member States supported the proposed date of 1 January 2010 for opening the market. A large majority supported the principle of including cabotage, though some felt that cabotage should be phased in later.

The Council also considered the relationship between the rail market access proposal and the Commission’s recent proposal for a Regulation on Public Service Obligations (PSOs) in Land Transport. There was general acknowledgement that certain provisions of the PSO proposal were closely linked to the rail market access proposal and that these needed further clarification. However, very few Member States considered that the two dossiers needed to be agreed at the same time.

Following this useful exchange of views, I informed the Council that the UK Presidency would work on the basis of the views expressed, noting that agreement of the rail market access proposal might be possible at the 5 December Transport Council.

On EU-US aviation, the Commissioner reported to the Council on progress made in recent technical talks with the US. He requested the Council’s support for an early resumption of formal negotiations. In the interventions which followed, several Member States restated the need for significant improvements in the June 2004 offer. I concluded for the Presidency that there was unanimous support for resuming talks. However, there could be no guarantee of success, and an agreement would have to deliver real benefits to both sides. An agreement could be in stages, but if so there would have to be a commitment on both sides to completion. The Council and the Presidency would work closely with the Commission to achieve a good outcome.

Also in the field of aviation external relations, the Commissioner reported on progress in the negotiations with third countries on inclusion of Community designation clauses in their bilateral air service agreements with Member States.

The Council reached a general approach on a regulation on the rights of disabled persons and persons with reduced mobility when travelling by air. The aim of this proposal is two-fold: to prevent persons being refused carriage on the basis of disability or reduced mobility; and to guarantee the provision, without additional charge, of the assistance needed by disabled persons and those with reduced mobility to have effective opportunities for air travel. I expressed the hope that early agreement with the European Parliament might be possible.
Discussion over lunch revealed general support from Member States for the continuation of work on inclusion of aviation emissions within the EU Emissions Trading Scheme.

Also discussed over lunch was the innovative electronic Ministerial consultation recently staged by the UK Presidency on the mid-term review of the Commission White Paper. Our initiative was well received. The Commission said that the review would issue in 2006, to give time for more input from Member States, and noted agreement on three main areas for EU-level action; infrastructure TENs to support mobility and EU competitiveness; safety; and sustainable development. The main comments of Member States focussed on the need to manage the further inevitable increase in road traffic. Modal shift should be about encouraging all alternative modes—ie diversity and interoperability. The closing statement, together with the opening statement, are publicly available on the Department for Transport website (http://www.dft.gov.uk/stellent/groups/dft-about/documents/page/dft-about-038723.hcsp) and the UK Presidency Website.

There were a number of statements under Any Other Business.

Italy drew the Council’s attention to the Informal Ministerial conference on road safety to be held in Verona on 4 and 5 November. Stephen Ladyman will co-chair the meeting.

France presented a paper on the impact on road transport of the rise in the price of fuel, on which there was no substantive discussion.

The Commission, in its report under AOB on aviation safety said that effective safety would require work on several fronts, including: developing the role of EASA (European Aviation Safety Agency); work to develop and manage a Community blacklist of carriers banned from operating in the EU; development of the SAFA (safety assessment of foreign aircraft) programme; and effective engagement with ICAO to improve international safety standards.

The Commission noted that its report on aviation security had shown that although overall standards were high, there were several areas for improvement. There was scope for Community standards to be applied more flexibly. The Commission had therefore proposed a new regulation (to replace Regulation 2320/2002).

The Commission made a statement on state aid for regional airports, introducing its new guidelines on funding of regional airports. The guidelines reflected an ECJ ruling which said that provision of infrastructure should not be to the detriment of competitors. There should be no funding for services which might compete with high speed rail services.

The Commission recalled that the Council had reached Conclusions on 9 December 2004 to start the Galileo deployment and operational phases. In view of delays and funding/spending concerns in some Member States, the Commission urged Member States to work together to resolve current difficulties, as there was a need to make progress on the public-private partnership. The Presidency agreed that early resolution was essential to deliver the project in budget and on time.

Letter from the Chairman to Rt Hon Alistair Darling MP

Thank you for your letter of 4 October outlining the agenda for the Transport Council on 6 October which Sub-Committee B considered at its meeting on 17 October 2005.

You state that you aimed to reach a General Approach on the dossier concerning the rights of persons with reduced mobility when travelling by air (6622/05). This document is currently held under scrutiny by the Sub-Committee, pending a reply to my letter to Charlotte Atkins MP of 23 March 2005 a copy of which is attached to this letter. Are you now able to answer the points that I raised? We would like as speedy a response as possible. We look forward to receiving the completed Regulatory Impact Assessment on this subject.

The Sub-Committee continues to take a close interest in EU-US aviation negotiations. You will recall that we published a report on this issue “Open Skies or Open Markets?” 8 April 2003. I wish you well in your aim to achieve a deal which is both path breaking and balanced and I look forward to an updated report on this matter.

I note that the Commission was to make a statement on revised state aid guidelines in the aviation sector. What discussions are taking place on state aid for airlines in the European Union and the United States?

19 October 2005
Letter from the Chairman to Rt Hon Alistair Darling MP

Thank you for your letter of 14 October 2005, and for the enclosed Ministerial Statement which Sub-Committee B considered at its meeting on 7 November.

Sub-Committee B of the European Union is very keen to meet with you before the next Council meeting on 5 December. Would it be possible for you to find time before then for the Committee to reiterate the concerns raised in its recent rail freight report? \(\text{Liberalising Rail Freight Movement in the EU}, \text{4th Report of Session 2004–05, published 4 March 2005, HL Paper 52}.\) It would also be an opportunity for you to brief the Committee on your expectations for the 5 December meeting.

9 November 2005

Letter from the Chairman to Rt Hon Alistair Darling MP

I am writing to alert you to a development in the way that European Union Sub-Committee B will scrutinise Council of Ministers meetings under the Austrian and Finnish Presidencies.

Sub-Committee B has decided to see you once next year for a public oral evidence session at your earliest convenience after a Transport Council has met. We hope that such sessions will provide an opportunity for an exchange of information and views on the Transport Council to supplement the written material provided before and after the Council and in so doing will mark a significant enhancement of ministerial accountability to Parliament.

The Clerk of Sub-Committee B, Miss Anna Murphy, will liaise with your officials to decide after which Transport Council it would be most appropriate for you to be invited to give evidence to the Sub-Committee.

I trust that you will be able to ensure that you can schedule a time to meet our Sub-Committee.

1 December 2005

UK PRESIDENCY: DEPARTMENT FOR TRANSPORT PRIORITIES

Letter from Alistair Darling MP, Secretary of State, Department for Transport to the Chairman

As the UK begins its six months Presidency of the Council of Ministers in the European Union I would like to take this opportunity to provide the Committee with a review of the Department for Transports priorities and expectations for our term.

During the six months of the Presidency, I hope to move forward a number of dossiers in the Transport Council meetings on 6 October and 5 December, as well as working to reach agreement with the European Parliament.

I was pleased that “Eurovignette” Directives (the Directive governing how lorries may be charged for road use, the subject of EM 11944/03) secured a Political Agreement at the April 2005 Transport Council. This is an important revision to existing EU legislation. The UK Presidency will be making a real effort to secure a negotiated agreement with the European Parliament at 2nd Reading. However, this will not be an easy task. There remains differences in the positions of the European Parliament and the Council, which have minimal scope for compromise, particularly over the inclusion of external costs in charges.

The EU/US aviation “open sky” negotiations will be another important area where the UK Presidency will want to make progress. I will make time at the Council for the Commission to report on their progress in the negotiations with the USA. We shall be looking for progress on the three areas identified at the June 2004 Council: greater market access for EU carriers, liberalisation of ownership and control rules, and greater regulatory convergence and balance.

During the UK Presidency I will be bringing forward for discussion at the Council two of the four dossiers which make up the Commission’s Third Rail Package (the subject of EM 7147/04, 7148/04, 7149/04 and 7150/04). I will be looking to reach a general approach on the “International Passenger Rights” dossier at the October Council. The other is “International Passenger Service Liberalisation”, on which I will shortly be seeking the views of other Ministers by letter prior to a policy debate at the October Council.

There is little support for the Commission’s proposal on port services (EM 13681/04), in respect of which the Commission will be producing a further economic analysis in the autumn. In light of that I have agreed with M Barrot that the Commission and the Presidency should collaborate in a review; my aim is that we should develop a radical rethinking of how to deliver liberalisation to port services.
During the next six months I will place the issue of Maritime Employment on the agenda. Almost all countries in the EU are seeing a substantial decline in the number of home-grown seafarers. This trend, if left unchecked, will only worsen. The age profile of remaining EU seafarers indicates that in 20 years time, there will be a default in maritime skills afloat. The proposed initiative concerns a non-regulatory action programme from 2006 by Member States and industry to sustain high standards of management and training, secure future supplies of EU citizens with seafaring experience, improve the image of shipping as prospective employment and develop opportunities for shore-based second careers. The initiative entails a voluntary agreement among stakeholders and between Member States. I look forward to holding a policy debate, with conclusions, at the Transport Council of Ministers in December.

In the field of aviation, the UK Presidency is starting discussion of the proposed directive on Access for Persons of Reduced Mobility (EM 6622/05). This will prohibit persons of reduced mobility being refused carriage on commercial flights on the basis of their reduced mobility and guarantee the provision free of charge. There is much debate to have on this dossier but I hope to make good progress on this issue.

On Galileo, there have now been some developments on the selection of a private sector concessionaire to deploy and operate the Public Private Partnership (PPP) concession for the Galileo satellite navigation programme, and Stephen Ladyman has written to provide you with further details of this.

It is likely that there will be a discussion at the December council on the longer term costs of the project.

In regard to the Driver Licences proposal (EM 15820/03), which aims to harmonise and update the existing EU requirements for Member States’ driver licences, we will work closely with the Parliament and other Member States to reach a political agreement at the October Council. This I hope will meet the Council’s objectives on road safety, improved fraud protection and better administration.

We are expecting new proposals to issue from the Commission on:

- a Secure European System for Applications in a Multi-vendor Environment (SESAME);
- Public Service Obligations regulation;
- a Third Maritime Safety Package;
- slot allocation;
- aviation emissions trading; and
- aviation security.

SESAME is the technical implementation of the Single European Sky. The first phase or “definition phase” is in the process of being launched: it is co-funded by the European Commission under Trans European networks, and put under Eurocontrol’s responsibility. This definition phase will end in 2007 and will be undertaken by a consortium uniting forces from the whole aviation community. It will deliver an ATM Master Plan, which will define a common goal and vision for the development of the European air traffic control infrastructure. The subsequent cost of implementing the outcome of the SESAME definition phase is expected to be 200 to 300 million euros a year from 2007 until 2020 or even 2030 depending on the scope of the project.

The Commission is expected to launch a Communication on SESAME later this month. We understand that this will take the form of a Regulation providing a suggested governance and financial structure to deliver SESAME from 2007.

The aim of the Public Service Obligations proposal is to establish clear Community rules on the payment of state aids and the award of exclusive rights in passenger transport by road and rail and, potentially, to expose much of the public transport market to controlled competition.

The new legislation will give legal certainty on the provision of subsidy in the light of recent European Court of Justice jurisprudence, in particular, the Altmark judgment (a 2003 case where the award by a German region of licences to run bus services to a company called Altmark was challenged by a rival bus company on the basis that the subsidies granted were incompatible with EU state aid rules. The judgment raises doubts about the legality of the funding on many EU public transport operations).

We understand that the Commission hope to publish the proposal in July. Once the Commission’s proposals has been published we will consider carefully how we might take it forward during our Presidency. One of the main considerations will be the interface between this proposal and that on the liberalisation of international passenger transport contained within the 3rd Railway Package, mentioned above.

The Third Maritime Safety Package will include a number of legislative proposals to improve maritime safety including inspection visits, civil liability for ship sourced pollution, vessel traffic monitoring and flag state control. The proposals will include legally binding measures on Flag state performance. Accident investigation, Classification societies, Port State control, Vessel Traffic Monitoring, Passenger Insurance and
Civil liability including the imposition of financial guarantees on ships entering EU ports. We understand that the eight draft measures are unlikely to go to the College of Commissioners for adoption before the summer break. The Council’s working group of attaches and officials will not have time to do more than start work in the autumn on one, or perhaps two, of these (probably Port State Control and Accident Investigation).

If the Commission brings forward its expected proposals to revise the existing EU regulation on airport take-off and landing slot allocation in time, I would hope to start making progress on it.

The Commission will be bringing forward a communication to discuss ways to reduce aviation emissions, through a variety of economic instruments, including emissions trading. This will be taken forward in the Environment Council, but I am considering what contribution the Transport Council might make.

On aviation security, the Commission will publish a revision to Regulation 2320 which was prepared to a very tight schedule as an urgent response to 9/11 terrorist attacks. If this is brought forward in time, I would hope to bring it to the Council.

Derek Twigg will be taking the lead for the Presidency on transport conciliation negotiations with the European Parliament. At present this is likely to include two linked directives on Drivers’ Hours rules and Enforcement of Drivers’ Hours Rules, including the implementation date for the digital tachograph (EMs 12168/03 and 15688/03).

In preparing for the UK Presidency, Stephen Ladyman MP, Minister of State, and I embarked on a tour of Transport Ministers of Member States to hear their views. I also addressed the Transport and Tourism Committee of the European Parliament on 14 June on the transport priorities for the UK Presidency.

INFORMAL EVENTS DURING OUR PRESIDENCY

There are no plans to hold an informal Transport Council; however, you may like to know about the following informal events.

The “Verona III” road safety Ministerial Conference, which the UK will co-Chair with the host country Italy, will take place on 4–5 November. A topic for discussion may be the Commission’s report on progress towards the 2000 target of reducing road deaths by 50 per cent by 2010.

A “EuroMed” Ministerial conference on transport will take place in Marrakesh on December 15 for Ministers from the EU and all Mediterranean countries, as part of an annual programme of Ministerial meetings; the transport sector has been selected for discussion this year.

We will hold a limited number of non-Ministerial events, which will be badged as part of the Presidency. These include:

— A “PPP summit” at permanent secretary level on using PPPs in developing transport infrastructure—(Edinburgh, 20 October).
— Seatrade International Maritime event (London, 5–6 October)—an afternoon will be devoted to developing the maritime employment proposals with Member States and key stakeholders.
— A conference for civil aviation regulators sponsored by the Civil Aviation Authority (Edinburgh, either 17–18 November or 24–25 November).
— Delivering improved road safety through engagement at the local level (Manchester, 19–21 September).
— A G8/Presidency Environmentally Friendly Vehicles Conference (Solihull, 10–11 November).

I hope you find this information useful and I look forward to providing further information to you on the UK Presidency in the future.

18 July 2005

Letter from the Chairman to Rt Hon Alistair Darling MP

Thank you for your letter of 18 July 2005 outlining the UK Presidency’s transport priorities and expectations which sub-Committee B considered at its meeting on 10 October.

Members noted that there were a large number of dossiers which you hoped to progress. The Sub-Committee would like to invite you to appear before it, after the UK’s Presidency has ended, to report on progress made. I hope that you will agree to this.

12 October 2005
Letter from Rt Hon Alistair Darling MP to the Chairman

I wrote to you on 18 July with a review of the Department for Transport’s priorities and expectations for our term as Presidency of the Council of Ministers. In particular, following Political Agreement at the April 2005 Transport Council, I said that the UK Presidency would make a real effort to secure a negotiated agreement with the European Parliament at 2nd Reading on the “Eurovignette” Directive (the Directive governing how lorries may be charged for road use, the subject of EM 11944/03).

As anticipated negotiations were difficult throughout as the room for manoeuvre on both sides was limited and the timescale for reaching agreement was tight. However, I am very pleased to report that the European Parliament voted by an overwhelming majority on Thursday 15 December to adopt a text that will enable a second reading deal with the Council.

In my letter of 18 July I highlighted the inclusion of external costs in charges as being one particular area where there was minimal scope for compromise. However, we were able to secure a text which will require the Commission to develop a model on the internalisation of external costs within two years including an impact assessment and a strategy for the stepwise introduction for all modes of transport. If appropriate, the Commission will also come forward with a proposal for a further revision of the Directive which the Council has agreed it will consider diligently.

On other major issues that required careful negotiation with the European Parliament, the final deal agreed that from 2012 charging will apply to vehicles of over 3.5 tonnes rather than those of 12 tonnes or more with some strictly formulated derogations available to Member States. And from 2010 member states must vary charges for lorries using the trans-European road network according to their Euro emissions class again with some potential derogations. Member states will also be free to apply a mark-up on tolls in mountainous regions but must use the revenues to fund new infrastructure such as railways. However, for other tolls and charges, member states will retain the freedom to determine how the revenues are used.

This is an important revision to existing EU legislation and I believe it successfully balances the interests of peripheral states and transit countries, hauliers and environmentalists. I am delighted that the UK has been able to broker a deal during its Presidency of the Council of Ministers. The deal will be put to the Council for adoption shortly, probably in late January or early February. It is not expected that a further depositable text will be issued, however I attach a copy of the European Parliament’s second reading amendments.

21 December 2005

Letter from Rt Hon Alistair Darling MP to the Chairman

As we enter the New Year with Austria taking over from the UK as Presidency of the Council of Ministers, this is a good opportunity to provide your Committee with our assessment of the transport aspects of the UK’s Presidency.

I wrote to your Committee on 18 July 2005 to set out my priorities and expectations for the transport sphere during the Presidency. In the run-up to and during the Presidency, Stephen Ladyman, Derek Twigg and I were able to develop good relationships with fellow Ministers from other Member States, MEPs and the Commissioner. This proved to be very helpful in enabling us to deliver the objectives that we had set ourselves at the start of the Presidency.

One of my key priorities was to make progress on the EU/US aviation “open sky” negotiations. Negotiations were able to resume and that good progress has been made, raising the prospect of achieving a balanced deal in the first half of 2006, in line with UK aims. I shall be writing to your Committee in more detail on this specific issue shortly.

During the Presidency we were also able to ensure better rights and entitlements for disabled aviation passengers and those with reduced mobility, through negotiating a First Reading deal with the European Parliament on the directive for Access for Persons of Reduced Mobility (EM 6622/05). The October Council reached a general approach on the regulation, and following close collaboration between the UK Presidency and the European Parliament Rapporteur the EP adopted amendments to the proposal at their First Reading in December that were consistent with the Council text. This will enable the proposal to be adopted shortly. The regulation will prevent persons being refused carriage on commercial flights on the basis of their disability or reduced mobility, subject to legitimate considerations of air safety. It will also guarantee that disabled persons and those with reduced mobility receive the assistance they need in order to take full advantage of the opportunities of air travel without additional charge.

Following the communication brought forward by the Commission to discuss ways to reduce aviation emissions (EM 12790/05), we held an informal discussion at the October Transport Council which revealed general support for continuation of the work. The December Environment Council agreed that emissions
trading appears to be the best way to tackle the climate change impact of aviation, and urged the Commission to bring forward a legislative proposal by the end of 2006. A working group, chaired by the Commission, has started to consider the detailed design issues.

In response to the series of the airline accidents that occurred during the summer of 2005, rapid progress was made on the Air Carrier Identification regulation (EM 6624/05), allowing the Council to achieve a Political Agreement at the December Council. This followed the general approach reached under the Luxembourg Presidency. Following the Council agreement, a First Reading deal was reached with the European Parliament, which will see an EU wide list of banned airlines, and the right for passengers to know their air carrier in advance.

With regard to aviation security (EM 11263/05), the Commission has proposed a simplification of the existing regulation which was prepared as an urgent response to the 11 September terrorist attacks. Good progress was made in the working group on the proposed revision of the regulation, which should allow the Austrian Presidency to settle outstanding points quickly.

Turning to the field of land transport, a Second Reading deal between the Council and the European Parliament on the Eurovignette Directive (governing how lorries may be charged for road use, the subject of EM 11944/03) was achieved in December. Securing agreement with the European Parliament involved intensive negotiations led by the UK Presidency, following the political agreement reached at the Council in April 2005 during the Luxembourg Presidency. The agreement will see an important revision to the existing EU lorry charging legislation.

The Transport Council in December was also able to come to a political agreement on three of the four dossiers which make up the Commission’s Third Rail Package.

Following negotiations during previous Presidencies, agreement was reached on a compromise text on the International Passenger Rights dossier (EM 7149/04)—maintaining the core scope as international journeys—and on the Train Crew Licensing directive (EM 7148/04)—on the same terms as the December 2004 general approach text. At the beginning of the UK Presidency I started negotiations on the International Passenger Services Liberalisation dossier (EM 7147/04). Following an exchange of views at the October Council, we were able to achieve a political agreement in December. The Austrian Presidency will now work with the European Parliament to explore the prospects for a Second Reading deal on these three dossiers which will, respectively, strengthen rights for international rail passengers so increasing the attractiveness of rail for international journeys; facilitate the movement of train drivers between different States and companies, and provide opportunities for new commercial international passenger services (including the right of cabotage on such services), while providing protection against competition for publicly subsidised services where strictly necessary.

The Commission published the Public Service Obligations (PSO) proposal (EM 11508/05) in July. This aims to establish clear Community rules on the payment of state aids and the award of exclusive rights in passenger transport by road and rail. Discussion of the proposal during our Presidency was limited to those aspects which were relevant to the negotiations on the international passenger rail liberalisation dossier. In particular, the Council and Commission made a minutes statement at the December Council stating that rail market opening can only be achieved step by step recognising public service needs, and committing the Council to try to reach political agreement on the PSO proposal as soon as possible in 2006 on the basis, inter alia, that Member States should continue to have the possibility to award directly without competition contracts for rail public services. Detailed negotiations on the PSO proposal are expected to commence in January under the Austrian Presidency.

In December, Derek Twigg chaired the Council side of the conciliation committee and was able to negotiate an agreed text on two pieces of legislation. These were a regulation to replace the current EU Drivers’ Hours Rules for lorry and coach drivers, and the associated directive (Enforcement of Drivers’ Hours Rules) that requires Member States to undertake specified levels of checks for compliance with the drivers’ hours rules. The deal included a new implementation date for the digital tachograph (EM 12168/03 and EM 15688/03).

I explained in my letter of July that I hoped to be able to reach an agreement in Council on the Driver Licences proposal (EM 15820/03), which aims to harmonise and update the existing EU requirements for Member States’ driver licences. However, due to political difficulties in other Member States, it was not possible to reach an agreement.

On Galileo, the December Council heard a progress report from the Commissioner, who informed us that the first Galileo test satellite would be launched in December 2005. Progress has been made on the UK’s objectives: to ensure value for money, to increase transparency and to maintain the civil status of the project.
In the area of shipping, the December Council agreed conclusions to boost employment prospects in the maritime sector. The initiative will see a non-regulatory action programme from 2006, by Member States and industry, to sustain high standards of management and training, secure future supplies of EU citizens with seafaring experience, improve the image of shipping as prospective employment and develop opportunities for shore-based second careers. The initiative entails a voluntary agreement among stakeholders and between Member States.

As I also explained in July, there is little support for the Commission’s proposal on port services (EM 13681/04). The Commission has therefore been required to produce a further economic analysis, which they have not yet published. Therefore no progress has yet been made on this dossier.

In my letter of 11 July, I wrote that we were expecting new proposals from the Commission in regard to:

- Airport Slot allocation, which the Commission has said they will publish in the first quarter of 2006.
- SESAR (previously known as SESAME—Secure European System Implementation Project). This was published in December (EM 15143/05) and proposes funding arrangements for the implementation phase of the project, which is designed to overcome air traffic control related delays and ensure that airspace capacity continues to meet the demand of airspace users.
- Maritime Package, which will formally be published shortly and will include a number of legislative proposals. During the Austrian Presidency, the UK will assist with the handling of maritime business, where negotiations will be taken forward on only two of these dossiers: port state control and vessel traffic monitoring. In addition the package also includes proposals on flag state performance, accident investigation, classification societies, passenger insurance and civil liability including the imposition of financial guarantees on ships entering EU ports.

During September, we hosted a Ministerial web-based consultation on the mid-term review of the Commission’s transport policy White Paper. This was an innovative exercise, which ran very smoothly and was well received by colleagues as a useful alternative to an Informal Council for conducting business of this sort. The Commission is expected to publish a Communication on the review in the spring and the Austrian Presidency have scheduled an exchange of views on the Commission Communication for the June 2006 Transport Council.

Stephen Ladyman was able to attend and co-chair two Ministerial conferences:

- The “Verona III” road safety Ministerial Conference, in Italy, took place on 4–5 November.
- A “EuroMed” Ministerial conference on transport took place in Marrakech, Morocco on 15 December for Ministers from the EU and the Euro-Mediterranean countries, the first such meeting of transport Ministers.

There were also a limited number of non-Ministerial events, which were badged as part of the Presidency. These included:

- A “PPP summit” at Permanent Secretary level on using PPPs in developing transport infrastructure (Edinburgh, 20 October).
- Seatrade International maritime event, an afternoon devoted to developing the maritime employment proposals with Member States and key stakeholders (London, 5–6 October).
- Aviation and Climate Change Conference, an opportunity for officials to discuss aviation and climate change (Gatwick, 26–27 November).
- A conference for civil aviation regulators sponsored by the Civil Aviation Authority (Edinburgh, 17–18 November).
- A G8/Presidency Environmentally Friendly Vehicles Conference (Solihull, 10–11 November).
- A meeting of European Directors General of Civil Aviation (Heathrow Airport, 21–22 July).

A separate letter will be sent to you shortly on the prospects for the transport sector during the next few months, including the Austrian plans for their Presidency.

17 January 2006

UK PRESIDENCY: DEPARTMENT OF TRADE AND INDUSTRY PRIORITIES

Letter from Rt Hon Alan Johnson MP, Secretary of State, Department of Trade and Industry to the Chairman

As we approach the start of the UK Presidency of the EU, I would like to take the opportunity to inform you of my Department’s plans and priorities. The Foreign Secretary announced the overall programme for the UK
Presidency in the House today. It is now clear what EU business we will be expected to take forward during our Presidency and this letter sets out the key negotiations my Department will aim to progress, and outlines the broader agenda for those formations of the Council my Department is responsible for. We have worked with the Commission, Parliament and other Member States to shape the agenda that we are inheriting and that we will aim to take forward effectively and impartially.

I am sure there will be opportunities for us to discuss these priorities further once all Committee members have been appointed, but it is important for me to remain in close contact with you, as efficient working between us will be crucial in delivering a business-like Presidency that builds the UK’s reputation among our European partners.

The overall EU agenda for 2005 was set out in the UK-Luxembourg Annual Operating Programme (AOP), copies of which have been placed in the Libraries of both Houses. Within this large agenda, there are four key themes that my Department will give priority to: Promoting Employment; Better Regulation; Open and Sustainable Markets in an Outward Facing Europe; and Boosting our Economies’ Potential for Research and Innovation.

Specific objectives for particular dossiers will be developed as we approach meetings of the Council of Ministers, when it will become clearer where there is potential for significant progress. The first UK draft agendas will be published on 4 July. I will of course be informing the Committees in advance of Council meetings about the agendas and the outcomes we will be aiming for at each Council meeting.

I welcome your committees’ request for a pre-Council statement in advance of each Council. Two Competitiveness Councils are scheduled, for 11 October and 28–29 November, and there will be one half-day each of the Telecoms and Energy Councils on 1 December. It may prove difficult to provide a pre-Council statement for the first Competitiveness Council on 11 October, unless the committees decide to sit during the summer recess.

In the Competitiveness Council, key priorities will be Better Regulation (systematic implementation of strengthened impact assessments and competitiveness testing, and progress on simplification priorities), progress on the Services Directive, progress towards agreement on REACH, and consensus on key elements of the 7th Framework Programme on Research and Development.

There will be a large number of items on the agendas for the Competitiveness Council. We expect the following items to feature for possible political agreement at the Council:

— Services Directive.
— REACH.
— Commission Simplification priority: Nominal quantities of pre-packed products directive.

The following items may feature for political agreement or adoption as “A” points:

— Commission Simplification priority: 2nd Company Law directive on the formation of public liability companies and the maintenance and alteration of their capital.
— Regulation on financing of European standardisation.
— Regulation on access to medicines.

Other items likely to appear on agendas that the committees may wish to consider (though they will not be on agendas for agreement) are as follows:

— Internal Market Scoreboard.
— Better Regulation.
— Entrepreneurship and Industrial Policy.
— Consumer Credit directive.
— State Aids.
— ITER.
— 7th Framework Programme (FP7).
— Competitiveness and Innovation Programme (CIP).
— Health and Consumer Protection Strategy.
— Revision of the Customs Code.
— 14th Company Law directive on the cross-border transfer of the registered office of limited companies.
— European Space Policy (Space Council).

In the Energy Council, we will be taking forward initiatives to promote open and competitive European energy markets, ensure secure supplies of sustainable energy and encourage efficient use of energy. For the Telecommunications Council, the biggest piece of work during our Presidency will be to seek agreement on the i2010 initiative for exploiting Information and Communications Technologies as economic drivers. We expect the following specific items may appear on the agendas for discussion or agreement:

— Implementation and outcomes of the internal market for electricity and gas.
— Climate Change and sustainable energy.
— Energy relations with Russia.
— (Possibly) Energy Community for South-Eastern Europe.
— Implementation of telecommunications markets.
— The i2010 initiative.
— E-Accessibility.
— Member States’ plans for the transition from analogue to digital broadcasting.
— Follow-up to the World Summit on the Information Society.

My Department also has responsibility for significant business in two other Council formations. In the Employment, Social Policy, Health and Consumer Affairs Council, we will seek to make progress on the Working Time Directive. In the General Affairs and External Relations Council, it will be important to work with the Commission and other Member States to ensure the EU plays its part in securing an outcome at the World Trade Organisation Ministerial meeting in Hong Kong this December that facilitates the successful early conclusion of the Doha Development round. We will also seek to make progress on the Structural and Cohesion Funds regulations.

This ambitious programme for growth and jobs has been developed by working closely with the Commission and other Member States and a key challenge will be to continue to build consensus and establish the common ground in Europe to take the agenda forward.

We will also be hosting a number of Presidency events, many of them in the UK, to provide a forum for policy discussions that will pave the way for progress on key issues. I will host an informal meeting of the Competitiveness Council in Cardiff on 11–12 July. My Department is also organising and hosting an informal meeting of Equality Ministers to be held in Birmingham on 8–9 November.

At the Informal Competitiveness Council meeting, the discussion is expected to focus on research, Better Regulation, and the Internal Market. On research, we are aiming to make progress on the Framework Programme 7 negotiations, through discussion of key aspects of the Commission’s recent proposal. Discussions on Better Regulation are likely to cover how assessments of the impact of legislation can best be used, priorities for simplifying EU legislation, and best practice among the member states. Finally, a session on the future of the Internal Market is planned.

I shall provide the EU Committees with further information on the Informal Competitiveness Council discussions after the event.

30 June 2005

Letter from Rt Hon Alan Johnson MP to the Chairman

Following my letter of 30 June, which outlined my Department’s plans for the EU Presidency, and the written statements I and my Ministerial colleagues have provided before and after each Council, I am writing again to provide an end of Presidency report for my Department.

During the Presidency, we have worked closely with the Commission, Parliament and other Member States to take forward the EU agenda we inherited from Luxembourg, which we have aimed to handle efficiently and in the interests of the EU as a whole.
Our specific achievements are outlined below and I believe my department has helped to deliver a business-like Presidency and achieve UK objectives of promoting economic reform and social justice in the EU, as well as contributing to the development and climate change agendas.

I would like to outline our key achievements in the four main Council formations that handle DTI business (the Competitiveness, Employment, Telecoms, Transport & Energy, and General Affairs and External Relations Councils):

1. **Competitiveness Councils**

*Competitiveness Council, 11 October 2005*

Constructive debates on the Chemicals Regulation, REACH, and the 7th Framework Programme, the EU’s main Research and Development funding instrument, laid the foundations for agreement on these at later Council meetings.

The Council took note of the information on the introduction of the European Enterprise Awards scheme, which recognises excellence in promoting entrepreneurship. The scheme was launched in London on 14 November 2005.

The Council noted that, compared to last year, considerable progress had been achieved in transposing internal market directives into national legislation.

*Competitiveness Council, 28–29 November 2005*

Ministers supported the approach set out by the Commission in its Communication on industrial policy—at both a sectoral and horizontal level, welcoming, in particular, the new High Level Group on Energy, Environment and Competitiveness. It was agreed that policies should focus on embracing and facilitating structural change.

The Council took note of a Presidency progress report on a draft decision establishing a competitiveness and innovation programme (CIP) for 2007–13 and endorsed the approach to the horizontal issues that it sets out. The Council instructed the Permanent Representatives Committee to use the report as a basis for future discussions following agreement on the financial perspectives. The Austrian Presidency will take forward this work now the financial perspectives have been agreed.

Based on a Presidency progress report the UK chaired an exchange of views over lunch and in the Council on a draft directive on services in the internal market. The questions of scope, worker protection and free movement of services were discussed in order to provide political guidance for future discussions once the European Parliament has given its opinion.

The Council adopted conclusions on better regulation and recognised progress made at EU and Member State level. In particular, the conclusions welcomed recent Commission initiatives on simplification of existing legislation, screening of pending legislative proposals, impact assessment, and consultation. The Council also welcomed the announcement by the Commission in September at the UK Presidency conference on Better Regulation that it intended to withdraw 68 items of proposed EU legislation.

The Council approved, by a large majority including the UK, a partial general approach on the 7th Framework Programme (FP7) for research and technological development, based on a Presidency compromise text. The Council debate focused on supporting the participation of small and medium sized enterprises in research projects and the implementation arrangements of the future European Research Council. This partial general approach will provide a good basis for adopting a Common Position under the Austrian Presidency now that agreement has been reached on the financial perspectives.

The Council adopted conclusions on the recent Commission Communication “More research and innovation—investing for growth and employment”.


The 28 November Space Council endorsed Orientations reaffirming the strategic aspects of Global Monitoring for Environment and Security (GMES) in respect of both the developing European Space Policy and the 7th EU Framework Programme for Research and Development and meeting Europe’s wider objectives on the Environment. The Orientations also offered advice on the further development and implementation of GMES and the roles of the European Union and the European Space Agency (ESA). These orientations were adopted by the Competitiveness Council.
Competitiveness Council, 13 December 2005

The Competitiveness Council reached unanimous political agreement on the draft REACH Regulation. The Council will formally adopt its common position at a later session once the legal text has been finalised and forward this to the European Parliament for a second reading under the co-decision procedure.

2. TELECOMMUNICATIONS AND ENERGY COUNCIL, 1 DECEMBER 2005

Energy Council, 1 December 2005

The Energy Council on 1 December held a substantive debate around the energy agenda discussed recently at Hampton Court, and the balance between our three key objectives of competitive markets, security of supply and tackling climate change.

There were a number of positive results from the Council. Generally, Member States recognised the important potential contribution to be derived from a European energy policy and supported Commission plans for taking this forward, through a Green Paper early in 2006, with a view to reporting to the 2006 December European Council.

More particularly, there was good progress arising from a thorough debate on the important issue of market liberalisation, with broad consensus on the importance to Europe’s competitiveness of secure electricity and gas supplies at competitive prices, delivered on open, transparent and competitive markets; and that full implementation of the second electricity and gas directives is crucial. The Presidency helped to prepare the debate by identifying the key issues, enabling Member States to influence more effectively the future direction of liberalisation within a “better regulation” framework. In the process, the Presidency also provided the first opportunity for Member States to debate the emerging findings of the Commission’s (DG Competition) inquiry into European energy markets and contribute towards its future direction.

The UK Presidency gave impetus to EU input into the sustainable energy agenda. Council conclusions were agreed on climate change and energy efficiency. Good progress was made on the Energy End-Use Efficiency and Energy Services Directive, reflecting our Presidency priority on energy efficiency in general and on this draft Directive in particular; subsequent to the Council, a second reading agreement with the European Parliament was secured on 13 December.

The UK Presidency can also point to successes on the EU’s international energy relations. We hosted an energy Permanent Partnership Council on 3 October, which gave impetus to the EU/Russia energy dialogue; progress on the South East Europe Energy Treaty was such that it was signed by Ministers in Athens on 25 October; an EU-OPEC ministerial meeting on 2 December gave impetus to the dialogue begun earlier in the year; and negotiations on the Transit Protocol to the Energy Charter Treaty continued, albeit without reaching a conclusion. All these initiatives have helped to promote producer/consumer understanding and enhance energy transit and market opening.

The EU-China Summit launched a Partnership on Climate Change, which will strengthen cooperation and dialogue on climate change including clean energy and will promote sustainable development. It will include cooperation on the development, deployment and transfer of low carbon technology, including advanced near-zero emissions coal technology through carbon capture and storage—a project with start-up funding provided by DEFRA and DTI.

The EU-India Summit launched an India-EU Initiative on Clean Development and Climate Change, with the aim of promoting cleaner technologies and their use. The Summit also agreed to work through the India-EU Energy Panel to build on cooperation in the energy sector to develop more efficient, cleaner and alternative energy chains.

Telecommunications Council, 1 December 2005

There was broad support for the Commission’s i2010 Strategy and its three objectives to promote open and competitive markets, to strengthen ICT research and to achieve an inclusive information society. The Council discussed particular priority areas within these three themes. These included the need for appropriate policy actions in the regulatory field, on broadband and content and on e-government and e-accessibility. There was agreement that the i2010 Strategy needs to be effectively implemented if its contribution to the Lisbon agenda is to be realised. I am pleased to report that at the end of this debate the Council adopted Council Conclusions on the i2010 Strategy and on e-accessibility.
The Council also adopted Conclusions without debate on the subject of the transition from analogue to digital broadcasting. These conclusions highlight the intention of Member States to complete the switchover, as far as possible, by the end of 2012.

The EU was instrumental in brokering a worldwide deal on Internet Governance at the World Summit on Information Society (WSIS). This retains the present informal management structure for the internet while accommodating legitimate international concerns. WSIS also achieved consensus for enhanced cooperation between all stakeholders on sensitive issues such as freedom of expression on the Internet, spam and online consumer rights.

3. **Employment, Social Policy, Health and Consumer Affairs Council, 8 December 2005**

Council reached agreement on two dossiers: a partial political agreement on a Decision of the European Parliament and of the Council establishing a Community Programme for Employment and Social Solidarity—(PROGRESS) which involved agreement on all parts of the programme without budgetary implications; and, political agreement on a common position on the Gender Recast directive which aims to simplify, modernise and improve existing EU law on equal treatment between men and women. The Presidency advised that the European Parliament had confirmed its undertaking not to adopt any amendments in second reading if the Council adopted the common position on the basis of the text negotiated in the informal discussions.

There was a lengthy debate on the Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time; the Presidency prepared revised texts for discussion and the Council almost reached agreement on a package which retained the opt out and solved the doctors’ on call issue. However, despite intense negotiation, concerns about clarifying that the limits in the directive apply per worker rather than per job/contract meant this agreement could not finally be reached. The Presidency agreed to reflect on the best way forward.

4. **General Affairs and External Relations Council**

Progress on the negotiations on the Doha Development Agenda (DDA) was discussed at several meetings of the Council. These discussions enabled the UK Presidency to provide the Commission with a firm platform, which had the support of the member states, from which it could negotiate in Geneva and ultimately Hong Kong. At the WTO Ministerial in Hong Kong in December, some progress was made, particularly on a development package and on the phasing out of export subsidies. The Ministerial did not make as much progress as the UK would have liked, but has provided a springboard to conclude the round in 2006.

The Presidency secured Council approval for a new agreement on textile imports from China, Saudi Arabia’s accession to the WTO, agreement to grant market-economy status (MES) to Ukraine and the launch of high-level dialogues to address outstanding issues concerning MES for China.

At the European Council, Heads of State and Government Member States agreed a Structural and Cohesion Funds (SCF) budget of €308 billion (0.37 per cent of EU GNI) for 2007–13. As in the Commission’s original proposal, this will be focused on three new objectives: a Convergence Objective (for regions with a GDP below 75 per cent of the EU average); a Competitiveness Objective for other regions; and a Cooperation Objective for cross border and transnational projects. In advance of the meeting, we made substantial progress at Working Group level, resolving all of the technical issues that were not linked to the EU Budget. Now that the budget has been agreed in the European Council, it will fall to the Austrian Presidency to seek an inter-institutional agreement with the European Parliament on the budget; once this is obtained, the SCF package can be finalised.

5. **Presidency Events**

*Informal Council Meetings during the UK Presidency*

*Informal Competitiveness Council, 11–12 July 2005*

The UK held an informal Competitiveness Council on 11–12 July 2005 in Cardiff—this allowed Ministers to meet informally early in the Presidency to engage in discussions in preparation for the formal Competitiveness Councils later in the Presidency. The discussion focused on Better Regulation, the Internal Market, and Promoting Research and Innovation in the EU.
DTI achieved the overall objective of the Informal Council of facilitating and preparing progress on the inherited agenda, in particular Presidency priorities, at the formal Competitiveness Council meetings in October, November and December.

**Gender Equality Informal Ministerial Meeting, 8–9 November 2005**

Ministers from across the EU were invited to meet representatives from projects from across the West Midlands that promoted equality of opportunity for women, particularly in the area of work.

The following morning, during the informal meeting of the Council, Ministers discussed best practice and shared information on tackling gender inequality.

The focus on discussing good practice rather than proposing further legislation helped to move the gender equality approach towards a sharing of good practice at EU level instead of a legislative approach, in line with the wider Presidency aims.

**22 December 2005**

**UK PRESIDENCY: HOME OFFICE PRIORITIES**

**Letter from Rt Hon Charles Clark MP, Home Secretary, Home Office to the Chairman**

With the start of the UK Presidency of the EU, the work of my Department on European issues, which I view as already essential to delivery of the Home Office’s priorities, becomes even more important. So too does the relationship between the Department and your Committee, in order that all proposed EU legislation is properly scrutinised by the UK Parliament. With the recent extension of the co-decision process to more Home Office work, the links that my Department and your committee have with the European Parliament also become more important.

With this in mind, I hope that you might find it useful to have an opportunity for you and some of the members of your Committee to meet representatives from the European Parliament LIBE Committee when they visit the UK on 7 July. I will be hosting an informal drinks reception at the Home Office, between 18.30 and 20.30 and I would be very pleased if you could attend.

I would also like to take this opportunity to consult you on a proposed change to the way in which my Ministerial colleagues and I work with you to ensure that Parliamentary scrutiny of EU work is as effective as possible—a change which I believe will further improve the service that you receive from the Home Office.

Following the recent changes in my Ministerial team, I have decided to establish three teams to deal together with the three main pillars of the Home Office’s responsibilities:

— Hazel Blears, Minister of State for Policing, Security and Community Safety will be supported by Paul Goggins;
— Baroness Scotland, Minister of State for Criminal Justice and Offender Management, will be supported by Fiona Mactaggart; and
— Tony McNulty, Minister of State for Immigration, Citizenship and Nationality, will be supported by Andy Burnham.

In recognition of this growth in importance of EU and international work, I have taken overall lead on international business and have asked each of my Ministers to ensure that they play their part in developing and delivering the international elements of the Department’s agenda in their areas. As part of this move to mainstream EU work into all areas of the Department, I have asked my Ministers to take responsibility for scrutiny in their respective areas.

It will mean that Ministers requested by your Committee to appear for either evidence sessions or debates on the floor of the House will be responsible for the policy under consideration and so will be able to give a more detailed and considered response to your questions. It should also mean that there will be less pressure on a single Minister’s diary allowing a quicker response to your requests for Ministerial attendance.

As part of this change, I have asked my Ministers of State supported by their Parliamentary Under Secretaries to make a renewed effort to achieving a further step change in the quality of Explanatory Memoranda and Ministerial correspondence that you receive. I hope that this and the proposed changes will make full and effective scrutiny of EU business both easier and more efficient for both your Committee and the Home Office. I would very much welcome your comments on this suggested approach.

**29 June 2005**
UK PRESIDENCY: HM TREASURY’S PRIORITIES

Letter from Ivan Lewis MP, Economic Secretary to the Treasury, HM Treasury to the Chairman

With the UK Presidency of the European Union now underway, I would like to take the opportunity to write setting out the Treasury’s priorities for the coming six months.

PRESIDENCY PRIORITIES

As background to this letter, I attach the ECOFIN Work Programme of the UK Presidency, which includes provisional ECOFIN agendas for your information. The Chancellor presented this work programme to Council at the first ECOFIN meeting of our tenure on 12 July. As set out in that document, in our role as Chair of ECOFIN the UK Presidency we will be prioritising the following high-level themes:

— economic reform, following up the 2005 Spring Council’s focus on jobs and growth, including through a strategic discussion around Member States’ Lisbon National Reform Programmes, due in October. The Chancellor’s statement to Parliament of 26 May sets out our economic reform priorities in more detail;
— better regulation, including agreeing a methodology for measuring the administrative burden on business of new EU legislation, and embedding a risk-based approach to regulation;
— financial services, working with the Commission to agree a future EU financial services strategy based upon implementation and enforcement of existing legislation, and firmly embedding the better regulation principles. We will also aim for a first-reading deal on the Capital Requirements Directive;
— financing for development, continuing with work already set in motion under the Luxembourg Presidency to put together an ambitious EU financing package ahead of the UN Millennium Development Summit in New York in September; and
— working with global partners; including a strengthened transatlantic economic relationship, and financial markets regulatory dialogues with India as well as China.

I would also like to highlight the importance we will be placing on counter-terrorism, including the full and rapid implementation of the EU’s Counter-Terrorism Action Plan. ECOFIN will have a particular interest in counter-terrorist financing, including further work on asset freezing.

PROGRESS OF SCRUTINY DURING THE UK PRESIDENCY

I am conscious that the long summer recess this year means that Parliamentary scrutiny processes will not be fully active until some way into the UK Presidency. However, I am hopeful that we should be able to keep overrides of the scrutiny reserve to an absolute minimum, reflecting the seriousness with which my Department approaches our scrutiny obligations. The fact that our September meeting is an Informal Council also means that where final decisions are taken in Council this should generally be in the latter half of our Presidency.

However, it may be helpful for me to set out as far as possible those items which we expect may reach final agreement under our Presidency. The Paymaster General has written separately to keep you informed of developments on taxation policy, so I will confine myself to non-tax issues here. To the best of my knowledge at this stage, these are likely to include:

— Capital Requirements Directive (Explanatory Memorandum no 11545/05 ADD1 refers);
— Extension to the Markets in Financial Instruments Directive (EM no 10165/05 refers);
— Payments Regulation (this relates to wire transfers; an EM will be produced when the draft regulation issues);
— Amendment of the Excessive Deficit Procedure Regulation in respect of Eurostat powers (EM no 9461/05);
— 2006 Annual Budget (adoption expected in December; EM OTNYR refers); and
— Roadmap to an integrated internal control framework (possibly Council conclusions only, but you will want to consider before next ECOFIN discussion, likely in November. EM no 10326/05 refers).

ECOFIN will also continue during the UK Presidency to discharge its responsibilities for the implementation of the Stability and Growth Pact.
Finally, you will be aware that the UK Presidency will take forward the discussions on the Financial Perspectives 2007–13, drawing on progress made to date, with a view to resolving all the elements necessary for an overall agreement as soon as possible.

I hope the above information is useful to your Committees in planning your work programme for the coming months. Officials will of course be considering other issues which remain under scrutiny and will seek to update the Committee on developments over the summer. I look forward to continued good co-operation between HM Treasury and your Committees this year, including through our new arrangements for pre- and post-Council statements to Parliament, which I hope will be a positive step in improving the transparency of EU business.

19 July 2005

UNIVERSAL SERVICE (9592/05)

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

Thank you for your Explanatory Memorandum dated 7 July which Sub-Committee B considered at its meeting on 10 October 2005.

We accept the Commission’s conclusion that the scope of the Universal Service Directive should not be amended. We are content to lift scrutiny at this point.

We would, however, like to see a copy of the United Kingdom’s response to this Communication. We will wish to return to the issues raised in the second half of the Communication during the overall review of the European Union regulatory package for electronic communications scheduled to take place in 2006.

12 October 2005

Letter from Rt Hon Alun Michael MP to the Chairman

Thank you for your letter of 12 October about the Explanatory Memorandum on the above and your helpful confirmation regarding the scope of the Universal Services Directive.

I attach the draft response that was sent to the Commission at the end of July, which, as you will see, gave our preliminary views on the issues of the scope and the future nature of the universal service provision.

I also welcome your commitment to look at this subject again in the light of further Commission deliberations, which, we understand, will form the basis of a further Communication on Universal Service during our Presidency.

30 October 2005

Response to Commission Communication (9592/05) on the Review of the Universal Services Directive (2002/22/EC)

Dear Sirs,

It is with pleasure that I attach the response from the Government of the United Kingdom on the above referenced Communication.

SUMMARY

We are in agreement with the conclusions the Commission have reached on the requirement they have, under Article 15 of the Directive, to review the scope of Universal Service. We concur that under the criteria (laid down in the directive) there is no real case for either mobile provision or broadband to be included within the scope of the Directive.

We do, however, believe that the wider issues raised in the Communication will warrant further detailed discussion during the 2006 Review of the Electronic Markets Framework. We are somewhat attracted to the idea of moving towards an environment where it is the access (to perhaps broadband connection) that is specified as an obligation rather than a specific service. You will understand, however, that we are not attracted towards an environment where universal service provision is paid for out of general taxation.
Another important issue, which I am sure you will be considering, is how you craft uniform obligations across such a diverse member State landscape. In that the beneficiaries of specific obligations are those in a specific member State, there may well be a case, at some point, to consider a degree of flexibility (to reflect national conditions) when it comes to such issues as pay phones and directories.

DETAIL

Wireless service provision

We, with the Commission; welcome the rapid deployment of mobile technology across the European Union. The ever increasing penetration rates of mobile usage are a testament to both the competitive policies adapted in the European Union and the technological and business strategies adopted by the business. In view of this success, we conclude with the Commission’s analysis that, at present, there is no real need to mandate universal service provision. This, however, is not to detract from the fact that there are geographical “gaps” in the coverage of mobile technology in the UK and (no doubt) in other member States, which may need addressing: especially as networks progress to 3G. On a related issue, the current ability of mobile operators to be designated as providers of universal service (providing they can provide a functional Internet service) needs to be highlighted in the forthcoming Review. As technology advances allow increased internet functionality for mobile devices, the provision of mobile networks in remote and physically difficult environments makes ever-increasing sense.

Broadband penetration

Again, we welcome the recent success in many Member States of the European Union of Broadband. It is a key component of the future information strategy for Europe and a vital pre-requisite of moving us forward in terms of exploiting ICTs across our communities. We do, though, concur with the analysis of the Commission that at present a situation has not been reached under which the criteria for Universal Service has been met. This is, however, an area that needs to be kept under close review, as indeed is the need to encourage the competitive delivery of broadband throughout the EU.

Longer term issues

We are happy to provide these very much tentative remarks at this stage, and look forward to providing more substantial ones before the Review in 2006.

(a) Access and service provision

As noted above, there may well be some merits in looking, at some juncture, whether a Universal Service obligation should pertain to a particular service or the access to (potentially) a variety of services. There are though, a number of issues, that would need to addressed before, sensibly, any such change could take please. These include the cost of access (especially in rural areas); and the cost of “devices” required to facilitate service at the citizens’ residence.

(b) Access from a fixed or any location

Given the current flexibility in the Directive for an NRA to nominate a provider of wireless services to provide a Universal Service (as long as certain conditions are met) we see this requirement as already being partly met. The real issue, however, is whether the requirement should be extended so that a subscriber should expect a service anywhere within a country, even when on the move. This latter requirement may well be seen as a requirement for many—in this increasingly mobile society—and one which to an extent is already being met by the wireless market. To mandate a service, however, might well be seen as excessive, especially given the costs of providing a service in geographically remote areas (ie mountains) where there are no residential properties.
(c) Public payphones

Although the analysis of the Commission points towards a decline in the use of public payphones; they still provide, in many locations, an important social service. It may therefore seem appropriate for the requirement to be based at a national or even regional level rather than mandated across the Community. It may also be worth considering whether in some areas, where there might be almost uniform fixed line and wireless access, whether the requirement for a payphone may be for Emergency use only; in a similar vein to those on motorways.

(d) Directory services

We are grateful for the Commission highlighting the potential need for a relaxation in requirements here. We would concur. Whilst it would seem sensible to maintain a requirement for a database to be maintained (and contributed to by all service providers) it would seem less important to maintain an obligation on directory enquiry services themselves. The latter is something a competitive market should be able to adequately provide.

(e) Services for the disabled

This is an important issue and it dovetails appropriately with both the objectives on e-Accessibility given in the i2010 Communication and the forthcoming Communication from the Commission on the same issue. We concur with the Commission that the convergence towards IP networks offers potential advantages for those who currently are excluded from the information society. The advent of e-mail and text messaging are examples of how many disabled persons are now finding it easier to stay in touch. There are, however, potential problems concerning compatibility of legacy equipment (an example being text phones) as we move towards a universal IP environment. It would therefore seem sensible for these to be explored further, in addition to the responses received on the forthcoming e Accessibility Communication, when the Directive is reviewed in 2006.

(f) Future USO financing

It is clearly appropriate that we should look at the funding issue while the overall requirement for the USO is reviewed. We do not, though, think it will be attractive for many Member States to procure funding from general taxation. Indeed we would join the Commission in hoping that in time, as communication networks become more generic and developed, the need for specific Universal Service requirements may decline. Clearly, in the interim, there may well be a case for the provision of support from an industry fund (as we understand already happens in several countries) or, depending on national situations, from specific support from local authorities (as long as this was consistent with State Aids).

VEHICLE TYPE APPROVAL DIRECTIVE (7532/04)

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

I am writing to you in order to inform you of the latest state of play on the proposed new Vehicle Type Approval Directive, setting a standard for re-usability, recoverability and recyclability.

Explanatory Memorandum (7532/04) on this proposal was submitted by my Department on 29 April 2004. However, this was not cleared pending further information on the position of other member States, a more precise estimation of likely costs and the final outcome regarding UK transposition of the EC End of Life Vehicles (ELV) Directive. I am sorry that it has taken so long to provide an update. It was only recently that negotiations on this proposal made substantial progress, and UK transposition of the ELV Directive was completed.

We have now received inter-departmental clearance for our preferred negotiating lines—general support, but on the basis that the requirements would only apply to new types, or failing that, an appropriate extension before the standard applies to existing types; support for the component coding requirements and for a proposal to add the ELV Directive’s heavy metals restrictions to this proposal, provided this is done in a way that is not more burdensome that the UK’s current enforcement regime. This addition would mean that the UK’s ELV Regulations 2003 would have to be amended as they currently include the regulations that transpose the heavy metals restrictions into UK law.
Discussions with other member States in Technical Harmonisation “Motor Vehicles” Working Party meetings started at the end of last year. Initial indications were that there was significant support from most member States for the new requirements should apply only to newly type approved vehicles, or there should be a delay in the application to vehicle types that have already been approved. The extension favoured by most member States was an extra 24 months, in addition to the 36 months before the standard was applied to new types, making a total of 60 months. This corresponds to a typical five-year product cycle—meaning that after introduction of the new standard, most existing vehicle types would have been replaced or would be near the point in their lifespan where they were due to be replaced. This would minimise the number of existing vehicle types that might need to be modified in order to meet this new standard. It would also bring a substantial practical advantage for both vehicle producers and testing authorities by phasing-in the new standards rather than applying them to all products from the outset.

This proposal has now been examined by the European Parliament’s Committee on the Environment, Public Health and Food Safety, who recently met with Commission and Presidency representatives to prepare a draft compromise package. The differences between this package and the original proposal are relatively minor and also recognise that a new approach is needed for existing vehicle types. The compromise package gives a 54-month application date for these types, just a little shorter than the amount favoured by most representatives in Working Party meetings but still bringing the practical advantage of phasing-in the standards, as mentioned above.

In order to assess the possible impact of a 54-month application for existing types, further economic analysis has been undertaken which is attached in the form of an updated RIA. On the basis of this new information, a 54-month application date for existing vehicle types would seem to be a satisfactory compromise and this view has been supported by the Society of Motor Manufacturers and Traders in the UK and the equivalent trade association (ACEA) in Europe.

Other main areas in which the compromise package differs from the original Commission text are as follows. The text now allows more input from vehicle producers when deciding which particular version of the model to assess against the new standard, it integrates the ELV Directive’s heavy metals restrictions, and has more flexible requirements with regard different styles of bodywork (e.g. saloon, van etc) being presented for approval. All of these changes are satisfactory from a UK point of view.

I am pleased to be able to confirm that the regulations transposing the remaining elements for the EC ELV Directive came into force on 3 March 2005 on the basis set out in the public consultation dated 4 February 2004. This means that the UK is placing responsibility on individual vehicle producers for the free take-back of all their vehicles and the attainment of the Directive’s re-use, recovery and recycling targets, whenever the vehicles were designed. This method of transposition effectively limits the environmental benefits of the proposed type-approval Directive and helps to justify our approach in respect of existing vehicle types.

Although not currently on any forthcoming Council agendas, it is possible that this proposal may be presented before Council before the summer recess so it would be most helpful if this EM could now be cleared.

25 May 2005

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 25 May 2005 in response to mine of 21 May 2004 which Sub-Committee B considered at its meeting on 8 June 2005.

We note from your letter and the information contained within the updated RIA that the proposed 54-month application for existing types is a satisfactory compromise and that the Society of Motor Manufacturers and Traders in the UK and the equivalent trade association (ACEA) in Europe agree with this view. We are now content to lift scrutiny on this proposal.

13 June 2005

WORKING CONDITIONS OF MOBILE WORKERS (6364/05)

Letter from the Chairman to Tony McNulty MP, Minister of State, Department of Transport

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 4 April 2005 and agreed to maintain the scrutiny reserve.

We share your concerns that this document might damage the competitiveness of the rail freight industry and hinder the Community’s objectives for modal shift from road to rail.
We would like to be kept informed of developments on this draft Directive.

6 April 2005

Letter from Derek Twigg MP, Parliamentary Under-Secretary of State, Department for Transport to the Chairman

The Government’s Explanatory Memorandum of 16 March advised the Committee of the European Commission’s proposal for a Council Directive implementing an agreement reached between the Community of European Railways (CER) and the European Transport Workers’ Federation (ETF)—“the Social Partners”—on certain aspects relating to the working conditions of mobile workers assigned to interoperable cross-border rail services.

The proposal was considered by Sub-Committee B on 4 April and you subsequently wrote to Tony McNulty to note that the Committee shared the Government’s concerns that this document might damage the competitiveness of the rail freight industry and hinder the Community’s objectives for modal shift from road to rail. I am writing now to update the Committees on subsequent developments in working group and at the Council.

Discussions in the Social Questions working group revealed that while there was strong support in general for the process of social dialogue, and the right of the partners to seek the implementation of their agreements as Directives, some Member States shared the UK Government’s concerns about the potentially adverse effects of this proposal on the Community’s own objectives for modal shift from road to rail.

However, in the course of the discussions in Council between February and May, a majority of Member States, who were concerned not to compromise the autonomy of the social dialogue procedures, lifted their reservations on the proposal. It was clear that there would not be a blocking minority at the Council.

As expected, the proposal was brought to the Employment, Social Policy, Health and Consumer Affairs Council on 2 June 2005 for a political agreement by QMV. The UK, together with two other Member States, abstained. The UK also entered a statement for the Council minutes explaining our continuing concerns about the potential impact of the proposal on the development of the rail sector and the lack of any proper impact assessment by the European Commission. I attach a copy of that statement for your information. The Commission also made a statement for the minutes indicating that it intends:

— at once to ask the social dialogue committee to widen its representativity in line with the developing market;
— to bring forward its report on the Directive, taking account of its economic and social impacts, from the timing set out in Article 3 of the Directive (three years after transposition is due, i.e. six years after coming into force); and
— to propose modifications to the Directive should the social partners at any time amend their agreement, even if this is before the date transposition is due (three years after publication of the Directive in the Official Journal).

The Directive will in due course now be published in the Official Journal of the European Communities, at which point it will enter into force.

16 June 2005

Letter from Derek Twigg MP to the Chairman

The Government’s Explanatory Memorandum of 16 March advised the Committee of the European Commission’s proposal for a Council Directive implementing an agreement reached between the Community of European Railways (CER) and the European Transport Workers’ Federation (ETF)—“the Social Partners”—on certain aspects relating to the working conditions of mobile workers assigned to interoperable cross-border rail services.

My letter of 16 June reported on the outcome of the discussions on this proposal between February and May, which culminated in the political agreement reached by QMV at the Employment, Social Policy, Health and Consumer Affairs Council on 2 June 2005. The UK abstained in that vote, and maintained its Parliamentary Scrutiny reserve. I understand that this dossier is awaiting consideration in Sub Committee B.

We have now been advised that the political agreement text will be put to the Agriculture and Fisheries Council on 18 July 2005 for adoption. There is a clear risk that this will take place before the clearance by Sub-Committee B, which would normally be the mechanism for lifting the UK’s remaining Parliamentary scrutiny reserve.
As you will be aware, proposals may not be formally adopted by the Council while any Parliamentary reserves are still in place. Given our current Presidency of the Council, it would be inappropriate for us to maintain our reserve in such a way as to block a proposal that has duly been agreed by Qualified Majority Voting. The lifting of our reserve does not indicate acceptance of the Political Agreement, on which we would still intend to abstain.

I am therefore writing to advise you that we shall lift our Parliamentary reserve but will maintain our earlier abstention, in order not to obstruct the completion of Community business.

11 July 2005

Letter from the Chairman to Derek Twigg MP

Thank you for your letters of 16 June and 11 July 2005 which Sub-Committee B considered at its meeting on 10 October. The Minute Statement which should have been attached to the letter of 16 June was not received until the start of July. This is the cause of the delay in considering your letter. We trust that in future you will ensure that all attachments are enclosed to enable us to deal with correspondence sooner than we were able to on this occasion.

Sub-Committee B noted with regret that the scrutiny reserve had been overridden on this occasion. However, we accept that the UK’s current Presidency of the Council, makes it inappropriate for the UK to maintain its reserve in such a way as to block a proposal that has been agreed by QMV.

12 October 2005
Foreign Affairs, Defence and Development Policy (Sub-Committee C)

ACCESS TO COMMUNITY EXTERNAL ASSISTANCE (8881/04)

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

Your Committee met on the 25 May 2004 and discussed the Proposal from the Commission to the Council and the European Parliament concerning arrangements for untying the Community’s aid programmes managed by the Commission. Your Committee cleared the proposal from scrutiny. I am writing to inform you of progress and the outcome of the European Parliament’s (EP) first reading (detailed in the attached note) (not printed).

The EP adopted 31 amendments to the Commission’s original proposal, mainly to establish the importance of preference for contractors from developing countries, to ensure compliance by contractors with core labour and environmental standards and to exempt humanitarian aid and aid channelled through Non Governmental Organisations from the scope of the Regulation. These amendments matched the Council’s compromise proposal in response to improvements suggested by the Member States, with an additional amendment on committee procedure and an amendment to the wording of the Commission’s proposal for a single horizontal regulation.

The Commission and Member States have signalled agreement to these amendments in the Development Cooperation Working Group. The Council will be asked to formally adopt the revised Commission Proposal shortly. The new Regulation will enter into force following its publication in the Official Journal.

14 September 2005

ARTICLE 24—MODEL AND FRAMEWORK PARTICIPATION AGREEMENTS

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

Civilian and military ESDP operations so far, have generally included contributions from third party states. Although the majority of personnel in ESDP operations will be from EU Member States, it was always foreseen that non-EU countries should also be able to participate in EU-led operations by invitation (non-EU NATO members have a right to participate in Berlin Plus operations). The legal and financial parameters relating to participation of third states in the operation is agreed between the EU and the third state under Article 24 of the Treaty on the European Union.

In the early stages of ESDP, these agreements were drawn up on an ad-hoc basis when a new mission was launched. This involved separate negotiations for each mission and sometimes meant that agreements were not finalised in time for the beginning of an operation. Therefore, to streamline this aspect of mission planning, Member States agreed to develop a Framework Participation Agreement (FPA) to provide a continuing arrangement between the EU and certain third countries who were likely to participate regularly in ESDP operations, eg Canada, Russia, Ukraine and European NATO countries. An Explanatory Memorandum (EM) was sent to your Committee on 4 February 2004 outlining this agreement and the Council Decision was agreed on 24 February 2004. Like mission specific Article 24 agreements, these FPAs set out the legal and financial parameters to allow for third country participation in an ESDP operation. FPAs have been agreed thus far with Iceland, Norway and Romania, and are currently being negotiated with Switzerland and Canada. A third country’s participation in a specific ESDP operation is confirmed by an exchange of letters between the Presidency and the Government of that country. This significantly reduces the bureaucratic burden and timelines.

There are also occasions when third countries with whom the EU does not have a FPA are invited to participate in an ESDP operation, eg African states for a mission in that region. For these cases a standard text of an Article 24 agreement was agreed between Member States—known as a “Model Participation Agreement (MPA)”. This enables the Presidency to quickly begin negotiations with the relevant third countries on the basis of the agreed text—once an operation has been agreed upon and Member States have decided which
third countries to invite to participate—making it more likely that the agreement will be in place at the beginning of a mission. As with the FPA, the MPA sets out the legal and financial parameters to allow for third country participation. An EM was sent to your Committee on 27 April 2004 outlining this framework and was agreed on 13 May 2004. We have used the model text to date for third country participation in the ESDP mission in Bosnia (Operation EUFOR).

MPAs for Operation EUFOR have been concluded with Morocco, Albania, New Zealand, Argentina and Switzerland (FPA negotiation have yet to be concluded).

It does not seem efficient to reproduce Explanatory Memoranda for each agreed FPA and MPA when an original framework has already been agreed and placeholders are merely being substituted by the name of countries involved. As you will be aware, the volume of scrutiny documents is growing with every Presidency and anything we can do to streamline the process would help both Government and Parliament. I therefore hope you will be able to agree our request that your Committee considers placing third country agreements emanating from pre-scrutinised frameworks on the list of non-deposit items held within Cabinet Office. We will of course treat this on a case-by-case basis and any key changes departing from the agreed framework or where important policy issues arise will be deposited and an EM submitted in the normal way. Those not deposited would be listed in the quarterly reports of non-deposited documents prepared by the Cabinet Office. The House of Commons European Scrutiny Select Committee has already agreed with this procedure. I look forward to hearing you thoughts on this matter.

2 April 2005

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

Thank you for the letter of 2 April from Rt Hon MacShane concerning Article 24 Model and Framework Participation Agreements. I would like to apologise for the delay in this response.

We note that the Commons European Scrutiny Committee have argued that such third country agreements could be placed on the list of documents which need not be deposited. The agreements are based on the model agreement which we have previously examined, and you undertake to submit an EM where there are any key changes or where important policy proposals arise. However, after discussing this proposal carefully, we note that Sub-Committee C would prefer to examine the circumstances surrounding agreements with certain countries, even where the model framework has not been departed from. Whilst we would be content for agreements with European countries and other members of NATO not to be deposited, we would therefore ask that agreements with other countries continue to be deposited in the usual way.

14 June 2005

COTONOU AGREEMENT (8704/05, 9267/05)

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

Thank you for your Explanatory Memorandum dated 9 June which was considered by Sub-Committee C at its meeting on 16 June.

The Sub-Committee cleared the document from scrutiny but would like to raise a number of issues of concern.

The revision of the Cotonou Agreement is a substantial document raising significant questions of EU development policy. The negotiations were concluded on 23 February 2005, though not submitted to Member States until early May. The Explanatory Memorandum is dated 9 June and the document is expected to go to Council on 24 June. We do not feel that this has allowed Parliament sufficient time for scrutiny of this document. Although the document itself was made available to the clerk, it is equally important that an Explanatory Memorandum be made available in order that the UK position can be considered. We would in future ask that such important documents be deposited more quickly in order that a more thorough examination can be carried out.

In addition, we note (para 6, EM) that a number of changes to the Commission’s procedures for the awarding and implementation of contracts have yet to be agreed amongst the parties. These provisions are due to be considered by the ACP-EU Council of Ministers at a later date. When will a decision be taken by Council on these amendments and will it be possible for Parliament to scrutinise them before a decision is made?
We would also like to raise some questions on the substance of the revisions. The Explanatory Memorandum is unclear in many respects. We feel that this strengthens our argument that sufficient time ought to have been allowed for Parliamentary scrutiny.

You note (para 12, EM) that you worked hard to secure agreement that financial support in the areas of counter-terrorism and WMD would not impinge on available ACP-EC development funds. The proposed new art 11(2) states that counter-proliferation “will be financed by specific instruments other than those intended for the financing of ACP-EC Cooperation.” What are these specific instruments? Will any of the necessary funds for the new political and security provisions come out of the European Development Fund (EDF) (assuming that budgetisation of the EDF does not take place)? If not, what part of the EU budget will the funds be taken from? And what is your estimate of the cost to the UK of financing these new provisions?

We recently published a report on the subject of non-proliferation: “Preventing Proliferation of Weapons of Mass Destruction: The EU Contribution” (HL European Union Committee 13th Report of Session 2004–05) in which we drew attention to the need for proper implementation of non-proliferation clauses with third countries. We note that in the proposed new art 11 of the Cotonou Agreement, a failure to cooperate on non-proliferation will lead to a period of consultation. Art 11(6) states that “If the consultations [which will under the article in the case of non-cooperation in the area of non-proliferation] do not lead to a solution acceptable to both Parties, if consultation is refused, or in cases of special urgency, appropriate measures may be taken.” What form might these appropriate measures take and, in particular, could they include the withdrawal of development assistance to the country concerned?

Paras 16–19 of the Explanatory Memorandum which deal with the financial implications of the Cotonou Agreement are unsatisfactory and raise a number of questions.

Para 16 mentions “a new multi-annual financial framework for EC cooperation with the ACP states”. Does this refer to the European Development Fund and, if not, could you specify what is meant by the multi-annual financial framework?

You note that ACP states will receive a sum at least equivalent to that of the 9th EDF, excluding balances carried forward. Could you confirm that this refers to ACP states collectively, and not individually. How much will have been given to the ACP states under the 9th EDF once it comes to an end? Will balances also be carried forward into the 10th EDF? And what effect might budgetisation have on those balances due to be carried forward?

You note that the Commission’s interpretation of this guaranteed level of funding would represent a minimum figure of €18.49 billion (£12.52 billion), but that this has been challenged by some Member States. What is the nature of the challenge? Does it relate to the calculation per se, or to the fact that minimum funding levels have been guaranteed? And do you agree with the challenges made?

You note that you would like to see a bigger and more effective 10th EDF. What exact increases in funding do you support? What is the current UK contribution to the EDF and how much would you expect to contribute under a bigger 10th EDF?

Letter from Gareth Thomas MP to the Chairman

Thank you for your letter dated 20 June regarding the above Proposals.

I note the Committee’s concerns at the length of time it had to scrutinise the documents. Following the conclusion of negotiations on 23 February, the Commission prepared the documents and circulated them on 10 May (reference [8704/05] and 24 May [9267/05]) respectively. Both documents were deposited within a few days of publication. The Jurists Linguists circulated amended versions of 8704/05 to Member States on 20 and 30 May that corrected certain typographical errors; re-inserted agreed wording that had been omitted in error; and presented the text in the correct legal form. DFID officials alerted the Committee Clerks. and the Cabinet Office who advised that an EM should be completed on the original documents. This was submitted on 9 June in time for the Chairman’s sift on 13 June. I apologise if this delay between depositing the documents and submitting the EM resulted in the Committee having insufficient time to review the Proposals, but I hope you understand the reasons why this occurred. Please be assured that I take a keen interest in ensuring the Committees receive the appropriate documentation at the earliest opportunity in order to carry out their work effectively.

I shall comment on the specific questions you raise on the detail of the proposals, in the same order as your letter.
The proposed changes to the procedures for awarding and implementing contracts remain under discussion between the Commission and ACP negotiators. Agreement is envisaged before the end of 2005. EU Member States will be asked to agree the proposed changes by way of Council Decision, and therefore subject to the usual scrutiny procedure, before they are agreed by the ACP-EC Council of Ministers.

In stating that support for counter terrorism (CT) and counter proliferation (CP) of Weapons of Mass Destruction will be from instruments other than those intended for financing ACP-EC cooperation, the EU has confirmed that this will not be funded from the European Development Fund (EDF). The Common Foreign and Security Policy (CFSP) budget would be the appropriate source from which to support the majority of such activities. The Commission’s new Financial Perspective should contain a new instrument to fund those activities that fall within its competence (eg capacity building in the rule of law and enhancing export control of dual-use goods). We are unable to predict what level of funding this will imply.

The first paragraph of the CP clause will constitute an essential element of the Cotonou Agreement. As such, non-compliance with this provision could ultimately result in the application of appropriate measures with the State(s) concerned. The exact nature of these measures would depend on the circumstances. The first step would be to increase dialogue to remedy the situation. Either Party could ask a competent international body, such as the International Atomic Energy Agency, to provide an assessment of whether an obligation has been met or not. This information would be provided to the other Party and to the ACP and EC Council of Ministers to assist with the examination of the situation and to help find a mutually acceptable solution. Where a solution cannot be found and where the nature and gravity of the violation requires a suitable response, then appropriate measures may be taken, covering any aspect of the EU/ACP relationship. Suspension of cooperation under the Agreement could be taken as a measure of last resort. Such measures would be revoked as soon as the reasons for taking them no longer exist.

The EU agreed on the phrase “New Multi-annual Financial Framework of Cooperation” as a way of describing the successor funding arrangement to the 9th EDF, whether that be in a budgetised scenario or a 10th EDF. The EU’s undertaking to provide ACP States with a sum at least equivalent to that of the 9th EDF, excluding balances carries forward, will apply to ACP States collectively and not individually. The 9th EDF provides ACP States with €13.5 billion (£9.14 billion) over five years. The UK’s share is approximately £1.7 billion (£1.15 billion), representing 12.7 per cent. The Commission has confirmed that the 9th EDF will be fully committed by the end of 2007. The new Financial Framework will fund commitments from 1 January 2008.

Discussions on the exact amount and period of application of the new Financial Framework continue within the Council. The Commission has proposed its interpretation of the formula using figures for calculating inflation, EU growth and the effect of EU enlargement. It is the calculation of these additional factors that is the subject of technical debate, rather than the guarantee to provide the ACP with a minimum funding level. As Presidency, we will not challenge this but will seek to find a compromise between the different interpretations. The UK contribution to the new Financial Framework will be agreed as part of the ongoing negotiations.

All Parties signed the revised Agreement at the ACP-EC Council of Ministers, held in Luxembourg on 24–25 June. I signed on behalf of the UK. The Agreement will now need to be ratified before coming fully into force. UK Parliamentary procedures for ratification will be followed including the laying before Parliament of the revised Agreement as a Command Paper.

7 July 2005

COTONOU AGREEMENT—CONSULTATIONS BETWEEN THE EU AND HAITI (11691/05)

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

Thank you for your Explanatory Memorandum dated 23 September 2005 which Sub-Committee C considered by written procedure on 28 September.

The document was cleared from scrutiny. However, we note that the proposal would mean that the remaining Article 96 measure against Haiti will be lifted without all of the conditions set in 2001 being met. We ask you to keep this matter under close and frequent review, and to keep us informed of the progress of the elections.

5 October 2005
COTONOU AGREEMENT—OPENING OF CONSULTATIONS WITH MAURITANIA (14031/05)

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

I am writing to apologise to your Committee that due to an unfortunate oversight by FCO officials we will need to lift our scrutiny reserve on a Commission Communication to the Council on the opening of consultations with Mauritania under Article 96 of the Cotonou agreement. The Council Decision is due to be agreed at the Competitiveness Council on 28 November.

Ian Pearson MP, Minister for Foreign Affairs and Trade, will be representing the EU at the opening of consultations with the Mauritanians, which will take place in Brussels on 30 November. This will be the first step in a long process of consultations with the Mauritanians. You have my assurance that the Committees will be given sufficient time scrutinise any further Council Decisions emanating from this Commission Communication. I can also confirm that an EM on this issue will be submitted in time for your next Committee meeting.

On 3 August 2005, the elected Mauritanian Government of President Ould Taya was overthrown by Colonel Vall, the leader of the “Military Council for Justice and Democracy” (MCJD). The MCJD is now entrenched and has appointed an interim government to oversee the transition to democracy within two years. The European Commission is therefore proposing that the Council invite the Islamic Republic of Mauritania to hold consultations under Article 9 and 96 of the revised Cotonou Agreement. The Commission proposes that cooperation activities underway through the sixth, seventh, eight and ninth European Development Funds should continue during the consultation period on condition that the special conditions of the Financial Agreements are observed. Furthermore, it is proposed that cooperation activities currently being planned, which would help the return to democracy and improve governance, should also be pursued.

The Government supports Article 96 consultations being opened. The consultations will offer the opportunity to promote democratic principles in Mauritania and to demonstrate the importance the EU attaches to the “essential elements” of the Cotonou Agreement. It is important that there are free, fair and democratic elections in Mauritania as soon as possible. Whilst there have been some positive developments on the ground, the EU should continue to keep pressure on Mauritania, in order to ensure that positive pronouncements are turned into concrete actions. The Government will continue to use every opportunity to press the Mauritanian authorities to behave transparently, respect human rights and return the country to democratic rule as soon as possible.

The Foreign and Commonwealth Office will endeavour to provide your Committee with sufficient time needed to scrutinise Council decisions effectively.

23 November 2005

CROATIA CO-OPERATION WITH ICTY (14136/04)

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

Thank you for your letter of 13 December requesting further information on the measures which the Government proposes ought to be taken, should Croatia continue to fail to co-operate with the International Criminal Tribunal for the Former Yugoslavia (ICTY); and a progress report on this issue.

EU Foreign Ministers decided on 16 March to postpone the opening of negotiations with Croatia in the absence of their full co-operation with the ICTY. The UK is a firm supporter of this stance, and the decision by the General Affairs and External Relations Council to open negotiations as soon as Croatia is co-operating fully with the ICTY. The UK will continue to monitor closely steps taken by Croatia and stay in close contact with the Tribunal whose opinion remains of decisive importance.

I would be happy to write to you in six months’ time to detail the progress that has been made on this matter.

31 March 2005

DESTRUCTION OF SMALL ARMS AND LIGHT WEAPONS (SALW) AND THEIR AMMUNITION IN UKRAINE

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

Thank you for the Explanatory Memorandum dated 11 November 2005 which Sub-Committee C considered at its meeting on 17 November. The Sub-Committee cleared the document from scrutiny but raised two questions about the long-term problem of surplus stocks of weapons and ammunition in Ukraine.

You note in paragraph 1 of your Memorandum that Ukraine currently has approximately 7 million weapons and at least 2 million tonnes of ammunition. The US-led project, which the EU proposes to support, will destroy around 1.5 million surplus weapons and 133,000 tonnes of ammunition. Are there any long-term plans for further destruction of surplus stocks which the US project will not have dealt with?

More generally, how does the EU propose to use its neighbourhood policy to ensure the destruction of surplus stocks of SALW in Ukraine? The EU should use the opportunity provided by the ENP to assist Ukraine in becoming a more stable and secure state, and the further destruction of SALW is an integral part of this process.

18 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for letter of 18 November in which you indicted that Sub-Committee C has cleared the document from scrutiny but raised two questions about the long-term problem of surplus stocks of weapons and ammunition in Ukraine.

You asked whether there were any long-term plans for further destruction of surplus stocks which the US-led destruction project would not have dealt with. There is a 10-year project plan envisaged by NATO to destroy weapons and ammunition in Ukraine. However, due to the enormous quantities involved and to the political and financial constraints in attracting donor support the general consensus is to split the surplus stockpiles into prioritised manageable amounts in three year periods. We understand there are no concrete plans yet to deal with these wider surplus stocks. However, it is hoped that funding for further stages of this plan will be attracted if the current project is a success.

The EU-Ukraine European Neighbourhood Policy Action Plan already contains a commitment to “jointly address threats for security, public health and environment, posed by Ukrainian stockpiles of old ammunition, inter alia anti personnel land mines”. The EU will continue to support this process.

20 December 2005

ESDP ADVICE AND ASSISTANCE MISSION FOR SECURITY SECTOR REFORM MATTERS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

I am writing to let you know of a forthcoming EU decision to deploy an ESDP Advice and Assistance Mission for Security Sector Reform (SSR) Matters in the Democratic Republic of the Congo (DRC), which we expect Council to agree during April.

As you know, SSR is crucial if there is to be real progress towards one unified army in DRC—through a demobilisation and civilian reintegration programme, restructuring of the remaining troops and a sustainable pay structure. Otherwise, we risk a return to full-scale conflict either before or after the elections (likely to take place before the end of the year) with each of the factions retaining their own military capability. In the broader context such a conflict could have serious implications for peace and stability in the Great Lakes region.

As a result of the two EU Fact Finding Missions to the DRC (in December 2004 and February 2005) the Political and Security Committee (PSC) agreed to the principle of an advisory mission on SSR to work alongside the DRC government and in co-operation with other international actors (notably South Africa, the US, the UN Mission (MONUC) and the World Bank). The General Concept, which will be put to the Council on 12 April, is to contribute to a successful integration of the DRC army through the work of EU experts in this field providing advice and assistance to the Congolese authorities. An Implementation Plan and Joint Action should be agreed by Council in mid to end-April with deployment taking place at the end of April.
The mission will involve placing experts within the competent Congolese defence authorities (including the Ministry of Defence, the General Staff HQ and the Structure for Military Integration (SMI)) to offer advice and assistance on pay, grading, logistics, integration and command/control. These experts will then be able to identify areas for specific SSR programmes to be supported by EU interventions. The Mission, as envisaged, would consist of a team of eight, mainly but not exclusively, military personnel commanded by a two-star General. The UK is looking to fill one of the positions but has not yet identified a firm candidate. The proposal foresees the mission lasting for one year initially, subject to review. Although the funding for the mission has not yet been addressed in detail it is estimated that it will cost approximately €1.5 million (£1.03 million).

You will recall from my letter of 5 February 2004 that we always seek to ensure the Committees have the time and information needed to scrutinise ESDP decisions effectively. However there will inevitably be occasions where, for reasons of operational urgency, the Government will need to take part in EU decisions before scrutiny is completed. It is possible that this may be the case in this instance if, for example, Parliament were to be dissolved. I should like to thank you for your understanding if it proves necessary to override scrutiny in this case for this reason.

31 March 2005

Letter from the Chairman to Rt Hon Denis MacShane MP

Thank you for your Explanatory Memorandum dated 4 April 2005 which Sub-Committee C considered by written procedure on 7 April 2005.

The Sub-Committee agreed to clear the document from scrutiny but would like to ask to be kept informed of further developments and the perceived success, or otherwise, of the mission.

In particular, we would like further details of the financing of the mission: will it be financed from the Athena Financing Mechanism or from the CFSP budget? And what will be the UK’s contribution to the overall costs? We would also wish to be kept informed as to whether UK personnel will be directly involved as part of the mission (you note the possibility of this in para 3 of the EM).

8 April 2005

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

Thank you for your letter of 8 April to my predecessor, Denis McShane, about your Committee’s decision to clear this Joint Action from scrutiny. The mission (recently named EUSEC RD Congo) will be launched shortly; the staff selection process is currently under way with a provisional launch date of 8 June 2005.

You requested further information on the financial aspects of this mission with respect to whether it will be funded from the Athena Financing Mechanism or from the CFSP budget, and what the UK’s contribution to the overall costs. It has now been decided that this mission should be classified as a civilian mission for the purposes of Article 28 (3) of the Treaty on European Union on financing of missions, and therefore that the common costs of the mission will be funded from the CFSP budget. The decision, following consultation with legal advisors, took into account the civilian nature of the mission’s objectives, the civilian chain of command and the fact that there is no mandate to use force. We agree that this particular mission should be funded from the CFSP budget, but believe that in principle missions which include both civilian and military elements should be considered on a case by case basis. We therefore secured clear language in the cover note to the Joint Action which will ensure this happens.

Additionally, Dr McShane wrote to Dr Solana, Mme Ferrero-Waldner and Mr Barrosso on 30 April setting out the UK position on this issue. His letter stated:—“After consideration of the legal and policy implications, we agree that there are a number of factors which confirm this EU Security Sector Reform mission is not an operation with military or defence implications in the sense meant by Article 28.3 of the Treaty on European Union. However, the UK does not consider that this decision sets a precedent for any future security sector reform mission. It is important that each mission is considered on its own merits, on a case by case basis. This is the approach the UK will take in discussions on any future mission.”

Our estimated contribution to the commons costs of this mission (based on the UK’s contribution to the CFSP budget) is around £270,000. This is slightly less than we would have paid under the Athena financing mechanism.

You also asked to be kept informed as to whether UK personnel will be directly involved as part of the mission. The mission will be comprised of eight mainly military personnel. The UK has put forward two civilian candidates for these positions, one of whom has been accepted; the other is still pending. Provisional estimates suggest a cost of around £150,000 to deploy one UK candidate on EUSEC for one year.
I will endeavour to keep you informed of major developments in this groundbreaking mission as and when they occur.

17 May 2005

ESDP CIVILIAN MONITORING MISSION TO ACEH, INDONESIA AND SUDAN

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

I wanted to update you and your Committee colleagues on preparatory work that may lead to an ESDP mission to Aceh, Indonesia and support for the African Union’s (AU) policing work in Darfur.

SUDAN

Plans for EU support to the AU’s work in Darfur are moving ahead quickly. A preparatory mission departed on 23 June to look at how the EU can assist the AU with its civilian police work. A certain amount of preparation has already been undertaken. The EU proposes to second policing advisors and trainers to provide support to the African Union Mission in the Sudan (AMIS) II Police Chain of Command and provide training for AMIS’s own police trainers. It is also looking at how we can strengthen the AU’s policing capacity more generally, through the development of a policing unit within the AU Secretariat in Addis Ababa. The AU have requested that the first contingent of police trainers be in place by early August, a timetable the EU is keen to achieve.

I should clarify that this will not be an ESDP mission, but an EU contribution to the AU’s AMIS II mission. This is in part due to our, and the AU’s, desire to maintain the African ownership of the current AU mission.

INDONESIA

The fact-finding mission to Aceh, which also departed 23 June, will consider a possible role for an ESDP mission in monitoring any future peace agreement between the Government of Indonesia and the separatist Free Aceh Movement (GAM). If agreed, this would be the first ESDP monitoring mission. We support the efforts (led by Martti Ahtisaari) to establish a peace accord. However, the fact-finding mission will need to tackle some outstanding questions, including the role of ASEAN or other regional players, the EU’s precise mandate and security.

Plans for this work are still at an early stage, but we expect firmer proposals will develop in light of the fact-finding mission.

I will try to ensure that your Committee is kept informed of developments as soon as they occur. But given the fast moving nature of ESDP operational planning, I wanted to write to you now. Should Joint Actions be drawn up following the visits to Sudan and Indonesia, I will forward these under the cover of Explanatory Memoranda as soon as they are available.

29 June 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

You will recall that I wrote to you on 29 June alerting you to an EU fact finding mission to Indonesia on a possible role for an ESDP mission in monitoring any future peace agreement between the Indonesian Government (GOI) and the Free Aceh Movement (GAM). Progress has been made in preparatory work. EU Foreign Ministers at the GAERC on 18 July said they were prepared, in principle, to provide observers to monitor implementation of a peace agreement. It is possible that the EU may reach a decision on whether to launch a mission during the summer Parliamentary recess so I am writing now to update you in case it is necessary to override normal scrutiny procedures.

The Crisis Management Initiative (CMI) chaired by Martti Ahtisaari, which is facilitating the talks, hopes to achieve signature of a peace agreement by the end of August. We assess that this deadline is possible: both sides have given assent to a draft accord. Both sides have made key concessions and this would be the first time a substantive peace deal, rather than a ceasefire agreement, has been reached between the two parties. The Indonesian Government has invited the EU, and five ASEAN states, to participate in an Aceh Monitoring Mission. CMI, GOI and GAM would all like monitors to be on the ground in Aceh as soon as possible after the signature of the peace deal, so that implementation can begin quickly.
The precise mandate of any mission is still under discussion. The tasks set out in early drafts of the MOU include:

- To monitor the relocation of national military forces and national police troops.
- To monitor the decommissioning of GAM armaments and the disarmament of the militia.
- To monitor the reintegration of active GAM members.
- To monitor the human rights situation.
- To monitor the process of legislative change.
- To investigate complaints and alleged violations of the MOU (CMI would be the ultimate arbiter in difficult cases).

Potentially there could also be a role in disputed amnesty cases, but this needs to be clarified. We would not want to see the EU in the position of ultimate arbiter.

Indications from early discussions are that a mission would comprise around 180 monitors. Monitors could be either civilian or military, but the proposal is that they should be unarmed. Indonesian police would provide security where necessary.

We support Ahtisaari's work and believe an EU monitoring mission could play a helpful role. However substantial preparation is still necessary if the mission is to be effective. This will include a clear mandate, a definition of how the five ASEAN countries will be involved, a proper technical assessment (including security) and financing. We (and partners) will want to see key questions addressed before a final decision.

Given the short timeframe, the Secretariat is continuing with planning on a contingency basis. As Presidency, we will be aiming to ensure proper discussion and management of the issues and sufficient planning and preparation. The MOD is sending two experienced planners to help the Secretariat with this process.

We have not yet decided what sort of contribution the UK would make to any mission, but we would expect it to be modest. The Nordics (and possibly the Dutch) are likely to provide the biggest contribution to any mission.

I will continue to keep you informed as things progress, but hope you will understand should it become necessary to override scrutiny during the summer. Any delay in monitoring could delay the peace process.

20 July 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

I am submitting Explanatory Memoranda (EM) covering a draft Council Joint Action and a draft Agreement between the EU and the Government of Indonesia, both of which are required to establish a civilian ESDP monitoring mission to Aceh, Indonesia.

At the General Affairs and External Relations Council (GAERC) on 18 July, EU Foreign Ministers agreed in principle to provide observers to monitor the implementation of the anticipated Memorandum of Understanding (MoU)/peace accord between Government of Indonesia (GoI) and the Free Aceh Movement (GAM) through a civilian ESDP mission. This is an important mission for the EU—it will be the first of its kind and the first in Asia—and for Aceh where we want to see peace brought to the region so that the post-tsunami reconstruction work can take place in conditions of security.

The GoI and GAM signed their MoU on 15 August and plans are being developed rapidly to ensure that the mission is in place by 15 September 2005. The mission will monitor the implementation of the peace accord/MoU recently agreed between the Government of Indonesia and the Free Aceh Movement (GAM).

To launch the mission, both a Council Joint Action and Status of Mission Agreement (SOMA) are required. Work is continuing on these documents and the Council Secretariat expect to seek agreement on these through written procedure by 2 September to ensure necessary arrangements are in place for the start of the mission.

Unfortunately this timetable, falling during the Parliamentary recess, will result in your Committee not being able to scrutinise the final proposals, as I am aware that you will not be meeting until the second week of October. For this reason it is likely that I will have to agree to the Council Joint Action and Status of Mission Agreement before your Committee has the chance to complete scrutiny. I hope you will understand our reasoning for doing so.

26 August 2005
Letter from Rt Hon Douglas Alexander MP to the Chairman

As I informed you in my letter of 26 August 2005, the EU has launched an ESDP mission to monitor implementation of a peace agreement between the Government of Indonesia and the Free Aceh Movement. Five ASEAN nations (Thailand, the Philippines, Malaysia, Singapore and Brunei) and Switzerland and Norway, will participate with the EU in the Aceh Monitoring Mission. The ASEAN nations are contributing a total of 96 personnel, the Swiss three and the Norwegians five. Formal Participation Agreements are needed for the ASEAN Contributing Countries and Switzerland. The Norwegian contribution is covered by their Framework Participation Agreement with the EU. The EU has negotiated the draft texts with the ASEAN nations and Swiss respectively. These are based on the Model Participation Agreement agreed in April 2004 with minor adjustments to meet contributing countries’ requirements. The agreements with the ASEAN countries will take the form of an Exchange of Letters at their request.

The Government welcomes these agreements. They provide the basis for ASEAN nations and Swiss participation in the Aceh Monitoring Mission and are therefore in line with the Government’s policy of encouraging third country participation in ESDP operations. This will be the first time ASEAN nations participate in an ESDP operation.

Timing of a Council Decision will depend on how quickly the ASEAN contributors can clear agree to the exchange of letters in their capitals, but is expected to be soon. The Government welcomes these contributions and would not want to delay implementation. Due to the summer recess I will therefore agree to this Council Decision before scrutiny has been completed. I hope you will understand the reasons for doing so.

23 September 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

As the Aceh Monitoring Mission (AMM) deployed during the Parliamentary recess, your Committee was not able to scrutinise the final proposals or Joint Action. I am writing to update you on progress in the first two months of the process.

So far, the implementation of the peace agreement has proceeded as (or better than) scheduled. The first tasks were the decommissioning of weapons held by the Free Aceh Movement (GAM), and the withdrawal of non-local troops and police from Aceh. We are now at the halfway stage, and in both cases the original targets have been exceeded. In addition, amnestied GAM prisoners are receiving government compensation, and the first phase of rehabilitation funds have been paid out to former GAM combatants. Potential spoilers have shown few signs of wishing to wreck the agreement. Although reports of extortion and harassment (by army and GAM) continue, the level of both is manageable. In addition, Acehnese committees (including GAM) are contributing to drafting government legislation to enable local political participation. The leadership on both sides have demonstrated their political commitment to the agreement.

The AMM has played a key role in this success. It has facilitated regular meetings from regional to sub-district level between the security forces and GAM representatives, which have contributed toward building trust between the two sides and in some cases helped to resolve contentious issues. In the handful of more serious incidents where the AMM has had to conduct an investigation, both sides have been prepared to accept, in large part, the AMM findings. Initial suspicion in the Indonesian parliament and press about the role of the AMM has been largely allayed and it has been praised for its transparency.

The UK is contributing 11 staff to the AMM. In addition, we continue to offer practical help on the ground in our role as EU Presidency. Cooperation between the EU and ASEAN has worked well, with the Headquarters and district officers composed of a mix of EU and ASEAN staff. The principal Deputy Head of Mission is a Thai.

There are still risks ahead. The next stages of decommissioning will take place in southern and western Aceh, areas with weak links to the GAM leadership—potentially testing its ability to control its followers on the ground. Some local army commanders continue to be suspicious of, and reluctant to co-operate with, the AMM. Opposition to the perceived concessions made by the government is currently muted, but could easily re-emerge. In the longer-term, economic development in Aceh is essential to cement a sustainable peace. The Government of India (GoI) has started planning and co-ordination of development assistance, but their capacity to implement plans in this area is limited.
This is not to undermine the achievements so far, which are unprecedented in Aceh. But they are still, unfortunately, reversible. We, as EU Presidency, will continue to encourage both sides to stick to the spirit of the peace agreement and contribute where possible to further building of trust between the GoI and the GAM. We are also supporting the economic regeneration of Aceh through our development assistance.

8 November 2005

ESDP: PALESTINE

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

I wanted to update you and your Committee on preparatory work that may lead to an ESDP mission in Palestine.

At the 18 July GAERC, EU Foreign Ministers discussed the possibility of an ESDP mission to build on the work that the EU Co-ordination Office for Palestine Police Support (EU-COPPS) is undertaking to support the development of the Palestinian police. Since then the Council Secretariat has been taking forward planning and completed a fact finding mission on 4 October. This visit confirmed the Political and Security Committee’s recommendation that a new mission should represent a measured increase over the EU-COPPS mission. Proposals currently being considered would see the staff increase from 6 to 33.

DfID currently funds running costs for EU-COPPS but this is due to finish at the end of this year. Our aim has been to find a way to continue Palestinian policing support with greater EU support and funding. The proposal envisages a three year mandate, longer than normal, but considered necessary if the EU is to support the Palestinian’s comprehensive Police Development Programme. This programme includes both institutional change and capacity building together with Rule of Law elements, with the aim of creating an effective Palestine police force.

The next steps will be for the Secretariat to take forward detailed planning on the basis of the fact finding mission, particularly in relation to the size, structure and mandate of the mission. They will also clarify the security, logistic, legal and financial requirements of the mission. A draft Joint Action will be discussed by Brussels Working Groups over the coming weeks, with view to seeking agreement at the 7 November GAERC. The ESDP follow-on mission would be expected to launch from the end of DfID-funding on 1 January 2006.

Personnel requirements should be determined over the coming weeks and we will be looking at how the UK can best contribute to the ESDP operation as these details become clearer.

I will try to ensure that your Committee is kept informed of developments as soon as they occur. But given the fast moving nature of ESDP operational planning, I wanted to write to you now. When the Joint Action becomes available, I will forward this under the cover of an Explanatory Memorandum.

Separately from our work in supporting the Palestinian Civil Police, there has been speculation about a possible EU role in Gaza. However we have not yet been approached by the parties. We would examine closely any proposals which they presented to us.

14 October 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Following my letter of 14 October 2005 I wanted to update you and your committee on preparatory work that may lead to a second ESDP mission in Palestine.

In his letter of 2 November 2005 to the Foreign Secretary as President of the EU Council of Ministers, the Special Envoy for Disengagement, Mr James Wolfensohn, outlined the agreement in principle between the Israeli Government and the Palestinian Authority to a third party presence at the Rafah Crossing Point. This third party would work to increase the capacity of Palestinian Authority services at Rafah, to build confidence, and to monitor the implementation of the Framework Agreement between the two parties allowing for the reopening of the border (due by mid-late November). The Palestinian Authority and the Israeli Government have invited the EU to take on this role.

At the 7 November General Affairs and External Relations Council (GAERC), EU Foreign Ministers agreed in principle to respond positively to this request, and we expect to start planning imminently for an EU mission. This is likely to take the form of an ESDP mission co-ordinated with Commission programmes. The Presidency, with the Commission and Council Secretariat, are conducting an initial joint visit to the area to discuss the situation with the Israeli Government and the Palestinian Authority and to identify options for a possible early deployment. A Fact Finding Mission (FFM) to assess the requirements was deployed on
9 November. Personnel and financial requirements will be determined as the FFM reports and we will be looking at how the UK can best contribute as these details emerge.

The Government supports this initiative. If the EU decides to deploy a mission to Rafah there are a number of issues we will want to see addressed during the planning process. A clear mandate for the EU deployment will be needed within the terms of the Framework Agreement and there should be a clear timeframe linked to progress in building Palestinian capacity assessed through an agreed evaluation process. The EU should not be required to assume an executive role substituting for the Palestinians and adequate security should be provided for EU personnel at all times.

I will try to ensure that your Committee is kept informed of developments as soon as they occur. But given that any plans are likely to develop rapidly, I wanted to write to you now. When the Joint Action becomes available I will forward this to you under the cover of an Explanatory Memorandum.

10 November 2005

EU ACCESSION NEGOTIATIONS WITH THE REPUBLIC OF CROATIA

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

I am writing following the decision on 3 October by the General Affairs and External Relations Council to open EU accession negotiations with the Republic of Croatia. The Council also made some minor technical adjustments to the negotiating framework.

I welcome the decision to open accession negotiations with Croatia on 3 October and am delighted this happened under the UK Presidency. The process of EU enlargement will stimulate reform in Croatia and contribute to the security and prosperity of the EU as a whole.

The decision to open negotiations followed assessment by Carla del Ponte, the Chief Prosecutor of the Hague Tribunal, that Croatia was fully co-operating with the Tribunal. I welcome this assessment. As you know, the Council postponed the opening of negotiations in March in the absence of full co-operation. The Council conclusions will form part of the negotiating framework. They set out that sustaining full co-operation with the ICTY will remain a requirement for progress throughout the accession process, and that less than full co-operation with the ICTY at any stage will affect the overall progress of the negotiations and could be grounds for triggering a suspension mechanism.

Croatia must now align its legislation with the EU. The Commission will start the process of screening on 20 October. All phase 1 (didactic) screening will be carried out with both Turkey and Croatia jointly. Phase 2 (consultative) screening will be carried out with Turkey and Croatia separately. The Presidency expects the first chapter to be Science and Research. The Public Procurement and Competition chapters will also be in the first wave of screening. The opening of chapters is largely dependent on progress made by the Commission during the screening process, but the Commission expects to produce its first screening reports by early 2006.

Separately from this process, we will organise an Accession Conference with both candidates, to allow them formally to agree to external arrangements for the accession process and to brief them on screening plans. Additionally, the Commission will produce an annual report on progress on 9 November. In keeping with current practice, the Government will ensure progress reports are deposited for your Committee’s consideration.

14 October 2005

EU ACCESSION NEGOTIATIONS WITH THE REPUBLIC OF TURKEY

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

I am writing following the decision on 3 October by the General Affairs and External Relations Council, to open EU accession negotiations with the Republic of Turkey.

The opening of accession negotiations with Turkey was a priority for the United Kingdom’s Presidency of the European Union. This was an historic decision, from which the UK, EU and Turkey will benefit. It should strengthen the wide-ranging reform programme already pushed through in recent years, and give renewed impetus to further improvement to the rule of law, respect for human rights and democratic institutions. By standing by our promise to Turkey, we should make the European Union stronger, safer and more
competitive. The accession process also holds out the clear prospect of a satisfactory resolution of various regional issues, including disputes over rights in the Aegean and over Cyprus.

The Commission’s framework for negotiations with Turkey was also agreed on 3 October. This was in line with frameworks previously agreed for other candidate countries, but reflected the new requirements agreed at the December European Council, including the potential for a suspension of negotiations in the event of a “serious and persistent breach in Turkey of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law”. Among other areas covered, the framework highlights the importance of Turkey’s good neighbourly relations and a commitment to engage with Turkey in an intensive political and civil society dialogue.

Turkey, like all candidate countries, must align its legislation with the European Union’s. All sides accept this will be a long process. The Commission will start the process of screening the 35 chapters on 20 October. All phase 1 (didactic) screening will be carried out with both Turkey and Croatia jointly. Phase 2 (consultative) screening will be carried out with Turkey and Croatia separately. The Presidency expects the first chapter to be Science and Research. The Public Procurement and Competition chapters will also be in the first wave of screening. The opening of chapters is largely dependent on progress made by the Commission during the screening process, but the Commission expects to produce the first screening reports by early 2006.

Separately from this process, we will organise an Accession Conference with both candidates, to allow them formally to agree to the external arrangements for the accession process and to brief them on screening plans. Additionally, the Commission will produce its annual report on progress on 9 November. In keeping with current practice, the Government will ensure progress reports are deposited for your Committee’s consideration.

14 October 2005

EU BORDER ASSISTANCE MISSION FOR THE RAFAH CROSSING POINT, EUBAM RAFAH
(14643/05)

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

Thank you for the Explanatory Memorandum dated 21 November 2005 which Sub-Committee C considered at its meeting on 24 November. The Sub-Committee cleared the document from scrutiny.

We would like to emphasise that we consider this to be a very important development in the context of the Middle East Peace Process, and we hope that regular reports will be made to the General Affairs and External Relations Council on the progress and success of the mission.

We would also like to request that the Minister for the Middle East come to give evidence to Sub-Committee C on the progress of the mission and the European Union’s role in the Middle East Peace Process once the mission has been fully established (in around six months time).

24 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 24 November regarding the Explanatory Memorandum of 21 November on the EU Border Assistance Mission to Rafah.

I share the Committee’s view that this mission represents an important development within the wider Middle East Peace Process. We will be monitoring the mission’s progress closely. The General Affairs and External Relations Council (GAERC) will be regularly updated on the mission by the Council Secretariat during the Council’s regular Middle East discussion. The Scrutiny Committees will of course be updated on these discussions through a written ministerial statement following each GAERC.

I have alerted Kim Howells, as Minister for the Middle East, to your request that he gives evidence on the mission in six months time, once it has been fully established. It would be helpful if your Clerk would contact Dr Howells’ office to make the necessary arrangements nearer the time.

20 December 2005
EU CODE OF CONDUCT ON ARMS EXPORTS

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

I am writing to inform your Committee of the current state of play on negotiations on the Common Position on the EU’s Code of Conduct on Arms Exports, which are nearing completion.

The Presidency has over the last weeks made a concerted effort to reach agreement among Member States on the Code, including scheduling back to back meetings. As yet there is no agreement. The Code was not discussed by Foreign Ministers at the General Affairs and External Relations Council on 13 June or by Heads of State/Government at the European Council on 16 June. Partners are keen to reach agreement on the Code and there is a possibility that the EU may reach agreement in the next few weeks. The UK has successfully argued for further consideration at working level. One element in our so doing was that your Committee has not had the opportunity to scrutinise the matter as we and you would want. However, the UK would not ultimately wish to hold up the introduction of a proposal that would strengthen European defence export controls. The EU has made this issue a political priority and we would not wish to stand out against consensus.

We may therefore have to send your Committee a document at short notice. We do not as yet have a document but as soon as we do we will send an Explanatory Memorandum. As you know, we try to give you as much opportunity as possible to scrutinise documents. We are grateful for the help of your Committee and of the Clerks in managing business to enable us to do so.

24 June 2005

EU FOREIGN MINISTERS’ INFORMAL, GYMNICHT

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

The EU Foreign Ministers’ Informal meeting (Gymnicht) was held on 1–2 September at the Celtic Manor Hotel in Newport, Wales. My Right Honourable Friend the Foreign Secretary chaired the Gymnicht as Presidency.

The Foreign Secretary made a short intervention at the start of the Gymnicht with regard to three different terrible incidents. The tragedy at the Khadamiya mosque in Baghdad, the terrible disaster that has resulted from Hurricane Katrina in the United States, and the first anniversary of the terrorist atrocity in Beslan.

The agenda items were covered as follows:

THURSDAY 1 SEPTEMBER 2005

Iran

Foreign Ministers discussed Iran’s unilateral decision last month to restart suspended nuclear fuel cycle activities. Foreign Ministers agreed that they would study the report by the IAEA Director General Dr Mohammed ElBaradei on 3 September and pursue consultations with other Board members on next steps. Iran’s human rights record was also discussed.

Russia

Foreign Ministers discussed the EU’s relationship with Russia and touched upon Belarus. Both EU-Russia Summit preparations (ahead of 4 October) and Belarus will be discussed, as necessary, at a future General Affairs and External Relations Council (GAERC).

Accession process

The Foreign Secretary invited Enlargement Commissioner Olli Reim to open up discussion of the accession process generally. On Bulgaria and Romania, the Foreign Ministers from both countries updated EU Foreign Ministers on the state of their preparations for EU membership. On Croatia, EU Foreign Ministers emphasised that negotiations should open as soon as the EU agreed that Croatia was cooperating fully with the International Criminal Tribunal in The Hague. On Turkey, EU Foreign Ministers discussed the outstanding issues to be resolved in advance of the opening of negotiations, scheduled for 3 October.
FRIDAY 2 SEPTEMBER 2005

Western Balkans

The Foreign Secretary invited High Representative Javier Solana to open discussion with an overview of forthcoming challenges. Foreign Ministers talked in detail about the support needed for Kai Eide (UN Secretary General’s Special Envoy for Kosovo) in his work to date and the further steps that need to be taken in Kosovo and the Western Balkans.

Avian flu

Foreign Ministers discussed the steps that need to be taken by the EU to ensure that there are adequate provisions to prevent its spread.

Arms Trade Treaty (ATT)

The Foreign Secretary gave a presentation to Foreign Ministers on proposals for an ATT and set out the key elements.

Migration

Foreign Ministers discussed the problem of the growing flow of illegal migrants to the EU, particularly in the Mediterranean region. Foreign Ministers welcomed the work of the Commission in developing a common approach to tackle illegal immigration, looking at long and short-term strategies.

United Nations Summit, 14–16 September

Foreign Ministers discussed the UN Summit (to be held in New York on 14–16 September) and the work that the EU and individual Member States are doing to secure an ambitious set of reforms.

Middle East Peace Process (MEPP)

Foreign Ministers were joined by the Croatian and Turkish Foreign Ministers at lunch. James Wolfensohn, Quartet Special Envoy for Disengagement, attended at the Foreign Secretary’s invitation. Foreign Ministers held a discussion about what had been achieved recently.

23 SEPTEMBER 2005

EU–IRAQ RELATIONS

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

A letter was sent to your Committee on 15 November 2004 outlining the EU package of assistance for Iraq that was presented to Prime Minister Allawi at the 5 November European Council. I would like to take this opportunity to update you on developments in the EU’s relations with Iraq.

Following conclusions from the 5 November 2004 European Council, and 21 February and 18 July 2005 GAERCs, the EU has provided support in the following areas:

— Constitution/Elections. The EU actively supported the electoral process resulting in the January elections (including through the deployment of experts to assist the UN effort), and has provided €20 million assistance to the UN to support the Constitutional process. The EU proposes to deploy further experts to work with the Independent Electoral Commission for Iraq on the forthcoming elections.

— Rule of Law/Police Assistance. The EU has launched an integrated Rule of Law and Police Training Mission for Iraq (EU JUSTLEX) with Offices in Brussels and Baghdad. The Baghdad liaison office is established and the mission has successfully started the training of senior officers of the police, correctional services, judges and prosecutors in EU Member States. Courses have so far been held in France, Italy and the UK, with over 100 trained so far. The mission aims to train around 700 in all. The Commission has been proposed and accepted as a joint sponsor (with the UK as Presidency and United Nations Assistance Mission for Iraq (UNAMI)) of the Sectoral Working Group on the Rule of Law, as part of the donor co-ordination structure established with the Iraqi Transitional

Government. EU involvement in this group should allow EU JUSTLEX to operate more effectively in support of the Iraqi government's priorities.

— Contractual relations on Trade Co-operation and Political Dialogue. The EU and Iraq’s commitment to a long-term relationship is demonstrated by their desire to promote greater trade and political co-operation through contractual relations. The Commission is establishing technical assistance programmes on trade and customs to enhance Iraqi capacity to enter a Trade and Co-operation Agreement with the EU. Alongside this, the EU has agreed to formalise political dialogue with Iraq: on 21 September 2005, the EU and Iraq signed a Joint Political Declaration. The first round of Political Dialogue under the Declaration is planned to take place during a Political Directors’ Troika visit to Iraq later in the year.

— GSP (Generalised System of Preferences) trade preferences. The Commission is working to ensure that Iraq can benefit from GSP (Generalised System of Preferences) trade preferences which, once implemented, will help to strengthen and diversify the Iraqi economy and stands ready to send experts to help the Iraqi authorities to set up the administrative system necessary to implement GSP.

— An additional aid package of €200 million for 2005 has been programmed, aimed at restoring public service and supporting the political process, civil society and human rights.

— The Commission intends to open a Delegation Office in Baghdad later this year. This will help the Commission fulfil its commitment to assist Iraq with capacity building in the trade and energy sectors, and in implementing the GSP trade preferences. And it will help in preparing to begin negotiations on a third country agreement in due course.

I am sure that you will agree with me in that we have made good progress in establishing a positive and mutually beneficial EU-Iraq relationship over recent months. Through the remainder of our Presidency we look forward to deepening these ties.

4 October 2005

EU-PALESTINE: CO-OPERATION BEYOND DISENGAGEMENT—TOWARDS A TWO STATE SOLUTION (13521/05)

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

Thank you for your EM dated 25 October 2005 which Sub-Committee C considered at its meeting on 3 November. The Sub-Committee decided to hold this document under scrutiny.

The Committee considers this Communication on EU-Palestinian co-operation beyond disengagement to be very important. We are disappointed that the Government did not provide a fuller account of HMGs view of the Commission’s proposals, particularly the suggestions directed specifically to the Council.

The Committee would accordingly like to know the Government’s view on the Commission’s proposals that the Council:

— agree a better mechanism for co-ordination of EU actions, reflecting the Commission proposal to act as a “clearing house”;

— confirm the objective of the negotiation of an Association Agreement with the Palestinian Authority, as well as a number of intermediate steps; and

— consider the creation of an EU Agency for Reconstruction in Palestine, along the lines of the EU Agency for Reconstruction in Kosovo?

In general, the Commission also invited the Council to endorse the objectives and priorities set out in the Communication. Does the Government have a view on priorities in what is a long list of desirable actions in support of the economic and political viability of the Palestinian Authority? Should the Member States co-ordinate their aid according to agreed priorities?

Finally, the Sub-Committee discussed the considerable problems of corruption plaguing the Palestinian Authority. Could the Government give a fuller explanation of the conditionality that will be applied to the aid? In this Communication the Commission has proposed a very considerable increase in aid to the Palestinian Authority. Is the Government fully satisfied that there will be sufficient control on the use of this money?

3 November 2005
Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 3 November requesting further details about the Government’s position on the above-mentioned Commission Communication. I hope this response, which has been agreed with the Department for International Development, provides you with a fuller account of the points that you have raised.

1. MECHANISM FOR CO-ORDINATED EU ACTIONS-CLEARING HOUSE

We strongly support enhanced donor co-ordination within the Palestinian territories. DFID has seconded a senior official to James Wolfensohn’s team to work on strengthening donor co-ordination systems. Donors and the Palestinian Authority (PA) are now close to finalising simplified local aid co-ordination structures. These new arrangements will focus on the four key areas of infrastructure, governance, economic and social/humanitarian issues. The EU will act as lead donor on governance issues.

A good mechanism to co-ordinate donor assistance is essential. In our view, the recently established joint PA-donor Local Aid Co-ordination Committee should undertake this clearing house role.

2. COMMISSION’S OBJECTIVE TO COMMENCE NEGOTIATIONS IN DUE COURSE WITH THE PALESTINIAN AUTHORITY ON AN ASSOCIATION AGREEMENT

An Interim Association Agreement on Trade and Co-operation between the European Commission and the Palestinian Authority came into force on 1 July 1997. We believe that this is an important framework to contribute to the social and economic development of the West Bank and Gaza Strip as well as to foster closer relations between the EU and the PA, in particular in the field of economic co-operation. We therefore welcome the Commission’s renewed efforts to ensure the full implementation of the Agreement. We also support the Commission’s proposals to overcome difficulties faced by Palestinian and EU producers in gaining access to their respective markets as well as to press for full recognition of the Interim Association Agreement by Israel.

Alongside the Interim Association Agreement; the EU and the Palestinian Authority have agreed a European Neighbourhood Policy (ENP) Action Plan. The inclusion of the Palestinian Authority in the ENP reflects the political importance of the EU’s relationship with the Palestinians. The Action Plan defines the way ahead for the next three years and covers a number of key areas for specific action. It also builds on and reflects the existing state of relations with the Palestinian Authority and includes commitments on the fight against terrorism and the proliferation of weapons of mass destruction. We believe that the approach in the Action Plan rightly combines opportunities for closer co-operation in areas of common interest, with a stronger desire from the EU to establish a set of shared common values. We hope that the Action Plan will provide support and impetus to the Palestinian Authority’s own reform programme aimed at improving governance and services for the Palestinians. In setting out jointly agreed areas for reform, the Action Plan will also serve as an effective tool for targeting technical assistance.

Looking towards the longer-term, we support the Commission’s ambition that upon the establishment of an independent Palestinian State, the EU should commence negotiations on a full Association Agreement, similar to those that have been agreed with other third countries in the region.

3. EU AGENCY FOR RECONSTRUCTION IN PALESTINE

We think the idea of creating an EU Agency for Reconstruction in the Palestinian territories a good one, on the basis that it may well increase the effectiveness of development assistance. There are risks of extra bureaucracy and duplication, which would need to be addressed. It is particularly important that such an Agency complements existing and proposed donor structures, works closely with the Wolfensohn team and contains staff who are skilled in civil policing, governance, institutional development and donor co-ordination. It is also important that the Agency is fully in touch with diplomatic efforts on the Middle East Peace Process and that its structure is relatively light. Once the Commission decides to take forward its planning for the Agency we will liaise with it on its plans to help to ensure that our concerns are addressed.

4. PRIORITIES

It is important that EU Member States co-ordinate their aid according to agreed priorities. Pooled and harmonised funding arrangements within the Palestinian territories are already beginning to develop momentum. These include the World Bank’s Reform Trust Fund, through which a number of donors including the UK provide budget support to the PA. The EU Coordinating Office for Palestinian Police Support (EU COPPS) brings together policing expertise from across the EU to support the capacity
development on security. The new Infrastructure Facility should do the same for infrastructure. It is particularly important that future donor assistance is focused on responding to the various priorities identified within the PA’s forthcoming three-year Medium Term Development Plan (MTDP).

We support the various economic priorities identified in the Commission’s Communication through both our provision of budget support to the Palestinian Authority and of technical assistance: The Government’s approach is particularly centred on support for four of the Commission’s economic priorities:

— In providing specialist assistance to the building up of Palestinian capacity in customs administration and border controls. In particular, we are contributing to the EU’s “third party” monitoring role at the Rafah checkpoint that will enable the direct export of Palestinian goods. The Government fully recognises the importance of improved access, trade and movement to Palestinian economic viability and the possibility of successful future peace negotiations;

— To improve the management of public finances by providing budget support (both directly through bilateral funding and indirectly through our 18 per cent contribution to EC funding) in response to the Palestinian Authority’s attainment of agreed financial reform benchmarks. The purpose of the existing budget support instrument is to support Public Financial Management reforms and better planning and budgeting. Future European donor efforts centred around a redesigned budget support instrument will rightly ensure a greater focus on Palestinian identified priorities and increased aid predictability;

— In providing support to the private sector through supporting the domestic enabling environment for investment and various initiatives to support domestic enterprise (for example, the establishment of loan guarantee schemes); and

— In developing bilateral and regional trade relations at the point of final status negotiations. In the meantime, we along with other EU Member States will work closely with the Commission in supporting James Wolfensohn’s efforts on improving movement, access and trade.

We will also continue to ensure that all-important needs are covered through the Ad Hoc Liaison Committee. The Commission’s political priorities that the UK Government focuses on are:

— Improving security, as progress on Palestinian delivery of their security commitments is crucial. The EU should continue to work closely with the US Security Co-ordinator (General Dayton has been appointed as successor to General Ward to lead on the enhanced mission) and the Palestinians on this. The EU is committed to continued and enhanced support for Palestinian civil policing (eg through EU COPPS) in order to help build the necessary security environment in Gaza following Israeli disengagement;

— Making public administration more effective as it is vital that the Palestinians develop credible and effective institutions in order to develop effective control of Gaza and the northern West Bank. Only then will the Palestinians in these areas enjoy a greater quality of life and the Israelis benefit from greater security. This in turn should create an environment where both sides can make progress on their Roadmap commitments; and

— Addressing the refugee issue beyond immediate humanitarian needs through our support for the current UNRWA external review.

5. Corruption Issues

Much of the Commission’s support to the PA has been through providing budget support through the multi-donor Reform Trust Fund. Disbursement of funding is conditional on the achievement of benchmarks for reform, progress against which is carefully monitored. These conditions have helped the PA improve its financial control and management and reflect the EU’s commitment that aid should be properly accounted for, used for the intended purposes and represent value for money. Donors also agree that there is a need to refocus a future Trust Fund. In order to address structural change, the new programme will need a set of broader conditions encompassing development planning, recurrent expenditures and reforms that address the size and efficiency of the civil and security services.

The European Anti-Fraud Office (OLAF) has recently completed an investigation into alleged irregularities concerning EC budget assistance to the PA. This investigation found no conclusive evidence of support of armed attacks or unlawful activities financed by EC contributions to the PA budget. However, primarily due to the fact that audit capacity in the PA was still underdeveloped, OLAF felt that the possibility of misuse of its budget could not be excluded. Strengthening audit is one of the requirements under the Reform Trust Fund.

29 November 2005
EU RULE OF LAW MISSION “LEX” FOR IRAQ

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

On 21 February 2005 I sent your Committee an Explanatory Memorandum on a Joint Action to establish an EU rule of law mission for Iraq (EUJUST LEX). Article 9 of this Joint Action authorises the Political and Security Committee (PSC) to take the relevant decisions in accordance with Article 25 of the Treaty of the European Union, including the powers to appoint the head of the mission, acting on a proposal from the High Representative Javier Solana, the Head of Mission.

I therefore wanted to inform your Committee that on 8 March the PSC formally appointed Mr Stephen White, a British national put forward by the FCO, to this post. Mr White has an exceptional professional background, especially in the field of criminal justice and policing. He has long-standing policing experience, including with the Police Service of Northern Ireland (formerly the Royal Ulster Constabulary). He has wide experience of police training, security, community policing, and advising international police departments in South Africa, Botswana, Bulgaria, Serbia, Indonesia, USA, Canada and Mongolia.

Mr White is currently a self-employed consultant specialising in police leadership and security sector reform. He has recently worked with the EU as the senior police expert in the EU’s Expert Team for Iraq (December 2004 to January 2005). He played a key role in this team in developing the concept for the EU’s rule of law mission for Iraq. His ability to lead and manage a multi-disciplinary team operating under challenging conditions was clearly demonstrated through his experience (July 2003 to January 2004) in Iraq as Director of Law and Order for the Coalition Provisional Authority. In this capacity he was responsible for reconstruction and reform of the court service, prison service, and police including establishment of a training academy in Basra and border and immigration control.

In addition to his extensive practical strategic skills he is a highly qualified academic, with a Bachelor of Science in Business Administration, a Masters of Science in Organisational Development, a Post-Graduate Diploma and a Masters in Applied Criminology.

It is the firm belief of High Representative Javier Solana, the Government and other EU Member States that Mr White has the right background to steer the mission towards the results and achievements needed in the police area in Iraq at this important time. I attach his CV for your consideration (not printed).

11 March 2005

EU–RUSSIA FOUR COMMON SPACES

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

I attach an Explanatory Memorandum on the road maps for the EU-Russia Four Common Spaces (not printed). As you will know from previous correspondence, we had hoped to allow your Committee time to scrutinise the text of the road maps prior to their approval by the Council notwithstanding the dissolution.

I am sorry that this was not in the end possible. Negotiations were taken right up the EU-Russia summit on 10 May, where agreement was finally reached. The road maps have been designated as political documents. They are not legally binding and will not be submitted to the Council for formal approval. The Council will, however, be invited to take note of the road maps. I hope you will understand that, in order to preserve the confidentiality of the negotiating process, we were unable to share the road maps with you during the negotiations between the EU and Russia.

7 June 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your Explanatory Memorandum dated 7 June which was considered by Sub-Committee C at its meeting on 16 June.

The Sub-Committee cleared the document from scrutiny. We note that during the UK’s Presidency of the EU, you plan to work closely with other EU Member States and Russia to secure greater co-operation within the framework of the Four Common Spaces; and that there is another EU-Russia Summit planned for the Autumn which will provide an opportunity to cement progress (para 11, EM). We would like to receive an update following the Summit in order that we may examine the progress that has been made.

20 June 2005
Letter from Rt Hon Douglas Alexander MP to the Chairman

As requested in your letter to me of 20 June, I am writing to update the Committee on progress made with regard to the roadmaps for the Four Common Spaces, following the EU-Russia Summit in London on 4 October. The following were the key points noted at the summit.

The summit welcomed the ongoing work on the Common Economic Space, which aims to bring down barriers to trade and investment and promote reforms and competitiveness based on the principles of non-discrimination, transparency and good governance. The summit noted the importance of Russia’s WTO accession as a factor in establishing these core principles, and agreed to intensify contacts to resolve problems over the implementation of commitments on reform of the system of Siberian over-flight payments. There was a particular focus at the summit on closer EU-Russia co-operation in the field of energy. The summit noted ongoing work under the EU-Russia Energy dialogue and welcomed the results of the first meeting of the Permanent Partnership Council of Energy Ministers, which agreed specific projects for taking work forward on energy efficiency, energy infrastructure, investments and trade-related energy issues.

The summit welcomed close and growing co-operation between the EU and Russia on climate change, including work to ensure the best possible conditions for the implementation of the Kyoto Protocol. The summit also agreed on the importance of an active dialogue on how to continue international co-operation on climate change after the end of the first commitment period of the Kyoto Protocol in 2012.

On the Common Space of Freedom, Security and Justice, the summit welcomed the conclusion of negotiations on visa facilitation and readmission agreements, which will open the way for easier travel and contacts across the European continent, while creating conditions for effectively fighting illegal migration. The summit also noted work ongoing under this Space to tackle common challenges including the fight against terrorism, drugs and organised crime, and the need to improve border management and migration controls. The EU side stressed in particular the importance of safeguarding human rights in the fight against terrorism. This led to a discussion of the situation in Chechnya. President Putin confirmed that the forthcoming parliamentary elections in Chechnya on 27 November would be held in accordance with international standards. The summit noted the results of the second round of EU-Russia Human Rights consultations held in Brussels on 8 September where the EU raised concerns about the situation of NGOs, judicial reforms, human rights defenders and media freedom. The summit looked forward to further rounds of Human Rights consultations in the future.

On the Common Space on External Security, the EU briefed Russia on the latest plans for a Border Assistance Mission in Moldova, which aims to address the security concerns associated with illegal trade across the Moldova-Ukraine border, in particular the Transnistrian segment. President Putin reiterated Russia’s willingness to discuss all international issues with the EU, and confirmed that Russia was prepared to work with the EU on Transnistria. The EU also expressed concerns about the situation in Belarus and in Uzbekistan, following the continued Uzbek refusal to allow an independent inquiry into the events in Andizhan on 12–13 May. The summit welcomed the positively developing dialogue and co-operation between the EU and Russia on terrorism and crisis management.

With regard to the Common Space on Research, Education and Culture, the summit took note of the new impetus given to the Science and Technology Agreement. The summit also welcomed progress made towards the establishment of the European Studies Institute in Moscow.

14 October 2005

EU STRATEGY AGAINST PROLIFERATION OF WEAPONS OF MASS DESTRUCTION:
OPCW ACTIVITIES

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

Thank you for your Explanatory Memorandum dated 10 November 2005 which Sub-Committee C considered at its meeting on 17 November. The Sub-Committee cleared the document from scrutiny.

We wholly endorse the proposed support for the OPCW which is in keeping with the recommendation in our recent Report, Preventing Proliferation of Weapons of Mass Destruction: The EU Contribution\(^1\) that the European Union should seize every opportunity to strengthen the global counter-proliferation regimes and instruments.

Whilst producing that Report, the six-monthly reviews of the Strategy were made available to us and proved extremely useful in examining the progress that had been made in the implementation of the Strategy. We would like to take this opportunity to ask that these progress reports be made available to us on a regular basis. We expect the next one to be produced in December and look forward to receiving it along with the Government’s view of the progress made on the Strategy to date.

18 November 2005

EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM) AND THE PEOPLE’S REPUBLIC OF CHINA: R&D CO-OPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY (15249/04)

Letter from the Chairman to Mike O’Brien MP, Minister of State, Department of Trade and Industry

Thank you for your letter of 18 February. The document has now been cleared by Sub-Committee C at its meeting on 10 March 2005.

We would, however, like to see a copy of the revised text of the agreement in order to reassure ourselves that no provisions relating to the retransfer of nuclear materials remain.

11 March 2005

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

Thank you for your letter of 11 March concerning the above agreement between Euratom and China.

In line with the conclusions drawn at the meeting of the Working Party on Atomic Questions (WPAQ) on 10 February, you will find attached a consolidated version of the draft agreement, received in this Department on 22 March (not printed).

I hope you will be satisfied that the revised texts takes account of any earlier concerns.

16 May 2005

EUROPEAN DEFENCE AGENCY STEERING BOARD MEETING, MAY 2005

Letter from Rt Hon John Reid MP, Secretary of State, Ministry of Defence to the Chairman

You will have seen the Government’s recent response to the House of Lords European Union Committee’s report on the European Defence Agency (EDA). In this response, we highlighted our commitment to improving the transparency of EDA-related business, in particular the Ministerial level meetings of its Steering Board and have suggested that there should be discussions between Government and Committee officials on this issue. In the meantime, you will wish to be aware that the next Ministerial Steering Board is due to take place on 23 May in Brussels. I would therefore like to take this opportunity to inform you of the main items we expect to be discussed at this meeting.

Whilst I do not yet have a formal agenda for the meeting, I am enclosing a draft agenda which has been circulated for the Steering Board’s Preparatory Committee meeting on 13 May. As you will see, there are several items proposed for agreement by the Steering Board as an A point, including the Rules of Procedure by which the Steering Board operates and an extension to the timescale in which the Steering Board can review and amend as necessary the Financial Provisions applicable to the EDA. In addition, the EDA has negotiated Administrative Arrangements with Norway and Turkey, in accordance with Article 25 of the Joint Action establishing the EDA. These arrangements may be approved by the Steering Board on 23 May, depending on their progress through other Council bodies. The Government supports the timely conclusion of these arrangements to aid the continuation of consultation and information exchange with the non-EU members of the Western European Armaments Group.

Turning to the more substantive elements of the meeting, the Chief Executive is expected to present the Steering Board with an update of progress made so far in implementing the EDA’s work programme for 2005. Much of the discussion at the meeting is likely to focus on progress made on the four flagship projects: Command, Control and Communications, Armoured Fighting Vehicles, Unmanned Air Vehicles and the European Defence Equipment Market. With regard to the latter, it is expected that the Steering Board will discuss the collection of information on Member States’ invocation of Article 296 of the EU Treaty in their defence procurements.

As I am sure you will appreciate, the agenda is subject to last minute changes. However, I hope that this will give you a flavour of the issues to be discussed by the Steering Board later this month. I shall of course ensure that you are informed of any significant changes to the enclosed draft agenda should they so arise.

19 May 2005

Letter from Rt Hon John Reid MP to the Chairman

You may recall that I wrote to you on 19 May to tell you about the meeting of the Ministerial Steering Board of the European Defence Agency (EDA) that I was to attend in Brussels on 23 May. I would now like to inform you of the outcome of this meeting.

I am enclosing the minutes of the meeting that were circulated by the EDA on 27 May (Annex A). The Steering Board took two principal decisions in relation to two of its four “flagship projects.” First, we decided to task the EDA to collect data from the participating Member States (pMS) on when they invoke (or not) Article 296 of the Treaty of the European Community, which allows member states to derogate from EC public procurement rules on National Security grounds. The Government believes the information will help us progress towards the implementation of a voluntary intergovernmental regime to open up European Defence Equipment Markets and improve competitiveness.

Secondly, in response to a report on Armoured Fighting Vehicle (AFV) programmes, we agreed that consolidation of demand in Europe was necessary and urgent, and instructed the Agency to work with pMS to this end, without jeopardising programmes to which nations are already committed.

The Government supports this initiative and I made it clear that we would be prepared to cooperate, noting that our FRES programme, was one of the largest and most mature “next generation” AFV programmes, and that there should be no delay in the FRES programme as a result.

The Chief Executive also briefed us on the early work the Agency is doing on its two remaining flagships, Unmanned Aerial Vehicles and Command, Control and Communications.

The Head of the Agency, Dr Solana, briefed the Steering Board on early indications for its future work programme and resource requirements, concluding that a further Ministerial Steering Board would be needed in the autumn for Ministers to start to look ahead. I offered to host this meeting in the United Kingdom. Our plan is to hold this at RAF Lyneham in October in association with a capability demonstration and informal working meeting of Defence Ministers held under the UK Presidency of the Council of the EU.

Finally, the Steering Board took two decisions “A Points”: the adoption of the Steering Board’s Rules of Procedure and an extension to the timescale in which the Steering Board can review and amend as necessary the EDA’s Financial Provisions.

13 June 2005

Annex A

EDA Steering Board minutes of the Fifth Meeting Defence Ministers’ formation
(Brussels, 23 May 2005)

The Steering Board of the European Defence Agency held its fifth meeting in Brussels on 23 May 2005 (the third one in Defence Ministers formation), immediately after the meeting of the General Affairs and External Relations Council/Defence.

The meeting was chaired by the Head of the Agency, Mr. Solana.

1. ADOPTION OF THE AGENDA

The draft agenda was adopted.

2. “A POINTS”

Operational conclusions

The Steering Board decided to:

— propose to the Council a one-year extension of the review of the Financial Provisions, as set out in the SB Decision enclosed (Encl: SBD No 2005/01);
— adopt its Rules of Procedure as set out in the SB Decision enclosed (Encl 2: SBD No 2005–02).
3. Progress Report

The Chief Executive of the Agency, Mr. Witney, made a presentation introducing the annotated version of the 2005 EDA Work Programme already circulated before the meeting (Ref: EDA Information Paper 2005–01), pointing out that substantive work had so far mainly focussed on the four flagship projects and the Council-mandated work (ECAP Evaluation and Headline Goal 2010 support). He stressed that successfully delivering the year’s ambitious agenda would depend on continuous and constructive support from the pMS.

4. European Defence Equipment Market

(a) In his introduction, the Head of the Agency recalled that the Steering Board (in NADs formation on 2 March) “decision to decide” by the year-end on instituting an intergovernmental and voluntary regime for opening European defence markets was a bold and challenging step—and underlined that much work was to be done to have a sound basis for a “Go” decision by November.

(b) The Commissioner for Enterprise and Industry, Mr. Verheugen, presented the Commission’s current efforts and achievements in the following areas:

- defence procurement: intention to increase competition on contracts not covered by Art 296. In this regard, the EDA’s idea of a Code of Conduct which would be complementary to the Commission’s efforts was supported;
- intra-EU transfers of defence-related goods: ongoing consideration of best way forward following the external study assessing the obstacles to trade within the EC;
- mapping of the European DTIB: launching of an exercise to assess the EDTIB’s competitiveness with the Joint Research Centre’s assistance; and
- European Standardisation Handbook on defence procurement: concrete example of co-operation between defence Ministries’ standardisation bodies and industry with the Commission.

Mr Verheugen offered co-operation with the Agency on bringing these matters forward:

- intra-EU transfers: discussion to be engaged on the line to take before launching wider consultations;
- mapping EDTIB: continuation of close contacts and transparency on the development of this knowledge base; and
- standardisation: invitation to EDA to promote the use of the European Standardisation Handbook in contracts placed by MS.

Lastly Mr. Verheugen informed about the current preparation of a Workshop to take place in Brussels on 11 July, which he would like to open together with Mr Solana, to present and discuss the Commission’s activities on defence industrial and market issues.

(c) In the discussion the Agency was encouraged to pursue its work on the “Code of Conduct” approach. More specifically, interventions from participating Member States stressed the following remarks:

- “freedom of choice” is important (no obligation to buy from a pre-selected supplier);
- issues such as SMEs (for them to get a fair chance in the EDEM), offsets, and Security of Supply (expanding the practices already established under LoI to non-LoI pMS) need to thoroughly addressed to create the EDEM for the mutual benefit of all pMS;
- focus should be primarily on reducing duplication, inefficiencies and delays which affect front line Capabilities (efficient co-ordination, transparency etc);
- competitive EDEM depends on fair market conditions (level playing field); and
- new challenges and the dual use possibilities or opportunities should be considered in developing capabilities.

(d) One delegation announced its intention to circulate a non-paper on the regime for opening European defence markets within Europe.

Operational conclusions

The Steering Board decided to task the EDA to collect data from the pMS on the invocation (and non-invocation) of Article 296 on the basis of a specific structure described in the enclosed SB Decision (Encl 3: SBD No 2005–03).
5. Other “Flagships”

5.1 UAV and C3

(a) The Chief Executive presented the Agency’s work on the C3 and UAVs flagship projects:

— On C3: the study prepared by the Agency and the EUMS had been delivered to EDA Chief Executive and DG EUMS on 12 May. Key issues identified included downwards connectivity from OHQs; lack of defined “information exchange requirements”; lack of capacity for high speed secure communications, lack of coherent European approach to software defined radio. Detailed proposals/road map were to be presented to the Capabilities Steering Board on 21 June.

— On UAVs: Agency had started “mapping the landscape” (requirements, R&T efforts, programmes, industrial capabilities), with a presentation to the R&T SB on 22 April. Experts would meet in June to identify common technology demonstration requirements would be placed. Long Endurance UAV capability requirements in wider ISTAR architecture through migration of ECAP PGs into EDA integrated capability development structure.

(b) One pMS informed about its ongoing efforts with a number of European partners to find possible co-operation schemes for the Euromale project, and announced its intention to report on that at the next ministerial SB.

(c) The Head of the Agency concluded that these two flagships were good examples of where the Agency must and can, with the help of pMS, make a difference.

5.2 Armoured Fighting Vehicles (AFVs)

(a) The EDA Chief Executive presented the work of the Agency (Ref: EDA Note for the SB No 2005–02 and EDA Information Paper for the SB No 2005–02). He highlighted the fragmentation of the European landscape (of requirements, programmes, R&T and industry), and explained the proposed six action-lines.

(b) One pMS warned that efforts to go ahead with using external consultant services focusing on European industrial strengths/capabilities and relevant national industrial interests should remain within the limits of EDA’s operational budget for analytical support.

(c) The Head of the Agency encouraged the pMS to all convey in their capitals the agreed message that things could not go on as they were now; and that we must get the work started and find a way to change.

Operational Conclusions

The Steering Board

— agreed that consolidation of demand for AFV in Europe was necessary and urgent—for operational, economic and industrial reasons;

— instructed the Agency to:

— encourage near-term co-operation on pMS AFV programmes due to be contracted in the near future, without jeopardising or causing detriment to ongoing national procurement programmes already under commitment;

— work with those pMS who plan to introduce to service 2010–15 “next generation” AFV, aiming to develop a common staff requirement and programme, with high commonality of platform and sub-systems solutions, and associated joint research and technology demonstration (relevant work under LoI could serve as a useful basis);

— conduct by the end of the year an AFV-related study using external consultant services focusing on European industrial strengths/capabilities and relevant national industrial interests, including market analysis in and outside Europe;

— encouraged the Agency to take the following further steps towards broader collaboration in the AFV sector:

— expand the definition work in due course on staff requirements to “new generation” Infantry Fighting Vehicles targeting to meet the pMS demand 2020+;

— promote “user-clubs”;

— support expanding European defence standardisation efforts in the AFV area towards more commonality and enhanced interoperability.
6. WAY AHEAD—PROSPECT FOR THE REST OF THE YEAR

(a) The Head of the Agency underlined the volume of business that was coming forward to EDA later in the year, emphasising in particular some forward-looking work as specified in the Agency’s 2005 Work programme: Long Term Vision beyond 2010, strategic targets, and the medium-term plan for the Agency, depending on the 3-year financial framework.

(b) The SB therefore agreed on the suggestion made by Mr Solana to schedule an additional Ministerial SB in the early autumn, to allow Ministers to prepare for the Council decision adopting the 3-year financial framework (expected at the 21 November GAERC). The UK Secretary for Defence invited the SB to meet back-to-back with the EU Defence Ministers’ Informal to take place on 13 October 2005.

(c) Lastly, the Head of the Agency gave preliminary information on the estimate budget for 2006 that the Joint Action required him to give to the SB by the end of June: an overall increase in pMS’s contributions of around €3 million—i.e an increase from €20 million to €23 million. This amount would reflect in particular the need for a few more staff assuming for example that EDA would take over WEAO R&T functions, and institute a Code of Conduct in defence procurement; as well as the need for an increase of the Agency’s operational budget (what it could spend on operational analysis and for feasibility studies).

(d) One pMS presented a proposal for the Agency to assemble in a scorecard a comprehensive set of “defence economy” indicators at European scale.

The Head of the Agency announced that the Agency would incorporate this proposal in the EDA’s work for the autumn on data, indicators and targets across the range of the EDA functions.

(e) One pMS complained about the lack of appointments of its nationals in the Agency’s staff.

Conclusion

(a) The Head of the Agency thanked the Members of the Steering Board for a productive meeting, which allowed the Steering Board, in particular, to:

— adopt a Decision on data-gathering in the context of Article 296 (EDEM);
— support the Agency’s efforts on C3 and UAVs; and
— agree that consolidation of demand in the field of AFV was necessary and urgent, and adopt the proposed actions-lines.

(b) The Head of the Agency confirmed that the next 2005 meetings of the Steering Board in Defence Ministers’ formation were to take place on 13 October (UK) and 21 November (Brussels).

25 May 2005

EUROPEAN DEFENCE AGENCY STEERING BOARD MEETING, NOVEMBER 2005

Letter from Rt Hon John Reid MP, Secretary of State, Ministry of Defence to the Chairman

The next European Defence Agency (EDA) Steering Board meeting is due to take place on 21 November. I am committed to improving the transparency of EDA-related business, and in particular the Ministerial level meetings of its Steering Board. I would therefore like to take this opportunity to inform you of the main items I expect to be discussed at this meeting. I also enclose for your information the draft agenda (not printed) and draft papers that have been circulated by the EDA. The final papers for this meeting will not be issued by the Agency until some time after 11 November, thus I am not able to provide these to you at present.

In addition to the papers that I am enclosing for the Steering Board, I also enclose the draft Council guidelines for the 2006 work programmes. However, I must caution that this document is still being discussed and is likely to be amended prior to 21 November. I also enclose a copy of the latest draft of the Code of Conduct on Defence Procurement, which differs only slightly from the draft I sent you on 25 October.

The substantive elements of the Steering Board are set out at Annex A.
EDA Steering Board (November 2005): Substantive Issues

“A”—Points

There are currently two items identified for agreement by the Steering Board as administrative points, without discussion at the meeting. The first is the amendment of the Financial Provisions on rules on procurement. This amendment will bring the Financial Provisions in line with the modified Financial Regulations and Implementing Rules of the European Communities. We have seen the papers very late in the day and are currently assessing them. I cannot yet say whether I will be in a position to support adoption of these amended regulations on 21 November.

The second item is for the agreement of a recommendation from the Steering Board on the 2006 budget. I have attached the latest budget proposals from the Agency (not printed). I must caution that negotiations on this matter are still ongoing, with MoD officials due to attend a meeting on 11 November for further discussions with EDA staff and Member States. It may still be the case that this will not be ready for agreement as an “A” Point on 21 November and that further discussions are required by Defence Ministers at the Steering Board. I am therefore unable at this stage to elaborate on Government’s negotiating position on the current budget proposal. However, I can confirm that I will continue to argue for an Agency that should be a catalyst for nations co-operating together rather than an Agency that requires a substantially larger budget such that it could fund a number of projects centrally.

I should explain the departure from the procedures as laid down in the Joint Action (JA) establishing the EDA that we are following this year. The JA allows that, once the Council has accepted by unanimity a three year financial framework establishing a legally binding ceiling, the Steering Board may adopt the annual budget by Qualified Majority Voting (QMV). I explained in my letter of 25 October that, given the difference in visions for the Agency, the Steering Board has recommended that the Council will not attempt to set the three year financial framework as formally required. The consequence of this is that on 21 November the Steering Board will be charged with recommending a budget for 2006 for subsequent adoption by the Council, by unanimous decision.

European Defence Equipment Market Code of Conduct—A Code of Conduct on Defence Procurement

Following further recent discussion between the EDA and Member States’ representatives on 27 October, the EDA has issued a further draft of the proposed Code of Conduct on Defence Procurement. The proposal is consistent with the Government’s aim to encourage more use of open competition for defence equipment procurements in the EU. With this in mind I intend to support the introduction of the Code at the Steering Board. In the interests of providing the Committee with the fullest possible information on EDA initiatives I also enclose a brief analysis of the EDA’s Code of Conduct proposal, (see Annex B).

Long Term Vision

I shall support the proposal to develop a long term capability vision for the EU. I believe that this is an important piece of work, which should help to inform decisions on capability development through better understanding of the way requirements may evolve. However, I shall caution that this work should not involve political debate on the scope of ESDP, as set out for example in the European Security Strategy or the Petersbourg Tasks.

2005 Work Programme

The Chief Executive will give an update on the work that the EDA has carried out in 2005. This will draw on an Information Paper produced by the Agency and which I believe shows that there has been some considerable success so far. There is still much to be done in certain areas and I expect discussion at the meeting is likely to focus on the need for further ad hoc projects to be initiated. I will argue that we should in the main wait for these to emerge organically from the EDA capability development processes. This will allow the EDA to provide evidence based assessments of proposals, which Member States can scrutinise and decide whether to take forward.
EDA Work Programme for 2006

The work programme will need to reflect the resources that the Steering Board allocates for the EDA’s 2006 budget. I will seek to ensure that this is indeed the case and that the work programme is focussed on addressing EU priorities. The current draft work programme is not exhaustive—we expect further areas for cooperation to emerge from discussion among experts in the Research and Technology and Capability groups. Indeed, I hope to be able to propose on 21 November, in partnership with France, an EDA ad hoc research programme on light weight radar systems.

Software Defined Radio

I will support the Agency’s initiative to identify Member States’ future requirements for Software Defined Radios. I look forward to seeing the output from this work to understand if there is scope to cooperate with other Member States in the future.

Indicators and Strategic Targets

I will support the initiative to collect data on the set of indicators suggested and develop targets for Member States’ expenditure in certain areas. I look to this work to provide a sound basis for later discussions on increasing Europe’s investment in defence Research and Technology, as discussed by Heads of State and Government at Hampton Court on 27 October. However, I will argue, as I did at the Steering Board at RAF Lyneham on 13 October that these need to be based on agreed and robust definitions, to ensure that the data collected is consistent and therefore useable.

Annex B

European Defence Equipment Market—A Code of Conduct on Defence Procurement—Analysis

The Code of Conduct (referred to as the “Code” hereafter) has been developed in response to a perceived lack of intra-EU competition for those defence equipment contracts—the majority—that are exempted from EU competition law on national security grounds. This situation has led to concerns that European defence industry lacks the competitiveness to cost-effectively deliver European defence capability requirements.

The Code approach to encourage greater competition in defence equipment markets was initially developed jointly by MoD officials and representatives of UK industry in 2004. It was taken forward by the EDA as the cornerstone of its work to create an internationally competitive European Defence Equipment Market (EDEM).

The overarching principle of the Code is that suppliers from all subscribing Member States will have an equal opportunity to compete for and win defence equipment contracts from other subscribing Member States above a minimum threshold. The scope of the Code would exclude certain procurements (Research and Technology services; collaborative programmes; Nuclear technology; Chemical, Bacteriological and Radiological goods and services; Cryptographic programmes). In addition, it would provide exemptions for pressing operational urgency, follow-on orders and where there are “extraordinary and compelling reasons of national security”. The Code will be voluntary, in that there is no legal sanction that will be brought to bear on any subscribing Member State who does not abide by the Code’s provisions. Nevertheless, by subscribing to the Code Member States will be making a political commitment to comply with its provisions. Individual Member States retain the right to extend the scope of their competitions to include countries who do not subscribe to the Code (including of course non-EU countries) if they so wish.

While the Code has the potential to introduce greater levels of competition into EU defence equipment markets, its success will rely on subscribing Member States’ willingness to abide by the provisions of a voluntary instrument. In this regard, a key feature of the Code will be the EDA’s role in monitoring its operation and reporting to Defence Ministers (through the Steering Board) on Member States’ adherence to the provisions of the Code. It is hoped that such exposure (and the potential embarrassment of being seen to disregard the provisions of an instrument that they agreed to abide by) offers an incentive to those whose commitment to the Code’s requirements might prove to be sub-optimal in practice.

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5 Data collected from Member States by the EDA indicates that in 2004 approximately 80 per cent of European defence equipment procurements (by value) were exempted from the EC public procurement rules through the invocation of Article 296 of the Treaty of the European Community. Article 296 enables Member States to derogate from the EC public procurement rules where this is necessary to protect essential national security interests.

6 A joint MoD-industry paper which developed the arguments for the Code of Conduct was provided to the Committee by Lord Bach, then Minister for defence Procurement, on 27 October 2004.
The Code includes provisions to provide for mutual confidence in Security of Supply. The Code commits subscribing Member States to enter into a dialogue with its industry when another subscribing Member State is reliant on that industry to meet an urgent operational requirement, and to expedite any relevant national administrative processes that might otherwise delay supply.

The UK is recognised as having one of the most open defence equipment markets in the world—in 2004–05 some 73 per cent by value of all UK defence contracts were placed as a result of competition. In this context, the introduction of the Code offers the potential for UK industry to gain greater levels of access to the defence equipment markets of other Member States than has been the case hitherto.

A decision on whether to introduce the Code will be taken by EU Defence Ministers when they meet in the EDA Steering Board on 21 November by Qualified Majority Voting. On the basis that the decision is taken to introduce the Code, the measure is expected to come into effect from 1 July 2006. EU Member States retain the right to “opt-out” of the Code’s provisions if they so wish.

Separately, the European Commission continues to review the operation of that part of the defence equipment market in Europe where Member States cannot legitimately invoke Article 296 and where, therefore, the EU’s procurement rules apply. This follows the Commission’s Green Paper on Defence Procurement (September 2004). The Commission has indicated that it expects to announce how it wishes to take forward this work during the next month or so.

Letter from the Chairman to Rt Hon John Reid MP

Thank you for your letter dated 9 November 2005 and the accompanying documents on the EDA Steering Board meeting on 21 November 2005. Sub-Committee C considered these documents at its meeting on 15 November 2005.

Scrutiny of the Papers

First, we would like to thank Mr Andrew Mathewson and Mr Stuart Fraser for their informal advice and explanation of the documents at the meeting. This advice was extremely valuable. The Sub-Committee accepted that the relatively small amount of time available for scrutiny of these documents was due to the EDA’s ambitious timetable for their adoption.

However, we would like to reiterate the point made in our Report on the EDA (9th Report, Session 2004–05). The EDA’s Steering Board structure means that it effectively acts as Council when meeting in ministerial formation. Points agreed on the Steering Board are simply endorsed by the same Ministers in Council formation. It is for this reason that the Sub-Committee scrutinises the EDA’s Steering Board papers. We urge the Government to press this point at the meeting on 21 November 2005. The EDA needs to provide documents to Member States earlier in order to allow time for parliamentary scrutiny.

The Voluntary Code of Conduct for Defence Procurement

We have concluded that the code represents a sensible compromise at this stage. Much clearly remains to be done. We were, surprised to read, in a footnote to your letter, that the EDA has found that 80 per cent of European defence procurements were exempted from competition through the invocation of Article 296. The code itself will not solve this problem. It is the EDA’s monitoring function and the peer pressure on the Steering Board that might make a difference.

We emphasise the vital importance of communicating the new code to the main stakeholders: industry, including sub-contractors. The Ministry of Defence has a responsibility to keep all industry players directly informed of the application of the code.

The Budget

It is deeply regrettable that the Council has decided to postpone agreement of a three year financial framework. Although this framework would only provide a ceiling figure for the budgetary planning of the EDA, it would provide much needed medium-term certainty for the Agency.

The proposals for the EDA’s budget for 2006 remain modest. While we agree with the Government that the EDA’s role as a facilitator means it does not need a substantial operational budget, we are concerned that the budget for staff should not be unduly restricted. We note with concern paragraph 3 of the 2006 draft budget which notes that further reductions or freezing of staff posts would leave the EDA unable to deliver on decisions already taken.
THE LONG-TERM VISION

While we agree with the Government that long term capacity planning is important to inform European procurement decisions the timing for this project is ambitious in the extreme. We see little reason to have a first draft of the Long-Term Vision produced by the summer of 2006. The EDA would be wise to conduct such a project with more thorough consultation and time.

We disagree with the Government that it will be possible to have a Long-Term Vision document that relates exclusively to defence capacity requirements in 20 years time without any reference to the political framework of the ESDP.

We welcome the opportunity to discuss these matters and others issues relating to the ESDP with Lord Drayson on 19 January 2006.

Letter from Rt Hon John Reid MP to the Chairman

You will be aware that the Ministerial Steering Board for the European Defence Agency (EDA) met in Brussels on 21 November. Prior to this meeting I wrote to you with the agenda, draft papers and an outline of the likely points of discussion. I would now like to take the opportunity to inform you of the outcome of this meeting. I therefore enclose at annex A a commentary on the 21 November Steering Board. This also picks up on a number of points raised by you in your letter dated 17 November.

I also enclose the papers (not printed) that were considered at the 21 November Steering Board. These differ slightly from the papers I sent to you before the meeting as those were updated and reissued following an officials meeting prior to the steering Board, on 14 November.

Following the request from [the Chairman of the Commons European Scrutiny committee] (letter dated 9 November), I would like to inform you that I would be pleased to send these documents and the other documents specified in Article 4 of the Joint action to the House of Commons Defence Committee. I have enclosed all the relevant documents with this letter.

2 December 2005

Annex A

Commentary on the European Defence Agency Steering Board Meeting on 21 November 2005

The following commentary outlines the discussions that took place on 21 November and picks up on a number of points raised by Lord Grenfell in his letter dated 17 November.

EUROPEAN DEFENCE EQUIPMENT MARKET—CODE OF CONDUCT ON DEFENCE PROCUREMENT

The EDA Steering Board agreed the Code of Conduct on Defence procurement with a view for it come into effect in July 2006. I gave this my full support and stated that I believed the Code should deliver better equipment to our armed forces through encouraging greater competitiveness within industry.

I should clarify a couple of points raised by Lord Grenfell. Firstly, concerning the EDA statistic that 80 per cent of European defence procurements were exempted from competition through the invocation of Article 296. The statistic of 80 per cent relates to invocation of Article 296 rather than, per se, the number of occasions that defence procurements were exempted from competition. This latter statistic is 54 per cent (or 41 per cent in terms of value of contracts)—still, of course a significant number which we are keen to see reduced.

Secondly, with respect to communicating the new code to industry, the Defence Industries Council (DIC) has been kept informed of this initiative and on 8 November wrote to confirm their general support for it. Separately we are ensuring that the details of the Code are being circulated to UK industry and we aim to continue a dialogue with the DIC Secretariat at official level through to the proposed Code implementation date of 1 July 2006.

EDA DRAFT BUDGET

The Steering Board made a recommendation to increase the EDAs budget to €22.3 million (participating Member States contribution will be €21.5 million the remainder is made up from tax rebates). The budget includes an increase in the Agency’s operational budget from €3 million to €5 million. However, €1 million of the €5 million operational budget will be frozen and would require specific authorisation from the Steering Board before the Agency could make use of it. There was also agreement to increase the number of staff by 14 posts. However, four of these posts are frozen pending further information on their requirement by the Agency.
I welcomed the rigorous scrutiny that was given to the budget proposal and supported the agreement on the budget and the staff numbers, based on the EDA’s proposals, including the frozen elements. I believe that this strikes the right balance between ensuring budgetary discipline and making sure that the EDA’s operational budget is not unduly restricted, which could have left it unable to deliver on decisions already taken. I urged that there should be maximum transparency of EDA’s expenditure.

The Steering Board budget recommendation will now go to the Council for approval. As you may recall from my letters of 25 October and 9 November this is necessary due to absence of a three year financial framework.

**Draft Work Programme**

The Steering Board agreed the EDA’s work programme for 2006. In the main this consists of follow on work from the current work programme. However, there are three new areas of interest: exploring opportunities for broadening Member States cooperation in strategic lift; fostering cooperation on interoperability of Space ground stations; and identifying commonalities of requirement for combat equipment for dismounted soldier.

**Long Term Vision**

The Steering Board agreed the EDA proposals for developing the long term vision. I acknowledge the concern that was expressed in Lord Grenfell’s letter concerning the timelines that the EDA have set to develop an initial long term vision. I believe the timelines can be achieved providing there is full transparency throughout the process. However, MoD officials will monitor the process carefully to ensure that thorough consultation takes place in developing this initial long term vision.

I would also like to pick up on Lord Grenfell’s point about reference to the political framework of the ESDP. It is not the Government’s position that the long term vision relates exclusively to defence capacity requirements in 20 years time without any reference to the political framework of the ESDP. However, it is the Governments view that the EDA should develop the long term vision based on and with reference to the current political framework of ESDP, ie the European Security Strategy and the Petersberg tasks. The EDA should not seek to expand its remit to look at the current scope of ESDP.

**Software Defined Radio**

The Steering Board agreed the EDA proposals for the Agency to look at nation’s requirements for software defined radio. Once this has been ascertained the Agency will explore the viability for a collective European approach to developing a next generation software defined radio.

**Indicators and Strategic Targets**

The Steering Board agreed the EDA proposals for a set of indicators and potential strategic targets on defence spending. Data will be collected and analysed with priority being given to set targets in the area of R&T before other areas of defence spending.

For your ease of reference I am listing the documents that I am enclosing with this letter (not printed). Please note in additions to EDA related papers I enclose the capability improvement chart that was requested by Lord Grenfell in his letter to Douglas Alexander, dated 20 October.

**21 November Steering Board Papers**

1. Covering letter for 21 November Steering Board including the Agenda (enclosure 1) and note on EDA staffing (enclosure 2)

Additional documents specified in Article 4 of the Joint action

9. Head of the Agency report to the Council
10. Council guidelines for the EDA’s work in 2006

Document requested by Lord Grenfell from FCO in letter dated 20 October

11. Capability improvements chart.

EUROPEAN DEFENCE AGENCY STEERING BOARD MEETING, OCTOBER 2005

Letter from Rt Hon John Reid MP, Secretary of State, Ministry of Defence to the Chairman

The next European Defence Agency (EDA) Steering Board meeting is due to take place on 13 October, at RAF Lyneham. I am committed to improving the transparency of EDA-related business, and in particular the Ministerial level meetings of its Steering Board. I would therefore like to take this opportunity to inform you of the main items I expect to be discussed at this meeting.

I enclose with this letter the agenda and supporting papers for the Steering Board which have been made available by the Agency (not printed). I am afraid that a few of the supporting papers have still not been circulated.

There are two items for agreement by the Steering Board as administrative points: the unfreezing of a senior budget planning officer post; and the approval of the annual management accounts for 2004. I intend to approve these two recommendations. The more substantive elements of the meeting are as follows:

European Defence Equipment Market Code of Conduct

The idea for a voluntary code of conduct originates from the UK. It seeks to introduce the principles of European competition law—transparency, non-discrimination and equal treatment of suppliers from any EU Member State—into defence procurements otherwise exempted. We see this as a practical first step towards introducing greater competition in this area. I will be urging the Steering Board to maintain momentum towards adopting the Code of Conduct, with the objective of Ministers being in a position to agree the Code at their next meeting on 21 November. I will make clear that, if the EDA adopts this Code, the UK will adhere to its provisions from July 2006.

Air-to-Air Refuelling

In response to a request from the Head of the Agency, Dr Solana, I have agreed to offer the EDA a presentation on our approach to procuring air-to-air refuelling capability. If there is interest from Member States, the EDA may set up a group to track the progress of our project in order that other member States can learn from this innovative approach.

Budgets and Work Programme

Ministers will exchange initial views on the EDA proposals for its 2006 budget, its 2006 work programme, and the three year financial framework (the budgetary ceiling for the Agency over the calendar years 2006–08). Ministers will need to make decisions on these on 21 November.

Whilst reiterating my support for the Agency, I will argue that it look critically at the scope for doing business more efficiently before seeking an increase in staff numbers and its operational budget. I shall express particular concern at the proposal to give the EDA a significant budget to fund Research and Technology (R&T) projects in common. I will argue that the most efficient approach
is for the Agency to act as a marketplace, facilitating ad hoc groups of member states working
together, rather than itself financing significant R&T projects.

**Defence Test and Evaluation Base**

I shall be supporting this initiative in order that we may develop a more efficient European Defence
Test and Evaluation Base. I will argue for work to be initially focussed in the area of electro-magnetic
effects, before considering other areas.

**Proposals for Indicators and Strategic Targets**

I shall be supporting in principle the idea to develop a set of indicators and targets for Member
States’ expenditure. It potentially will give us helpful levers in encouraging improvements in
European capabilities. However, these need to be based on agreed and robust definitions, to ensure
that the data collected is consistent and therefore useable.

Overall, I expect this to be an important meeting that will allow Ministers to give direction to our officials in
preparing the decisions on the Code of Conduct, Budget, Work Programme and Financial Framework in
particular that will be needed in November. I will update the Committee following the meeting.

7 October 2005

**Letter from the Chairman to Rt Hon John Reid MP**

Thank you for your letter dated 7 October 2005 which Sub-Committee C considered at its meeting on
20 October. We are grateful for the detailed information provided in the papers attached to the letter, and look
forward to receiving a copy, of the papers to be considered by the General Affairs and External Relations
Council on 21 November.

We are particularly interested in developments related to the voluntary code of conduct. The proposed Code
represents an important step forward in the introduction of competition in the defence procurement market,
and it is essential that the details be properly considered if the Code is to prove successful.

We are aware that the EDA has chosen a very tight timetable for the adoption of the Voluntary Code which
means that Government itself will have little time to consider the draft Code. Nonetheless, we urge the
Government to allow sufficient time for the Committee to examine the draft Code prior to its adoption by
Member States.

In recognition of the tight deadlines involved, Sub-Committee C will hold an extra meeting on 15 November
2005 to consider:

— The draft Voluntary Code of Conduct on defence procurement.
— The EDA’s work programme for 2006.
— The EDA’s budget for 2006.
— The three year financial framework for the EDA.
— Any other items, aside from those concerning the EDA, that defence ministers will decide on at the
  November 21 GAERC.

We will inform the Government of our deliberations as soon as possible after the meeting in the expectation
that the Government will be able to take our views into account in advance of the Council meeting.

We would also like to take this opportunity to invite Lord Drayson to come and give evidence to the
Committee on the outcome of the November 2005 Council early in the New Year.

20 October 2005

**Letter from Rt Hon John Reid MP to the Chairman**

You will be aware that the Ministerial Steering Board for the European Defence Agency (EDA) met at RAF
Lyneham on 13 October. Prior to this meeting I wrote to you with the agenda and an outline of the likely points
of discussion. I would now like to take the opportunity to inform you of the outcome of this meeting.

Two administrative decisions were taken by the Steering Board. These were for the unfreezing of a senior
budget planning officer post and the approval of the annual management accounts for 2004, which had been
validated by the National Audit Office.

The following commentary outlines the discussions that took place on the more substantive elements of the
meeting:
EUROPEAN DEFENCE EQUIPMENT MARKET CODE OF CONDUCT

I spoke to urge Member States to maintain momentum towards adopting the Code of Conduct on Defence Procurement at the next Steering Board on 21 November. I stated that this was a practical first step towards introducing greater competition in this area and was very encouraged that on the whole Ministers were content with the progress of this work. I attach the latest EDA draft Code of Conduct with the covering note from the EDA, and the draft Steering Board Decision for discussion on 21 November (not printed). My officials continue to work with other Government Departments, the EDA and Member States on the detail. I will write again in November to provide the Committee with a more detailed Government view of the Code of Conduct. Assuming the final draft of the Code is acceptable to the Government I will agree to adopt it at the 21 November Steering Board.

AIR-TO-AIR REFUELLENG

Following a request from Dr Solana, as Head of the EDA, I agreed to offer a UK presentation on our approach to procuring air-to-air refuelling capability. The briefing was well received, and 10 Member States decided to launch an ad hoc project to monitor development of the UK approach and to consider how they may be able to meet their own air-to-air refuelling requirements.

BUDGETS AND WORK PROGRAMME

There were different views expressed about the future size of the Agency’s budget and the scope of its work programme. One view was to give the EDA a substantially larger budget so that it could fund a number of projects centrally. I cautioned against this approach and put forward a view, which I made clear was much more aligned with the basis on which the EDA was established, for the Agency to play a coordinating role and not act autonomously.

I stated that the Agency should be a catalyst for nations co-operating together, addressing shortfalls, on the basis of foresight and rigorous analysis. Until it could do this we should not contemplate any more ambitious role. Funds were tight in all nations and the EDA should not expect a substantial budget increase. The majority of member states support this view.

Reflecting this clear difference in vision, the Steering Board agreed to recommend to the Council not to try this year to fix a three-year financial framework, as formally required by the Joint Action establishing the Agency. This framework would have required unanimous agreement at the Council and given the divergence in opinion at this stage, the Steering Board decided that it should instead focus solely on the 2006 budget.

DEFENCE TEST AND EVALUATION BASE

I supported this initiative to develop a more efficient European Defence Test and Evaluation Base. The work will initially focus in the area of electro-magnetic effects, with plans to consider other areas of the defence test and evaluation base subsequently.

PROPOSALS FOR INDICATORS AND STRATEGIC TARGETS

I supported in principle the idea to develop a set of indicators and targets for Member States’ expenditure. However, I argued that these need to be based on agreed and robust definitions, to ensure that the data collected is consistent and therefore useable.

During the second week of November, I intend again to write to share with you the agenda and the Governments views on the decisions that are likely to be taken and the likely points of discussion at the 21 November Council and Steering Board. I realise that these timescales are short but unfortunately the final papers will not be available from the EDA earlier.

25 October 2005

EUROPEAN DEVELOPMENT FUND (6589/05)

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

I am writing to update you on discussions concerning the above Communication and Proposals. A signed Explanatory Memorandum (EM) was submitted to your Committee on 9 March which was cleared at your meeting on 15 March. In the EM, I said that I would update you on the outcome of the 9th European
Development Fund (EDF) performance review and the proposals to be supported from the remaining conditional funds.

Following receipt of additional information from the Commission on ACP States’ performance against Millennium Development Goal targets derived from joint annual reports, the General Affairs and External Relations Council adopted Conclusions on 23 May concerning the performance review. I enclose a copy for your information (not printed). Noting the improvement in EDF commitment and expenditure rates and emerging evidence of enhanced quality and effectiveness of EC external assistance, the Council called on the Commission to provide more information in this regard through its future programming reviews. Moreover, the Council also stressed that a continued improvement in effectiveness should be a key objective for the successor funding arrangement to the 9th EDF. Given these factors, the Council agreed to release the remaining €750 million (£505.7 million) conditional funds under the 9th EDF.

The ACP-EC Council of Ministers met on 24–25 June and gave political agreement to the EU proposal, which the Government fully supported, for the use of the conditional funds. This included support for the following Commission proposals:

— A second €250 million (£169 million) allocation to the ACP Water Facility;
— €18 million (£12 million) for assistance to East Timor in 2006 and 2007;
— €25 million (£17 million) for the international commodity risk management financing facility;
— €30 million (£20 million) to help ACP states meet new EU sanitary and phytosanitary rules;
— €50 million (£34 million) in capacity building support for African Union institutions;
— €63 million (£42 million) for the Education for All Fast Track Initiative.

The ACP-EC Council of Ministers agreed to support two further Commission proposals but with reduced allocations, namely

— The establishment of an ACP Energy Facility with an allocation of €220 million (£148 million);
— To provide the Centre for the Development of Enterprise (CDE) and the Technical Centre for Agricultural and Rural Cooperation (CTA) with €32 million (£22 million) for operational expenses in 2006.

The reduction in these proposals allowed the Joint Council to agree to allocate €62 million (£42 million) to the replenishment of the Global Fund for AIDS, TB and Malaria (GFATM), as proposed by EU Member States in order to demonstrate ACPEU commitment in the fight against poverty diseases.

EU Member States will now need to formally adopt the EU Council Decisions on the allocation of these funds for the purposes envisaged. These will be concluded through Coreper and Council in September.

The Commission will subsequently submit detailed financing proposals for each of the proposed activities for the approval of the EDF Management Committee.

19 July 2005

EUROPEAN NEIGHBOURHOOD POLICY (7313/05)

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

Thank you for the Explanatory Memorandum dated 4 April 2005 which Sub-Committee C considered by written procedure on 7 April 2005.

The Sub-Committee agreed to clear the document from scrutiny, but would like to reiterate the concern expressed in our letter of 11 March7 about the situation in Lebanon which, from your letter dated 4 April, you appear to share. You state that you do not believe that this is the right time to initiate negotiations with Lebanon on an Action Plan. We agree with your position and would ask only to be kept informed of decisions made on the Commission’s recommendations under the European Neighbourhood Policy at the General Affairs and External Relations Council on 25 April.

12 April 2005

**Letter from Rt Hon Denis MacShane MP to the Chairman**

Thank you for your letter dated 12 April 2005 regarding the next wave of the European Neighbourhood Policy (ENP). You asked to be kept informed of any decisions made on the Commission’s recommendations at the 25 April General Affairs and External Relations Council (GAERC).

The ENP was not discussed substantively by Foreign Ministers at the GAERC. Council Conclusions, which I attach for reference (not printed), were agreed. The Council Conclusions welcome the Commission communication and country reports on the five countries and endorse the main thrust of these documents. The country reports give a clear and accurate account of the progress made by each country, but also of the challenges facing each of them both in political and in economic and social terms. These reports, pointing out the priorities for action which the Union would like to pursue with those five countries, form the basis on which the European Union should be able to enter into preparations for the ENP Action Plans.

The Council Conclusions invite the Commission to initiate discussions to prepare Action Plans for each of the three South Caucasus countries. The Council Conclusions further note that the Commission has started preparations for Action Plans for Egypt and Lebanon. However, it confirms that the timetable for starting negotiations with Lebanon will be dependent on political developments on the ground. The Government continues to support this approach with respect to Lebanon.

30 April 2005

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**EUROPEAN NEIGHBOURHOOD POLICY: ACTION PLANS FOR TUNISIA AND MOROCCO**

**Letter from Rt Hon Douglas Alexander MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman**

I am writing to inform your Committee that the Government has accepted minor amendments to the Tunisia and Morocco European Neighbourhood Policy (ENP) Action Plans.

On 30 November 2004, your Committee cleared the ENP Action Plans for the seven “first wave” Partners (Ukraine, Moldova, Morocco, Tunisia, Jordan, Israel and the Palestinian Authority). The Action Plans were subsequently approved by the 13 December 2004 General Affairs and External Relations Council. The Moroccan and Tunisian governments have now agreed to endorse the Action Plans subject to a few minor amendments. I enclose details of the textual amendments (not printed).

We do not believe the amendments to either Action Plan are substantive. With respect to the Tunisia ENP Action Plan, the amendment to the right of establishment does not water down Tunisian commitments to promote greater freedom with respect to the right of establishment and foreign investment. We do not believe that it is necessary to be prescriptive in the Action Plan on the methodology to identify Tunisian barriers to establishment. And the amended language still retains the commitment to facilitate, simplify and speed up visa issues procedures. The Action Plan continues to contain measures to promote effective management of migration flows and to prevent and combat illegal migration to and via Tunisia.

The Moroccan amendments to the Human Rights and WMD clauses ensure that the language matches that of other ENP Action Plans, such as Jordan and the Palestinian Authority. The amendments do not weaken Moroccan commitments in these areas. And the amendments on intellectual property rights and public procurement are consistent with Moroccan commitments in the EU-Morocco Association Agreement.

The Action Plans meet the Government’s key objectives for ENP of a safe, secure neighbourhood. We welcome the prospect of an enhanced relationship with Tunisia and Morocco on the basis of shared values, and effective implementation of political, economic and institutional reforms. We also believe that the approach in the Action Plans rightly combines opportunities for closer co-operation in areas of common interest, with a stronger desire from the EU to establish a set of shared common values including on issues such as human rights, democratisation, counter-proliferation and counter-terrorism. We hope that the Action Plans will provide support and impetus to Tunisia and Morocco’s own reform programme aimed at further integration into European economic and social structures. For these reasons, we have accepted the above-mentioned amendments. We expect the amended Action Plans to be approved at the 13 June 2005 General Affairs and External Relations Council.

9 June 2005
EUROPEAN NEIGHBOURHOOD POLICY: ACTION PLANS FOR UKRAINE AND LEBANON (6175/05)

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

Thank you for the Explanatory Memorandum dated 2 March 2005 which was cleared by Sub-Committee C at its meeting on 10 March.

We would like to raise two issues relating to the Action Plans for Ukraine and Lebanon.

The Action Plan for Ukraine was first cleared by Sub-Committee C at its meeting on 9 December 2004. However, we were aware that the political situation in Ukraine at that time would mean a delay in the implementation of the Plan. Para 10 of your EM notes that the Action Plan was agreed at the General Affairs and External Relations Council of 21 February which “set out further proposals to strengthen and enrich the Action Plan in support of a democratic and reform oriented Ukraine”.

It is unclear whether the document cleared by Sub-Committee C was the same as that agreed by Council. We would like details both of these “further proposals” (whether implemented or not) and the actual changes made to the Action Plan.

We would also like to express our concern about the current situation in Lebanon. We do not believe that the EU ought to seek closer relations with Lebanon until free and fair elections have been held in accordance with UN Security Council Resolution 1559 (as confirmed by international observers).

11 March 2005

Letter from Rt Hon Denis MacShane MP to the Chairman


The Action Plan for Ukraine agreed by the General Affairs and External Relations Council on 21 February was identical to the Action Plan cleared by the Lords Sub-Committee C at its meeting on 9 December 2004. Rather than re-open the text of the Action Plan, the Council decided to set out in its Conclusions further proposals to strengthen and enrich the Action Plan in support of a democratic and reform oriented Ukraine. I attach a copy of the relevant Council Conclusions (not printed).

We share your concern about the situation in Lebanon, and your wish to see free and fair elections to the Lebanese National Assembly. We therefore believe that this is not the right time to initiate negotiations with Lebanon on an Action Plan.

4 April 2005

EUROPEAN PROGRAMME FOR ACTION TO CONFRONT HIV/AIDS, MALARIA AND TUBERCULOSIS THROUGH EXTERNAL ACTION 2007–11 (8689/05)

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

You will wish to know that the General Affairs and External Relations Council, (GAERC) of 23–24 May 2005 considered the above Communication and adopted Council Conclusions. Unfortunately we were unable to complete Parliamentary Scrutiny on this document in advance of adoption at Council.

A signed Explanatory Memorandum was submitted to your Committee Clerk following the election, however you were unable to consider this before the Council took place.

At the May Council, EC Development Commissioner Louis Michel presented the Programme for Action and pledged to work closely with the UK Presidency to prepare for the September Global Fund replenishment conference. Following a brief discussion, draft Conclusions were agreed without any changes. One Member State’s concerns over abortion were noted in an annex.

I regret that we were unable to go through the formal scrutiny procedures prior to a decision being made.

9 June 2005
Letter from the Chairman to Gareth Thomas MP

Thank you for the Explanatory Memorandum dated 19 May 2005 which was cleared by Sub-Committee C at its meeting on 9 June.

The three “poverty diseases” dealt with by this document are a significant threat in certain areas of the world and we agree that the EU should be pushing ahead to do all it can to reduce this threat.

We note that this document was subject to an override caused by the dissolution of Parliament, and was agreed at the 24 May GAERC. What was agreed at the GAERC? In particular were any changes to the document agreed?

We would also like further information about the financing of the programme. Although we appreciate that the financial allocations will not be finalised until the next Financial Perspectives have been agreed, it would be helpful to know the approximate amounts that the Commission expect to spend putting this programme into effect. In para 14 of the Explanatory Memorandum, you state that “the EU should continue to significantly increase funding for poverty diseases to fill the identified resource gaps”. The resource gap identified by the Commission is £7.9 billion by 2007 (para 3 of the Explanatory Memorandum)—this is a global resource gap. To what extent should the EU be funding programmes (either internally or through external organisations such as UNAIDS) in order to fill this gap?

The Explanatory Memorandum is also unclear on the Government’s position in relation to EU programmes to combat the three poverty diseases. Para 12 states: “Generally the UK believes that the EC’s comparative advantage at country level is related to its direct budget support of the ‘Three Ones’ rather than project focus. At global level the EC’s comparative advantage lies primarily in its support of the GFATM [Global Fund to fight HIV/AIDS, tuberculosis and malaria], its aims to promote policy coherence and on research and trade issues.” The Explanatory Memorandum does outline specific programmes which it does not believe are feasible (such as compensation for countries particularly affected by brain drain), but does not comment on a number of other programmes (such as the development of sound and efficient procurement polices and practices for pharmaceutical products). It is not clear to what extent you support a number of the strategies and programmes outlined in the document. Could you state whether you believe that the EU should focus its resources on co-operating with global programmes and strategies, or on delivering its own programmes and strategies as outlined in this document?

We would also like to request further information on a number of specific issues:

1) Concerns have been raised about the use of DDT in anti-malarial drugs. How are decisions taken as to whether certain drugs may or may not be used in programmes funded by the EU? Does the Commission itself have any direct role in this process?

2) This Programme is intended to cover middle-income as well as low-income countries, since control of these diseases needs to be thorough in order to reduce their impact. We would like confirmation that this will not be an impediment to the Government’s support for this Programme.

3) Could you explain further how the WTO declaration on TRIPs (see para 3.1 of the document) will enable lower-income countries to start their own production of pharmaceutical products to combat the three diseases? Will the examples of Brazil and India in exporting cheap generic drugs have any impact on EU policy on own-country production?

14 June 2005

Letter from the Chairman to Gareth Thomas MP

Thank you for your letter dated 9 June 2005 noting that the above document was considered at the General Affairs and External Relations Council of 23–24 May before Parliamentary Scrutiny could be completed. Unfortunately, following the election, Sub-Committee C was not reappointed until 24 May and was unable to meet until 26 May. It was not therefore possible to consider the document before the Council. Sub-Committee C considered the document at its meeting on 9 June and agreed to clear the document from scrutiny. We have written separately in order to raise specific issues which arose out of the document and Explanatory Memorandum.

22 June 2005
Letter from Gareth Thomas MP to the Chairman

Your Committee met on 9 June and discussed the European Programme for Action to Confront HIV/AIDS, Malaria and Tuberculosis through External Action (PfA). Your Committee cleared this document from scrutiny but asked for further information on a number of issues.

I wrote to you on 9 June, explaining that the General Affairs and External Relations Council (GAERC) on 24 May had adopted Council Conclusions on the Communication and that we were unable to complete Parliamentary Scrutiny in advance of its adoption. There were no changes to the text at the GAERC although one Member State’s concerns related to abortion were included in an addendum to the Council Conclusions. This has no impact on EU policy.

Your letter asks for the approximate amounts that the Commission expects to spend on putting the Programme for Action into effect and to what extent the EU should be funding programmes to fill the global £7.9 billion (£11.7 billion) resource gap.

Clearly, the EU (EC and EU Member States) has a key role in meeting the global resource gap. EU Development Ministers at the May GAERC encouraged the Commission to make available adequate resources to implement the Programme for Action. As your letter notes, funding for the Programme for Action will only be agreed as part of the broader discussions on the next EC Financial Perspectives. It is therefore too early to say what the Commission expects to spend in this area. But the EC is spending €1.12 billion (£0.76 billion) between 2003 and 2006 on the current PfA. A number of Member States, including us, are pushing for a significant increase for 2007–11.

You also asked whether we believe the EU should focus its resources on cooperating with global programmes and strategies or on delivering its own programmes/strategies as outlined in the document.

Many in the Council, including the UK, believe that the EC should contribute primarily to global programmes and strategies for poverty diseases. The EC also has a role in supporting specific programmes and where it is working at country level, to ensure that it has the capacity to adhere to best development practice and engage in harmonisation and coordination amongst donors. The Programme For Action urges Member States to follow best practice in bilateral relations with countries, to use the EC’s comparative advantages where possible (such as with the European and Developing Countries Clinical Trials Partnership), and to support the global programmes and strategies in place which are working to combat the three diseases and their consequences.

In response to your numbered questions:

1. The UK and the EC follow national drug protocols for national-level country health programmes, and look to the World Health Organisation to provide technical and clinical guidance on drug safety within larger regional and global programmes. The Commission does not have a direct role in the process of deciding whether certain drugs may or may not be used in programmes. It does however, have an indirect role at the national level by working to build in-country technical competence.

   On the question of dichlorodiphenyltrichloroethane (DDT), although the EC overall has taken a strong position on DDT to limit its use with potential trade sanctions against countries that continue to use DDT for agricultural or outdoor use, the Directorate General (DG) for Development in the Commission maintains that DDT has a continued use as part of nationally agreed malaria control programmes, for indoor spraying, providing this complies with World Health Organisation guidance. Decisions are made within the Commission through discussion amongst relevant DGs.

2. The focus on low and middle-income countries in the PfA is not an impediment to UK support. Whilst 90 per cent of the UK’s development assistance is targeted at low income countries, with the other 10 per cent directed at middle income countries, we acknowledge that communicable diseases and especially HIV and AIDS are not confined to low income countries. In our middle income country programmes where poverty diseases are identified as a major problem, a proportionate response is provided. In our multilateral funding, including via the EC, our funding is not ring-fenced and goes to support the programmes as a whole.

3. The Trade Related Aspects of Intellectual Property Rights (TRIPS) and the Public Health Decision of 30 August 2003 allows countries with no, or insufficient pharmaceutical manufacturing capacity, to import copies of patented medicines. These can be imported from countries such as India, following the issuing of a compulsory licence in both the importing and exporting country. The Decision is a significant step. It should help increase supply and availability through market competition, and should also help to reduce the price in poor countries of patented medicines that are coming onto the market. EU legislation has been broadly adopted which is consistent with the World Trade Organisation TRIPS agreement. EU Member States are currently in the process of
implementing the TRIPS agreement. This allows EU Member State pharmaceutical companies to respond to requests from developing companies for generic drugs. There are potential price barriers due to the relative cost of production in the EU. However, we understand that in EU countries such as Spain, there are advantages as the cost of drug production will be low but meet high quality standards.

4 July 2005

EUROPEAN SECURITY AND DEFENCE COLLEGE (10185/05)

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

I am sending your Committee an Explanatory Memorandum (unnumbered) regarding a Council Decision on the establishment of the European Security and Defence College (ESDC).

Your Committee will be aware of the plans to establish the ESDC from the EM submitted by Dr MacShane on 20 December 2004 on the Dutch Presidency ESDP Report, which contained reference of the agreement in September 2004 of the EU Training Concept in ESDP, including the ESDC.

The ESDC will deliver training to meet the aims outlined in the Training Concept, covering the broad range of political, institutional and operational issues which are central to ESDP, with the aim of promoting better understanding of ESDP amongst the relevant Member State civilian and military personnel. The Government has engaged with the initiative to ensure that it is based on a proper assessment of needs, and does not duplicate existing Member State training provision.

The proposal for an ESDC was originally made by France, Germany, Luxembourg and Brussels at the Teruven or “Chocolate” summit in April 2003. The UK has been sceptical of the need for a new training institution. However, through its pilot course, the ESDC has demonstrated that it will be an effective means of delivering some of the key elements of ESDP training—the Orientation Course and the High Level Course.

The Government has ensured that the ESDC will be established as a “virtual network” of existing Member State training institutions, rather than a new “bricks and mortar” institution. Apart from the small administrative secretariat within the Council General Secretariat, there will be no common funding for the training provision—Member States will bear their own costs for the funding of their students.

Luxembourg was one of the original countries behind the ESDC initiative, and are keen to establish it during their Presidency. They are aiming for agreement at the 24 June Environment Council. We are also keen to get the ESDC up and running, as the UK will be hosting a one-week module of the ESDC High Level Course during our Presidency, at the Joint Services Command and Staff College, Shrivenham, between 28 November and 2 December.

Given re-formation of your Committee is still pending, I will have to agree to this Council Decision before scrutiny can be completed. I hope you will understand our reasons.

Moreover, this Council Decision is currently under negotiation in the RELEX Working Group, which deals with institutional, legal and financial issues. An area of disagreement between Member States is the financial arrangements. The UK will be working to retain the financial arrangements as outlined. We will update the Committee when the negotiations are completed.

14 June 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

On 14 June 2005, I sent your Committee an Explanatory Memorandum (unnumbered) regarding an EU Joint Action establishing the European Security and Defence College (ESDC).

When I sent you that EM, the negotiations over the ESDC were still ongoing, and I promised to update you on the outcome.

On financing, there will be no common funding for receiving or providing training. Member States will bear the costs directly, both by funding their students who participate in training in the ESDC, and by providing training through national institutes which participate in the ESDC network. There will also be an option for Member States to make additional voluntary contributions, to be managed by the Council General Secretariat, to finance specific ESDC activities which have already been agreed, such as the internet distance learning system—not training itself. In addition, the Joint Action does not give the ESDC “legal personality”, which had been proposed during negotiations.
The Presidency decided, following debate between the Commission Legal Service and the EU Council Legal Service, that the appropriate legal instrument to establish the ESDC is a Joint Action, rather than a Council Decision. As we explained in our EM, this is not significant in policy terms.

Thank you for your cooperation in allowing us to agree the Joint Action at the 27 June Transport Council.

4 July 2005

EUROPEAN SECURITY AND DEFENCE POLICY (ESDP) PRESIDENCY REPORT (10032/05)

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

Thank you for your Explanatory Memorandum dated 25 August 2005 which Sub-Committee C considered at its meeting on 20 October. Sub-Committee C cleared the document from scrutiny but wished to raise several matters concerning the Presidency Report and in particular the presidency report the Government will need to draft at the end of its presidency.

The Report provides a detailed review of individual operations which we have found very useful. However, we would also have wished to have seen an in-depth overview of the overall direction of ESDP operations, including of the implications for capabilities and financing of the EU undertaking an increasing number of ESDP missions. We recommend that the forthcoming ESDP Presidency Report contain such an overview. In particular, it would be helpful to have a more explicit link between section I on the on-going operations, and sections III and IV on the development of EU military and civilian capabilities.

On individual missions, a review of the EU JUST THEMIS rule of law mission to Georgia exploring the lessons learnt from this mission would be invaluable, and we would also wish to be kept informed of potential forthcoming missions in Palestine and Somalia. We have also been following the Council’s deliberations on a further border monitoring mission to Georgia and would like the Government to confirm the outcome of those deliberations.

We welcome the progress that is being made on Battlegroups. However, we regret that the Luxembourg ESDP Presidency Report, in the sections on capabilities, concentrated so very heavily on process while providing very little insight into actual progress in implementation. We urge the Government, in the strongest terms, to provide accurate information on implementation in its own forthcoming report. We note that in para 20 of the Report, an updated Capability Improvement Chart has been drawn up to keep the public and media informed. We would be grateful to see a copy of this Chart.

We note that paragraph 58 of the Report states that the EU has adopted an action plan to improve the EU’s rapid response capability following the Tsunami in the Indian Ocean. We also note the special GAERC on 18 October 2005 that was convened to discuss the EU’s response, among other things, to the natural disasters in Pakistan and Central America. Again, we urge the Government to include in its own Report an analysis of how the EU’s rapid response capability is being developed following these tragic disasters.

We also take note of the Section on the European Defence Agency (EDA). The Minister for Defence has written to keep us informed of current developments, and we will be writing to him separately on the work of the EDA.

20 October 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 20 October informing me that your Committee has cleared the Luxembourg Presidency ESDP Report from scrutiny. You made some comments on the forthcoming UK Presidency ESDP Report that I will address here, along with the other specific requests you made.

While the UK as Presidency will take the main responsibility for drafting the ESDP Presidency Report over the next few weeks, it is a document that is negotiated and agreed by all 25 Member States. As such it would not be appropriate to use it to highlight particular UK priorities and interests. Furthermore, it is intended to be a broad overview of key developments and events in ESDP in the preceding six months rather than an in-depth analysis of the policy. For instance, the Report will briefly cover all the missions that have been active during our Presidency, but detailed lessons-learned documents are produced separately. You will wish to be aware that in line with our Presidency objective of a more coherent ESDP, we are encouraging the Council Secretariat to undertake a review of the general trends and lessons identified across all civilian ESDP missions, including the EUJUST THEMIS mission. We will inform the Committee of the results of this review as and when they become available. As well as missions, the Report will cover military and civilian capabilities,
including rapid response, and institutions. We will of course give a comprehensive explanation of the UK position on all the elements of the Report in the Explanatory Memorandum that will accompany it when submitted.

You ask about Council deliberations on a border-monitoring mission to Georgia and to be kept informed of potential forthcoming missions in Palestine and Somalia. I can confirm that a decision was taken in March at working group level to establish a small team of three, based in Tbilisi, to monitor the border situation and make recommendations on an appropriate response from the EU. The decision was confirmed by Council on 26 April and the team was established the same month. Following receipt and consideration of the team’s recommendations, a further decision was taken to expand the team to 19. The expanded team's mandate includes mentoring of the Georgian border guards and assisting with reform, as well as work on follow-up to EU JUST THEMIS. An EM was sent to the Committees on 17 May to amend and expand the EU Special Representative’s mandate to include the team. Please note however, that this is now a Member State-led mission falling under the EUSR’s Office, not an ESDP mission, so will not appear in the ESDP Report.

You will be aware that planning is currently underway for an ESDP mission to Palestine—the Joint Action was submitted to you for scrutiny on 28 October. We will keep the Committees informed of developments in the implementation of this mission, as with any future missions. There are no plans currently under consideration for an ESDP mission to Somalia.

You also ask to see the updated Capability Improvement Chart, which is currently being finalised in Brussels; we expect it to be agreed by Council at the GAERC on 21 November. We have passed your request to the Ministry of Defence, which leads on capabilities, and officials there will forward the Chart to you after that date.

11 November 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your Explanatory Memorandum dated 8 December which Sub-Committee C considered at its( not printed) meeting on 15 December. The Sub-Committee agreed to clear the document from scrutiny.

We have a number of questions concerning the Report:

(1) What is the likelihood of a separate civilian or military ESDP mission being established in Kosovo following the current review of its status by the UN?

(2) Are there any plans to extend the current Moldova/Ukraine border control mission?

(3) Paragraph 28 of the Report notes that “it will now be possible to extract and refine the actual ESDP requirements for space-based capabilities.” What specific space-based capabilities does the EU intend to build, and for what purpose?

We will follow up these, and other issues, in our forthcoming evidence sessions with the Minister for Europe, Rt Hon Douglas Alexander, on 26 January and with the Minister for Defence Procurement, Lord Drayson, on 19 January.

There are, in addition, a number of documents referred to in the Report which we would wish to see deposited for scrutiny:

(1) Paragraph 31 of the Report notes the existence of a paper on “Lessons Identified from Battlegroups Initial Operational Capability.”

(2) Paragraph 33 notes that the Battlegroup roadmap is due to be updated at the beginning of 2006.

(3) Paragraph 49 notes that a Civilian Capability Improvement Action Plan which forms the basis for work in 2006 was due to be adopted by Council in December.

If these documents are restricted, then we ask instead for an unclassified summary to be deposited.

19 December 2005

EUROPEAN SECURITY RESEARCH PROGRAMME

Letter from Rt Hon Charles Clarke MP, Home Secretary, Home Office, to the Chairman

I am writing to update you on the Government’s position on the proposed European Security Research Programme (ESRP). I am aware that you wrote to Lord Sainsbury on this topic on 28 June 2005. While the DTI has overall responsibility for the Framework Programme, the Home Office is the UK lead department for the ESRP, and I welcome this opportunity to answer the questions you have raised about the ESRP.
Let me first say that the European Commission has responded very positively to my letter of 23 March introducing the UK non-paper on the ESRP. I attach Commissioner Verheugen’s reply (not printed), which states in particular that the proposed work “has a very clear and exclusive focus on civil research both in terms of structure and substance and it is our intent that this remains the foundation on which the programme is built” (the emphasis is Commissioner Verheugen’s). This is a significant statement which goes a long way towards allaying our concerns.

A cross-Whitehall working group chaired by one of my officials has since met with Commission officials to discuss UK concerns and offer further suggestions on the shaping of the ESRP. Three follow-up papers to the UK non-paper were provided, respectively on governance and scope of the ESRP, intellectual property rights and handling of confidential information within the programme. I am attaching them to this letter (not printed). The UK suggestions were welcomed by the Commission and are now under discussion by the European Security Research Advisory Board, on which Her Majesty’s Government has two representatives. It is worth noting that both France and Germany are supportive of the UK line and have produced non-papers which are very much in agreement with our thinking.

On the issue of a mechanism to handle ESRP issues with an impact on defence interests, I note the preference of Sub-Committee C for the COREPER option. As you will see from the attached follow-up paper on governance and scope of the ESRP, we are currently proposing an “emergency brake” option based on direct recourse to the Council. However this is still under negotiation and we will bear your preference in mind in our forthcoming discussions with the Commission.

On the issue of QMV, the Commission is well aware of our concerns about its use in any security research work programme and Mr Verheugen has confirmed the need for specific rules for this programme in his reply to my letter of 23 March. We have now made substantial further progress on the definition of these rules. In particular, in our follow-up paper on governance and scope of the ESRP, we have suggested three governance mechanisms to ensure Member States have a strong input in the management of the programme.

The Commission is interested in our proposals. We are now working with other Member States to develop them further, with a view to discussing legislative options for their implementation with the Commission in the autumn.

I believe that substantial progress has been made on the shaping of the ESRP and that we can reach a satisfactory agreement on the programme by working with the Commission to build in the safeguards the UK have requested. I have asked my officials to ensure you are kept informed of developments in this area.

19 September 2005

Letter from the Chairman to Rt Hon Charles Clarke MP

Thank you for your letter dated 19 September 2005 which Sub-Committee C considered at its meeting on 20 October.

We note that the Commission has responded positively to your non-paper on the ESRP and is aware of concerns over the use of QMV. We also note your proposal for an “emergency brake” option based on direct recourse to the Council which is still under negotiation.

We also note, in Commissioner Verheugen’s letter, that the European Security Advisory Board was due to meet for the first time in May 2005, and that it is to have a crucial role in the next 18 months. We would like further information on this new body’s composition and mandate. Does it for example report exclusively to the Commission or also to Member States? What have been the outcomes of this Advisory Board’s meetings so far?

Though we agree that progress appears to be being made on the ESRP, Sub-Committee C has decided to continue to hold document under scrutiny pending the outcome of current discussions with the Commission.

20 October 2005

Letter from Rt Hon Charles Clarke MP to the Chairman

Many thanks for your letter of 20 October, replying to my earlier letter to you of 19 September, which provided you with an update on the Government’s position on the proposed European Security Research Programme (ESRP).

In your reply, you asked for further information on the composition, mandate and outcomes of the European Security Research Advisory Board (ESRAB). The mandate for ESRAB is contained in the Commission Decision of 22 April 2005, establishing the European Security Research Advisory Board, which is attached for your information, at Annex A (not printed).
ESRAB is composed of experts drawn from the 25 MS representing users, industry and research organisation. A complete list of the ESRAB members and their affiliations are given in Annex B (not printed).

ESRAB reports to the Commission and not to Member States. Two United Kingdom officials are members, and although they have been invited to participate in their individual capacities, they do report back to the Government.

The most significant outcomes so far have been the initiation of discussions to consider the content, the governance and the management of the proposed European Security Research Programme. The first drafts of the proposals on these issues are due to be circulated by the end of November 2005. However, it should be noted that ESRAB is an advisory body, and that the content, governance and management of ESRP will ultimately be decided by the Council and European Parliament as part of the overall negotiations on Framework Programme 7 for European Community Research. The Minutes of the two ESRAB plenary sessions held so far are attached for your information, at Annex C (not printed).

23 November 2005

Letter from the Chairman to Rt Hon Charles Clarke MP

Thank you for your letter dated 23 November 2005 which Sub-Committee C considered at its meeting on 15 December.

We found your explanation of the ESRAB to be satisfactory. The Sub-Committee decided to continue holding the above document under scrutiny awaiting the decision of Council and the European Parliament on the content, governance and management of ESRP as part of the overall negotiations on the Seventh Framework Programme for European Community Research.


I note that I wrote to Lord Sainsbury, Parliamentary Under-Secretary of State for Science and Innovation, on 28 June concerning the need for a high level of Council involvement in the ESRP. We are content for either yourself or Lord Sainsbury to provide further updates on the progress of the Seventh Framework Programme.

19 December 2005

EUROPEAN UNION CIVILIAN-MILITARY SUPPORTING ACTION TO THE AFRICAN UNION IN THE DARFUR REGION OF SUDAN

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

Thank you for your EM dated 26 October 2005 which Sub-Committee C considered at its meeting on 3 November. The document was cleared from scrutiny.

The Committee would, however, like to take this opportunity to urge the Government to provide fuller analysis in the EMs of the political contexts of the proposed Joint Actions, in this instance the ongoing crisis in Darfur. This would greatly facilitate the Committee’s examination of the merits of the Council’s proposals.

3 November 2005

EUROPEAN UNION DEVELOPMENT POLICY (11413/05)

Letter from the Chairman to Rt Hon Hilary Benn MP, Secretary of State for International Development, Department for International Development

Thank you for your Explanatory Memorandum dated 26 July 2005 which Sub-Committee C cleared at its meeting on 20 October.
We are broadly supportive of the Commission’s proposals which, we note, were formulated in response to a wide-ranging consultation. We agree with your comment in paragraph 13 of the Explanatory Memorandum that the European Parliament should play a full part in agreeing the DPS.

In paragraph 12 of the Explanatory Memorandum you state that you will, as Presidency, be seeking to achieve “the right balance” in three areas:

— EU common principles versus implementation guidelines;
— Broad themes versus focal sectors for EC assistance; and
— Retaining clear focus on poverty reduction whilst ensuring other external action policies support development objectives.

However, you do not clearly state whether the Commission proposal does, or does not, (in your view) achieve the right balance. We would like to seek clarification on how you believe the document ought to be amended, and ask to be kept updated on developments as they arise.

20 October 2005

Letter from Rt Hon Hilary Benn MP to the Chairman

Your Committee met on 20 October 2005 and discussed the Proposal for a Joint Declaration by the Council, the European Parliament and the Commission on the European Union Development Policy. Your Committee cleared the Proposal from scrutiny but asked for further information.

In particular, your Committee asked whether the Commission Proposal does, or does not, achieve the right balance in:

1. EU common principles versus implementation guidelines;
2. Broad themes versus focal sectors for EC Assistance;
3. Retaining clear focus on poverty reduction whilst ensuring other external action policies support development objectives.

On the first point, we believe that by including the EC implementation guidelines as an Annex to the EU Declaration, the Commission Proposal did not strike the right balance. The majority of Member States support this view.

On the question of broad themes versus a more targeted assistance, a number of Member States argue that the EC should develop “areas of excellence”, building on its strengths and identifying where, at Community level, we need to develop particular expertise. However there is recognition that this should not restrict the Commission from working in other areas. Rather, there should be a balance between the need to concentrate efforts in country, whilst retaining the flexibility to respond to a range of country priorities.

The Commission Proposal sought to address the question of development within the broader context of external actions. Member States have expressed concerns that as a result development, and in particular, a focus on poverty eradication, are given insufficient emphasis. Subsequent discussions point to a consensus among Member States that while globalisation provides the context within which development is pursued, poverty eradication and sustainable development must remain the primary objectives.

Subsequently, Member States asked the Presidency to produce a draft to address these issues. The Presidency draft seeks to clarify that the Development Policy Statement is a single document in two parts—a common EU vision and an updated EC Development Policy. The Presidency draft will now form the basis of the future tripartite Development Policy Statement, which we hope to agree at the General Affairs and External Relations Council in November 2005. We will send you a copy of all relevant documents in due course, including this Statement.

4 November 2005

Letter from Rt Hon Hilary Benn MP to the Chairman

Your Committee discussed the Proposal mentioned above at its meeting on 20 October. The Committee cleared the document from scrutiny but asked for further information. I wrote to you on 4 November 2005 in response to your questions and would like to take this opportunity to update you on the current status of this document.

As mentioned in my letter of 4 November 2005 EU Member States requested the Presidency to produce a draft which addressed their concerns and in particular to produce a draft which all three parties (Council, Commission and the European Parliament) felt they could sign up to.
The UK acting in its role as Presidency has fulfilled this request and have produced a text which will form the basis of the future tripartite statement. The draft Development Policy produced by the Presidency and currently under negotiation, attempts to find compromise text including in the three areas you mentioned in your letter of 20 October 2005, namely:

— EU common principles versus implementation guidelines;
— Broad themes versus focal sectors for EC assistance; and
— Retaining clear focus on poverty reduction whilst ensuring other external action policies support development objectives.

I attach to this letter the most recent version of the Presidency draft text (not printed). It should be stressed that discussions are ongoing on this particular version and it may be revised further prior to final agreement at the General Affairs and External Relations Council in November 2005.

14 November 2005

Letter from the Chairman to Rt Hon Hilary Benn MP

Thank you for your letter dated 4 November 2005 which Sub-Committee C considered at its meeting on 17 November.

We note that the Presidency has been asked by Member States to produce a new draft Development Policy to take into account various concerns with the above Commission communication. This draft will form the basis of the future tripartite Development Policy Statement. We understand from your letter that this will be significantly different from the Commission communication. We therefore ask that it be deposited for scrutiny along with an Explanatory Memorandum outlining the major differences and explaining any new objectives.

18 November 2005

Letter from Rt Hon Hilary Benn MP to the Chairman

Your Committee discussed the Commission Communication: Proposal for a Joint Declaration on European Union Development Policy, on 8 September. Your Committee cleared this from scrutiny on 20 October. I am writing to let you know the outcome of the Council discussions, and to outline the main differences between the adopted Statement and the Communication.

On 22 November 2005, the General Affairs and External Relations Council adopted the Joint Statement: “The European Consensus on Development”. Endorsement by the European Parliament, which has been involved throughout the negotiation process, is expected before the end of the year.

This was a good outcome for a number of reasons: poverty eradication is established as the overarching objective for EU official development assistance in all developing countries; the least developed and low-income countries will be given priority in terms of overall resource allocations; and there is renewed attention to promoting policy coherence for development. The European Consensus on Development replaces the 2000 European Community Development Policy Statement. The main differences between the adopted Statement and the Communication are outlined below.

First, the Commission communication advocated a strategy for managing equitable globalisation, setting development in the context of globalisation and other EU external actions. In response to concerns from Member States that the focus on poverty and priority to low-income countries of the 2000 Statement had been lost, the adopted Statement clarifies that the overarching objective for EU Official Development Assistance (ODA) is poverty eradication, and reinstates that the least developed and low-income countries should be given priority in terms of overall resource allocation. Member States recognised the importance of other policies for achieving the MDGs, therefore the Declaration highlights the need to promote Policy Coherence for Development (PCD), to ensure that development objectives shall be taken into account in other Community policies that affect developing countries.

Second, the Commission Communication proposed a single EU Development Policy with a substantive EU part and with the EC part (guidelines for implementation) attached as an Annex (not printed). Most Member States wanted to be clear that as development is a shared competence this was not a single EU Policy. The adopted Statement therefore clarifies the status of the two parts: Part 1 sets out a common, EU vision on development as a guide for Community and the Member States development action; and Part 2 is a renewed European Community Development Policy. Both Parts apply to all ODA in all developing countries, as defined by the OECD DAC.
Third, the Commission Communication proposed establishing EU common policy guidelines, based on a EU-centric thematic framework and EU-led suggestions on in-country cooperation that went beyond existing agreements. These proposals did not find support amongst the majority of Member States, and were dropped in the adopted Statement.

Finally, the Commission proposed moving from the six focal sectors set out in the 2000 EC Development Policy Statement to nine broad areas for Community activity. The adopted Statement recognises that the Commission should engage in a broader range of areas in response to the needs of partner countries, and that within these areas, the Community will be guided by the principle of concentration in a limited number of sectors in country. In a number of these areas, the Community will be considered to have a comparative advantage. Our expectation is that Commission expertise will be focused in such areas.

I attach to this letter the adopted Joint Declaration: “The European Consensus on Development”. (not printed).

28 November 2005

EUROPEAN UNION MILITARY STAFF

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

The EU Military Staff (EUMS) was established in 2001 to provide military support and expertise through the EU Military Committee (EUMC) to the EU’s Political and Security Committee (PSC). The detailed terms of reference for the EUMS, including role, tasks and organisation, were laid out in Council Decision 2001/80/CFSP. The recent agreement to set up a civilian/military cell for joint strategic planning, a non-standing Operations Centre, and permanent liaison arrangements between the EUMS and NATO requires the EUMS terms of reference to be amended to take these new structures into account.

The amendments to the EUMS terms of reference are crucial to allow the new civilian/military cell and EU-NATO liaison arrangements to come into being. The cell will be a core of civilian and military planners within the EUMS and will enhance the EU’s capacity for the strategic planning of crisis management operations, particularly when a joint civilian/military response is needed. It will also have the capacity to activate a small Operations Centre when the Council decides, should neither NATO nor national assets be identified to run an EU (primarily civ/mil) mission. The liaison arrangements between EU and NATO should improve the planning of EU operations involving NATO assets, and contribute to full transparency between the two organisations in crisis management.

We believe that integrating the range of civilian and military tools available to the EU is at the heart of the real value that the EU can bring to international security, particularly in conflict prevention and post-conflict reconstruction. We are also strongly in favour of improving working relations between the EU and NATO. The UK was therefore one of the main instigators for these new structures and worked closely with Partners and with the Council Secretariat and EUMS on their development.

The civ/mil cell and liaison arrangements cannot get up and running until the EUMS ToRs have been amended and agreed. The UK has worked hard to ensure that the new planning arrangements reflect our vision of ESDP and we are now keen to see them working as soon as possible.

In light of the dissolution of Parliament and Scrutiny Committees I will have to agree to renew this Council Decision at the 10 May Competition Council before scrutiny can be completed. I hope you will understand our reasons.

25 April 2005

EUROPEAN UNION MONITORING MISSION (EUMM)

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

Following a review by the High Representative (Javier Solana) in September 2005 (not printed), I thought you would like an update on the EUMM. I have also included an Explanatory Memorandum and seek your approval of the Council Joint Action extending the mandates of EUMM and its Head of Mission until 31 December 2006.

The review considered the impact that EUMM has had on EU decision making over the last year and concluded that in light of anticipated negotiations on Kosovo’s status and the review of the State Union of Serbia and Montenegro, EUMM should focus its activity in these areas and provide the EU with timely,
comprehensive information on relevant developments. In early 2006, the High Representative will review whether conditions have been met to allow for a withdrawal from Albania and the phasing out of monitors in Bosnia and Herzegovina.

We will continue to argue that EUMM’s presence should reflect stability on the ground. Therefore, if conditions are in place in early 2006, we will press for a withdrawal from Bosnia and Herzegovina and Albania as part of an overall exit strategy.

3 November 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your Explanatory Memorandum dated 4 November which Sub-Committee C considered at its meeting on 17 November. The Sub-Committee cleared the document from scrutiny but expressed its concern over an apparent discrepancy between the memorandum and the documents provided.

The Secretary-General’s review of the EU Monitoring Mission (EUMM) which you also provided recommends that the mission should be continued, but that its presence in Bosnia and Herzegovina, Albania and the former Yugoslav Republic of Macedonia be kept under review. The review also recommends that EUMM’s overall focus on Serbia and Montenegro and Kosovo should remain unchanged. This is reflected in the proposed Joint Action which emphasises the focus on SaM and Kosovo. However, in paragraph 12 of your Explanatory Memorandum you appear to place equal focus on EUMM’s role in Kosovo, South Serbia and Macedonia. Given both the Secretary-General’s review, and the Commission’s recent recommendation that Macedonia be accorded accession status, it is not clear why you should emphasise the role of EUMM in Macedonia in this way.

We agree with the Secretary-General that the situation in Macedonia should be kept under review, but that the focus of EUMM should be on Serbia and Montenegro and Kosovo.

18 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter confirming that my Explanatory Memorandum on EUMM of 4 November has been cleared from scrutiny, and querying the Government’s position on the ongoing presence of EUMM in Macedonia.

Over the last year, there has been a reduction of around 35 per cent in EUMM monitors in Macedonia. This reflects the growing confidence in stability in the country. As you note, candidate status for Macedonia would have a further positive effect in this regard.

But although the predominantly ethnic-Albanian former crisis areas (2001) in the north-west of the country remain relatively stable, residual security concerns remain. EUMMs presence in Macedonia serves as an early warning mechanism for any localised reaction as Kosovo final status talks get under way. I hope that EUMM monitors in Macedonia continue to prove to be a precautionary measure and turn out to be unnecessary. EUMM’s presence in Macedonia, and the region more widely, should be kept under constant review, be adaptable and be downsized according to needs on the ground.

Therefore, at this time I believe that there is a distinction to be made between the presences in Bosnia and Herzegovina and Albania on one hand, and Kosovo, Serbia and Montenegro and Macedonia on the other. In saying that, I sincerely hope that we will soon be in a situation where further downsizing in Macedonia can be pursued.

30 November 2005

EUROPEAN UNION POLICE MISSION AND SPECIAL REPRESENTATIVE IN BOSNIA AND HERZEGOVINA

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

Thank you for your Explanatory Memoranda dated 3 and 4 November 2005 which Sub-Committee C considered at its meeting on 17 November. The Sub-Committee agreed to clear the documents from scrutiny but seek a reassurance that the reduced mission is sufficient for its purpose. There is no clear evaluation in the documents as to how successful the current police mission has been. Is the reduced mission being established simply because EUPM has come to the end of its three-year mandate, or is there an overarching strategic approach towards Bosnia which creates a need for the new proposals.
We note in your letter dated 11 November 2005 on the ESDP Presidency Report that you have requested that the Council Secretariat prepare a full review of the general trends of civilian ESDP. This is particularly important in the context of the Western Balkans as there are currently a number of civilian missions in place. As the first such mission (EUPM) has now come to a close, it is imperative that such a review take place. The review, once completed, should be deposited for scrutiny by Parliament along with a full Explanatory Memorandum.

18 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 18 November seeking further clarification on the recent Council Joint Action on the EU Police Mission (EUPM) in Bosnia and Herzegovina (BiH).

The decision to launch EUPM as a follow-on mission to the current EU Police Mission in BiH reflects the EU assessment that the Bosnian police continue to require international support to raise the standards of policing in BiH, to enhance their capacity to fight organised crime and to support the police reform process. The tasks of the new EUPM mission have been tightly refocused on these areas. This has enabled the overall size of the mission to be reduced. The end-state EUPM aims to achieve self-sustaining police reform, completion of the establishment of the necessary state-level agencies, achievement of European and international policing standards and the development of a sustainable and effective indigenous capability to fight organised crime.

This refocused mission builds on the achievements of EUPM over the last three years. EUPM has contributed extensively towards the positive development of policing in BiH. It has brought about the transformation of the State Investigation and Protection Agency (SIPA) into an operational police agency with enhanced powers to fight major and organised crime. The Mission has also played a key advisory role in the process of police reform, and has developed local ownership of this process through the establishment of the Police Steering Board, which it co-chairs with local authorities.

The EU is using the lessons identified from its growing experience of civilian crisis management missions to improve the implementation and management of EU missions. Under the Austrian Presidency these lessons may be brought together in an overarching review. This would take into account lessons from EUPM. The Austrian Presidency is also expected to undertake a review of the EU’s missions in BiH, taking into account the wider EU presence there and the expected evolution of the international community’s involvement. We will seek to inform the Committee of the results of these reviews as and when they become available.

7 December 2005

EUROPEAN UNION SPECIAL REPRESENTATIVE FOR THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

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

At the 18 July 2005 General Affairs and External Relations Council, EU Foreign Ministers are expected to agree Joint Actions to renew the mandates of the EU Special Representatives (EUSR)s to Afghanistan (Mr Vendrell), the Middle East Peace Process (Mr Otte), Bosnia and Herzegovina (Lord Ashdown), the South Caucasus (Mr Talvitie), the African Great Lakes Region (Mr Ajello), and Moldova (Mr Jacobovits de Szeged).

The mandate renewal for the EUSR to Macedonia (Mr Sahlin) is still under review in the Western Balkans Working Group. Mr Sahlin is expected to leave this position shortly and a discussion is underway on how the mandate should be amended in light of the imminent completion of the Ohrid Framework Agreement. An EM and Joint Action will be submitted as soon as it is available.

12 July 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

At the 17 September 2005 Environment Council, EU Ministers are expected to agree a Joint Action to approve the mandate of the EU Special Representative (EUSR) to the former Yugoslav Republic of Macedonia.

The political situation in the former Yugoslav Republic of Macedonia has improved over the past four years. Stability (though fragile) has returned; the legislative aspects of the Ohrid Framework Agreement (the peace settlement which ended the conflict in 2001 by addressing Albanian aspirations) were completed in July; and the country is gradually moving out of the post-conflict period. The entry into force of the Stabilisation and
Association Agreement, and the application for EU membership submitted in March 2004, (Macedonia is in line for a Commission opinion (avis) in November on her membership application) has lately led to a more active role for the European Commission. As the country enters the pre-accession period, the need for close cooperation between the EUSR and the Head of the Commission Delegation is becoming increasingly important.

While technical pre-accession issues are becoming increasingly prominent, Macedonia still suffers from a number of frailties and remains susceptible to extremism. Political post-crisis challenges will not immediately disappear from the agenda. In addition, the possible commencement of a process to determine the future status of Kosovo has the potential in the short to medium term to be a de-stabilising factor. There remains therefore a need for continued external support and classic mediation between different groups including on security issues. The EUSR is the primary mechanism for delivering this support.

Given both the stabilisation and integration challenges as set out above, the Council Secretariat and Commission have proposed a “personal union” of the EUSR and the Head of the European Commission Delegation for an initial period of four months (one individual to head up both offices). The new joint EUSR/Head of Delegation will continue to report to, and be instructed by, the Council on CFSP issues but will be responsible to the Commission for areas of Community competence.

This arrangement offers a practical, pragmatic and cost-effective solution to the specific requirements of Macedonia at this time. Having one individual heading up both offices will ensure that the Macedonian authorities receive one authoritative message on both security and integration issues. However, as we would want to consider the merits of any possible future proposal for such an arrangement on its own terms, we have secured a Declaration to accompany the Joint Action. This highlights that this proposal is an exceptional measure and does not set a model for the appointment of future EUSRs. Importantly, the declaration also notes the Council’s primacy in CFSP by stating the Council and Commission’s agreement that the EUSR will take instructions from the Council on CFSP, with no caveats or exceptions.

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for the Explanatory Memorandum and letter dated 7 October 2005 which Sub-Committee C considered at its meeting on 13 October. The Sub-Committee cleared the document from scrutiny, but wished to seek reassurance on two issues.

In the letter you note that there will be a personal union of the EUSR for Macedonia and the Head of the European Commission Delegation for an initial period of four months. The holder of this post will report separately to the Council and the Commission on CFSP and Community competence issues respectively. You note that the EUSR will take instructions on CFSP from the Council with no caveats or exceptions. Could you confirm that this means that, in any case of conflict between instructions from the Council and the Commission, those of the Council will take precedence.

In addition, whilst we recognise that this measure is appropriate in the particular circumstances of Macedonia, we share your concern that this does not set any precedent for the position of other EUSRs in the future. Furthermore, the personal union established in this case should be carefully reviewed at the end of the initial four month period.

We would like to thank you for bringing the separate declaration to our attention by your letter, even though it was not directly covered by the proposed joint action, and hope to be kept equally informed of any such future initiatives.

13 October 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter dated 13 October concerning the appointment of the EUSR/Head of Commission Delegation for Macedonia. Your letter sought reassurance on two issues. Firstly, that if a situation arose where the EUSR/Head of Commission Delegation received conflicting instructions from the Council and the Commission those of the Council would take precedence. And secondly, that these arrangements are an exceptional measure because of the situation in Macedonia. I am happy to provide the reassurance you seek on both counts.

The individual concerned will have two roles, with separate reporting chains and separate appointment procedures. For his Special Representative role he will be appointed under the standard legal base for EU Special Representatives (Art 18.5 TEU). He will carry out his EUSR duties as instructed by the Council and will report back to the Council on all these CFSP matters. For his Commission duties, he will report back to
the Commission and be financially responsible to them, for example for any development expenditure (as well as EUSR spending). The two strands of EU policy, pillars I and II, will remain entirely separate in legal and technical terms but will be carried out by the same person. However, the Council and Commission have agreed a declaration that ensures that in the event of conflicting instructions from the Council and from the Commission, the Council’s instructions would take precedence in CFSP matters.

As my letter to you of 7 October points out and as you acknowledge in your letter of the 13 October, the arrangements for this EUSR suit the particular circumstances in Macedonia—a country where pre-accession issues are becoming increasingly prominent but where residual security concerns remain. However, the declaration that accompanies the Joint Action is clear that this arrangement does not set a precedent.

The arrangements in Macedonia will be reviewed in February. I will of course ensure that both the Lords and Commons Scrutiny Committees are kept informed of developments regarding these arrangements and any such future initiatives.

3 November 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your Explanatory Memorandum dated 15 November 2005 which Sub-Committee C considered at its meeting on 17 November. Following the recommendation of the Sub-Committee, the document was cleared at the Chairman’s sift on 22 November.

Thank you also for your clarification of the position of the Special Representative for Macedonia in your letter dated 3 November.

We are content with the terms of the proposed police assistance mission but note that it is intended to come to an end in six-months time once the Commission field-level project is established. The mandate of the EU Special Representative for Macedonia has been extended until next February (Explanatory Memorandum on the Council Joint Action appointing the EUSR dated 7 October 2005). What will be the position of the EUSR once the Police Assistance Team takes over, and will he continue to have any role in police operations as the Special Representative or is it envisaged that his mandate will be terminated?)

22 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

At the 30 January 2006 General Affairs and External Relations Council (GAERC), EU Foreign Ministers are expected to agree Joint Actions to renew the mandates of the EU Special Representatives (EUSRs) to: Bosnia and Herzegovina (Lord Ashdown), the South Caucasus (Mr Talvitie’s successor, due to be appointed by the end of January), the Middle East Peace Process (Mr Otte), Afghanistan (Mr Vendrell), the African Great Lakes Region (Mr Ajello), Moldova (Mr Jacobovits de Szeged) and Central Asia (Mr Jan Kubis).

The mandate for the EUSR FYROM (Mr Fouere) is also coming up for renewal. You will recall my letter of 7 October 2005 setting out the particular characteristics of the mandate. This noted that the arrangement was for an initial period of four months. In my subsequent letter of 3 November I undertook to ensure that both the Lords and Commons Scrutiny Committees were kept informed of developments regarding these arrangements and any such future initiatives, when the mandate came up for renewal in February. The Presidency have started work on this and I shall write to the Committees shortly to allow sufficient time to scrutinise how the arrangement has worked on the ground.

19 January 2006

EUROPEAN UNION SPECIAL REPRESENTATIVE FOR MOLDOVA

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

On 2 March 2005 I sent your Committee an Explanatory Memorandum on a Joint Action to establish an EU Special Representative (EUSR) for Moldova. When I submitted the Explanatory Memorandum, the candidate for the EUSR had not yet been selected. I am therefore writing now to let you know that on 8 March
the PSC agreed in principle to appoint Mr Adriaan Jacobovits de Szeged, a Dutch national, to this post. The decision was formally endorsed by the General Affairs and External Relations Council on 16 March. Mr Jacobovits de Szeged has excellent credentials, and was the preferred choice of the Government.

Mr Jacobovits de Szeged was previously the Netherlands’ ambassador to the US, UN and NATO. He has developed an in-depth working knowledge of the situation in Transnistria, having served as Personal Representative of the Chairman-in-Office for Moldova during the Dutch chairmanship of the Organisation for Security and Cooperation in Europe in 2003. He was very effective during this period, coming into the role at a difficult time, and is well known to the two parties and three mediators involved in the Transnistrian dispute.

It is the firm belief of High Representative Javier Solana, the Government and other EU Member States that Mr Jacobovits de Szeged has the right credentials to achieve the objectives set out in the EUSR mandate.

22 March 2005

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

Thank you for your EM dated 20 October 2005 which Sub-Committee C considered at its meeting on 3 November. The document was cleared from scrutiny.

In connection to Mr Jacobovits de Szeged’s new mandate the Committee also discussed the resumption of the OSCE led negotiations aimed at solving the Transnistria conflict. We understand the negotiations were set to resume on 27 October in Chisinau and on 28 October in Tiraspol. The EU and the United States were invited to attend as observers. We would be very grateful for an update on the outcome of these meeting.

3 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 3 November referring to the Council Joint Action amending the mandate of the EUSR for Moldova and requesting further details of the OSCE led negotiations on Transnistria on 27 and 28 October.

I am pleased that the Explanatory Memorandum (EM) was cleared from scrutiny. As I mentioned in the EM, we believe the EU Border Mission is an important step forward in efforts to address the security concerns associated with illegal trade across the Moldova-Ukraine border. Ultimately we hope this will prove important in working towards a settlement of the frozen conflict in Transnistria. The EUSR’s expanded office will play a key role in trying to ensure the success of the mission.

In terms of the settlement process, negotiations did resume on 27–28 October in Chisinau and Tiraspol. This was the first formal session of the negotiations for almost 18 months, and the first including the EU and US Observers. Despite holding only observer status, both the EU and US were in fact able to contribute fully to discussions.

We understand from Mr Jacobovits de Szeged, who represented the EU, that the talks were difficult but productive. The two sides, with the assistance of the mediators and observers, were able to reach agreement on a number of issues, including OSCE-led consultations on an international assessment mission to evaluate conditions for democratic elections in Transnistria. They also agreed to exchange information on the size of their respective military forces and equipment, and set out rough parameters for a possible factory-monitoring mission in Transnistria. However, there was no mention in the protocol that emerged from the meeting of the withdrawal of Russian troops and munitions from Moldova, in line with Russia’s Istanbul commitments (which include the full withdrawal of arms and ammunition from Transnistria, or their destruction in situ, and the withdrawal of Russian forces). Accordingly, we have again made clear in a statement on 3 November the importance the EU attaches to Russian fulfilment of its Istanbul commitments.

Overall, we see the resumption of the formal negotiation process after a long period of stalemate as welcome progress. We hope that further positive steps will be taken at the next round of talks, currently scheduled for 15–16 December.

20 December 2005
EUROPEAN UNION SPECIAL REPRESENTATIVE FOR THE SOUTH CAUCASUS

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

At the next General Affairs and External Relations Council (GAERC) on 25 April, Foreign Ministers are expected to agree to a Council Joint Action amending the mandate of the EU Special Representative (EUSR) for the South Caucasus. The Joint Action is being amended to take account of a new support team, seconded to Tbilisi by Member States, which will report on the situation on the Georgia-Russia border.

The Organisation for Security and Cooperation in Europe’s (OSCE) border monitoring operation (BMO) in Georgia ceased at the end of 2004 when Russia vetoed the continuation of its mandate. The OSCE BMO provided a valuable security and confidence building service along Georgia’s border with Russia (Chechnya, Ingushetia and Dagestan) across which terrorists were allegedly travelling to take refuge between attacks. The Georgians do not have the capacity to control the borders themselves and have asked OSCE participating states to maintain an international presence. It is important not to leave a vacuum on the border as the OSCE BMO closes down. During the lifespan of the OSCE BMO, the number of border crossings reported decreased, suggesting that the BMO acted as a deterrent to those who would travel between Georgia and Russia.

The support team strengthening the EUSR’s Office in Tbilisi will be in place for an intitial period of three months. It will provide limited capacity for monitors to travel to the border to assess the security situation. The support team will also facilitate confidence-building between Georgia and Russia and ensure efficient co-operation and liaison with all relevant actors. The support team will assess the need for further action, including the question of whether an international presence is required. The increase in funding for the EUSRs office will go towards translators and transportation. Staffing costs will fall to those individual Member States providing personnel (of which the UK is one).

The amended Joint Action should be agreed as soon as possible to allow the extra funding to be released. The 25 April GAERC will be the next opportunity to do this. In light of the dissolution of Parliament and Scrutiny Committees I will have to agree to renew this Council Joint Action at the GAERC before scrutiny can be completed. I hope you will understand our reasons.

20 April 2005

EUROPEAN UNION SPECIAL REPRESENTATIVE FOR THE SUDAN

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

Thank you for the Explanatory Memorandum dated 4 July 2005 which Sub-Committee C considered at its meeting on 7 July. The Sub-Committee agreed to hold the document under scrutiny.

In article 3 of the proposed Joint Action it is stated that the Special Representative will “maintain close collaboration with the United Nations and other relevant international actors”. NATO is currently providing airlift, training and other logistical support for AU troops engaged on the African Union monitoring mission in Sudan (AMIS). It is important that the EU Special Representative co-operate closely with NATO, since one aspect of his stated role is to “ensure maximum effectiveness of the EU’s contribution to AMIS.” We therefore consider that article 3 should include a specific reference to NATO in order to make clear the importance of collaboration in Sudan.

It is expected that this Joint Action will be agreed at the GAERC on 18 July. We would therefore appreciate an early response to this letter in order that Sub-Committee C may consider your response at its meeting on 14 July.

7 July 2005

Letter from Ian Pearson MP, Minister of State for Trade Investment and Foreign Affairs, Foreign and Commonwealth Office to the Chairman

Thank you for your letter of 7 July to Douglas Alexander about the Joint Action to appoint an EU Special Representative (EUSR) for Sudan. I am writing on behalf of Douglas Alexander who will be in the Baltics on Tuesday 12 July on EU Presidency duties.
The House of Lords Sub-Committee C considered that article 3 of the Joint Action ought to include a specific reference to collaboration with NATO. Let me explain why the Government continues to think it unnecessary to re-open the text.

The role of the EUSR will be both political and operational, facilitating the effective co-ordination and delivery of overall EU support to Sudan, and contributing to the peace process in Darfur and implementation of the Comprehensive Peace Agreement across the rest of the country. There are many other international actors involved, principally the UN. NATO is involved too, but only militarily and on one conflict (Darfur). So it does not need to be singled out in this context.

However, NATO is a key international actor in the more specific context of the AU mission in Darfur. That is why close EU collaboration with NATO is explicitly singled out in Articles 3 and 5 of the separate Joint Action covering EU support to the African Union Mission in Sudan (AMIS).

Co-ordination will be achieved in Addis Ababa and Brussels. The AU’s Administrative Control and Management Centre (ACMC) in Addis, where both the EU and NATO have Liaison Officers, will ensure overall co-ordination of all international assistance on the ground. The Council Secretariat will additionally ensure that close co-ordination with NATO also takes place in Brussels.

The EUSR and AMIS Joint Actions are of course linked, not least through the role of the EUSR in ensuring coherence between the EU’s supporting action to AMIS and the overall policy objectives of the EU towards Sudan. That is further assurance that collaboration with NATO will not be overlooked in the wider political context.

I trust this explanation provides the Sub-Committee with sufficient reassurance that the EU will continue to work in close co-ordination with NATO (and the UN), as is already happening in Brussels, Addis Ababa and Sudan.

12 July 2005

Letter from the Chairman to Ian Pearson MP

Thank you for your letter of 12 July 2005 written on behalf of the Minister for Europe, Rt Hon Douglas Alexander in response to our letter of 7 July. Sub-Committee C considered this letter at its meeting on 14 July. Sub-Committee C cleared the document from scrutiny. We were reassured that the proposed Special Representative for Sudan would work in close co-operation with NATO and we welcome the specific references to NATO in the separate Joint Action covering EU support to the African Union Mission in Sudan (AMIS). We urge you to ensure that the need for co-operation with NATO in Sudan continues to be recognised in future.

15 July 2005

EXCHANGE OF CLASSIFIED INFORMATION BETWEEN THE EUROPEAN UNION AND SWISS CONFEDERATION (8103/05)

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

I sent your Committee an Explanatory Memorandum (8103/05) on 20 May 2005 regarding a Council Decision on procedures for the exchange of classified information between the EU and the Swiss Confederation.

In January 2004, the Council authorised the Presidency to open negotiations with Switzerland based on a draft model agreement. The Council felt that there was a long-term need for the exchange of classified information with Switzerland, as the Swiss are a contributor to the EU Police Mission in Bosnia and the EU police mission in Macedonia (EUPo1 Proxima). Switzerland also participates in the ESDP military operation Althea in Bosnia and is a potential contributor to future ESDP civilian and military missions.

The Council Decision will enable Swiss personnel involved in EU crisis management operations to be fully involved in the decision making process. At present they are currently restricted in the level of EU documentation they can see by the lack of an agreement on exchange of information. The effectiveness of ESDP operations involving third countries depends on the ability to share classified information. As indicated in the FCO’s Explanatory Memorandum this Council decision is expected to be agreed at the 30 May Agriculture and Fisheries Council. Given re-formation of your Committee is still pending, I will have to agree to this Council Decision before scrutiny can be completed. I hope you will understand our reasons.

25 May 2005
FUTURE FINANCIAL PERSPECTIVES 2007–13 (11734/05)

Letter from the Chairman to Rt Hon Hilary Benn MP, Secretary of State for International Development, Department for International Development

Thank you for your Explanatory Memorandum dated September 2005 which Sub-Committee C cleared at its meeting on 20 October.

We agree that the proposal represents an important step towards simplifying the complex budget structure for external spending and share your concerns that it is unclear how the thematic programmes will work in detail. We look forward to receiving the detailed communications on each programme later in the year, and ask to be kept generally informed of the on-going discussions on the future structure of the external relations budget.

20 October 2005

GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, LUXEMBOURG, JUNE 2005

Letter from James Eke, Department Scrutiny Coordinator, Foreign and Commonwealth Office to the Chairman.

1. I attach (Annex A) for the Committee’s consideration a scrutiny table and provisional agenda for the General Affairs and External Relations Council (GAERC) of 13 June 2005.

Annex A

GENERAL AFFAIRS

2. Financial Framework 2007–13. The Council will have another exchange of views on a revised version of the Presidency’s “negotiating box” (a draft framework for June European Council Conclusions). The discussion will cover both expenditure and own resources. The Presidency aims to reach a political agreement at the June European Council. The Government’s position on future financing remains that the Commission’s proposals for real terms spending increases of 35 per cent from 2007 to 2013 are unrealistic and unacceptable. We, along with France, Germany, The Netherlands, Austria and Sweden, believe that the priorities of an enlarged Union can be met within a budget of 1 per cent EU Gross National Income (GNI).

3. Preparations for the 16–17 June 2005 European Council. The Presidency will discuss the draft agenda with Member States and tie up any loose ends on the Conclusions. We do not expect any discussion on the Treaty Establishing a Constitution for the EU. This will be discussed by Heads of State/Government at the Council. The current agenda is:

   (a) Financial Perspectives: the Presidency is aiming for an agreement at the June Council.

   (b) Sustainable Development: the Presidency envisage a two-stage process with the June European Council agreeing a set of guiding principles, and a further discussion to follow when the Commission has put forward its more detailed proposal in the Autumn.

   (c) JHA: the next JHA Council will discuss the Hague Action Plan. The European Council is expected take note of the extent to which it has been implemented.

   (d) Enlargement: the Council will take note of the signing of the accession treaty with Romania and Bulgaria. and review progress on Croatia and Turkey.

   (e) External Relations: the Council is expected to discuss progress on the Millennium Development Goals, ESDP, Non-proliferation, Conflict Prevention, and the Middle East.

EXTERNAL RELATIONS

4. Western Balkans. The Council is expected to agree Conclusions on Kosovo and Bosnia-Herzegovina. On Kosovo, Ministers may have a brief discussion on the EU’s role in the UN protectorate. On Bosnia, Commissioner Rehn is expected to brief Ministers on the lack of progress on police reform.
5. Middle East. On the Middle East Peace Process, Ministers may discuss the outlook leading up to, and following, Disengagement. We will wish to emphasise the role the EU can play in supporting Disengagement and the EU should encourage both parties to improve co-ordination prior to Disengagement. There may also be a round-up of work since the 1 March London Meeting. There has been progress on governance, economic and security reform. We will highlight the importance we place on the Commission working with the donor community in order to better target support.

6. The Council may also discuss the situation in Lebanon, particularly in light of the ongoing Lebanese Parliamentary elections and the assassination of the Lebanese journalist Samir Qasir on 2 June. We expect the Council to call for continued EU support for full implementation of UNSCR 1559.

7. Cuba. The GAERC is expected to agree Conclusions which roll over the suspension of the June 2003 measures. The Conclusions will reaffirm the EU’s commitment to the Common Position of 1996 which sets out a policy of constructive engagement and dialogue with the Cuban government as the best method to promote a peaceful transition to pluralist democracy. The Conclusions will reaffirm the EU’s commitment to intensified dialogue with the peaceful opposition, and to raising human rights concerns, particularly regarding political prisoners, with the Cuban government.

8. Transatlantic Relations. The Presidency will present its plans—as agreed with the US—for the EU-US Summit on 20 June. It is unlikely that Ministers will have a lengthy discussion.

9. UN Summit. The GAERC will discuss the Millennium Review Summit. It will present a good opportunity to ensure all Member States remain committed to achieving a positive summit outcome. The Summit in New York on 14–16 September is an excellent opportunity to achieve much-needed reform at the UN in the areas of development, human rights, security and reform of the UN Secretariat. We will use the opportunity as incoming Presidency to encourage EU partners to maintain a positive attitude towards UN reform and lobby for a successful Summit outcome.

10. Iraq. The Presidency will brief Member States on preparations for the International Conference on 22 June. The Conference will be the occasion for the Iraqi Interim Government to announce its long-term strategy, priorities and ideas in the fields of constitutional process, rebuilding and the rule of law, and to present progress made in these areas. At the May GAERC, the Foreign Secretary welcomed the work the Presidency and others had done to prepare the Conference.

11. I attach (Annex B) a scrutiny table, which sets out the scrutiny state of play of proposals and documents bound for the 13 June GAERC.

7 June 2005

Annex B

GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, 13–14 JUNE 2005—EXTERNAL RELATIONS ITEMS SCRUTINY TABLE

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GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, LUXEMBOURG, OCTOBER 2005

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

The General Affairs and External Relations Council (GAERC) was held on 3 October in Luxembourg. My Right Honourable Friend the Foreign Secretary and I chaired the Council as Presidency. The agenda items were covered as follows:

GENERAL AFFAIRS

Enlargement. The Council approved the framework for negotiations and other documents necessary to open accession negotiations with Turkey. The Council also welcomed a report to the Croatia Task Force by the ICTY Chief Prosecutor, which indicated that Croatia was now co-operating fully with the ICTY. The Council concluded that Croatia had met the outstanding condition for the start of accession negotiations. The Council confirmed that sustaining full co-operation with the ICTY would remain a requirement for progress throughout the accession process and agreed that less than full co-operation with the ICTY at any stage would affect the overall progress of the negotiations. Negotiations with both Turkey and Croatia were subsequently opened in an Intergovernmental Conference following the GAERC.

Future of Europe. The Presidency briefed Partners on the arrangements for the Informal Meeting of Heads of State/Government on 27–28 October at Hampton Court.
EXTERNAL RELATIONS

Iran. In the light of the recent International Atomic Energy Agency (IAEA) Board of Governors’ meeting in Vienna, the Presidency held an exchange of views on developments and next steps. The Council welcomed the resolution adopted by the IAEA Board of Governors on 24 September 2005 and urged Iran to seize the opportunity offered by the resolution by implementing all the measures requested by the IAEA Board, including reinstating full suspension of all fuel cycle activities. The Presidency also concluded that Ministers should revert to the issues of broader EU/Iran relations and support to civil society at the 7 November GAERC.

MEPP. The Presidency took stock of recent developments noting the successful completion of disengagement (12 September) and the Quartet Meeting (20 September) which welcomed disengagement and stressed the need for both sides to implement their Roadmap commitments. Commissioner Ferrero-Waldner also briefed on her visit to Lebanon on 29–30 September.

EU-Russia Summit. The Presidency updated Partners on the preparations for the 4 October EU-Russia Summit in London—the 16th to be held under the EU-Russia Partnership and Co-operation Agreement. Ministers agreed on a draft readmission and visa facilitation agreement between the EU and Russia. These agreements were subsequently approved at the EU-Russia Summit in London on 4 October.

AoB: ASEM. Ministers briefly discussed the Asia Europe Meeting (ASEM) process following the decision of ASEAN Ministers not to attend an EU/ASEM Finance Ministers’ meeting. Ministers reaffirmed the importance the EU attaches to its relations with Asia and looked forward to fruitful ASEM meetings in 2006.

AoB: Tsunami. Member States suggested that in light of the first anniversary of the 26 December tsunami the Council should review its overall response. The Presidency tasked the Commission and Council Secretariat with drawing up a paper setting out what had been achieved with respect to community aid and action in the CFSP framework. This will be circulated to Member States in December.

Uzbekistan. Ministers agreed Council Conclusions imposing an embargo on exports to Uzbekistan of arms, military equipment and other equipment that might be used for internal repression; placing restrictions on admission to the European Union aimed at those individuals directly responsible for the indiscriminate and disproportionate use of force in Andijan; and suspending all scheduled technical meetings under the EU-Uzbekistan Partnership and Co-operation Agreement.

Conclusions were also agreed on MEPP, Iran, Western Balkans, Colombia, International Peace and Security, and Croatia.

14 October 2005

GLOBAL MONITORING FOR ENVIRONMENT AND SECURITY (GMES): FROM CONCEPT TO REALITY (14443/05)

Letter from the Chairman to Lord Bach, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your Explanatory Memorandum dated 17 November 2005 which Sub-Committee C considered at its meeting on 15 December. The Sub-Committee decided to hold the document under scrutiny.

We note in paragraph 22 of the Explanatory Memorandum that you have two reservations concerning the proposed new monitoring system.

Firstly you argue that the “invitation to explore possible further funding from the Community budget” must be in line with the principle of budget discipline and with wider UK objectives on the Financial Perspective. Following the agreement of the Financial Perspective at the European Council on 16 December, we ask that you keep us informed of developments regarding the funding of GMES.

Secondly you note that you will need to continue to make sure that any developments on the Security theme of GMES remain in the civil arena. We have a number of questions we wish to raise concerning the security aspects of this project:

1. What does “security” mean in the context of GMES? In particular, what are the security uses in the civil arena mentioned in paragraph 22 of the Explanatory Memorandum?
2. What role has the European Defence Agency played in the development of GMES?
3. In November 2004, the Council adopted a Report on ESDP and Space. Did that Report explore the possible use of GMES for ESDP operations?
4. Is any role envisaged for GMES in relation to military ESDP?
5. What is the European Satellite Centre’s current role in ESDP? What would GMES contribute to the ESC’s role?

6. How much did the Government offer to contribute to the initial financing of the GMES at the Berlin ministerial meeting on 5 and 6 December? What was the reason for this?

7. How will GMES be financed in the long-term? We look forward to hearing your response.

19 December 2005

INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY): MEASURES AGAINST INDICTEES

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

At the 3 October General Affairs and External Relations Council (GAERC) we expect Common Position 2004/694/CFSP to be renewed for a further 12 months. The Common Position imposes an assets freeze on all persons indicted by the ICTY for war crimes, who are not in the custody of the Tribunal. It will expire on 10 October 2005.

The EU agrees that the Common Position should be renewed. As such, it is likely that the renewal will be agreed while parliament is still in recess and that your Committee will not have sufficient time to clear the text from scrutiny. I hope that the Committee will understand why I am unable to maintain the scrutiny reserve. To do so would result in the measures expiring.

The Government welcomes the renewal of the assets freeze. It strengthens the EU’s other measures (which include travel bans) against the indictees and hampers the ability of individuals to harbour and support these suspected war criminals. Renewing the assets freeze would send out a strong political signal that the EU maintains its support for the work of the ICTY.

20 September 2005

MILLENNIUM DEVELOPMENT GOALS (8137/05, 8138/05, 8139/05)

Letter from Rt Hon Hilary Benn MP, Secretary of State Department for International Department to the Chairman

You will wish to know that the General Affairs and External Relations Council (GAERC) of 23–24 May 2005 considered the above Communications and agreed Council Conclusions. Unfortunately, we were unable to complete Parliamentary Scrutiny on these documents in advance of Council Conclusions being agreed.

Signed Explanatory Memoranda on the three Communications were submitted to your Committee Clerk following the election. However, your Committee was unable to consider these before the Council took place.

At the GAERC, EU Development Ministers agreed Council Conclusions relating to the EC’s three Communications on Financing for Development, Policy Coherence for Development and the EU’s Contribution to meeting the MDGs.

The Conclusions included historic commitments to the following ODA/GNI targets:

— a new average EU target of 0.56 per cent ODA/GNI by 2010;
— commitment by the 15 Member States who joined before 2004 to undertake to reach at least 0.51 per cent by 2010 and 0.7 per cent by 2015;
— commitment by the 10 Member States who joined in 2004 to strive to reach 0.17 per cent by 2010 and 0.33 per cent by 2015; and
— commitment that at least 50 per cent of new aid would go to Africa.

The UK strongly welcomes the agreement as it means that EU aid will double by 2010, generating around an additional $40 billion (£20.7 billion/€30.6 billion) in 2010. This agreement is fully in line with the UK’s own policy and plans for increasing aid. The EC calculate that this represents an additional $25 billion (£14 billion/€20 billion) of new aid in 2010 compared to existing EU commitments for 2006. On current trends, this will mean an extra $17 billion (£9.7 billion/€13.7 billion) for sub-Saharan Africa in 2010 compared to 2004. This represents 67 per cent of the amount required to double aid to sub-Saharan Africa by 2010, as recommended by the Commission for Africa. The agreement also consolidates the 10 new Member States’ shift to donor status.
The Council also agreed to continue work on multilateral debt and innovative financing prior to the Millennium Review Summit; and to adopt a comprehensive and long-term EU Strategy for Africa by December 2005. In addition, the Council invited the Commission and Member States to pursue its work on Policy Coherence for Development on the basis of the broad commitments outlined in the Annex to the Conclusions in the following eleven areas: trade, environment, security, agriculture, fisheries, social dimension of globalisation, employment and decent work, migration, research and innovation, information society, transport and energy, as well as climate change. The Council also confirmed the EU’s engagement to effectively deliver on these commitments against the background of the MDG framework between now and 2015.

I regret on this occasion that we were unable to complete the formal scrutiny procedures prior to a decision being made.

8 June 2005

Letter from the Chairman to Rt Hon Hilary Benn MP

Thank you for your letter dated 8 June 2005 noting that the above documents were considered at the General Affairs and External Relations Council of 23–24 May before Parliamentary Scrutiny could be completed. Unfortunately, following the election, Sub-Committee C was not reappointed until 24 May and was unable to meet until 26 May. It was not therefore possible to consider the documents before the Council. Sub-Committee C considered the documents at its meeting on 26 May and will be examining them further as part of our current inquiry into EU-UN Relations and we hope to report on our findings by the end of July.

22 June 2005

Letter from Rt Hon Hilary Benn MP to the Chairman

Your Committee met on 26 May and discussed three Commission Communications on the Millennium Development Goals. (MDGs). Your Committee agreed to clear these documents from scrutiny and examined them further as part of an inquiry into EU-UN relations in July, (HL Paper 35). I am writing to you to inform you of the outcome of the summit.

Despite the lengthy and difficult negotiations, the final outcome document provides a good basis to increase international efforts to help developing countries meet the MDGs. It recognised that sustainable development is an important element of the overarching framework of the UN, and renewed commitment to the global partnership established at the 2000 Millennium Summit and reaffirmed at the 2002 Monterrey and Johannesburg Summits. The MRS also underlined the particular challenges facing Africa, the need for urgent action to address them and the importance of ambitious national development plans.

The outcome document consolidated all the major development achievements of 2005. It noted the recent commitments to increase and improve development assistance, as well as the value of developing innovative sources of finance such as the International Finance Facility. It reflected key G8 commitments for example on HIV/AIDS (including a commitment to work towards universal access to treatment by 2010), and endorsed the G8 approach on climate change, including on stabilising greenhouse gas concentrations. Over 190 countries, not just the G8 countries, now support the main Gleneagles outcomes.

But the MRS went much further than this. UK objectives to secure agreement on reform of the UN development and humanitarian system, management reform, Responsibility to Protect, the Peacebuilding Commission and the Human Rights Council were broadly met.

The conclusions on security, humanitarian reform and human rights are a definite step forward. We now have an agreement to establish a Peacebuilding Commission by the end of this year. It will address some of the critical weaknesses in the international response to conflict. We welcome the proposed shape, mandate and composition of the Commission (including membership for permanent members of the Security Council), as reflected in the outcome document.

On human rights, an agreement to create a Human Rights Council (to promote universal protection of all human rights and fundamental freedoms), and the strengthening of the Office of the High Commissioner on Human Rights (including doubling its budget over five years) are good first steps in building a better international human rights system.

On terrorism and security, there is a universal condemnation of terrorism in all its forms. Endorsement of the Responsibility to Protect, consistent with the Prime Minister’s 1999 Chicago speech, is possibly the most important outcome of the Summit. For the first time, the international community has agreed that it should intervene, including militarily in nation states that are unwilling or unable to protect their populations from genocide, war crimes and crimes against humanity.
We also secured commitments to reform the UN itself, to strengthen the Secretary General’s management powers and to set in train a process to improve the mandates and oversight of the different branches of the Secretariat. The outcome document also asks the Secretary General to address longer-term reform of the UN development architecture. On humanitarian reform, we have consensus that the Central Emergency Revolving Fund needs to be strengthened so that the international system has improved stand-by capacities and can provide more timely and predictable funding. Six countries including the UK have already agreed to contribute to the new fund.

But all these decisions have to be implemented. We will be working closely with all partners concerned to ensure that we deliver on our commitments. We are particularly keen to finalise details of the Peacebuilding Commission and Human Rights Council as soon as possible.

5 October 2005

NUCLEAR NON-PROLIFERATION TREATY (NPT) REVIEW CONFERENCE

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

I am writing to give you some background on the Explanatory Memorandum submitted by the Foreign and Commonwealth Office on the draft EU Common Position on the nuclear Non-Proliferation Treaty (NPT) Review Conference.

The NPT Review Conference in May comes at a time when the Treaty is facing significant challenges. The Government is firmly committed to maintaining and strengthening the NPT, which we regard as the cornerstone of the nuclear non-proliferation regime. I know that this view is widely shared by Members of both Houses of Parliament.

The EU has prepared a Common Position to guide its contribution to the Review Conference. It contains good language on issues that we want to highlight (compliance, strengthening the IAEA, a Fissile Material Cut-off Treaty) and protects all UK interests fully. The version we are submitting is not quite final but we thought it better to let you consider this version now. We expect any subsequent changes to be minimal; no UK interests are in question.

We believe the EU can play a constructive role in steering the Review Conference to a productive outcome. For this reason, we attach very high importance to the Common Position and hope that your Committee can give it rapid consideration at your meeting on 6–7 April so that the UK can agree to it at the Council on 25 April 2005.

The EU Common Position played a useful role in the 2000 NPT Review Conference. Failure to agree a Common Position this time would be a damaging blow for the European Union and would undermine our ability to influence the discussions in New York. I therefore very much hope that your Committee will be able to clear the Common Position before a possible dissolution of Parliament in early/mid April. If your Committee is unable to meet after the Easter recess I may have to agree to this Common Position before scrutiny is completed. If I have to do this I hope you will understand our reasons. We would not want the inability of the UK to approve the Common Position to be the factor preventing the EU from being able to agree it, as that would cast the UK in a bad light.

1 April 2005

Letter from the Chairman to Rt Hon Denis MacShane MP

Thank you for the Explanatory Memorandum dated 1 April which Sub-Committee C considered by written procedure on 7 April 2005.

The Sub-Committee agreed to clear the document and welcomes the move towards a Common Position on this important Conference. We agree that the UK Government will be in a stronger negotiating position if it co-operates with other EU Member States in putting forward recommendations.

We support the stance taken by the proposed Common Position which is in favour of strengthening the implementation of the Nuclear Non-Proliferation Treaty and expresses a desire to work further towards disarmament. We would like to ask that the EU also gives urgent attention to the recommendations on non-proliferation and disarmament made by the UN Secretary-General’s High Level Panel in its report “A More Secure World: Our Shared Responsibility” (2005). As we concluded in our recent report “Preventing Proliferation of WMD: The EU Contribution” (EUC 13th Report of Session 2004–05, HL Paper 96, para 61), if the EU could accept the High Level Panel recommendations in advance of the NPT Review Conference,
this would be a valuable indicator of the readiness of the Nuclear Weapons States to take seriously their obligations under the Treaty.

We hope that these recommendations will form a part of the discussions on the proposed Common Position and that they are given full consideration.

12 April 2005

OPERATION ALTHEA

Letter from Rt Hon Douglas Alexander, Minister for Europe, Foreign and Commonwealth Office to the Chairman

Framework Participation Agreements (FPA) and Model Participation Agreements (MPA) were established in February/April 2004 to streamline mission planning, so that separate negotiations for each mission were not required. The FPA provides a continuing arrangement between the EU and certain third countries who were likely to participate regularly in ESDP operations, eg Canada, Russia, Ukraine and European NATO countries. The MPA allows other third countries (eg African states) with whom the EU does not have a FPA to participate in an ESDP operation on a case-by-case basis. As with the FPA, the MPA sets out the legal and financial parameters to allow for third country participation.

Chile is contributing 24 troops to the EU’s military operation in Bosnia (Althea), in the UK-led Multinational Task Force North-West. An FPA has yet to be agreed with Chile. In the interim, the EU has decided to establish, in line with the MPA agreed in April 2004, a Participation Agreement to cover Chile’s continued participation. The Government welcomes this agreement. It provides the basis for Chile’s participation in Operation Althea and is therefore in line with the Government’s policy of encouraging third country participation in ESDP operations. The Government also welcomes the use of the existing MPA as a framework for this agreement—this speeds up the process of agreement and is in line with the Government’s goal of allowing ESDP to react quickly to emerging crises.

I am aware that your Committee was content for the Government not to deposit this type of agreement for scrutiny. However, the Lords Select Committee on the European Union indicated that they would still prefer non-NATO and non-Europe agreement to be deposited. An Explanatory Memorandum has therefore been submitted for scrutiny.

This Council Decision will be agreed at the 27 June Transport Council. This will enable planning to commence for Chile’s participation in Operation Althea. The Government welcomes their contribution and would not want to delay its implementation. Due to the pending reformation of your Committee I will therefore agree to this Council Decision before scrutiny has been completed. I hope you will understand the reasons for doing so.

30 June 2005

RESTRICTIVE MEASURES AGAINST BURMA/MYANMAR

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

The next meeting of the General Affairs and External Relations Council (GAERC) is on 25 April 2005. At this meeting Foreign Ministers will be asked to agree to an amended renewal of restrictive measures against Burma. These measures include an EU visa ban and asset freeze on selected individuals of the ruling military junta, and a prohibition on EU registered companies or organisations from making financing such as loans and equities available to named Burmese state-owned enterprises. At present they will expire on 30 April 2005.

Given the grave political and human rights situation in Burma, in particular the failure of the military to enter into substantive discussions with the democratic movement concerning a peace process leading to national reconciliation, the continued detention of Daw Aung San Suu Kyi and other members of the National League for Democracy and other serious violations of human rights, there is EU consensus to roll over the measures in the Common Position for a further 12 months. Burma has made no significant progress on these issues in the last 12 months and there is not therefore any justification for suspending or weakening the EU’s measures.

It is therefore important that the EU maintains pressure on the military regime to enter into a meaningful and genuine dialogue with the democratic opposition, with the view to seeing an eventual transition to civilian rule; and to fully respect human rights including the release of political prisoners and recognition of the rights of ethnic communities. The renewal of these measures will show that the European Union remains committed to keeping up such pressure. The Government fully supports this approach.
The 25 April GAERC will be the last opportunity to agree the measures before they expire on 30 April 2005. In light of forthcoming dissolution of Parliament and Scrutiny Committees I will have to agree to renew this Common Position at the GAERC before scrutiny is completed. I hope you will understand our reasons.

11 April 2005

RESTRICTIVE MEASURES AGAINST MEMBERS OF THE SEPARATIST REGIME IN TRANSNISTRIA

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

In September 2004 your Committee cleared travel bans against ten Transnistrian officials for their roles in forcing the closure of Latin-script Moldovan schools in the region. In February 2005 your Committee cleared the renewal of the ban for a further 12 months, at the same time agreeing to the renewal of the ban against 17 members of the Transnistrian leadership, including “President” Smirnov.

At the General Affairs and External Relations Council on 12 December, the EU agreed to lift the ban against eight of the ten individuals subject to the restrictions for their role in the closure of the schools (Annex II in EU Common Position 2005/147/CFSP). The restrictions against those listed in Annex 1, including “President” Smirnov, will remain in place. Although such an amendment to the Annex does not require scrutiny (category 3 of the non-deposit list), your Committee may be interested in further information about these developments.

The decision to lift the ban comes after a review of the situation in Transnistria, as required by the Common Position. This states that the list of names subject to the ban for their role in the closure of the schools (Annex II) should be reviewed by 1 December 2005, with a view to deciding whether the restrictions can be lifted.

According to EU Heads of Mission in Moldova, all the schools were able to start the school year on 1 September and continue to operate unhindered, except for the school in Ribnitsa which is still operating from temporary premises. On this basis, EU Member States agreed that all but two of the ten individuals subject to the ban had met the lift criteria. Accordingly, the EU agreed to lift the ban against these eight, but to leave it in place against the two officials from Ribnitsa, where the school continues to experience problems. We hope that this partial lifting will encourage those still subject to the ban to work towards a solution.

14 December 2005

RESTRICTIVE MEASURES AGAINST SUDAN

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

EU Member States are expected to agree to a Council Common Position and Regulations concerning the implementation of restrictive measures against Sudan by written procedure in early May (the Common Position and Regulations are currently under discussion at official level). This Common Position and the Council Regulations which will implement it will bring together the EU’s existing comprehensive arms embargo on Sudan (Common Position 2004/31/CFSP) with the measures that the EU is now taking to implement the assets freeze and travel ban imposed by UN Security Council Regulation 1591 of 29 March 2005. Common Position 2004/31/CFSP will therefore be repealed.

The Common Position maintains the EU’s existing embargo, which prohibits the supply of arms, munitions and military equipment to the whole of Sudan. The scope of the EU embargo therefore remains wider than that imposed by the UNSC in UNSCRs 1556 (2004) and 1591 (2005). The Common Position adds an exemption to the EU arms embargo, in line with the UN arms embargo, for work in support of the Comprehensive Peace Agreement in Sudan. The Common Position also incorporates the asset freeze and travel ban imposed by UNSCR 1591 (2005). These measures are targeted against individuals who impede the peace process, constitute a threat to stability in the Darfur region, commit violations of international humanitarian law or human rights law or other atrocities, violate the arms embargo or are responsible for offensive military overflights in and over the Darfur region.

The Government welcomes the Common Position and Regulations, which consolidate all EU restrictive measures against Sudan. The UK continues to rigorously enforce the comprehensive EU arms embargo against Sudan and supported the adoption of UNSCR 1591 (2005). Rapid adoption of the Common Position and Regulations highlights the EU’s support for the Resolution and will ensure full and consistent implementation by all EU Partners in line with their international obligations. The Resolution comes into force on 29 April 2005 and EU Member States are obliged to implement it near this date. In light of the
dissolution of Parliament and Scrutiny Committees I will have to agree to implement this Common Position and Council Regulations before scrutiny can be completed. I hope you will understand our reasons.

25 April 2005

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

I am sending you this letter along with an Explanatory Memorandum for an EU Common Position and implementing Council Regulation concerning restrictive measures against Sudan. This is in light of UN Security Council Resolution 1591 (2005), which was adopted on 29 March 2005. Resolution 1591 imposes a travel ban, arms embargo and asset freeze, owned or controlled, directly or indirectly by the persons designated by the UN Sanctions Committee. The UK is extremely concerned at the regional humanitarian and economic impact of the Sudan/Darfur crisis and we support the immediate implementation of restrictive measures.

The attached draft regulation (not printed) to implement an asset freeze is it to use a “triple legal base” of articles 60, 301 and 308 TEC. This follows the precedent of similar measures for persons not connected with a particular third state. It was the method used to implement UNSCR 1267 (1999) against the Taliban and Al-Qaida at the EU level, for indictees of the International Criminal Tribunal for the former Yugoslavia (ICTY), and rebels involved in the ceasefire breach in Cote d'Ivoire, who were not representative of the Government of Cote d'Ivoire. In this instance it can be used to target Sudanese rebels, who are not representative of the Government of Sudan.

I am aware that your Committee has previously challenged the use of Article 308 as the sole legal basis for Commission proposals so I wanted to inform you about this particular proposal. In this case, the combination of all three articles is generally accepted as the only way to take EU action against “non-state” actors and to ensure uniform application of the assets freeze throughout the EU.

24 May 2005

RESTRICTIVE MEASURES AGAINST THE DEMOCRATIC REPUBLIC OF CONGO (DRC)

Letter from Douglas Alexander MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

EU Member States are expected to agree to a Council Common Position and Regulations concerning the implementation of restrictive measures against the DRC at the next Agriculture and Fisheries Council on 30 May 2005. This Common Position, and accompanying implementing Council Regulations will bring together in a single instrument the EU’s existing comprehensive arms embargo on the DRC (2002/829/CFSP) with the measures that the EU is now taking to implement the assets freeze and travel ban on embargo violators imposed by UN Security Council Resolution 1596 of 18 April 2005. Common Position 2002/829/CFSP will therefore be repealed.

The Common Position maintains the EU’s existing arms embargo and prohibition on the provision of technical and financial assistance related to military activities on the whole territory of the DRC while bringing the exemptions to the embargo in line with those contained in UNSCR 1596 (2005). The Common Position also incorporates the assets freeze and travel ban imposed by UNSCR 1596 (2005). The UN and EU’s application of an arms embargo to the entire DRC and provision for targeted measures against embargo violators sends a strong signal to those contributing to the continuing conflict in the region. It will also ensure that international attention and pressure continues to be placed on those responsible for perpetuating the climate of insecurity particularly in the eastern provinces of the DRC and in the surrounding Great Lakes Region of Africa.

The government welcomes the Common Position and Regulations, which consolidate all EU restrictive measures against the DRC into one document. The UK continues to rigorously enforce the comprehensive EU arms embargo against the DRC and strongly supported the adoption of UNSCR 1596 (2005). Rapid adoption of the Common Position and Regulations highlights the EU’s support for the UN resolution and will ensure full and consistent implementation by all EU Partners in line with their international obligations. The UN resolution came into force on 18 April 2005 and EU Member States are obliged to implement it shortly after this date. In light of the pending re-formation of the Scrutiny Committees I will have to agree to implement this Common Position and Council Regulations before scrutiny can be completed. I hope you will understand our reasons.

19 May 2005
SECURITY PROCEDURES FOR THE EXCHANGE OF CLASSIFIED INFORMATION BETWEEN THE EU AND UKRAINE

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

I am sending your Committee an Explanatory Memorandum (unnumbered) regarding a Council Decision on an Agreement on procedures for the exchange of classified information between the EU and Ukraine.

This is one of a number of agreements between the EU and 11 third countries which are being negotiated under a mandate agreed in November 2003. Of the original 11, EMs were submitted throughout 2004 and 2005 on agreements between the EU, and respectively Bosnia and Herzegovina, Norway, Romania, and Bulgaria and Macedonia. All of these agreements followed the original Council mandate, and all were cleared from scrutiny by the Lords and Commons Committees.

This Agreement will make it easier for the EU and Ukraine to work more closely together on shared security objectives and enhance the prospects for further cooperation and consultation, including in areas such as future Ukrainian engagement with ESDP, which depends in part on the ability to share classified information.

As indicated in the FCO’s Explanatory Memorandum this Council decision is expected to be agreed at the 13 June General Affairs and External Relations Council. The reason for this timing is to allow the Agreement to be signed at the annual EU-Ukraine Co-operation Council which is scheduled for the same day.

Given re-formation of your Committee is still pending, I will have to agree to this Council Decision before scrutiny can be completed. I hope you will understand our reasons.

2 June 2005

SEVENTH FRAMEWORK PROGRAMME OF THE EUROPEAN COMMUNITY FOR RESEARCH, TECHNOLOGICAL DEVELOPMENT AND DEMONSTRATION ACTIVITIES, 2007–13 (8087/05)

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

Thank you for the Explanatory Memorandum dated 23 May 2005 which was considered by Sub-Committee C at its meeting on 9 June. Please note that Sub-Committee C is only examining this document in so far as it relates to security research. Sub-Committee B is examining this document in its entirety.

We are holding this document under scrutiny and would like to receive further information. Whilst the Explanatory Memorandum provides a general overview of the document and the Government’s position, it does not examine issues relating to security research. However, in a non-paper, dated 23 March, annexed to the Government Response to our recent Report on the European Defence Agency, we were informed that “The scope of the proposed ESRP, as it currently stands, is extremely broad having military and defence implications.” The non-paper also stated that the Government is seeking a mechanism to ensure that issues which overlap with, or have an impact on, defence interests will be referred to pillar 2 structures. Sub-Committee C would prefer the first option presented in the non-paper: that COREPER be used to refer matters with defence implications up to the General Affairs and External Relations Council (GAERC) or down to CFSP structures. We agree that the UK should use its veto on specific research proposals if defence issues are not satisfactorily dealt with.

Paragraph 6 of the non-paper states that the Government is “minded to question the use of qualified majority voting for this programme” if these safeguard mechanisms are not put in place. Does this mean that the Government is willing to veto the entire 7th Framework Programme over the single issue of security research? If not, could you provide further explanation of how the Government might question the use of QMV? Please keep us informed as to the progress of the negotiations on these matters relating to security research.

28 June 2005
SPECIFIC RESTRICTIVE MEASURES AGAINST CERTAIN PERSONS SUSPECTED OF INVOLVEMENT IN THE ASSASSINATION OF FORMER LEBANESE PRIME MINISTER RAFIK HARIRI

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

I am sending you this letter along with an Explanatory Memorandum for an EU Common Position and implementing Council Regulation concerning restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafik Hariri. These EU measures flow from UN Security Council Resolution 1636 (2005), which was adopted on 31 October 2005.

UNSCR 1636 (2005) imposes a travel ban and assets freeze on “all individuals designated by the Commission or the Government of Lebanon as suspected of involvement in the planning, sponsoring, organizing or perpetrating of this terrorist act, upon notification of such designation to and agreement of the Committee . . . “. The Sanctions Committee (a sub-Committee of the Security Council), established by UNSCR 1636 (2005), will also be responsible for making decisions on permissible exemptions to the application of the individual measures. Such exemptions are defined by the resolution as including travel for humanitarian purposes (including in connection with religious obligation) and funds for basic expenses such as medical treatment, food and accommodation.

The measures will remain in place until the Sanctions Committee reports to the Security Council that all investigative and judicial proceedings relating to the assassination have been completed, unless the Security Council decides otherwise.

The Government is concerned about the situation surrounding Syria’s possible involvement in the assassination and welcomes UNSCR 1636 (2005) as a way of seeking cooperation from the Syrian government and from individuals suspected of involvement. The Government hopes that the measures set out in UNSCR 1636 (2005) from which the proposed Common Position and Council Regulation flow, will persuade the Syrian government to comply with its obligations under international law.

The attached draft Regulation (not printed) to implement an asset freeze uses a “triple legal-base” of articles 60, 301 and 308 TEC. This follows the precedent of similar measures for persons not connected with a particular third state. It was the method used to implement UNSCR 1267 (1999) against the Taliban and Al-Qaida at the EU level, for indictees of the International Criminal Tribunal for the former Yugoslavia (ICTY), and rebels involved in the ceasefire breach in Cote d’Ivoire, who were not representative of the Government of Cote d’Ivoire. In this instance it can be used to target individuals of any state who are suspected of involvement in the assassination.

I am aware that your Committee has previously challenged the use of Article 308 as the sole legal basis for Commission proposals so I wanted to inform you about this particular proposal. In this case, the combination of all three articles is generally accepted as the only way to take EU action against actors not attributed to one particular state and to ensure uniform application of the assets freeze throughout the EU.

25 November 2005

STABILISATION AND ASSOCIATION AGREEMENT WITH BOSNIA AND HERZEGOVINA

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

I am writing to advise that at the General Affairs and External Relations Council (GAERC) on 21 November, the Council authorised the Commission to open negotiations on a Stabilisation and Association Agreement (SAA) with Bosnia and Herzegovina (BiH). Negotiations were opened in Sarajevo on 25 November.

The opening of negotiations follows the Commission’s assessment in October 2005 that Bosnia and Herzegovina had made significant progress against the sixteen priority areas for action identified in the Commission’s Feasibility Study of November 2003. It marks the first important step towards contractual relations with the European Union. It also demonstrates the EU’s commitment to the full implementation of the Thessaloniki agenda, which emphasises that the future of the Western Balkans lies in the European Union.
The aim of the negotiations is to conclude a Stabilisation and Association Agreement with Bosnia and Herzegovina. This is designed to contribute to socio-economic development, strengthen democracy and the rule of law and to establish a close, long-term association between the EU and BiH.

The pace and conclusion of negotiations will depend in particular on Bosnia and Herzegovina’s progress in developing its legislative framework and administrative capacity, the implementation of police restructuring reform and public broadcasting legislation and full co-operation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). The Council and Commission will jointly review the performance of Bosnia and Herzegovina in these areas before negotiations conclude.

29 November 2005

STABILISATION AND ASSOCIATION AGREEMENT WITH SERBIA AND MONTENEGRO

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

I am writing to advise that at the General Affairs and External Relations Council meeting on 3 October, the European Council authorised the Commission to open negotiations for a Stabilisation and Association Agreement (SAA) with Serbia and Montenegro (SaM).

A formal ceremony to open negotiations was subsequently held in Belgrade on 10 October in the presence of EC Commissioner for Enlargement, Olli Rehn.

The opening of negotiations follows the positive Feasibility Study that Serbia and Montenegro received from the Commission in April this year, and marks the first important step for SaM towards contractual relations with the European Union. It also demonstrates the EU’s commitment to the full implementation of the Thessaloniki agenda, which emphasised that the future of the Western Balkans lies in the European Union.

The aim of the negotiations is to conclude a Stabilisation and Association Agreement with Serbia and Montenegro. This is designed to contribute to socio-economic development, strengthening of democracy, the rule of law and political stabilisation of the country and the region, to foster regional co-operation and to establish a close, long-term association between the contracting parties.

The Stabilisation and Association Agreement will be the first contractual agreement between the EU and Serbia and Montenegro. It will be a mixed Agreement, concluded by the European Community and its Member States. The whole agreement will be a single instrument concluded with the state union of Serbia and Montenegro, but some parts will be negotiated separately with the two Republics of Montenegro and Serbia, according to their competences.

The Commission will start the negotiations before the end of this year. The pace and conclusion of negotiations will depend in particular on Serbia and Montenegro’s progress in developing its legislative framework and administrative capacity, the effective implementation of the constitutional charter, and full co-operation with the ICTY. The Council and Commission will jointly review the performance of Serbia and Montenegro in these areas before negotiations conclude.

14 October 2005

STRATEGY TO COMBAT ILLICIT ACCUMULATION AND TRAFFICKING OF SALW AND THEIR AMMUNITION

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

The CFSP Working Group on non-proliferation has prepared a draft EU Strategy to combat illicit accumulation and trafficking of Small Arms and Light Weapons (SALW) and their ammunition. The draft EU Strategy for SALW aims at implementing the European Security Strategy, which stresses the detrimental impact of SALW on numerous conflicts in the world. Given your Committee’s interest in the development of the European Security Strategy I thought I would share this paper with you.

The United Nations Programme of Action (UNPOA) to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects, adopted on 20 July 2001, reaffirms the need for complementarity at global, regional and national levels in its implementation. Although the EU has had a Joint Action and policies on SALW since 1998, there has not been an overarching strategy until now. By developing a strategy for combating the accumulation of and illicit trade in SALW and their ammunition, the EU wishes to fall into line with this essential complementarity and to provide a regional written contribution.
After surveying relevant issues the strategy outlines key ideas to combat illicit accumulation and trafficking of SALW and their ammunition:

- Foster effective multilateralism so as to forge mechanisms, for countering the supply and destabilising spread of SALW and their ammunition.
- Meet requests by States seeking to reduce their surplus stocks of SALW and their ammunition.
- Promote the restructuring of some industrial sites producing low-cost SALW in Eastern and South-East Europe:
  - (a) allow the implementation of measures to address the underlying factors favouring the illegal demand for SALW;
  - (b) support the strengthening of the effective rule of law in countries which remain unstable.

The Government fully supports the strategy as a useful tool demonstrating a co-ordinated EU response to combating illicit accumulation and trafficking of SALW and their ammunition. It is also helpful in that it promotes the inclusion of minimum common international criteria and/or guidelines for controls on SALW transfers in the UNPOA. This includes initiating discussions on this issue at the UNPOA Preparatory Conference in January 2006 and the Review Conference in June 2006.

The intention is that it is a living document and can be updated every six months in order to maintain its relevance to changing international circumstances. The EU intends to publish the Strategy before the December European Council so that the document is ready for the UN SALW Prepcon meeting in January 2006 which prepares the way for the UN Review Conference. Although the Strategy acts as a very useful co-ordinating reference document, there are no legislative proposals or projects planned as a direct result of this Strategy.

3 November 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter dated 3 November containing the above draft strategy which Sub-Committee C considered at its meeting on 17 November.

We welcome the proposed strategy but consider that more emphasis should be placed on the destruction of surplus stocks of weapons and ammunitions, especially in the countries of the former USSR. The reduction of surplus stocks is essential to the prevention of trafficking which often makes use of such stocks as the source of the illegal weapons.

We ask that you deposit for scrutiny by Parliament the revised strategy each time it is significantly updated or amended, including, but not solely, after the forthcoming European Council in December.

18 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 18 November regarding the EU Small Arms and Light Weapons (SALW) Strategy. I am glad to say that since you wrote the Strategy was agreed unamended by Heads of State/Government at the European Council on 15–16 December 2005.

We agree that the destruction of surplus stocks of weapons and ammunition especially in the countries of the former USSR is one of a number of important SALW issues. Although these destruction projects normally call for very large amounts of donor funding (and EU funds in this area are limited), we continue to look out for further projects in this area to support. That is why earlier this year we used UK influence to encourage EU funding for a major SALW destruction project in Ukraine.

As I mentioned in my previous reply the strategy is a living document and can be updated every six months in order to maintain its relevance to changing international circumstances. As you requested, we will keep you informed of any significant updates to the strategy.

9 January 2006
TENTH ANNIVERSARY OF THE EURO-MEDITERRANEAN PARTNERSHIP (13809/05)

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

Thank you for the Explanatory Memorandum dated 15 November 2005 which Sub-Committee C considered at its meeting on 24 November. The document was cleared from scrutiny.

We welcome the Commission’s proposals for a five-year work programme which we agree will help to take the Barcelona Process forwards. We particularly welcome the proposed involvement of non-governmental organisations and ask that you press for more involvement of NGOs wherever possible.

However, we note that €3.43 billion of budgetary resources was spent under the MEDA I Programme from 1995–99, and that a further €5.35 billion has been allocated for the MEDA II Programme from 2000–06 (p 34 of the Commission Communication). Given these significant sums, it is imperative that programmes undertaken in the future be closely monitored and targeted.

We also note that the Commission’s document was published on 12 April 2005 but not deposited for scrutiny until 15 November, some seven months later. We would like an explanation for this delay which has meant that there has been no real time for effective Parliamentary scrutiny prior to the Barcelona Summit on 27–28 November. Indeed, it would have been more helpful had we been able to review this document prior to the meeting of Foreign Ministers of the Partnership held in Luxembourg on 30–31 May. Alternatively, we would have wished to have seen in your Explanatory Memorandum a review of the outcome of this meeting outlining whether or not the Commission Communication was welcomed by Ministers.

Whilst we recognise that much foreign policy is of an urgent nature that leaves little time for Parliamentary scrutiny, this is not the case with this document. In cases such as this, where there is an ongoing process of negotiation, we expect to be afforded the opportunity to raise any concerns or queries at the earliest opportunity.

24 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 24 November on your decision to clear the above Commission Communication from scrutiny. I am pleased that you agreed with the Commission’s proposals for a five-year work programme which will help move the Barcelona Process forward. The Summit delivered an ambitious five-year Work Plan with a substantial package of concrete commitments towards political, economic and social reform in the Southern Mediterranean region.

In your letter you noted that a further £5.35 billion has been allocated for the MEDA II programme from 2000–06. The Government agrees that, given the significant funds, it is important that future programmes undertaken be closely monitored and targeted. One of the problems with MEDA I (1995–99) was its record on disbursement. The Commission have improved on this dramatically. The payments/commitments ratio has gone from 28 per cent under MEDA I (1995–99) to 105 per cent in 2004. We have also successfully pushed for spending to be tied more closely to objectives—in the form of activity based budgeting—and for resources to be allocated more objectively and transparently, with resource allocation criteria based on need and performance. And we have had significant success in focussing EC spending more on supporting reform. We pushed hard for the EU to agree the EU’s Strategic Partnership with the Mediterranean and Middle East. This sets out a concrete policy agenda for the EU’s relations with the Middle East, focusing on political and economic reform. Endorsing the Strategic Partnership in June 2004, the European Council agreed that the EU would ensure “that regional and bilateral assistance programmes . . . reflect and contribute to the achievement of the objectives of the Strategic Partnership.”

Your letter also asks for an explanation for the seven month delay between the publication of the Commission Communication and the Government’s depositing of the text for scrutiny. The Government shares your concern. The Commission produced its Communication on 12 April and sent it to the Council Secretariat on 18 April. However, it was not until 27 October that the Council Secretariat circulated this document. The trigger for the Cabinet office to request an Explanatory Memorandum from government departments is the circulation of a text from the Council Secretariat. I regret that neither we nor the Cabinet Office spotted the time delay in order to provide an explanation to your Committee before an EM was submitted.
Officials at the UK Permanent Representation to the European Union in Brussels have raised this issue with the Council Secretariat and ascertained that this was an administrative mistake, for which they apologise. A delay of seven months is certainly not common and the Council Secretariat has highlighted that this is an isolated case. Nevertheless, the Cabinet Office and FCO will continue to monitor the situation.

Additionally, the FCO will ensure the same early warning mechanism we have developed for legislative material (Joint Actions, Common Positions etc) is transposed for non-legislative documents, such as Commission Communications. I know your Committee has acknowledged that the FCO has made great strides in recent years in the early deposit of legislative material using unofficial texts. A similar system, whereby the FCO submits Commission documents at a suitable stage as unofficial text, would reap the same rewards in those cases where the Council was likely to consider the document quickly or where there was likely to be a delay in the text being circulated by the Council Secretariat.

Finally, you mention in your letter that you would have wished to have seen in the Explanatory Memorandum a review of the 30–31 May meeting of Foreign Ministers of the Partnership and whether the Commission Communication was welcomed by Ministers. We welcomed the Conclusions from the Foreign Ministerial Meeting, which were endorsed by all 35 EuroMed Ministers. The Conclusions—which reviewed the performance of the first 10 years of the EuroMed Partnership and set out recommendations for the future direction—represented an important basis for a more focused Partnership to meet the challenges that the EuroMed region faces. The Commission’s Communication helped to inform these Conclusions.

20 December 2005

TOGO

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

Thank you for your letter of 24 February 2005. You note that the EU will consider restoring its relations with Togo in the light of appropriate presidential and parliamentary elections. Under the Togolese Constitution “transparent, free and fair” elections must be held in 60 days from the death of the former President, Gnassingbe Eyadema.

However, we are concerned about a clause in the Constitution which stipulates that all presidential candidates must have lived in Togo for 12 months prior to the election. We do not believe that elections can be “free and fair” so long as this stipulation remain, since it may be used to prevent opposition candidates from standing. We ask the Government to state whether it believes that “appropriate presidential and parliamentary elections” can be held whilst this clause remains in place, and urge the EU to suspend relations with Togo until such time as elections have been held in which all opposition parties and individuals are free to stand.

11 March 2005

Letter from Rt Hon Denis MacShane MP to the Chairman

Thank you for your letter of 11 March about the Togo constitution and forthcoming presidential elections. You asked whether the elections on 24 April could be free and fair whilst there is a clause in the constitution which bars candidates who have not lived in Togo for the past 12 months from standing. While I would have welcomed the removal of this provision, I note and applaud the coalition of opposition parties for agreeing to take part in the presidential elections on these terms. I understand they have selected Emmanuel Bob-Akitani, the vice-president of the Union of Forces for Change, as their candidate.

Getting to this point was the result of a considerable and commendable effort by the African Union (AU) and Economic Community Of West African States (ECOWAS) whose pressure on the Togolese authorities successfully reversed their unconstitutional efforts to allow Faure Gnassingbé to serve out the rest of his father’s presidential term.

The EU’s relations with Togo remain subject to the Council decision of 15 November 2004, which requires free and fair parliamentary elections to take place before the restoration of full EU relations. Please refer to my letter of 24 February for further details.

24 March 2005

UK PRESIDENCY: DEPARTMENT FOR INTERNATIONAL DEVELOPMENT

Letter from Rt Hon Hilary Benn MP, Secretary of State, Department for International Development
to the Chairman

As the UK Presidency gets under way, I would like to inform you of DFID’s plans and priorities for the next
six months and the dates of key events. I am keen to work closely with you to ensure an efficient and successful
Presidency.

The Irish, Dutch and Luxembourg Presidencies did an excellent job in taking forward development priorities
in the 2004–06 Multiannual Strategic Programme and, in the case of Luxembourg, the 2005 UK-Luxembourg
Joint Work Programme. I will look to do the same, with a particular focus on the Millennium Development
Goals (MDGs), Africa and AIDS.

The May meeting of EU Development Ministers made an historic new commitment which will double the
amount of aid we provide by 2010. But with thousands of people still living in abject poverty, there is more
to do. Discussions during the Development Informal in Leeds on 24–25 October and the decisions that are
taken in Brussels, particularly at the 22 November Development General Affairs and External Relations
Council (GAERC), must make a real difference.

In particular, I hope that by the end of the year we will have had a successful Millennium Review Summit,
and that at the European level we can agree a comprehensive and long-term strategy for Africa and a revised
Development Policy Statement. We are also committed to trying to get agreement on the main elements of the
successor arrangement to European Development Fund 9, including measures to enhance its effectiveness. I
look forward to the debate in the House on the MDGs after the Millennium Review Summit and before the
November GAERC.

At the May GAERC, a new Programme for Action to tackle AIDS, tuberculosis and malaria was agreed.
AIDS in particular threatens progress towards the MDGs. The UK will therefore be holding a high-level event
on HIV and AIDS on 1 December in London. I am also keen for progress to be made on financing for further
action on poverty diseases, particularly in Africa.

A meeting of Director-Generals in Brussels on 13 October will examine coherence between trade and
development policies in order to build on the May GAERC conclusions on coherence. Discussions and
decisions in other Council formations and outside the EU, not least the Millennium Review Summit and the
WTO, will also have an impact on our work.

The 21–22 November GAERC is the next Development focused GAERC. I would expect this to cover the
Development Policy Statement, Africa Communication, Annual Report, Orientation Debate and possibly the
EDF successor. I will endeavour to ensure that your Committee is given sufficient time to scrutinise all
documents prior to this Council.

I hope that in addition, progress will be possible on the external relations instruments of the Financial
Perspective, particularly the Development Cooperation and Economic Cooperation Instrument. We must
also make further progress on improving the effectiveness of our aid. The Orientation Debate at the GAERC
will be a good opportunity to discuss these issues, taking into account the outcomes of recent Organisation
for Economic Co-operation and Development/Development Assistance Committee (OECD/DAC) meetings.
We should also be able to finalise the Untying Regulation.

Gareth Thomas MP submitted an Explanatory Memorandum on 10 March 2005 regarding the use of the EDF
Conditional Billion. Your committee considered the EM on 15 March and cleared it from Scrutiny. You might
like to note that in the light of discussions at the EU-ACP Council of Ministers meeting in Luxembourg on
24–25 June, the Council is likely to adopt the proposal during the forthcoming summer recess.

I enclose a copy of a short publication about our Presidency which we have produced for the UK public (not
printed). Raising public knowledge and awareness about development issues remains an important challenge
for us all.

18 July 2005
**Main Development-related Events Taking Place During the UK Presidency**

**July 12**  Hilary Benn MP addresses Development Committee of European Parliament*

**September 5–6**  Replenishment Conference for the Global Fund for AIDS, TB and Malaria (London)

**September 14–16**  Millennium Review Summit (New York)

**October 13**  DGs meeting on coherence (Brussels)*

**October 24–25**  Informal Meeting of EU Development Ministers (Leeds)*

**November 19–24**  EU-ACP Joint Parliamentary Assembly (venue tbc)

**November 22**  Development GAERC (Brussels)

**December 1**  World AIDS Day event (London)*

**December 13–17**  WTO Hong Kong Ministerial

* = specific UK Presidency event

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**Letter from Rt Hon Hilary Benn MP to the Chairman**

I wrote to you on 18 July 2005 outlining DFID’s objectives for the UK’s EU Presidency. Our overarching aim was to take forward the development priorities in the 2004–06 EU Multiannual Strategic Programme, with a particular focus on the Millennium Development Goals (MDGs), Africa and AIDS. More specifically, we wanted a successful UN World Summit; a comprehensive and long-term strategy for Africa; the main elements of the successor arrangement to 9th European Development Fund (EDF); further action on financing for poverty diseases; a revised Development Policy Statement; progress on the Development Cooperation Instrument; and further measures on aid effectiveness and policy coherence. I am pleased to report progress in all these and other related areas.

The 15–16 December European Council adopted the European Consensus on Development. This updates the 2000 Development Policy Statement. The Consensus provides for the first time a common vision, objectives, values and principles for all EU development work, centred around poverty eradication and the achievement of the MDGs. The Prime Minister, European Commission President Barroso and European Parliament President Borrell jointly signed the document in Brussels on 20 December. Under the Consensus, poverty eradication and the pursuit of the MDGs are the primary and overarching objective for EC and EU Member States development efforts and the poorest countries are to be given priority in terms of overall aid resource allocations. The Consensus also emphasises the need for coherence among external EU policies that affect developing countries. The 21–22 November Development General Affairs and External Relations Council (GAERC) agreed a series of extra measures to improve the effectiveness of EC and EU aid, including the adoption of the Regulation to untie EC aid.

The December European Council also agreed a new EU Strategy for Africa. The Strategy sets out the steps the European Union will take with Africa between now and 2015 to support African efforts to build a peaceful, democratic and prosperous future. Its primary aims are the achievement of the Millennium Development Goals and the promotion of sustainable development, security and good governance. The document reflects discussions with African partners—including at the December EU-African Union meeting—and the Conclusions agreed at the 21–22 November GAERC.

It includes specific commitments on peace and security, governance, sustainable economic growth and trade, investing in people and development assistance.

As part of the agreement on the 2007–13 Financial Perspectives, the European Council agreed to establish a 10th EDF to provide development assistance to African, Caribbean and Pacific (ACP) signatories to the ACP-EU Partnership (Cotonou) Agreement. The 10th EDF will provide €22.682 billion (approximately £15.5 billion) over the period 2008–13. This is a significant increase on the value of the 9th EDF and the EDF will remain an EU intergovernmental fund. Both were important UK Government objectives. The agreement on the Financial Perspectives should also accelerate the negotiation of the new Development Instrument. During our Presidency, we helped unblock negotiations by tabling a redraft that was well received by the Council, Commission and European Parliament. The redraft gives more prominence to poverty reduction and best development practice.

The EU played a pivotal role in the negotiation of the reforms and commitments agreed at the UN Millennium Review Summit in September, including reaffirming the MDGs, recognising Africa’s special needs and strengthening the international community’s ability to respond to humanitarian crises. The EU presented a comprehensive development financing package, including the commitment to double EU aid from 2004 levels to around €66 billion per year by 2010 and agreement to move forward on innovative financing.
A number of Member States were instrumental in launching in September the International Finance Facility for Immunisation (IFFIm) which is expected to prevent five million child deaths over the next 10 years. Also in September, the EU provided 60 per cent of the nearly $3.7 billion new money pledged at the replenishment conference for the Global Fund to tackle AIDS, TB and malaria. To mark World AIDS Day, the UK Presidency hosted a high level meeting on HIV and AIDS. The EU agreed that prevention is a very important part of fighting HIV/AIDS and that more action was needed for example on education, providing more condoms and access to clean needles for drug users.

An informal meeting of Member State Directors-General in Brussels on 12 October examined coherence between trade and development policies. This helped pave the way for agreement at the December GAERC to strive to increase EU trade-related assistance to €2 billion per year by 2010. Transitional assistance in 2006 was agreed for ACP sugar producers and in December the GAERC adopted Conclusions on development and migration.

There was also progress in other areas. The EU-India and EU-China Summits in September agreed a number of measures on climate change. In December, the Council adopted a new Regulation allowing the EU to sign agreements with timber-producing countries in the developing world and ban the import of illegally logged timber from those countries. The Community and Member States responded quickly to the October earthquake in South Asia, and the Presidency and the Commission organised an international event to evaluate the EU’s response to the 2004 Asian tsunami and discuss priority needs for 2006. The main conclusion was that while much had been achieved in the last year, it was important not to lose the sense of urgency given that the affected regions and people—particularly in Sri Lanka, Indonesia and the Maldives—required continued large scale support.

In the light of these achievements on development during the UK Presidency, the challenge now is to consolidate and build on this progress made during the next Presidencies. This includes ensuring that the new instruments and forthcoming EC country programming put the principles of the European Consensus into practice.

11 January 2006

UK PRESIDENCY: GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL

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

I am sending this letter to highlight the UK’s Presidency priorities for the General Affairs and External Relations Council (GAERC) and to include a brief forward look of the work expected to be taken forward and discussed at the 3 October GAERC. This GAERC falls during recess (21 July to 10 October).

We have, as do all incoming Presidencies, to continue work on all pending business. That is a heavy workload at any time, but we also have to take on the EU budget negotiations (“Future Financing”) after the inconclusive outcome of the European Council on 16–17 June. The Prime Minister has made clear that we take our Presidency responsibilities seriously and will seek to make progress towards agreement during our Presidency. In the first instance, we will be conducting bilateral consultations with the other 24 Member States and the two Accession States to ascertain their views on the future financing of the Union and on how we should take forward the negotiations. We will consider next steps in the light of those consultations. Much wider than that, and building on the Prime Minister’s speech to the European Parliament on 23 June, we also want to use this period of reflection for public debate about the future political and economic direction of the EU. The Prime Minister announced on 1 July 2005 that we will host an informal Summit in the autumn to discuss the challenges for the European social model in the 21st Century.

The main policy priorities for the UK Presidency reflect the issues identified in the cross-Presidency Multiannual Strategic Programme for 2004–06 published in December 2003, the Luxembourg-UK work programme published in December 2004, and the White Paper on prospects for the EU under the UK Presidency published in June 2005. All three papers are in the Libraries of the House. In the field of external relations, including CFSP, the UK Presidency hopes to take forward:

Doha Development Agenda. The WTO Ministerial meeting in Hong Kong in December 2005 will aim to take forward the current round of trade talks. The WTO Round is an important priority for the EU. Our objective is to conclude the Round by 2006, and to this end, we need to make progress in the lead-up to the Hong Kong Ministerial. We have scheduled two informal EU trade ministers’ meetings during our Presidency, where the WTO Round will be on the agenda. We will work with our EU Partners, the EU institutions and other WTO members to achieve a successful outcome at Hong Kong.
Africa/G8. The Summit at Gleneagles produced the most detailed and ambitious package on Africa ever agreed by the G8. We will now be looking to implement these commitments, including through our EU Presidency. At the Summit, Heads agreed to strengthen the Africa Partnership Forum, including by establishing an Action Plan between all the major donors and Africa. The June European Council asked for a long-term strategy for Africa to be agreed at the December 2005 European Council. We will be working with our EU partners to produce this, and look forward in particular to the Commission’s Communication which is due to come out in October.

On aid, the G8 agreed that the commitments made before and at the Summit would increase aid to Africa by $25 billion a year over 2004 levels by 2010 (a doubling), as part of a wider package to increase overall aid by $50 billion a year by the same date. The EU agreement at the May GAERC to double aid to Africa clearly set the bar high and shows the EU making a leading contribution. We will be working to implement these commitments. We will also continue discussions on innovative finance mechanisms with our Partners. On debt, the G8 agreed a proposal to cancel 100 per cent of the debts of qualifying countries to the International Development Association (IDA), the IMF and African Development Fund. European Partners welcomed the proposal at the Council Meeting of 16–17 June. We will now work to secure agreement for the proposal at the World Bank and IMF Annual Meetings in September.

Peace, stability and reform in the Middle East. The EU will continue to work with the US and other international Partners to play a major role in the Middle East, in particular as a member of the Quartet for the Middle East Peace Process. The EU will continue to play, through the Quartet, a key role in supporting the Palestinian Authority’s efforts at institutional reform and Prime Minister Sharon’s disengagement plan. Stronger Palestinian institutions and a successful disengagement are necessary for Roadmap implementation.

Iraq. During the UK Presidency, we will be looking for the EU to continue to increase its engagement with Iraq. In particular, for the EU to continue to support the political transitional process, including for the constitutional process, elections, referendum and subsequent elections. We also want to build up the current EU Rule of Law and Police Training mission, including moving towards some training being undertaken in Iraq; to lay the foundations for negotiations to commence on a Third Country Agreement to increase EU/Iraq political and trade cooperation; and see the Commission establish a permanent presence in Iraq.

EuroMed Summit. The Presidency will use the tenth anniversary of the Barcelona Process, on 27–28 November 2005; to deepen the EU’s partnership with the Mediterranean region, supporting reform efforts. We want Partners to endorse at the EuroMed Summit a Declaration and an outcomes-orientated Action Plan (AP) which meets our Arab Reform objectives. We hope that the Action Plan contains medium-term targets in key areas including governance, education and economic reform.

Russia and Ukraine. The EU will continue to build its partnership with Russia. The UK Presidency will take this forward in a way that is based on common European values and reflective of the EU’s interests in the common neighbourhood. Events in Ukraine last year marked a watershed for democracy there. The UK Presidency will continue to develop the EU’s relationship with Ukraine on the basis agreed earlier this year, reflecting Ukraine’s progress in implementing reform. The Prime Minister will chair Summit meetings with both Russia and Ukraine.

UN Millennium Review Summit. The Summit will take place on 14–16 September. We are strongly committed to a balanced and ambitious Summit outcome to enable the UN to comprehensively tackle today’s inter-related challenges of development, security and human rights. As Presidency we will further co-ordinate the EU’s contribution to Summit preparations.

EU-China and EU-India Summits. As Presidency we are working towards a successful EU-China Summit on 5 September and EU-India Summit on 7 September, both of which the Prime Minister will chair. The focus for the EU-China Summit will be on long-term objectives such as a timetable for negotiating a new EU/China framework agreement. We also hope to agree to strengthen and deepen co-operation on climate-friendly technologies. The key output of the EU-India Summit will be the launch of a comprehensive Action Plan which covers key objectives across the range of our strategic partnership over the next 10 years—from counter-terrorism work to cooperation in the fields of science and technology.

Enlargement. As Presidency we will work to deliver on the EU’s existing enlargement commitments. This includes: continuing preparations for Bulgarian and Romanian accession due in January 2007; opening accession negotiations with Turkey on 3 October; and opening accession negotiations with Croatia as soon as it is cooperating fully with the International Criminal Tribunal for Yugoslavia. We will also take forward consideration of Macedonia’s membership application once the Commission have issued an opinion. We will also consider Commission papers on agreeing a Stabilisation and Association Agreement with Serbia and Montenegro, and Bosnia and Herzegovina.
Western Balkans. The Presidency will take forward the EU's clear commitment to the further European integration of the Western Balkan countries as they move towards meeting the necessary political and economic criteria. In particular we hope to develop the EU's role in support of the UN's work to create a stable and multi-ethnic Kosovo, and encourage further moves on the part of Serbia and Montenegro, and Bosnia and Herzegovina to justify the opening of Stabilisation and Association Agreement negotiations during our Presidency.

Counter-Terrorism and Security. Counter-terrorism was already a Presidency priority prior to 7 July. But the Emergency JHA Council of July 13 saw a renewed commitment from all Member States to deliver the EU’s Counter-Terrorism action plan and to work to more ambitious deadlines. As Presidency we are encouraging Member States to enhance their own national efforts, to work more closely together and through EU bodies, and to enhance co-operation with other countries, in the fight against terrorism, within the framework of the Hague Work Programme and the Counter-Terrorism Action Plan. The UK Presidency will also take forward work to reinforce security within and outside the EU, focusing on organised crime and illegal immigration.

European Security and Defence Policy. The UK Presidency will continue to develop an active, coherent and capable ESDP. We will ensure the effective management of the EUFOR Bosnia mission, the policing missions in Bosnia, Macedonia and the Democratic Republic of Congo (DRC), the security sector reform mission also in DRC, and the training mission for Iraq. We will deliver the EU’s commitments to support the African Union mission in Darfur, working closely with NATO, and look at potential missions in Aceh, Palestine and Georgia. We will also drive forward work on civil-military coordination, which is both the most needed capability in many security crises today and an area where, with its wide range of instruments, the EU has the potential to take a leading role. Finally, through further development of the EU Battlegroups initiative, the European Defence Agency and the Civilian Headline Goal, we will continue to focus on improving European capability to take action either within NATO or, where NATO chooses not to take part, without it.

The EU’s relationship with the US. Within a wider framework of a renewed transatlantic agenda, strengthening the economic partnership will be a particular priority for the Presidency.

October GAERC

At present, the General Affairs and External Relations Council (GAERC) will meet on 18 July, 3 October, 7 November, 21–22 November, and 12 December.

On current plans, key priorities at the 3 October GAERC will be Turkey (the opening of negotiations has been scheduled for 3 October), Financial Perspectives 2007–13 (a continuation of the debate on the EU’s long term budget), Western Balkans (appointment of an EU member to the UN envoy’s team), Afghanistan (elections to be held on 18 September), and preparation for the EU-Russia Summit on 6 October and the EU-Ukraine Summit in w/b 17 October.

The following items may feature for political agreement or adoption as “A” points:

- Belarus—restrictive measures (renewal of the Common Position imposing a travel ban).
- ICTY—asset freeze against indictees (renewal of the Common Position).
- ESDP—EU COPPS (new Joint Action to establish an ESDP mission—dependent on the outcome of a fact finding mission).
- ESDP—Aceh (new Joint Action—dependent on the outcome of a fact finding mission).
- ESDP—EUPM (renewal of the Joint Action).
- ESDP—EUPOL Kinshasa (renewal of the Joint Action).
- Turkey—Commission Communication Strategy.
- Small Arms and Light Weapons in Cambodia (renewal of the Joint Action).
- Small Arms and Light Weapons in SE Europe (renewal of the Joint Action).
- Small Arms and Light Weapons in Albania (renewal of the Joint Action).
- Palestinian refugees (renewal of the Common Position).

The EU Foreign Ministers informal (Gymnich) will take place on 1–2 September in Newport, Wales. The agenda has yet to be agreed. I will provide the EU Committees with further information on Gymnich discussions after the event.

I look forward to working with your Committee during the UK Presidency of the EU. I enjoyed my appearance before your Committee on 11 July to highlight the UK’s Presidency priorities. The Government recognises the important role of your Committee in relation to the Presidency and sees your Committee, and
Parliament more widely, as holding a key stake in the Presidency and its success. The Government also recognises that examination of Presidency priorities will place an extra burden on the Committee and is grateful for the Committee’s willingness to undertake this important role. It is important for me to remain in close contact with your Committee, as efficient working between the FCO and Parliament will be crucial in delivering a business-like, professional Presidency that enhances the UK’s reputation among our European and global Partners.

20 July 2005

UK PRESIDENCY: INFORMAL MEETING OF EU DEVELOPMENT MINISTERS, OCTOBER 2005

Letter from Rt Hon Hilary Benn MP, Secretary of State, Department for International Development to the Chairman

The Informal meeting of EU Ministers responsible for Development Cooperation was held on 24–25 October in Leeds. I chaired the meeting as Presidency. Gareth Thomas MP, Parliamentary under Secretary of State for International Development represented the UK. Louis Michel, European Commissioner for Development and Humanitarian Aid; Luisa Morgantini, Chair of the European Parliament Development Committee; and Glenys Kinnock, Co-President of the ACP-EU Joint Parliamentary Assembly also participated. External speakers were: Donald Kaberuka, President of the African Development Bank; Peter Mandelson, European Commissioner for External Trade; Mark Malloch Brown, Chef de Cabinet of the UN Secretary General; and Jan Egeland, the UN Emergency Relief Coordinator.

The agenda items were covered as follows:

SOUTH ASIAN EARTHQUAKE

Jan Egeland, the United Nations Emergency Relief Coordinator, briefed Ministers on the urgent need to respond to the South Asian earthquake. He called for more aid, particularly for shelter and helicopters. Ministers agreed that more money and help needs to be given and reiterated that coordination is vital both in the humanitarian phase and as reconstruction begins. Commissioner Louis Michel announced that the Commission had asked the European Parliament to approve the release of an additional 80 million Euros of EC funds in 2005–06 of which 30 million Euros would be for humanitarian aid and the remainder for reconstruction. This would be in addition to the 110 million Euros of support already committed by Member States and the Commission. Further pledges were expected at a UN meeting in Geneva on 26 October. Ministers also agreed to work to strengthen the EU and UN’s capacity to respond to future disasters.

REFORM OF THE INTERNATIONAL ARCHITECTURE

Ministers discussed the need to ensure that the international development architecture is fully equipped to respond to the challenge of delivering more and better aid to help maximise progress towards meeting the Millennium Development Goals. There was recognition of the EU’s leading role in the international development system and therefore the leading role it should play in shaping its future—particularly as the EU will account for two-thirds of DAC aid by 2010.

Mark Malloch Brown, the UN Secretary General’s Chief of Staff confirmed that the UN Secretary General would appoint a team of experts to develop a proposal, in consultation with development partners and donors including the EU, for the reform of the UN development and operational architecture. This could include proposals for more tightly managed development, humanitarian and environmental entities. Ministers strongly supported the need to signal a high level of interest in, and political support for, reform to the international development system.

Ministers noted the paper circulated by the Netherlands on UN reform, but agreed that engagement should not be limited to the core group of EU and non-EU countries, referred to in the paper as the “G13”. Instead, the EU as a whole should actively support UN reform, including the strengthening of country level Resident Coordinators. Austria confirmed its intention to take forward work on UN reform during its Presidency of the EU.

Ministers also discussed EU aid effectiveness, noting the importance of providing sustainable and predictable funding and the need to address issues of aid distribution. The Presidency confirmed that the 21–22 November General Affairs and External Relations Council would include the annual Orientation Debate on how to improve and monitor the effectiveness of European aid.
PUTTING TRADE AT THE SERVICE OF DEVELOPMENT

Peter Mandelson, European Commissioner for External Trade, emphasised the importance of achieving a good outcome for developing countries from the Doha Development Round. He urged Development Ministers to help demonstrate that the EU is ready to put trade at the service of development, reinforcing Europe’s role as a force for good in the world. That meant we needed to deliver on the obligations stemming from last year’s Framework Agreement, including providing our partners significantly improved agricultural market access. He highlighted the need to push hard for a development “down payment” for Hong Kong. This should include other OECD countries following the EU’s lead in giving Everything But Arms (EBA) access to all Least Developed Countries; achieving the right degree of differentiation in trade rules; and commitment to dedicate significantly increased resources—at EU and national levels—to help poorer countries build their capacity to trade.

Development ministers agreed that whilst the negotiating specifics are clearly a matter for trade colleagues, they have an important role to play in ensuring priority concerns of developing countries are addressed both before and after the WTO Ministerial in Hong Kong.

Ministers agreed on: the importance of increased market access for products in which developing countries have comparative advantage, especially agricultural products; the need for all agreements to reflect the different levels of development of developing countries and that there are millions of poor people working in middle income developing countries, especially in agriculture; and that South–South trade has to be part of the solution for development in least developed countries, but recognised that this is no substitute for action by the EU. Ministers highlighted the importance of an urgent WTO response to the plight of West African cotton producers, as set out in a paper circulated by France.

Ministers emphasised the importance of ensuring Economic Partnership Agreements are successful development tools and that an effective mechanism for monitoring implementation is needed as soon as possible. Ministers agreed that increasing support to help developing countries build their capacity to trade is a high priority and called for the Presidency and Commission to bring forward a proposal on the EU’s possible contribution to an enhanced aid for trade package ahead of Hong Kong. Ministers also noted that many developing countries will look at sugar as a test of EU support for their concerns and that transitional assistance for sugar producers needed to be made available in 2006.

DEVELOPMENT POLICY STATEMENT (DPS)

Discussions on the Development Policy Statement clarified some important issues. There was consensus that poverty eradication remains the primary objective, while globalisation provides the context within which development is pursued. There was broad agreement that whilst our development objectives for working in both Low Income Countries and Middle Income Countries are the same, the way in which we implement and approach development assistance will be different, according to partner countries’ situations and needs.

There was agreement on the need for a shared EU vision for development and for the EU to work together more effectively and more coherently, in line with the Paris Declaration. Doubts were expressed on the need for, and feasibility of, a single thematic framework for all EU development activities. However, it was important to indicate in a comprehensive way common objectives and principles, and a shared understanding of the breadth of activities needed to eradicate poverty.

There was broad support for the EC to underline its areas of excellence; building on its strengths and experiences and to identify where at Community level we need to further develop expertise. However, there was recognition that this should not restrict the Commission from working in other areas. What is needed is a balance between the need to concentrate efforts in country, whilst retaining the flexibility to respond to a range of partner countries’ priorities.

Discussions on the Development Policy Statement will continue at working level, with the aim of reaching consensus on a tripartite statement between the Council, Commission and Parliament by November.

EU-AFRICA PARTNERSHIP

Donald Kaberuka, President of the African Development Bank emphasised the need for the EU Strategy to identify the comparative advantage of EU institutions within the international donor community; to recognise the importance of anchor countries because of their influence on low-income countries; and, to work through and build capacity in existing African institutions. Ministers agreed that strengthening African institutions was particularly important.
Ministers welcomed the Commission’s Africa Communication, which will form an integral part of the overall EU Strategy for Africa to be agreed at the December European Council. Ministers agreed that the November GAERC should adopt positive Conclusions—broadly in line with the outline discussed by COREPER the previous week—on the Communication. Ministers highlighted the importance of peace, security and migration and other issues, and the need to ensure we get the right balance between the different elements. Ministers noted that enhancing political dialogue was a key element, including participation of civil society and parliamentarians in Africa. Ministers also agreed on the need to follow up and effectively monitor implementation of EU commitments on more and better aid.

**European Development Fund (EDF)**

There was agreement that the Council should consider the non-financial elements, of a possible EDF10, especially in relation to effectiveness, without prejudice to the outcome of discussions about the 2007–13 Financial Perspective (EC Budget).

**Sudan/Darfur**

There was agreement that both the UN presence in Southern Sudan and the African Union force (AMIS) in Darfur need strengthening and that capacity building of the African Union to manage peacekeeping operations was essential. Delegations agreed that the benefits of the comprehensive peace agreement were not yet being felt in Sudan, which threatened hopes for long-term peace. All atrocities were unacceptable. Member States agreed to give any evidence of specific atrocities to the Sanctions Committee and the International Criminal Court.

**Food Crisis in Southern Africa**

Delegations agreed that the EU should continue to provide significant support to countries affected by food shortages in Southern Africa. Zimbabwe was highlighted as a particularly difficult case following the misreporting of harvest figures. Commissioner Louis Michel suggested that future EDF allocation criteria should reflect food security levels.

**Ethiopia/Eritrea**

Delegations noted with regret that relations between Ethiopia and Eritrea remained difficult, as did the situation in Ethiopia following the elections.

5 November 2005
Foreign Affairs, Defence and Development Policy (Sub-Committee C)

Agriculture and Environment
(Sub-Committee D)

AARHUS CONVENTION (14152/03, 14153/03 AND 14154/03)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment,
DEFRA to the Chairman

I am writing to update you on progress on the three related proposals arising from the Aarhus Convention, and to which the above Explanatory Memoranda refer.

All three proposals have cleared Lords’ scrutiny. However, as this is a complex package, it is helpful at this point to summarise where each of them currently stands.

With regard to the Regulation to apply Aarhus Convention to European Union Institutions and bodies, political agreement to a common position was reached in Environment Council on 20 December 2004. My letter to you of 24 January 20051 set out the basis for the UK’s agreement to the amended proposal. Publication of the text of the common position is expected in September. The UK, as Council Presidency, then expects to facilitate consultations with the European Parliament, the Council and the Commission on early final adoption of the text of the Regulation.

The proposal for the European Community to conclude (or ratify) the Aarhus Convention, which was also agreed at the December Environment Council, was uncontroversial, as it had signed the Convention in 1998. The ratification process was completed in February 2005, which enabled the Community to play a full part in second meeting of the parties to the Convention, which was held in May.

My letter of 24 January also explained the latest position on the proposed Directive on access to justice. There was some consideration of this proposal at official level during the Luxembourg Presidency. A majority of Member States took the view that the Directive was no longer desirable because it was not needed for Member States to ratify the Aarhus Convention (nearly all have done so). Furthermore, the evidence that it would improve enforcement of EU environmental legislation was unclear. These views were reported to the June Environment Council.

The Commission is currently considering whether the proposal meets its criteria for the withdrawal of legislative proposals that have failed to make substantive progress for some time. The UK Presidency will review future handling of the proposal in the light of the Commission’s deliberations, on which it is expected to report in October.

14 September 2005

AGRICULTURE AND FISHERIES COUNCIL—DECEMBER 2005

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare,
DEFRA to the Chairman

I was pleased to have the opportunity to discuss on 7 December with Lord Renton’s committee the issues that are likely to arise at the Fisheries Council next week. I am now writing to give you details of three proposals, which we anticipate will be agreed at the December Agriculture and Fisheries Council.

The main item to be discussed at the Council is the annual Regulation on Total Allowable Catches (TACs) and quota and related measures for fisheries in most EU waters. I submitted an Explanatory Memorandum (14920/05) on the Commission’s proposal on 9 December which was cleared by your Committee on 14 December.

This year there is a separate TACs and quotas Regulation for the Baltic. I attach (not printed) an Explanatory Memorandum (14919/05) on this proposal. Previously TACs for the Baltic were agreed by the International Baltic Sea Fishery Commission (IBSFC), whose recommendations bind the Community until the end of 2005.

Following enlargement of the Community in 2004 and effective dissolution of IBSFC, it was hoped that it would be possible to agree the Baltic TACs in November because the scientific advice is received earlier in the year. This could help to reduce the number of decisions the December Council needs to take. Unfortunately the Commission were not able to produce the proposal in time for agreement in November.

The third proposal (EM 5199/04 of 19/02/2004 and EM 5205/04 of 19/02/2004) is for the recovery of the sole stocks in the western Channel and the Bay of Biscay which the Committee has previously considered and cleared. It has not yet proved possible for the Council to reach agreement on the western Channel sole proposal—which is the part of the proposal with direct interest for the UK. The Commission has made progress on the Bay of Biscay part of the proposal and is proposing to agree a Regulation on this at Council. The Commission would then bring forward a new proposal on western Channel sole and we will brief you on this when it is received.

We have previously discussed the difficulties for Parliamentary scrutiny caused by the late publication of the annual TAC proposals. EU Ministers discussed this in October. Following that discussion I am writing to the Commission to propose a different way of dealing with these negotiations in the future. I attach a copy of the paper which sets out our proposal which I would be happy to talk to the Committee about in the new year. In the meantime though I very much regret that the two TAC proposals are likely to be adopted without prior scrutiny clearance. I hope the Committee understand the reasons for us taking this course on this occasion and hope they will accept my apologies for any appearance of discourtesy.

19 December 2005

Proposal for Changes to the Process for Annual Fisheries Management Decisions Under the CFP

BACKGROUND

1. The options for changes to the process for arriving at annual fisheries management decisions under the CFP were discussed by Ministers over lunch at the 24 October 2005 Fisheries Council. The main conclusions were:
   — although there was some support for changing the fishing year (eg from January–December to April–March), this was not the majority view;
   — there was a preference for bringing forward the scientific advice to allow more time for proper consideration of proposals between publication of the ICES advice (currently mid-October for the majority of stocks) and decisions in December; and
   — there was general support for the principle of “frontloading”, allowing discussion to take place earlier in the year on the basis of informal papers in advance of formal Commission proposals.

2. This note sets out some thoughts on a possible way forward on this issue that responds to the key conclusions reached by Ministers in October, as well as reflecting the United Kingdom’s experience over the last few months of its Presidency of what might work in practice.

RECENT DEVELOPMENTS

3. Developments in recent months under the UK Presidency have highlighted some practical problems which have made it difficult for the Commission to make frontloading a reality this year and are likely to do so again in future years. In particular:
   — the publication of the informal views of one Commission DG in the form of a non-paper without going through the Commission’s normal process of internal consultation and clearance through the College of Commissioners gives rise to inter-institutional issues, which have become more high-profile this year for reasons unrelated to fisheries. This has inhibited DG Fisheries from publishing non-papers on proposals which are specific or controversial; and
   — the normal fisheries calendar means that major dossiers to be decided by the Fisheries Council other than the annual TACs and quota regulation tend to be decided earlier in the year in order to enable everyone to concentrate on TACs and quotas in November and December. This makes it difficult in practice for the Commission team responsible for conservation of fisheries resources to give the time to preparing frontloading papers significantly earlier in the year (eg in 2005 because of the need to concentrate on proposals on technical conservation measures in the Mediterranean and the European Fisheries Fund).
**Timing of Scientific Advice**

4. There are also difficulties with bringing forward the scientific advice. This is potentially difficult because the timing of the October ICES ACFM meeting is driven by the series of scientific Working Groups on different groups of stocks, the reports of which form the basis for the advice. The timing of the ICES working groups is in turn driven by the timing of the various national and international scientific surveys. The advice on those stocks which is not dependent on these surveys is already delivered earlier in the first tranche of ICES advice in May.

5. There may be scope for re-scheduling some scientific working groups and/or surveys in order to support a fundamental change in the ICES advisory timetable. The Commission should invite ICES to consider and advise on the implications and practicalities of such changes, including any changes in the character of, and processes for, delivering advice within a revised policy timetable. However, realistically such an adjustment of the international scientific timetable is likely to take some years to design and implement. The UK has therefore been considering an alternative approach capable of implementation in the meantime in 2006.

**Proposal**

6. In order to build on the constructive Ministerial discussion on 24 October and to address the difficulties outlined above in relation to frontloading and the timing of the scientific advice, the UK has developed a proposal for changes to the annual process. The aim of this proposal is to lengthen significantly the time available for proper technical consideration of the Commission’s proposals, including consultation of RACs, which all member states agreed was desirable, but to do so in a way which retains the current fishing year based on the calendar year.

7. The basis of the proposal is that the Commission should draw up proposals for TACs and quotas and related measures as soon as the May ICES advice is available, drawing on the previous October’s advice for those stocks considered at the October ACFM meeting. The Commission should publish formal proposals by mid-July at the latest. This would allow four months for technical examination of the proposals and consultation of stakeholders (mid-July to mid-November). The Fisheries Council should decide on the proposals at its November meeting (usually the third or fourth week in November), allowing national authorities one month to prepare for implementation on 1 January and inform those affected. This timetable would imply the EU/Norway bilateral fisheries negotiations being held a few weeks earlier.

8. For this proposed timetable to work effectively there would need to be an understanding between the Council and the Commission that where the October ICES advice showed a clear change in the scientific perception of a particular stock compared to the previous October’s advice, the Presidency and Commission would table as a Presidency compromise any corresponding changes to the level of TAC in the proposals already on the table. However, where the October advice implied a more fundamental reassessment of the approach to managing a particular stock, consideration of the implications of that advice and of the appropriate management response would need to be held over until the following year.

9. A schematic representation of how these proposed changes to the timetable would work if applied next year is set out in the Appendix.

10. An additional element of this revised timetable could also be that it could represent a good basis for moving towards more multi-annual setting of TACs. By providing a more realistic timetable for in-depth consideration of the more fundamental and difficult management issues, it might make it easier for the Council to accept that TACs for stocks where the advice has not fundamentally changed are considered only every other year, for example. This in turn might lead to ICES not needing to provide a complete assessment of every stock every year and could lead to some savings in the cost of the advisory process.

**Advantages and Disadvantages of the Proposal**

11. Key advantages are:
   - A much more reasonable timetable for full technical consideration of complex Commission proposals and consultation with stakeholders, allowing for better decision making and better understanding among stakeholders and respect for the process and the outcome;
   - A timetable which makes it possible to realise the aspiration of RACs having a meaningful part in contributing to the process;
   - By spreading the work involved in the annual decision making process more evenly through the year, a lessening of the current pressure on all those involved in December;
— more opportunity to give proper attention to implementation aspects of the annual management cycle, including control and enforcement issues; and
— a better basis for moving in the direction of multi-annual setting of TACs.

12. Key disadvantages are:
— There would potentially be a longer lead time between scientific advice in October and implementation of measures to address its implications (14 months instead of two months). However, as noted in paragraph 8 above, where the October scientific advice showed a changed perception of the state of a particular stock, the opportunity to amend the proposed TAC level for the following year to reflect this would still be there. Moreover, for most stocks it is rare for the scientific advice to be radically different from one year to the next, so such late amendments should only need to be the exception rather than the rule. It would be more technically complex or far-reaching changes that would be delayed, and it is precisely these kind of changes where the principles of good regulation suggest that time should be taken to get them right.
— There is a risk that without the time pressure which the current timetable places on the Commission to publish its proposals following the October ICES advice and on the Council to reach decisions before Christmas, the timetable proposed would prove more difficult to adhere to (i.e., the mid-July deadline for the Commission to publish their proposals would tend to slip, and the Council would be more likely to fail to reach agreement in November than in December). How serious a risk this is would depend on how determined the two institutions are to make a revised timetable work.

CONCLUSION

13. This is a limited proposal in that it would not require significant changes to other processes (with the exception of an adjustment to the timing of the bilateral negotiations with Norway, which would clearly need to be discussed and agreed with Norway). It is therefore a proposal which could potentially be implemented in 2006. However, it offers major benefits in terms of improving the annual decision-making process and potentially in the quality of the legislation adopted.

14. In parallel the scope for making significant changes in the annual timetabling of the international scientific advice should be investigated.

*UK Delegation*

*December 2005*

**Annex**

**Proposed new timetable for Annual Fisheries Management Decisions if implemented in 2006 for 2007 TACs and Quotas**

<table>
<thead>
<tr>
<th>Period</th>
<th>Description</th>
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<tbody>
<tr>
<td>January–May 2006</td>
<td>Consideration of any fundamental issues raised by October 2005 ICES advice on the basis of Commission discussion papers, including consultation of RACs.</td>
</tr>
<tr>
<td>2nd half May 2006</td>
<td>Publication of ICES May ACFM advice.</td>
</tr>
<tr>
<td>1st half of July 2006</td>
<td>Commission proposals published.</td>
</tr>
<tr>
<td>July–October 2006</td>
<td>RACs consider Commission proposals and formulate opinions.</td>
</tr>
<tr>
<td></td>
<td>Commission meetings with RACs.</td>
</tr>
<tr>
<td></td>
<td>Opportunity for RACs to contribute provisional advice while proposals under consideration in Council Working Group.</td>
</tr>
<tr>
<td>3rd week October 2006</td>
<td>Publication of ICES October ACFM advice.</td>
</tr>
<tr>
<td>2nd half of October 2006</td>
<td>COREPER consideration of Commission proposals.</td>
</tr>
<tr>
<td>End October 2006</td>
<td>Deadline for RACs to submit advice.</td>
</tr>
<tr>
<td>1st half November 2006</td>
<td>Second round of COREPER consideration of Commission proposals.</td>
</tr>
<tr>
<td>2nd half November 2006</td>
<td>Fisheries Council decides on Commission proposals.</td>
</tr>
<tr>
<td>December 2006</td>
<td>Member State administrations inform the industry of agreed changes and plan for implementation from 1 January 2007.</td>
</tr>
</tbody>
</table>
Timetable for Annual Fisheries Management Decisions for 2007 TACs and Quotas

Consideration of issues raised by ICES advice
- Consideration of any fundamental issues raised by Oct 05 ICES advice on basis of Commission papers, including consultation of RACs

Publication of ICES May ACFM advice

Commission draws up 07 proposals on basis of ICES Oct 05 & May 06 advice

2007 Commission TAC proposals published

RACs consider Commission proposals and formulate options
- Examination of Commission proposals
  - Technical examination of proposals in council Working Group & Technical expert groups
  - Commission meetings with RACs

Publication of ICES Oct ACFM advice

Deadline for RACs to submit advice

COREPER consider proposals
- COREPER consideration of Commission proposals
- COREPER consider proposals

Fisheries Council decides on Commission proposals

Planning implementation for 1 Jan

Task

Milestone

Jan-06
Mar-06
May-06
Jul-06
Sept-06
Nov-06
Jan-06

Date
AVIAN INFLUENZA (8630/05)

**Letter from the Chairman to Ben Bradshaw MP, Parliamentary Under-Secretary of State, DEFRA**

The Committee have examined this proposal and have decided to clear it from scrutiny at this time, however we will return to it at a later stage. In the meantime we would be interested to receive further information on why Government wishes to increase the flexibility for movements of day old chicks from within infected zones to multi-age sites.

2 November 2005

**Letter from Ben Bradshaw MP to the Chairman**

Thank you for your letter of 2 November explaining that you have examined this proposal and cleared it from scrutiny but propose to return to it at a later stage.

One of our main concerns has been to ensure that the measures contained in the proposal for the control of avian influenza are proportionate to the risks concerned and can be scientifically justified while allowing us to properly control the disease.

Day old chicks from hatcheries in the infected area which follow proper biosecurity rules pose negligible risk of disease spread. Any eggs from infected parent flocks are unlikely to survive during the setting and incubation period in the hatchery. Therefore healthy day old chicks are unlikely to carry infection. That is why the latest draft of the proposal includes a derogation from the prohibition on movements of poultry for day old chicks in an outbreak of highly pathogenic avian influenza.

The decision to apply this derogation rests on the competent authority. The proposal includes a number of conditions for such movements to make sure that the chicks are not infected by contact with eggs or chicks of a different health status before they leave a hatchery, they are transported to their destination without risk of disease spread and that there is no risk of disease spreading once they arrive there. The movements can only take place within the same member state. Similar derogations for day old chicks with associated biosecurity provisions would also apply in an outbreak of low pathogenic avian influenza.

The derogations and conditions for movement of day old chicks have now been agreed by delegations to the Council Working Group and support our objective of giving industry the flexibility to operate whilst ensuring that the control of an outbreak of avian influenza is not jeopardised.

23 November 2005

BATHING WATER (8559/04)

**Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman**


Prior to conciliation, the Council’s solidarity was strong in its resistance to significant amendments to its common position. I am pleased to inform you that this solidarity was maintained throughout the conciliation negotiations. The joint text of the conciliation has not yet been published. However, as the wording of the agreed amendments is known, I am now in a position to provide you with the following summary of outcomes on issues that were previously of concern to the Council.

**Stringency of Water Quality Standards**

The Council opposed the European Parliament’s proposals for an overly stringent minimum water quality standard and the withdrawal of the “sufficient” classification as the minimum compliant standard. Had the European Parliament’s amendments been accepted, they would have increased the stringency of the existing seawater standards dramatically. This would not have provided any measurable health benefit, but would have resulted in a dramatic increase in the number of “poor” bathing waters, beyond that predicted under the Council common position, in many northern Member States.

The Council was, however, prepared to accept a marginal tightening of the minimum compliant “sufficient” standard for intestinal enterococci (IE), in return for the European Parliament’s withdrawal of a number of its outstanding amendments. The “sufficient” standard for will now permit no more than 330 IE per 100 ml (previously 360 per 100 ml) of inland waters and 185 per 100 ml for coastal waters (previously 200 per 100 ml).
IMPLEMENTATION TIMETABLE

In return for the Council’s acceptance of a marginally tighter IE “sufficient” standard, the European Parliament has withdrawn all amendments that would desynchronise the implementation timetable of the revised Bathing Water Directive from that of the Water Framework Directive (WFD) timetable. Consequently, the date by which the new standards and classifications of Bathing Water Directive must be in full use remains the end of the 2015 bathing season.

It is anticipated that, by 2012, the programmes of measures under the Water Framework Directive will have started to reduce diffuse pollution to bathing waters. This should contribute to improved compliance over most of the preceding four year assessment cycle against which bathing waters in 2015 will be classified. Consequently, the agreed timetable minimises the chance of a significant drop in both compliance with the directive and in the public’s perceived quality of bathing water, which would have been expected if use of the new standards were required any earlier than this date.

PUBLIC INFORMATION

A number of amendments proposed by the European Parliament on how Member States should inform the public of water quality were viewed as overly burdensome by the Council. These were also withdrawn in return for the Council’s acceptance of the marginally tighter IE “sufficient” standard.

The Council supports the general principles of the remaining amendments and has worked with the European Parliament on these to achieve the following mutually acceptable compromises:

— A standard symbol will be used on public signage to denote the current classification of the bathing water and any prohibition or advice against using it. The symbols shall be announced by the Commission within two years of adoption of the new directive, following consultation with stakeholders, including the representatives of Member States and of local and regional authorities.

— Bathing water monitoring data for each site shall be made available to the public via the internet upon completion of water samples’ analysis.

EMERGENCY PLANNING AND RESPONSE

The European Parliament proposed a number of amendments on how Member States should guard against and deal with severe, unexpected pollution to bathing water, which the Council felt were prescriptive and burdensome. The European Parliament agreed to withdraw these as it agreed that, in the light of the agreed joint text, the ability to respond to unexpected pollution was covered adequately by Article 7 and Member States’ existing generalised contingency arrangements.

REPORT AND REVIEW OF THE DIRECTIVE

Reporting and reviewing the implementation of the revised directive is considered crucial by all institutions. The setting of standards in current revision process has been hindered by the relative paucity of information on the health effects of bathing and by disagreement on the interpretation of this. To overcome similar problems in future reviews of bathing water legislation, amendments now aim to provide the following structure to improve the understanding of the health risks of bathing.

The Commission is expected to produce a report by 2008 on scientific, analytical and epidemiological developments relevant to parameters for bathing water quality. This will be supplemented by 2014 by written observations to the Commission from Member States on the need for further research or assessment. Both of the above will then contribute to a review of the Directive, due to take place no later than 2020.

The adoption of the new directive is anticipated before the end of 2005, following its third readings by the Council and European Parliament. I trust that we have scrutiny clearance to proceed with this and would be grateful if you would contact me, should your Committee have any concerns.

6 November 2005
BATTERIES AND ACCUMULATORS (15494/03)

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

I write to inform you of progress made on this proposed Directive.

Following consideration of the Supplementary Explanatory Memorandum 15494/03 at the European Standing Committee Scrutiny debate on 28 April 2004, the proposed Directive had its first reading in the European Council in December 2004, when political agreement on a common position was reached. First reading in the European Parliament previously took place on 20 April 2004.

The common position significantly amended the European Commission’s initial proposal, on which the Government consulted in May 2004. The two main amendments were a revised portable battery collection targets of 25 per cent of average annual sales after four years, rising to 45 per cent after eight years; and a ban on the marketing of portable nickel-cadmium batteries, with an exemption for their use in cordless power tools, medical equipment and emergency and alarm systems (around 70 per cent of total sales). The UK voted for the common position, since it represented an acceptable outcome for the UK and other Member States starting from a low level of collection for spent portable batteries.

It is expected that the common position will be transmitted to the European Parliament in September 2005, with the EP’s second reading being completed at their December plenary session. Early indications are that agreement following the European Parliament’s second reading is unlikely, and it is felt that the draft Directive will need to go through the conciliation process during the Austrian Presidency in the first half of 2006.

31 July 2005

CLIMATE CHANGE: “WINNING THE BATTLE” (6417/05)

Letter from the Chairman to Elliot Morley MP, Minister for Climate Change and Environment, DEFRA

Thank you for your Explanatory Memorandum of 4 March which Sub-Committee D (Environment and Agriculture) examined at its meeting yesterday.

The Committee considers the Commission’s Communication to be a constructive document which usefully contributes to the debate on how best to tackle climate change. The Committee is supportive of the gist of the report and asked me to write with its comments on it.

The Committee is interested in the Communication’s recommendation that “a strategic programme to sensitise the general public to the climate change significance of their actions” be set up through the “launching of an EU-wide awareness campaign”. This is fully in line with the Committee’s recommendation that “the key to engaging the public is for people to have ownership of the climate change problem”. However the Committee believes the EU’s primary role to be regulatory. The impetus to alter individuals’ behaviour must come from as locally a source as possible.

On the issue of energy efficiency, the Committee draws your attention to the need for strong action to be taken if carbon dioxide emissions from UK domestic housing are to be reduced to only 40 per cent of current levels, in line with Government targets. The Committee would be interested to know what measures the Government is taking to address this issue.

The Committee is keen to emphasise that much more action must be taken if EU Member States are to achieve their Kyoto targets. To this end the Committee would be grateful if you were able to provide an overview of the type of programmes other Member States are implementing in order to reduce their CO₂ emissions.

The Committee is keen to ensure that words on climate change policy are met with decisive action. You may recall that the Committee also recommended in its report that:

— Emissions from intra-EU flights should be brought into the EU ETS at the earliest opportunity.
— The Commission should take firm action to ensure 2nd phase allocations are wholly appropriate to achieve the reductions required.
— The EU should coordinate European research projects, thus minimising the potential for unnecessary overlapping research or, conversely, for gaps in research.
— The EU should set as a priority increasing the engagement of developing countries in climate change policies.

We are pleased that the Government is seeking to advance the climate change agenda during its forthcoming EU Presidency. The Committee decided to clear the Communication from scrutiny and we look forward to receiving the information on buildings and other Member States’ programmes requested above.

24 March 2005

COMMON FISHERIES POLICY (8142/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, DEFRA to the Chairman

Your Committee considered Explanatory Memorandum 8142/05 of 23 May 2005 on a proposal establishing Community financial measures for the implementation of the Common Fisheries Policy earlier this year and concluded that it should be held under scrutiny, pending further information on the proposal.

The proposal provides the legal powers to permit EU funding of Common Fisheries Policy (CFP) measures from 2007–13 (except for the European Fisheries Fund which is dealt with in a separate measure).

It sets objectives for expenditure, rules for eligibility of expenditure, the level of the Commission’s financial contribution and control measures. The key areas covered are control and enforcement of the CFP, data collection, scientific advice, governance of the CFP and international matters.

It proposes expenditure levels for each area of work. The Commission proposes that expenditure would be higher than at present, on the basis that additional work is needed to implement the reformed CFP, for example, to gather environmental data, and also because of new tasks following the accession of two further Member States, such as the expansion of scientific and control and enforcement work in the Black Sea.

The Government welcomes this proposal to consolidate the legislation relating to financial implications of the Common Fisheries Policy. The proposal addresses the Government’s aim of achieving better regulation through simplification of legal texts.

The substance of the legislation is similar to existing measures. The extension of the Regulation to cover new activities as a result of the reform of the CFP in 2002 and the accession of new Member States is appropriate.

Generally the Regulation sets a framework for expenditure, leaving decisions on the substance and balance of the detailed expenditure programmes to the Commission and the Management Committee. The Government is content with the framework as proposed, and will be raising in the appropriate subordinate forum the need to ensure that expenditure under each element of the framework is limited to the scale necessary for effective EU policy making.

The Commission notes that it will probably be necessary to continue to provide for funding of Regional Advisory Councils (RACs) after the current five year period provided for by the legislation. The Councils are an important new mechanism through which stakeholders are involved in policy development and the Government agrees that further funding of the RACs should be expected. Indeed the current indicative allocation proposed for RACs may be insufficient, in the light of possible additional needs of the Councils. One such area is the need for RACs to be able to respond to requests from the Commission for advice on scientific issues. To improve the quality of their advice RACs need to pay for scientific and technical expertise.

In our view any increase of expenditure in this area should be offset by savings on the international relations area, the largest budget element, and particularly from the provision for Partnership Agreements, not all of which represent good value for money.

The Government also notes that the overall scale of funding for the CFP is dependent on decisions by Heads of Government on the Financial Perspective for the EU for the period 2007–13. The Government is seeking an overall budget of less than that originally proposed by the Commission. If consequential cuts are needed in the indicative budget for the CFP, the Government considers that they would best be made from the international relations heading.

In our Explanatory Memorandum we noted that the proposed expenditure of 2.6 billion Euros forms part of the 7.8 billion Euros overall budget for the Common Fisheries Policy. The Commons European Scrutiny Committee asked whether the balance would be accounted for by the expenditure envisaged under the European Fisheries Fund (EFF).

The Commission’s estimate of 7.8 billion Euros includes a figure of 4.963 billion Euros for the EFF. Most of the remaining amount is provision for financial intervention in the fisheries market.
Agriculture and Environment (Sub-Committee D)

The Commons European Scrutiny Committee also asked how the figure of 2.6 billion Euros related to current levels of Community expenditure in the areas covered by this proposal. I attach a table supplied by the European Commission which addresses this question.

9 November 2005

Comparison of 2006 EU budget and proposed budgetary amounts for period 2007–13

Note issued by the European Commission on 2 September 2005.

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NB: PDB = Provisional Draft Budget
DB = Draft Budget
Commons as used in Commission arithmetical notation

ECO-DESIGN REQUIREMENTS FOR ENERGY-USING PRODUCTS (12082/03)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman

Following the recent deposit of Council document 8014/05, which sets out the result from the Second Reading in the European Parliament, I am writing to inform your Committee of the current position on this dossier.

The substance of the original proposal was set out in Explanatory Memorandum 12082/03 of 16 September 2003 which was cleared by your Committee on 4 February 2004. Following discussion in the Council Working Group and the Environment Committee of the European Parliament, the Presidency presented a compromise text to an informal meeting of representatives of the Council, the European Parliament and the Commission. The text reflects amendments which provide for clearer guidance to the Commission on the conditions under which it should consider initiating implementing measures, the use of benchmarking for establishing appropriate minimum standards and for a more effective policing and compliance regime. It also includes amendments which clarify how the suitability of voluntary approaches should be evaluated and allows for provision of information to consumers. These amendments are in line with the UK negotiating objectives.

The European Parliament adopted the compromise amendments at its plenary meeting on 12 April 2005. The dossier is now expected to be adopted as an “A” point at one of the Councils scheduled for June.

30 May 2005
ENERGY END-USE EFFICIENCY (16261/03)

Letter from Lord Whitty, Minister for Food, Farming and Sustainable Energy, DEFRA to the Chairman

In December last year, I submitted a second Supplementary Explanatory Memorandum (SEM) 16261/03 of 7 December 2004 setting out the Government’s position on the proposal for a Directive on Energy End-Use Efficiency and Energy Services and seeking scrutiny clearance. At that time, the Committee referred the proposal to Sub-Committee D on 14 December. Sub-Committee D considered the proposal at its meeting of 15 December and decided to retain it under scrutiny.

I am pleased to say that under the Luxembourg Presidency there has been considerable progress on the Directive and the latest text of the Directive has gone a long way in addressing the concerns I set out in my earlier Memorandum. Specifically, the latest text has addressed our concerns on the mandatory nature of the energy-saving targets, the nature of obligations on energy suppliers, and the potential costs associated with any requirement for actual-time-of-use metering.

On targets, the text now reflects the position of the UK, and all other Member States, that the energy saving target in Article 4 of the Directive should be indicative not mandatory. On the question of obligations placed on suppliers, we were concerned that the requirement on suppliers to offer and promote just one approach to delivering energy efficiency—energy services—was too narrow and we believed the obligation should be a wider one to offer and promote energy efficiency, as under the UK’s own Energy Efficiency Commitment. This wider approach has been supported by other Member States and the latest text of the proposal now allows Member States to place obligations on suppliers to not only offer and promote energy services but also energy audits and other energy efficiency improvement measures with clearly measurable and verifiable effects.

We were also concerned that a broad interpretation of the phrase actual-time-of use in the Article 13 requirements for informative metering could potentially require the wholesale replacement of the UK’s meter stock to an impractical timetable and at potentially very high costs. I am therefore pleased that in the latest version of the proposal we have managed to secure the addition of text which would require metering that provided information on actual time of use, only in so far as this is technically possible, financially reasonable and proportionate in relation to the potential savings. I believe this offers a practical solution, enabling us to determine how we can best deliver improved metering in the UK, taking into account our national circumstances and the costs and benefits associated with different solutions.

I hope that, in the light of the progress set out above, the Committee will be able to grant scrutiny clearance to enable us to work towards securing political agreement on the Directive at Energy Council at the end of June paving the way for possible adoption of the Directive under the UK Presidency. I will, of course, keep you informed of any other significant developments over the coming months.

11 March 2005

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman

I am writing with regard to a proposal for a Directive on Energy End-Use Efficiency and Energy Services, which is scheduled to come before the 28 June 2005 Energy Council for political agreement.

The proposal is intended to provide the necessary targets, mechanisms, incentives and institutional, financial and legal frameworks to remove existing market barriers and imperfections for the efficient end-use of energy. It is also intended to allow for the development of a market for energy services and for the delivery of energy efficiency programmes and other energy efficiency measures to end users.

A second supplementary Explanatory Memorandum (EM 16261/03) on the proposal was prepared and submitted on 7 December 2004. At that time, Sub-Committee D decided to retain it under scrutiny, awaiting further information. Lord Whitty subsequently sent a letter on 11 March, which set out the substantial progress, made in negotiations on a number of key issues. This included changes to the text to:

— replace the mandatory energy-saving targets with indicative targets;
— provide more choice for Member States as to the obligations they must place on energy suppliers to promote energy efficiency. This will secure the future of the UK’s successful Energy Efficiency Commitment; and
— apply a test of technical feasibility and cost-effectiveness to the metering requirements in the Directive.
On that basis, Lord Whitty requested that the Committee grant scrutiny clearance. However, the letter was not considered when your Committee reconvened on 15 June and it is therefore very unlikely that it will receive consideration before the Energy Council meeting on 28 June at which the Luxembourg Presidency will seek to reach political agreement on the proposal. Given the substantial progress made in negotiations we support this step, which will put us in a favourable position to work towards adoption of the proposal during the UK Presidency.

The Government therefore feels that in the circumstances it is clearly desirable for the proposal to be adopted by the Council on 28 June. It is unfortunate that the scrutiny procedure could not be completed within this timescale. I wish to inform the Committee of the Government’s decision to proceed.

23 June 2005

Letter from the Chairman to Lord Bach, Parliamentary Under-Secretary, DEFRA

Thank you for your letter dated 11 March regarding this proposal which Sub-Committee D (Environment and Agriculture) considered by written procedure. We are aware that this proposal may be agreed at the 28 June Energy Council.

This proposal has been held under scrutiny throughout its progression through the negotiating process. We are grateful for the detail of the letters and Explanatory Memoranda you have provided to us. Our main concerns were over the costs which might arise from the proposal and the practicality of implementing the requirements for energy suppliers. You have addressed these concerns in your letter of 11 March, but we are particularly disappointed at the proposed removal of binding targets for energy efficiency at the Member State level.

Improving energy efficiency could be as important in reducing carbon emissions as the EU Emissions Trading Scheme, the setting up of which we praised in our report The EU and Climate Change (30th report, HL 179, para 83). Combating climate change continues to be at the top of the current environmental agenda and must be met with strong action to improve energy efficiency. It is therefore disappointing that the targets set out in the draft Directive are not binding or particularly stringent as we do not believe this will motivate Member States to improve their energy end use efficiency.

Given these reasons the Committee decided not to lift the scrutiny reserve at this time. The Committee looks forward to receiving an update on this proposal following the Energy Council.

28 June 2005

Letter from Elliot Morley MP to the Chairman

Thank you for your letter of 28 June to Lord Bach, regarding the proposed directive on energy end use efficiency and energy services COM (03) 739. I apologise for the delay in replying.

You asked for an update on the proposal following Energy Council on 28 June. I am pleased to say that the proposal reached political agreement paving the way for further progress under the UK Presidency. The text Council reached agreement (enclosed) and includes the following key requirements:

— Indicative targets of 6 per cent over six years for each Member State.
— Public Sector to fulfil an exemplary role in meeting the targets.
— Additional obligations on service companies have been included to allow suppliers to offer and promote other energy efficiency improvement measures, in addition to the provision of energy services. There is also the provision to establish voluntary agreements and/or other market-oriented schemes, such as white certificates.
— Requirements of improved metering and billing, including provision of actual time of use metering where technically feasible and cost-effective.

The European Parliament has completed its First Reading of the proposal and whilst there are many areas of agreement there are still a few key areas on which the Council and the European Parliament disagree, among them the issue of targets. The European Parliament wants to retain, and raise, the mandatory targets whereas the Council has unanimously backed indicative targets. As President, it will be for the UK to take the proposal forward with the aim of securing adoption later this year. However, if this is to be achieved a compromise deal on targets will need to be secured with the European Parliament at Second Reading and we hope that both Member States and the European Parliament will engage constructively with us in seeking an acceptable compromise. This will be challenging but we are committed to doing all we can to secure the adoption of this important proposal.
I will keep you informed of any significant developments in the proposal over the coming months but hope that the Committee will now be able to clear the proposal from scrutiny.

26 July 2005

Letter from the Chairman to Elliot Morley MP

Thank you for your letter of 26 July updating the Committee on the progress of this dossier at the June Energy Council. The Committee are prepared to clear the proposal at this time, but reiterate our views that binding targets should be sought. We are also concerned that the proposal is further weakened by removing the obligation for the public sector to reach a specific target. Improving energy efficiency is an important part of addressing climate change, and we would like to be kept informed of developments during second reading.

26 October 2005

Letter from Elliot Morley MP, to the Chairman

Thank you for your letter of 26 October clearing the proposal for a Directive on Energy End Use Efficiency and Energy Services and requesting to be kept up to date on progress.

Negotiations continued throughout November in order to find a compromise between Council and Parliament and I am pleased to be able to write to you after a deal was reached with Parliament ahead of their plenary Second Reading vote on 13 December. The Directive as agreed sets out challenging requirements and targets for all Member States and the European Parliament, Commission and Council have all stated that the compromise is a positive step toward greater energy efficiency throughout Europe and a significant achievement for the UK Presidency.

The Directive, as agreed, sets out the following key provisions:

- Indicative energy saving targets of 9 per cent over nine years with Member States to produce forward looking energy efficiency action plans in years 1, 4 and 8 setting out how they will aim to meet the target and reporting on progress. These action plans will be scrutinised by the Commission to ensure significant actions are being taken. An intermediate target will also be set by each Member State for year 3 of application.

- Public sector to fulfil an exemplary role in meeting the overall target and adopt mandatory public procurement measures in at least two areas, from a list specified in the directive.

- Member States required to place obligations on energy suppliers to provide one or more of the following: competitively priced energy services, energy audits or other energy efficiency improvement measures. Alternatively Member States can establish voluntary agreements and/or other market-oriented schemes (such as white certificates) to deliver the same ends.

- Actual time of use metering to be provided for all new connections and for replacement installations subject to assessment of technical and financial feasibility.

- Accurate billing information to be provided to all consumers to enable them to make informed choices about their energy usage.

- Harmonised methodology for measuring energy savings with energy efficiency indicators and benchmarking between Member States.

I hope you agree that this compromise marks a significant step in our efforts to tackle climate change and move toward a greater level of energy efficiency both in the UK and throughout the rest of Europe.

22 December 2005

EU AGRICULTURE AND ENVIRONMENT COUNCIL, SEPTEMBER 2005

Letter from Rt Hon Margaret Beckett MP, Secretary of State, DEFRA to the Chairman

I hosted the first ever joint meeting of the EU Agriculture and Environment Councils in London over the weekend of 9–12 September. Environment and Agriculture Ministers from across Europe—EU Member States, accession countries (Bulgaria and Romania), candidate countries (Turkey and Croatia) and the EEA (Iceland), European Commissioners (Fischer Boel and Dimas), a representative of the European Parliament Committee on Environment, Public Health and Food Safety and the Defra Ministerial team all attended. A joint discussion on climate change and agriculture took place on the morning of 11 September. A programme of visits was undertaken to showcase UK achievements and the links between environment and agriculture.
Detail of meeting

The meeting heard thought-provoking presentations from seven leading international experts including Professor Sir David King (UK Chief Scientific Advisor), Professor Jacqueline McGlade (European Environment Agency) and experts from Austria and Spain. The presentations underlined the message that sustainable agriculture and land-use can play a significant role in addressing climate change and still provide the economic and social benefits rural areas need. They dealt with both the impacts of climate change on European agriculture—including changing crop suitability, food production potential, land abandonment and forest fires—and how farmers and land managers can best respond. The potential of bio-energy was one of several opportunities highlighted.

Meeting summary

I summarised that as land managers control some 42 per cent of the land area of the EU, their role is vital as we strive for sustainability and that agriculture would feel the impact very directly of climate change. I stressed farmers could help to address the drastic impacts of climate change, for example through water management to reduce the risks of flooding. The agricultural sector also needed to consider how it can contribute to reducing its own direct emissions of greenhouse gases, for instance through energy crop production and changing their management practices for fertiliser and manure application.

Both Commissioners emphasised the importance they attached to further work on the issues raised by the presenters, and in my summing up at the end I stressed how vital it was for both agriculture and environment Ministers to work together to help farmers and land managers face up to the challenges and opportunities which climate change presents, noting that southern and central Europe are likely to face great challenges in terms of water shortage, and heat stress.

As well as providing a unique forum for discussion of an important but relatively unexplored aspect of climate change—a key priority for our presidencies of both the G8 and the EU this year—the joint Informal Council provided an opportunity to showcase a wide range of UK environment and agriculture achievements through a series of visits. Both Agriculture and Environment Ministers were given follow up presentations and tours, including the Royal Botanic Gardens at Kew and the Darwin Centre at the Natural History Museum.

In line with the interdepartmental agreement relating to all major meetings hosted in the UK during the Presidency, Defra took steps to make the event as sustainable as possible by minimising its environmental impact and offsetting the residual carbon emissions.

7 October 2005

EU AGRICULTURE AND FISHERIES COUNCIL, SEPTEMBER 2005

Letter from Rt Hon Margaret Beckett MP, Secretary of State, DEFRA to the Chairman

In light of the Parliamentary recess, I am writing to you in place of the usual written statement to summarise what will be happening at the Agriculture and Fisheries Council meeting in Brussels on 19 and 20 September 2005.

I will chair the agriculture items with the Parliamentary Under-Secretary, Ben Bradshaw in the UK seat.

Ben Bradshaw will chair the fisheries items with the Parliamentary Under-Secretary, Jim Knight, in the UK seat.

I will begin on Monday by briefing the Council on the arrangements for the afternoon informal meeting with Ministers of the sugar producing African, Caribbean and Pacific (ACP) countries and Least Developed Countries (LDC).

The Council will also take four AOB points: from Poland on levels of cereal intervention stocks, from Italy on the market difficulties in the wine and horticulture sectors, from Czech Republic on earlier deadline of providing single area payment and one from Austria on Situation of the cereals market.

The afternoon session will be devoted to the meeting with the ACP and LDC Ministers on sugar reform.

On Tuesday, the Commissioner for Health and Consumer Protection will give an update on the epidemic of avian influenza in Asia over the summer, and on the measures taken in the EU.

I will then follow with two Environment Council points on GM maize authorisation and the end-of-life vehicles Directive. These items have been included on the agenda at the request of Denmark.
This will be followed by the two fisheries items on the agenda: Management Measures for the Mediterranean, where political agreement will be sought on the proposal to improve conservation measures and Options and Principle of Stock Recovery Measures, on which there will be a political debate. The Fisheries Commissioner will then outline measures to assist the fisheries sector following the recent rise in fuel prices.

In the margins of the Council there will be a series of high level trilateral meetings between the Commission, the Presidency and Member State Ministers to discuss sugar reform.

19 September 2005

Letter from Rt Hon Margaret Beckett MP to the Chairman

In light of the Parliamentary recess, I am writing to you in place of the usual written statement to summarise what happened at the Agriculture and Fisheries Council meeting in Brussels on 19 and 20 September 2005.

I chaired the Council for the agriculture items on the agenda. The Parliamentary Under Secretary (Commons), Ben Bradshaw, represented the United Kingdom and also chaired the Council for the fisheries items. The Parliamentary Under Secretary (Commons), Jim Knight represented the United Kingdom for fisheries items. Also in attendance was the Scottish Environment and Rural Affairs Minister, Ross Finnie.

Two Environment Council matters were included on the agenda in the absence of a meeting of Environmental Ministers within the relevant deadlines. They were taken as “B” points at the request of Denmark. On the first, the Council was unable to act on the Commission’s proposal on a GM maize authorisation due to the absence of a qualified majority in favour or against. The Council did, however, adopt a Decision amending Annex II of Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.

The Council postponed the political agreement on fisheries measures in the Mediterranean Sea. A compromise text was tabled by the Presidency taking into account a number of the concerns of Member States. However, Italy and France had particular difficulties which proved irreconcilable.

As part of the UK’s better regulation theme, and building on the Commission’s “front-loading” of the December Total Allowable Catch (TACs) and quotas negotiations, the Council held an exchange of views on a Presidency discussion paper concerning the options and principles for enhancing fish stock recovery measures. There was a very constructive discussion with contributions from over half of the Member States.

Under Any Other Business, France urged the Commission not to extend the period of its emergency measures to conserve anchovy in the Bay of Biscay. However, on reflection, the Council upheld the scientific advice and agreed that the measures should remain in place until the end of the year.

Commissioner Borg made a statement on economic difficulties in the fishery sector, particularly in view of current higher fuel prices on which several Member States and industry representatives had expressed concerns—a Commission communication is expected in due course.

Poland requested the Commission remove surplus cereal production from the countries of Central Europe, through the use of free market tenders, rather than intervention storage, Austria suggested that the intervention criteria for grains be adjusted to respond to difficulties caused by bad weather this year. The Czech Republic, Slovakia and Hungary supported both requests. The Commission were aware of the serious situation and said they had made every effort within the rules to ease it.

Italy supported by France, Greece, Spain, Poland, Hungary, Cyprus and Portugal, drew the Commission’s attention to the crisis on its wine and fruit and vegetables markets caused by drops in price. They asked for a further increase in the quantity of crisis distillation and called for the Commission to present its proposals on crisis management as soon as possible. The Agriculture Commissioner explained that they were considering options. They were planning a reform of the fresh and processed fruit and vegetables sectors for the second half of 2006.

On wine, the Commissioner explained that the Management Committee of 6 September had given a favourable opinion on the opening of crisis distillation for table wine in Italy. A reform of the wine CMO would be launched in 2006.

The Czech Republic, supported by Poland, Lithuania, Latvia, Cyprus and Slovakia, requested a derogation from the CAP reform regulation which would allow them to make payments under the Single Area Payment Scheme (SAPS) earlier than 1 December. The Commission explained that there was no legal basis for an earlier payment date this year, unless in the case of an emergency.

The Commissioner for Health and Consumer Protection gave an update on the situation on Avian Influenza in South East Asia and Russia and the actions taken and planned.

The Agriculture Commissioner provided the Council with an update on the state of play of the WTO negotiations.
In the margins of the Council, I chaired an informal meeting between the Commission and Member States and Ministers from the sugar producing African, Caribbean and Pacific (ACP) Countries and the Least Developed Countries (LDC). The Agriculture Commissioner, Mariann Fischer Boel, and the Development and Humanitarian Aid Commissioner, Louis Michel, attended along with the Commission’s Director General for Trade, Peter Carl. ACP and LDC representatives acknowledged the need for reform of the EU sugar regime but criticised a number of aspects of the Commission’s proposals.

The Commission and I also held trilateral discussions with Lithuania, Latvia, Cyprus, Poland, Sweden, Denmark, Greece, Czech Republic, Portugal, Spain, Slovakia, Slovenia, Hungary and Austria to discuss the Commission’s sugar reform proposals.

7 October 2005

EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT, EAFRD (11495/04)

Letter from Lord Bach, Minister for Sustainable Farming and Food, DEFRA to the Chairman

I am writing to inform you that a vote is due to be taken on Commission proposal 11495/04 for a Council Regulation on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

The Luxembourg Presidency is extremely keen to reach a political agreement to the regulation before the end of their term at the 20 June Agriculture Council meeting. The proposed regulation itself does not pose significant problems for the UK, but related funding issues could, unless they are resolved, prevent us from being able to support the regulation at the June Agriculture Council. For the UK, our priority is to:

— continue to press for a fair UK allocation of resources;
— demand further flexibility to transfer funds from CAP subsidies to CAP rural development expenditure (“modulation”).

Accordingly the Secretary of State has written to EP Committee requesting clearance to abstain or vote against the regulation if progress on these points is not satisfactory. Every effort is being made to ensure that a suitable deal can be made at Agriculture Council.

The proposal was cleared by the Commons following a scrutiny Debate on 23 February 2005. Your Committee has decided to reserve your decision until after the conclusion of your inquiry into The Future Financing of the Common Agriculture Policy. It is unfortunate that scrutiny procedures could not be completed before the Council vote, but I wished in any case to inform the Committee of the Government’s position.

15 June 2005

EUROPEAN POLLUTANT RELEASE (13371/04, 9841/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, DEFRA to the Chairman

I am writing to inform your Committee of the current position on this dossier. I enclose a new Council Document (9841/05) (not printed) which sets out the outcome of the First Reading in the European Parliament.

The substance of the original Commission proposal was set out in Explanatory Memorandum 13371/04 of 10 November 2004 and a Supplementary Explanatory Memorandum 13371/04, of 10 February 2005, which cleared House of Lords scrutiny on 23 March 2005.

The Luxembourg Presidency had hoped to reach a First Reading agreement with the European Parliament. However, at the beginning of June, the Presidency concluded that this would not be possible within its Presidency and indicated that it would instead aim to secure political agreement.

The European Parliament voted in plenary on 6 July 2005 and adopted 39 amendments (contained in document 9841/05) to the original Commission proposal. The amendments adopted correspond to the agreement reached between the European Council and the Parliament on the Commission’s proposal. In order to reach agreement with the Parliament, the Council agreed to a number of amendments, which go beyond the requirements of the UN-ECE Pollutant Release and Transfer Register Protocol. The main effect of the amendments was to lower the reporting thresholds for a few substances and to include quarrying as an activity that must be reported on.
The UK played a significant role in the development of the text that emerged following agreement with the Parliament, in particular with regard to clarification of the definitions of substances set out in the Commission’s original proposal. This will help industry to better comply with the requirements of the European Pollutant Release and Transfer Register.

17 October 2005

EXTRACTIVE INDUSTRIES WASTE (10143/03)

Letter from Baroness Andrews, Parliamentary Under-Secretary of State, Office of the Deputy Prime Minister to the Chairman

I am writing to update you on the negotiations on the proposed Directive on the management of waste from the extractive industries.

On 17 January 2005, Yvette Cooper updated the Committees on the outcome of the Environment Council’s First Reading on the proposed Directive. The proposal was granted scrutiny clearance by the Scrutiny Committees of both Houses in September 2004.

At the time of our earlier letter, the Common Position was still to be published. This was finally adopted on 18 March 2005 and transmitted to the European Parliament (EP) for its Second Reading. The Environment Committee will issue its recommendation to the EP on 15 July with the Second EP Reading plenary vote taking place during the 5–6 September session.

The UK Presidency is, therefore, inheriting responsibility for attempting to negotiate a Second Reading agreement between the Council and the EP. Our intention is, if possible, to reach agreement with the Parliament on the Second Reading of the proposal before their Plenary Session on 2–5 September. This, and the timing of the summer recess, means I must write now as there will be no other opportunity to do so before the EP Plenary session. If we do not succeed in achieving a Second Reading agreement then the Directive would go to conciliation in the autumn.

EUROPEAN PARLIAMENT AND COUNCIL SECOND READING

The Common Position received support from a qualified majority at Council. Its provisions provide appropriate controls specific to extractive wastes and are proportionate to risk. As such, the Common Position sits within the parameters of our negotiating objectives as explained to the Committees.

The EP’s Rapporteur has published his draft recommendations. These, for the most part, look to reinstate those amendments from the First Reading that were not accepted by Council. They concern the scope of the Directive and its provisions on closed and abandoned mines.

Our Presidency aim is to facilitate agreement with the EP whilst taking forward the Council’s objective of realising a risk-based and proportionate Directive. Early soundings suggest a slight chance of getting a Second Reading deal with the EP. However, it is difficult to predict with absolute certainty at this stage how negotiations will develop during the summer. We will have a better indication after the EP’s Environment Committee vote on 15 July. But I recognise that there will not be an opportunity for you to consider an update at that point before the summer recess.

I therefore regret we may reach agreement before the Committees would be able to review the EP’s new recommendations to the Council. However, I can assure you that my officials will be working closely with the UK’s representatives in Brussels to secure a compromise with the EP that as closely as possible reflects the objectives underlying the Common Position. I will, of course, report further to the Committees as negotiations move towards a conclusion.

5 July 2005

Letter from Baroness Andrews to the Chairman

INTRODUCTION

I am writing to update you on the negotiations on the proposed Directive on the management of waste from the extractive industries.

On 5 July 2005, I updated the Committees on progress made through the co-decision process as well as expected developments during the summer period concerning the Second Reading by the European Parliament (EP) and the Environment Council on the proposed Directive.
Since my earlier letter, the EP has completed its Second Reading on the proposed Directive by issuing its recommendation on the Council’s Common Position on 6 September 2005. A copy of the EP’s Second Reading decision is attached as Annex A to this letter (not printed).

The Environment Council rejected the EP’s recommendations on 5 October 2005. A Conciliation Committee, therefore, has been convened to reach a final agreement on the proposed Directive. We expect Conciliation to start on 12 October and conclude on 12 December, ie during the UK Presidency.

**EUROPEAN PARLIAMENT’S AND ENVIRONMENT COUNCIL’S SECOND READING**

The EP did not back the full set of amendments voted through their Environment Committee and suggested by the Rapporteur. In particular, the EP rejected a significant number of amendments that would have (i) significantly undermined the risk-based approach set out by the Common Position and (ii) widened the scope of the provisions on closed and abandoned mines. Some amendments which did go through, however, are unwelcome and would undermine the balanced approach set out in the Common Position.

**THE CONCILIATION PROCESS**

The remaining areas of priority to the Council are:

(a) *Scope of the Directive*

Both the Commission’s proposal and the Common Position focus on waste from the extractive industries. The EP is pursuing amendments that would extend the Directive’s scope beyond waste (into wider mining and quarrying activities) and stray significantly beyond the subject matter of the Directive. In particular they would introduce considerable overlap with the Water Framework Directive.

(b) *Scope and application of financial guarantees*

The financial guarantee is intended to ensure funds are available for the restoration required by the permit for the waste facility. The guarantee is not intended to cover liability arising from accidents. The EP amendments would introduce ambiguity and risk overlap with the Environmental Liability Directive.

(c) *Transitional requirements and transposition deadline*

The Common Position provides for the Directive to focus on existing and future operations. Its full effect would only apply to facilities granted a permit or operating on the date of transposition. The Common Position also includes specific transitional provisions for waste facilities that have stopped accepting waste on the date of transposition but are not closed within the terms of the Directive because they are not fully restored. EP amendments would remove these transitional provisions and shorten the transposition timetable from 24 to 18 months.

**NEXT STEPS**

In its role as Chairman of the Conciliation Committee, our Presidency will aim to secure a compromise text that reflects the Council’s concerns but acceptable to the EP. This may mean some limited textual changes to the Common Position. But I can assure you that my officials will be working closely with the UK’s representatives in Brussels towards achieving a compromise satisfactory to both Council and the EP. I will of course report further on the agreement reached through Conciliation.

25 October 2005

**Letter from Baroness Andrews to the Chairman**

**INTRODUCTION**

I am writing to update you on the outcome of the Conciliation process on the proposed Directive on the management of waste from the extractive industries (“mining waste”).

On 25 October 2005, I updated the Committees on progress made through the co-decision procedure and the move of negotiations to Conciliation, and advised on the UK Presidency’s intention to reach a final agreement on the proposed Directive under the UK Presidency. On 21 November at an informal trialogue, the UK Presidency succeeded in securing, on behalf of the Council, a political agreement with the European Parliament’s Conciliation delegation on the “mining waste” Directive.
On 29 November the EP delegation to the Conciliation Committee unanimously approved the agreement reached by its negotiators with the Council. The permanent representatives of the Member States approved the agreement on 23 November. The joint text approved by the Conciliation Committee has now been sent to the Council and the European Parliament’s Plenary for final adoption and publication early next year. We are still to see publication of the final text, but as this is still awaiting translation I am writing now. A copy of the provisional version of the text is, however, attached as Annex A to this letter (not printed).

BACKGROUND

Having brokered acceptance of a compromise package within the Council and having energetically negotiated with the European Parliament on the Council’s behalf, the UK Presidency was able to successfully reach agreement with the Parliament’s Conciliation delegation on a compromise text. The agreement reached through Conciliation represents a successful outcome not only for the UK Presidency, but also for the UK both in securing the proportionate risk-based regulation we have advocated and in our handling of the process. The European Parliament has expressed its satisfaction with the achieved outcome which represents; in the round, a considerable increase of controls on Member States and applicant countries which will have the effect of reducing the risks to human health and the environment arising from the management of extractive waste.

The agreed Directive is consistent with the main obligations in UK national legislation and provides the certainty that industry needs, whilst safeguarding the overall environmental objectives. As such it has largely been welcomed by UK industry.

THE CONCILIATION PROCESS OUTCOME

The remaining areas of priority to the Council were:

(a) Scope of the directive

The Parliament’s proposal to extend the Directive’s scope has been a key area of concern for the Council underpinning much of the negotiations with the Parliament under Conciliation. Within a compromise package, it was agreed that the scope and subject matter of the Directive would, as originally intended, be the management of extractive waste, but that there would be specific controls and monitoring obligations on excavation voids containing waste. The agreed amendments provide the certainty sought by the Parliament that mine waste sites which are allowed to flood are recognised as point sources of pollution under the requirements set out by the Water Framework Directive.

(b) Scope and application of financial guarantees

Parliament called for a requirement for operators to provide financial guarantees to apply to any land “directly affected” by a mine waste site. The compromise reached ties the financial guarantee to an operators’ permit, making it clear that the geographical scope of the financial guarantee should be that described in the waste management plan and, therefore, as permitted.

The agreed compromise reflects the “polluters pays” principle in ensuring that all rehabilitation obligations flowing from the permit are fulfilled, and provides for a practicable way to calculate the amount of funds needed. It also provides greater certainty over potential financial liabilities.

(c) Transitional arrangements and transposition deadline

Under the compromise reached, transitional provisions will apply to those facilities that have stopped accepting waste but are still undergoing restoration as per the date of entry into force of the Directive (Article 22(3)). The 24 months transposition timetable has been maintained.

APPLICATION OF THE “MINING WASTE” DIRECTIVE ON ACCEDING COUNTRIES (ROMANIA AND HUNGARY)

The two Governments agreed to make a political declaration that they will not seek derogations to apply the directive later than other countries. The two states are due to join the EU in 2007. A copy of the draft declaration is attached at Annex B (not printed).
Next Steps

It is our understanding that the final agreed text is expected to come before the European Parliament’s Plenary in early February. We anticipate that this will endorse the agreement reached by the Conciliation delegation. Council’s third reading is a formality and is expected in January.

Following publication of the approved Directive in the Official Journal, Member States will then have two years to transpose the Directive into national law.

21 December 2005

FINANCIAL INSTRUMENT FOR THE ENVIRONMENT: LIFE + (13071/04)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman

I am writing to inform you of the developments in the negotiations of the LIFE + proposal which was the subject of Explanatory Memorandum 13071/04 of 20 October 2004.

Little progress was made during the first half of 2005 but significant progress has been made during the UK Presidency. We are aiming for a partial political agreement (on the text but not the budget) at the December Environment Council.

The inter-relationship between the LIFE + instrument and other sources of Community funding, notably the Structural Funds, Rural Development Funds and the Competitiveness and Innovation Programme (CIP), is still complex. Officials in Defra who are negotiating on each of these funding instruments have worked together closely, and with officials in other Departments to seek to ensure that the present activities covered by LIFE Nature and LIFE Environment are able to continue through one of these new instruments.

In July, the European Parliament adopted its first reading position. Many of the amendments proposed related to details of, and criteria for, nature and biodiversity measures with the main one being that 35 per cent (£7.35 billion) of Natura 2000 implementation costs should be funded through LIFE +.

Three issues have dominated the negotiations in Council: the support for nature and biodiversity measures, including the Natura 2000 network; whether support for environment technologies should be included, and the programming approach together with the delegation of budget implementation to Member States.

A clear majority of Member States, and the European Parliament, wanted a separate component for nature and biodiversity and the Presidency text includes this. There is still some discussion to be had over the exact scope of this component and the eligibility criteria for projects within it as some Member States want to include routine and ongoing management activities for Natura 2000 sites.

The inclusion of provision for environmental technologies within LIFE + is dependent on the outcome of the CIP negotiations which will not be completed during the UK Presidency. Provision has been made for some technology measures in case the CIP does not cover all of the possibilities available under the current LIFE Environment programme. However, the Presidency text ensures that double funding cannot occur and that any measure falling within the eligibility criteria of any other funding instrument will not receive funding from LIFE +.

The programming approach proposed by the Commission envisaged the adoption through comitology of multi-annual strategic programmes and national annual work programmes, the latter based on drafts that Member States would submit. National agencies, to which some 80 per cent of the total budget would be delegated, would implement national annual work programmes. The Presidency’s text has not altered these fundamental principles. However, it sets out in more detail the procedures, introduces steps to make the implementation of work programmes more transparent, addresses the issue of public administrations’ staff costs and provides for an allocation to each Member State from the annual delegated budget.

The budget for LIFE + cannot be finalised until the new Financial Perspectives are agreed. Thus the original budget proposed and the European Parliament’s amendment have not been discussed during the Council discussions.

7 November 2005

Letter from the Chairman to Elliot Morley MP

Thank you for your letter of 7 November which Sub-Committee D (Environment and Agriculture) considered at their meeting on 23 November.
The Committee understands that you seek to agree partial political agreement to the text of the LIFE+ proposal at the 2 December Council. The Committee agrees with the principle of the proposal which will create a more streamlined and cohesive environmental instrument. We are however concerned that preparing partial agreement to the text now seeks to pre-empt the outcome of the budget negotiations. Nonetheless, we are prepared to clear the proposal from scrutiny at this stage.

We look forward to the prompt deposit of the proposal again once the budgetary provisions can be considered. We would welcome your views at this stage on how realistic the European Parliament’s suggested LIFE+ budget of €9.54 billion is, and what opportunities there will be to reconcile this recommendation with the Commission’s proposal of €2.19 billion.

28 November 2005

FINANCING OF INTERVENTIONS (6206/05)

Letter from Lord Whitty, Minister for Food, Farming and Sustainable Energy, DEFRA to the Chairman

You will know that your Committee cleared this proposal from Parliamentary scrutiny on 8 March. Since then a shift in the UK’s position has materialised and I felt it would be useful if I clarified the UK Government’s position on this proposal, the original detail of which was outlined in Explanatory Memorandum 6206/05, submitted on 2 March 2005.

It is now clear that this proposal will not be discussed at Ministerial level until the 26 April Agriculture Council.

We were originally supportive of the Commission’s efforts to relieve pressure on the dairy and cereals markets, as we hoped that it would help to forestall pressure from some of the new Member States to take further, more expensive, measures. Preliminary discussion at official level revealed that several delegations had reservations about this proposal, including doubts about the estimated costs. Further, the Commission has now taken steps to open export tenders for wheat from intervention in a number of the new Member States.

Moreover, the fundamental problem here is created by high interest rates, which are a matter for national management rather than EU concern.

I understand the UK did not support a similar measure in 1993 and, as things stand, I would not propose to support the measure now.

16 March 2005

Letter from the Chairman to Lord Whitty

Thank you for your letter of 16 March further to your Explanatory Memorandum of 2 March. Sub-Committee D (Environment and Agriculture) examined both documents at its meeting on 6 April.

This proposal was cleared from scrutiny during the Chairman’s sift on 8 March. However, following receipt of your letter, which raised a number of new concerns, the Committee decided to examine the proposal. We are very pleased that you took the time to write to the Committee and inform Members of developments when you were under no obligation to do so. We appreciate being kept up to date with developments in the legislative process. The proposal is also relevant to the Committee’s current inquiry into future CAP financing, on which we hope to publish a report in June.

We fully support the Government’s position in no longer supporting this proposal. We note that concerns have been raised at preliminary discussions by several delegations—would it be possible to inform us which delegations raised concerns and what the details of their reservations were?

The proposal has already been cleared from scrutiny but the Committee ask to be kept informed of progress of this proposal as and when required.

7 April 2005

Letter from Lord Bach, Minister for Sustainable Farming and Food, DEFRA to the Chairman

Thank you for your letter of 7 April to my predecessor Lord Whitty, in which you expressed the Committee’s support for the Government’s revised position in no longer supporting this proposal.

You noted that concerns had been raised at preliminary discussions by several delegations, and were keen for further details. This proposal was last discussed at Special Committee on Agriculture (SCA) on 4 April. A number of Member States (MS) had concerns over budget discipline, particularly in light of the current future financing negotiations and the lack of robustness of the estimates of cost.
However, the Commission considers the proposal necessary given the difficulties the new MS are facing with transition, and the exceptionally large harvest, and has pointed out that EU 15-MS have benefited from this in the past. The Luxembourg Presidency proposed at SCA to reduce the period where the disposition 6206/05 will operate to two years (2005 and 2006) gaining qualified majority voting support from MS.

As you are aware, the UK maintains that the problem created by high interest rates is a matter for national management rather than EU concern, and we did not support a similar measure adopted between 1993 and 1996.

28 May 2005

FINANCING OF THE COMMON AGRICULTURAL POLICY (11557/04)

Letter from Lord Bach, Minister for Sustainable Farming and Food, DEFRA to the Chairman

I am writing to inform you that a vote is due to be taken on Commission proposal 11557/04 for a Council Regulation on the Financing of the Common Agricultural Policy at the 30 May Agriculture and Fisheries Council.

Given the broad support for this proposal, the Luxembourg Presidency is extremely keen to reach a political agreement as soon as possible. It seems likely they will secure this objective at the 30 May Council meeting. For the UK, our main objective—to ensure that the UK and other euro-out Member States are not disadvantaged by the proposed CAP financing arrangements—has been met. We have therefore sought European Policy (EP) Committee approval for the UK to vote in favour at the Council meeting.

An Explanatory Memorandum was prepared and submitted in August 2004 but a decision has yet to be reached. The proposal was cleared by the Commons following a scrutiny debate on 23 February 2005.

It is unfortunate that scrutiny procedures could not be completed before the Council vote, but I wished in any case to inform the Committee of the Government’s position.

25 May 2005

FISHERIES COUNCIL DECEMBER 2005

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, DEFRA to the Chairman

I am writing in response to the concerns expressed by the Scrutiny Committees over a number of years, in relation to the December Fisheries Council and the fact that the current annual timetable does not allow for proper scrutiny of the Commission’s related proposals. The UK Government has recognised the need for improvement in the fisheries decision-making process and we have made it one of the objectives for our Presidency.

Given such short timescales in the fisheries calendar, it seems very likely that we will once again face the high risk of scrutiny overrides with regard to the TAC and Quota Regulation for 2006 (and possibly related legislation), as has been seen in previous years. These overrides are invariably the result of late circulation of the proposals both before and during Council meetings. The UK Presidency has a commitment to initiate a discussion on how to improve the process at the Agriculture and Fisheries Council in October which I will chair. If there is agreement, we are hoping changes could be applied in 2006. In the meantime, I am committed to doing my best to improve the current situation as circumstances permit.

The European Commission is aware of existing problems in the timetabling and setting of the annual TAC round, including the necessity for Member States to scrutinise properly the proposals and the uncertainty that the fishing industry experiences when drastic changes in TACs are agreed and implemented with little consideration and warning. The Commission is gradually moving from an annual cycle to a process of long-term management of stocks. Such plans are already in development for Baltic Sea cod and North Sea sole and plaice.

In addition, Commissioner Borg has committed himself to improving the December Council process. The Commission has recently circulated a document proposing changes to the fisheries calendar and I will chair a discussion on this at the Council in October. The Commission has also introduced a practice of “front-loading” as a way of preventing the concentration of too many complex issues at the December Council by
Agriculture and Environment (Sub-Committee D)

bringing forward discussions on key issues. Potential recovery plans for Southern hake and nephrops are due to be discussed at the October Council. There is also a debate on the recovery plan for Baltic Sea cod scheduled for the November Council. In the meantime, I propose to keep the Committee informed by providing you with copies of the key unofficial working documents as they arrive. I will also be more than happy to give evidence to the Committee at an appropriate juncture, to assist you in your deliberations.

18 October 2005

FISHERY QUOTA 2006 (14920/05)

Letter from the Chairman to Ben Bradshaw MP, Parliamentary Under-Secretary, DEFRA

Thank you for your Explanatory Memorandum of 9 December which Sub Committee D (Environment and Agriculture) considered at its meeting on 14 December.

The Committee remains concerned over the state of fish stocks in EU waters, particularly that of cod. Whilst we understand that the United Kingdom believes it has contributed significantly to reducing fishing effort, the long term viability of fish stock must remain the ultimate goal. There must be no complacency in taking action to improve fish stocks.

The Committee would like to receive the figures for sales of United Kingdom quota over the past five years, and the identity of the buyers of United Kingdom quota.

The Committee decided to clear the proposal from scrutiny.

15 December 2005

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 15 December in which you ask for information about the sale of United Kingdom quota over the past five years.

A Member State is not permitted to sell fish quota that has been allocated to it. However, Member States have the option of swapping quota that they are unlikely to fully utilise for those stocks which are in demand by their industries. In order to maximise UK fishing opportunities, we make active use of this facility to acquire much needed additional quota for our fishermen. While it was still possible to swap 2005 quota to cover potential overfishes, to 15 January 2006 the UK undertook some 80 swaps involving 2005 quotas. Any UK group may propose an international swap but the Swap is processed through Fisheries Administrations and rules are in place to ensure that all such international swaps are balanced and in the best interests of the UK.

We cannot easily retrieve information on the numbers of swaps for 2001 and 2002, but in the past three years the numbers of swaps undertaken is as follows:

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Swaps undertaken at the preceding December Council are excluded. Swaps of quota solely for stocks outside EU waters are excluded. The number swaps in 2005 is the latest position and is likely to increase.

I hope you find this information helpful.

17 January 2006
AGRICULTURE AND ENVIRONMENT (SUB-COMMITTEE D)

FLUORINATED GASES (12179/03)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA
to the Chairman

I am writing to update you on the progress made on these dossiers, including the outcome of the European Parliament’s (EP) Second Reading Plenary vote, and to provide a final account of the progress made during our Presidency of the European Union.

The Commons scrutiny debate was on 14 January 2004 and I provided further information on 25 April, 13 July and Lord Whitty wrote on 24 August 2004. In my most recent letter of 28 July 2005, I wrote to you in advance of the publication of the EP Environment Committee Rapporteur’s report, outlining the UK objectives for these dossiers during our Presidency of the EU.

On 27 October 2005, the EP voted to reject proposed changes to the legal base (the EP Environment Committee had proposed a change from the dual article 175/95 base to article 175 only) and rejected all the additions proposed by the EP Environment Committee to the products and equipment prohibited by the Regulation. The dual legal base stands therefore. The outcome is in line with UK objectives. However, the EP did pass a number of amendments aimed at allowing Member States to maintain or introduce stricter national gas (fluorinated) legislation. These amendments are the most politically difficult.

On the Regulation, 26 amendments were passed (including those relating to maintaining stricter national gas legislation mentioned above). Of the remaining technical amendments, a few could probably be accepted as they stand, several raise particular difficulties, and the remaining large proportion are amenable to development of compromise wording, although as usual the devil will be in the detail, and some of these amendments could still prove problematic.

On the Directive, the EP voted to reject potentially significant changes to the Global Warming Potential (GWP) threshold for f gases used in Mobile Air Conditioning systems (MACs), and rejected proposed changes to the phase out dates for f gases used in MACs that have a GWP greater than 150. The EP passed only one amendment, which relates to the promotion of alternative MAC technology.

The UK Presidency has concluded that the Council cannot accept all the EP amendments, including the amendment to the MAC Directive, and therefore negotiations will not be finalised under the UK Presidency. These dossiers will now fall to be dealt with under the Conciliation process under the Austrian Presidency.

However, the UK Presidency has continued to progress work in Council. There have been a number of Working Groups aimed at facilitating the development of compromise texts to the amendments that the Council, and the EP could find acceptable. The UK Presidency has recently sought a mandate from COREPER for the Austrian Presidency to open negotiations with the Parliament in the New Year, drawing on the work of our Presidency.

Austria has indicated that it would like to open formal conciliation as soon as possible under their Presidency.

14 December 2005

GENETICALLY MODIFIED OILSEED RAPE (12343/04)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA
to the Chairman

Thank you for the Committee’s further letter of 22 March regarding this proposal, the scope of which is restricted to the import of GM oilseed rape grain for processing and does not include cultivation. I am sorry that my response of 9 December 2004 went astray.

I can assure you that the Government is not adopting an excessively complacent approach to GM crops. All GMOs, including GM crops, are stringently regulated by EU (and UK) legislation. Under this legislation each proposal to place a GMO or a GM product on the market is subject to a detailed assessment which involves careful scrutiny by independent scientists and the regulatory authorities, not only here but throughout each EU member state. Applicants are required to provide detailed information on the GMO and its properties and behaviour and a comprehensive environmental risk assessment to identify and evaluate the potential impact on human health and the environment. The UK Government is advised on whether or not the information meets the stringent criteria in the directive by the Advisory Committee on Releases to the Environment (ACRE). The Government also takes advice from the statutory nature conservation bodies (English Nature in England) and the Food Standards Agency.

As I explained in my previous letter, studies with herbicide tolerant oilseed rape carried out in the UK and elsewhere showed that herbicide tolerant plants do not show increased weediness or fitness in the absence of the herbicide. Oilseed rape plants, although sometimes present along road-side verges, do not generally persist in the UK as rape is an annual plant and is a poor competitor outside of cultivated environments. Verges are controlled by cutting, not by application of herbicides. As far as herbicide tolerant GM oilseed rape is concerned, Monsanto’s assessment confirmed by my independent expert advisors, is that it will behave in the same way as conventional rape in the absence of treatment with glyphosate herbicide and will not have a competitive advantage (further details given in the attached Annex). A copy of the full dossier on GT73 is available for scrutiny but as this runs to well over a thousand pages I am not enclosing a copy. I am advised that the transport of imported GM grain to processing facilities and possible spillage of seed on route will have a minimal risk of any impact on rape crops cultivated in the UK. Different issues would arise should there be an application for commercial cultivation GM oilseed rape, and these would be considered as part of a separate and detailed assessment of any such application.

In relation to GT73 oilseed rape I do share some of your concerns regarding spilled seed. While my advisors do not consider there to be any evidence of adverse effects on the environment of the spillage of GT73 oilseed rape, the UK did request that procedures to minimise seed spill should be included in the conditions of consent should it be granted and that there should be post market monitoring for seed spill for the first few years. This has not been agreed to as a requirement at EU level because seed spillage is not a safety issue. However, as I said in my letter of 9 December, Article 4 of the draft decision does include a requirement for consent holders to inform operators and users of the appropriate management measures to be taken in case of accidental grain spillage.

The opinion of the GMO panel of the European Food, Safety Authority also concluded that Brassica napus L., GT73 is as safe as conventional oilseed rape for human and animals, and in the context of the proposed uses (for import only not cultivation), on the environment. In reaching this conclusion EFSA considered molecular data associated with the genetic modification, the chemical composition of the GM and non-GM oilseed rape, the safety of the protein expressed by the introduced gene and the potential risks associated with any changes to the toxicological, allergenic or nutritional properties.

You will wish to note that the UK abstained when the vote was taken at Environment Council on 20 December because of outstanding concerns regarding the rat feeding studies. As there was no qualified majority at Council, the Decision has been referred back to the Commission which will be in favour of the application based on the scientific advice from EFSA (this is in line with procedures laid down in Council Decision 1999/468/EC).

I am unaware, of the specific representations received in Canada by Michael Meacher during his term in office, regarding the random proliferation of GM oilseed rape. In 2004 Canadian farmers grew 5.4 million hectares of GM crops, mostly oilseed rape (up 23 per cent from the previous year), and over 70 per cent of their oilseed rape crop was GM varieties. We are in touch with the Canadian authorities and, although there may be some agronomic issues for some farmers, there do not appear to be any significant environmental problems according to what we have received. Again the current EU application for Monsanto’s GT73 is for import of grain only, should an application for cultivation of GT73 GM rape be made in the EU, we would take into account evidence of experience of cultivation elsewhere as part of the considerations, and would be happy to take into account any reliable evidence positive or negative.

Annex

In general, oilseed rape is not considered an environmentally hazardous species and plants germinating from spilled seed are displaced by other plants, unless those habitats are disturbed on a regular basis (European Commission 1998, 1999, 2000; OECD 1997; Crawley and Brown 1995). Even when oilseed rape is deliberately sown in natural environments, a study has shown that as a result of competition from native perennial plants (oilseed rape is annual and therefore has to grow from seed each year), oilseed rape is unlikely to survive for long outside cultivation (Crawley et al 2001). The population may persist however, if spillage continues to occur in the same place over a number of years.

In the case of GT73 oilseed rape, Monsanto have reported that numerous field trials conducted over a number of years in a range of different environments, have shown that this GM oilseed rape is very unlikely to be more persistent than any other oilseed rape variety. Their experimental data demonstrate that GT73 oilseed rape is not different from its non-GM parental line in terms of dormancy, germination, invasiveness, seed production and pod shattering. They also report additional observations that show no differences in vegetative vigour, mode of reproduction, pollen fertility, flowering period, overwintering capacity and adaptation to stress factors. These findings support the conclusion that the introduced trait for herbicide tolerance has not altered the growth and development characteristics of GT73 and hence no changes in persistence or invasiveness would be expected.
GENETICALLY MODIFIED ORGANISM (GMO) LEGISLATION (11834/05)

Letter from the Chairman to Lord Bach, Parliamentary Under-Secretary, DEFRA

Sub-Committee D considered the above proposal at their meeting on 19 October. The Committee notes that this proposal will be debated in the 24–25 October Agriculture Council. However, the use of Genetically Modified Organisms (GMOs) in Europe remains controversial, and, given their continuing concerns over this issue, the Committee decided to hold the proposal under scrutiny.

The Committee would be grateful to be kept informed of proceedings during the final stages of the consent procedure in the Commission. In particular the Committee would be interested to know more about why the Council voted against the Commission proposal for Austria to lift its ban on MON 810 in the June Council. How does the Austrian case for banning the maize differ from the case made by Greece, and what are the implications of this vote for the application of legislation relating to GMOs in the EU?

20 October 2005

Letter from Lord Bach to the Chairman

I am writing to inform you of an issue which is to come before the Agriculture and Fisheries Council on 24 October 2005. This concerns a proposed decision rejecting a ban imposed by Greece on the marketing of 17 approved GM maize varieties listed in the EU common catalogue.

An Explanatory Memorandum was prepared and submitted on 26 September 2005. The Explanatory Memorandum has been cleared by the Commons Scrutiny Committee but it has not proved possible to obtain scrutiny clearance from the Lords ahead of the vote in Council on 24 October.

On 17 September 2004, 17 maize varieties containing the GM event MON 810 were added to the Common Catalogue. MON 810 has been authorised for cultivation and marketing in the EU since 1998 under Directive 90/220/EC.

Greece has prohibited the marketing of these varieties and seeks to justify its ban under Article 18 of the Common Catalogue Directive 2002/53/EC rather than Directive 2001/18/EC (formerly 90/220/EC) on the deliberate release and marketing of GMOs. However, Article 18 of Directive 2002/53/EC allows Member States to prohibit marketing of varieties on the Common Catalogue only where there is danger to human health or to the environment. As the GM event MON 810 has already been approved as presenting no threat to human health or to the environment, it is the view of the Government that Article 18 of Directive 2002/53/EC is not a valid legal base for Greece’s prohibition.

It is unfortunate that scrutiny could not be completed in time for Council but I wish to inform your Committee of the Government’s intention to proceed and to support the Commission proposal to reject the Greek ban which we view as inconsistent with scientific and legal principles previously established by the Council.

20 October 2005

Letter from Lord Bach to the Chairman

Thank you for your letter of 20 October on the above subject which crossed with my letter of the same date. My letter informed you of the Government’s intention to support the Commission proposal to reject the Greek ban, which we duly did at the 24 October Agriculture Council. The vote resulted in a “no opinion” which allows the Commission to adopt its proposal.

I am of course happy to answer the questions raised by your Committee.

Q: Why the Council voted against the Commission proposal for Austria to lift its ban on MON 810

Austria took action to ban the import and use of MON 810 under Directive 2001/18 on the grounds that new information about its safety had come forward after the consent was granted. Most Member States voted against the Commission out of political solidarity with Austria rather than on the basis of sound law or science. Only the UK and the Netherlands voted in favour, the UK on the grounds that the European Food Safety Authority and our own advisory committee advised that no new information had been presented which indicated that MON 810 posed a threat to human health and the environment. Portugal, Finland and Sweden abstained.
Q: How does the Austrian case differ from the case made by Greece?

In the case of the Greek ban, as explained in my letter, Greece has prohibited the marketing of seeds of these maize varieties on economic and co-existence grounds under Article 18 of the Common Catalogue Directive 2002/53/EC rather than for safety concerns under the GMO deliberate release Directive 2001/18/EC as the Austrians have done. Directive 2002/53/EC allows Member States to prohibit marketing of varieties only where there is danger to human health or to the environment but as MON 810 has already been approved as presenting no such threat, it was viewed by the Commission, and a sufficient number of Member States, that Directive 2002/53/EC was not a valid legal base for Greece’s prohibition. On this occasion, enough Member States voted with the Commission to secure a “no opinion”. However, had Greece chosen the same defence as Austria, the outcome may have been different.

Q: What are the implications of this vote for the application of legislation relating to GMOs in the EU?

In the view of the UK, this vote is simply a reflection of the fact that some Member States often vote along political lines on GM issues, rather than on the basis of sound law or science. In our view the Member States’ votes in Council have disregarded the legal position, with the result that the Commission has frequently been placed in a difficult situation and sound proposals have either been defeated or adopted only following Council’s failure to reach an opinion by qualified majority.

10 November 2005

GM MAIZE (8635/05)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman

I am writing to inform you of a proposal to approve the placing on the market of a GM maize product (MON 863) which is likely to come before the Environment Council in June, probably as an “A” point.

The proposal is part of the routine process for dealing with applications to place GM products on the market. An Explanatory Memorandum was prepared and submitted on 16 May 2005 but as the Committee is still in the process of being re-established since the dissolution of Parliament it is unlikely that your Committee can consider this before the Council meeting on 24 June. In the circumstances, it is clearly unfortunate that scrutiny procedures cannot be completed but wish to inform the Committee of the Government’s decision to proceed.

9 June 2005

GM MAIZE (10785/05)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman

I am writing to inform you of a proposal to approve the placing on the market of a GM maize product (1507) which is likely to come before the Agriculture and Fisheries Council in September, probably as a “B” point.

The proposal is part of the routine process for dealing with applications to place GM products on the market. An Explanatory Memorandum was prepared and submitted on 14 July 2005 but unfortunately, because of the summer recess, your Committee has not yet cleared it. In the circumstances, it is clearly unfortunate that scrutiny procedures cannot be completed but wish to inform the Committee of the Government’s decision to proceed.

12 September 2005

Letter from the Chairman to Elliot Morley MP

Thank you for your letter of 12 September 2005 notifying the Committee of a possible scrutiny override during the recess. The proposal was considered at the meeting of Sub-Committee D on 12 October.

The Committee notes that this proposal was debated in the September Council but no qualified majority was reached. As the proposal has been referred back to the Commission the Committee decided to continue to hold it under scrutiny. The Committee would be grateful if they could be kept informed of proceedings during the final stages of the consent procedure in the Commission.

13 October 2005
GM MAIZE (14425/05)

Letter from the Chairman to Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA

Thank you for your EM dated 14 November 2005 which Sub-Committee D considered at their meeting on 30 November 2005. The Committee considered this proposal at its meeting on 30 November 2005, and decided not to clear it from scrutiny at this time. We are holding the proposal as we remain concerned about the possible environmental impacts from GM varieties. The Committee has decided to carry out further research into European authorisation of GM crops in the New Year.

1 December 2005

GROUNDWATER POLLUTION (12985/03)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman

I am writing to update you on the progress of the above proposal, which was put forward in September 2003 by the European Commission under Article 17 of the Water Framework Directive 2000/60/EC, and which you debated in January 2004. I would like to let you know the outcome of public consultation and discussions to date in the Environment Council Working Group, and to outline our current expectations for consideration in the Council of Ministers which is scheduled for June.

The UK public consultation commenced in March 2004 and ran until midsummer. The responses, the results of which are summarised in the attachment to this letter (not printed), generally support the Government view that preventive measures are the key to protecting groundwater and that common European standards for groundwater are not desirable. They also strongly reflect the need to clarify and simplify certain aspects of the proposal, particularly in relation to trend reversal, pollution controls, and the application of standards. Following consultation, officials in the department have continued to meet stakeholders to discuss their concerns and to keep them abreast of developments.

The proposal has yet to be discussed in the Council of Ministers. However, discussions in Environment Council Working group which commenced under the Irish Presidency in May 2004 made good progress towards achieving a workable text under the subsequent Netherlands Presidency. The current Luxembourg Presidency, which is addressing the outstanding issues on the text, intends to seek political agreement at the June Environment Council meeting.

The main issues discussed in the Working Group are the meaning of good status, the setting and application of standards, the role and application of trend identification and reversal measures, and the approach to preventing or limiting the input of pollutants to groundwater.

On the issue of the meaning of good status and the role and application of standards, the Commission proposal provided a suitable basis for negotiation insofar that it requires standards for all substances, except nitrates and pesticides, to be established at national or local level. It also correctly identified the meaning of “good status” as set out in the Water Framework Directive—ie groundwater conditions which do not compromise environmental objectives for surfaces waters or terrestrial ecosystems. However, it also demonstrated several difficulties.

The first is the role of standards. The Water Framework Directive clearly envisages that they should be used to classify groundwater bodies as at “good” or “poor” chemical status. The proposal, however, confusingly states that they would be used for “characterisation”—a very preliminary risk assessment of groundwater intended to be based largely on information on pressures and impacts.

A second concerns taking social and economic considerations into account. The proposal suggests that these should be addressed when setting standards. However, the Water Framework Directive already requires social and economic costs to be addressed when applying standards. The Commission’s original proposal therefore makes little sense and would be very difficult to implement.

A third difficulty concerns the way standards would be applied. The proposal requires that if there is a single exceedence of a single standard at a single monitoring point, then the whole groundwater body should fail to achieve “good status”. Since exceedances can occur for all sorts of reasons, often beyond control, and since only those which compromise the objectives of “good chemical status” are relevant, this would not be a risk-based approach.
The final difficulty concerns the Europe-wide standards for nitrates and pesticides. The Commission took these values from other directives where they are used in a very different way. It is most important that these values should be applied consistently with the parent directives—namely the Nitrates Directive and the Plant Protection Products Directive.

With the exception to date of the last mentioned (which we anticipate will also be put right), these difficulties have been addressed in Presidency drafting.

In respect of the identification and reversal of pollution trends in groundwater, the Commission proposal contains two main problems. First it requires action to be taken on trends which are merely statistically, but not necessarily environmentally significant. Secondly it provides for over-prescriptive and unworkable detail concerning the timeframes for trend reversal, which takes no account of the natural recovery times of groundwater. The first issue has been addressed, and the second largely resolved subject to one or two further relatively minor improvements.

The issue of appropriate measures to prevent or limit the input of pollutants into groundwater is an important one since pollution prevention is the key to protecting groundwater. The Commission proposal takes a somewhat over simplistic approach to identifying which substances should be prevented and which limited. The appropriate, and risk-based, approach should be to ensure that hazardous substances are prevented from entering groundwater, and other substances are limited to prevent pollution. Another issue concerns the practicality of preventing absolutely all inputs. In the English language, “prevention” is an absolute requirement so appropriate exemptions are needed, for instance for very tiny inputs which pose very little risk, where prevention is not technically feasible or is disproportionately costly, or might result in greater overall risks to health or the environment. The latest Presidency draft addresses these points but there will be further discussion, particularly from those Member States which interpret “prevent” in a “best endeavours” sense.

The above developments in Council Working Group are, I feel, going in a direction which should ultimately address the concerns raised during last year’s Scrutiny debate. Now, as then, our aim is for a proportionate, risk-based and cost-effective directive, which protects groundwater efficiently and takes account of the variety of its uses and natural quality.

I am currently optimistic, therefore, about the likelihood of an acceptable text emerging from Council Working Group discussions, though the speed at which this can be achieved will of course depend on competing business under the Luxembourg Presidency. Assuming that the outcome of the European Parliament’s First Reading (expected in April) emerges in good time, the Presidency currently proposes to seek political agreement at the 24 June Environment Council meeting. I therefore anticipate writing to you nearer the time with a view to seeking the Committee’s Scrutiny clearance. In the meantime I hope that the Committee will find these comments useful.

7 March 2005

Letter from Elliot Morley MP to the Chairman

1. I wrote to you on 7 March 2005 to update you on the progress of the above proposal, which was put forward in September 2003 by the European Commission under Article 17 of the Water Framework Directive 2000/60/EC.

2. As anticipated, the Luxembourg Presidency plans to seek political agreement on an amended text at the June Environment Council. I am afraid that we do not yet have a published document from the Presidency, but the latest draft addresses the concerns I identified in my previous letter. In particular, the outstanding issue of common standards for nitrates and pesticides has been effectively addressed though an appropriately flexible and risk-based compliance regime. On the assumption that these improvements will be sustained in the published document I should be most grateful if your Committee would agree to scrutiny clearance in advance of the Environment Committee.

3. Although I am not able to send you the latest Presidency draft, I can outline its key elements which are a considerable improvement on the Commission’s original proposal and, as a package, represent a risk-based and efficient regime:

   — pollution prevention and control measures are proportionate and workable: they focus on the right substances (ie prevent inputs of hazardous ones and limit inputs of others to avoid pollution), they include appropriate exemptions, and they oblige Member States to “aim to” prevent inputs, rather than give an absolute obligation;

   — pollution trend identification and reversal measures address environmentally significant trends, allow action to be prioritised according to risk, and allow trends to be reversed according to local hydrogeological conditions, rather than prescriptive timetables;
— assessment measures for “good” or “poor” status are geared to assessing whether the environmental objectives for “good” status are met, rather than a simplistic “one-out, all-out” approach to applying standards—

— both common standards (for nitrates and pesticides) and “threshold values” (locally determined standards) act as triggers for further investigation into the environmental significance of any exceedences rather than as compliance standards (and any necessary measures will then be tested for technical feasibility or disproportionate expense).

4. Further common European standards for groundwater have been avoided, and the UK would resist any proposals for such standards at Environment Council. The compliance regime for nitrates and pesticides is now acceptable as a package representing a bottom line on which to fall back although we will seek, if possible, further underpinning by additional text which clarifies that any requirements of the new groundwater directive should not override or conflict with action programmes required under the Nitrates Directive.

5. The European Parliament’s First Reading was held on 28 April, the results of which are contained in Council document 7951/05. The First Reading amendments reflect the considerable level of disagreement amongst, and within, various groups in the European Parliament on this dossier. The result is accordingly somewhat mixed. The more difficult amendments include problematic new definitions, overly prescriptive measures on trend identification and reversal, and an inappropriate approach to pollution prevention and control. Some of these reflect problems and inconsistencies in the Commission’s original proposal. However, there are some positive outcomes—in particular the European Parliament rejected further common European standards for groundwater, which would potentially have resulted in an arbitrary level of protection and much unnecessary expense, and instead adopted a more risk-based approach requiring Member States to set standards against common criteria. It is very unlikely, because of the difficulty of many of the amendments, that First Reading agreement between the European Parliament and the Council of Ministers will be reached. The timetable for further European Parliament consideration is not yet known but if Luxembourg reaches political agreement in June, then a Second Reading in the last quarter of 2005 is possible.

6. The Partial Regulatory Impact Assessment for this directive will be updated once there is an agreed Council text, but meanwhile I can offer our unpublished latest draft for your information. On the basis of the current draft we would expect to avoid the high and unnecessary costs of a range of common European standards for groundwater.

7. I hope that this letter, and the accompanying draft updated Partial RIA provides the basis for consideration of this proposed directive by your Committee. I am sorry that I am not yet in a position to send you a published Presidency text or a published RIA, but I hope that I have provided sufficient information for the Committee to give Scrutiny Clearance, in advance of the Environment Council meeting, of a text which follows that outlined in paragraphs 3 and 4.

31 May 2005

Letter from the Chairman to Elliot Morley MP

Thank you for your letters of 7 March and 31 May regarding the above proposal. Sub-Committee D (Environment and Agriculture) considered this dossier at their meeting on 15 June in advance of the June Environment Council.

We appreciate the detailed nature of your letters and the draft regulatory impact assessment. The Committee is pleased with the progress that the Government has made in ensuring that a risk based approach is being considered.

However, as the protection of groundwater is an important issue for the United Kingdom, we remain concerned about the progress of this dossier and the potential for conflicts with the Nitrates Directive. We therefore look forward to receiving the updated regulatory impact assessment after the Council meeting. In the meantime, the scrutiny reserve is maintained.

17 June 2005

Letter from Elliot Morley MP to the Chairman

As I mentioned in my letter of 31 May the Luxembourg Presidency intends to seek political agreement on the above proposal at the 24 June Environment Council.
I understand that, following concerns raised at Sub-Committee D’s meeting of 15 June 2005, Sub-Committee D has decided not to clear the Proposal. It is unfortunate that scrutiny measures have not been completed before the Council vote, but I wish in any case to inform the Committee of the Government’s position and decision to proceed.

As mentioned in my earlier letter, our main objective to attain a “flexible, risk-based instrument” has been achieved. It is therefore important to adopt the current draft, in the face of opposition from other Member States who favour a more prescriptive and inflexible approach to groundwater pollution. On the basis of the current draft we would expect to avoid the high and unnecessary costs of a range of common European standards for groundwater.

We understand you have concerns about the relationship to the Nitrates Directive and the current development of the Regulatory Impact Assessment. It has been suggested that it may be helpful to discuss these points informally with relevant Defra officials. I think this would be the best way forward and my officials will be happy to attend at the Committee’s convenience.

20 June 2005

Letter from Elliot Morley MP to the Chairman

1. Thank you for your letter of 17 June, which crossed with mine to you of 20 June in which I advised you of the intention of the Luxembourg Presidency to reach political agreement at Environment Council on 24 June. I note your comments with regard to the potential for conflicts with the Nitrates Directive, which has been of concern to me too, and I understand that my officials attended an informal session of your Committee on 13 June. I hope that you found their explanations helpful, I am writing now to let you know formally the outcome of the June Environment council, and to inform you about another document from the European Commission which responds to the European Parliament’s First Reading amendments.

2. The European Environment Council duly reached political agreement on 24 June, with the support of the United Kingdom, on the text attached at A (not printed). Four Member States voted against the proposal for various reasons but essentially three sought a generally more prescriptive approach towards European common standards, whilst one desired a tightening of nitrates policy through the Water Framework Directive.

3. The Council’s political agreement text represents an extensive revision of the Commission’s original proposal, and provides for a flexible, risk-based approach to groundwater protection. It captures the important key elements for which the UK has been negotiating, as follows:

ARTICLES 3 AND 4

— A means of classifying groundwater bodies as “good” or “poor” on the basis of environmental considerations rather than the mechanical application of arbitrary standards. Locally determined standards (“threshold values”) and common European standards (for nitrates and pesticides) would be used as part of the classification process but would, if exceeded, trigger further investigation rather than automatic classification as “poor” status.

ARTICLE 5

— Measures to identify and reverse pollution trends which allow environmentally significant trends to be prioritised according to risk, taking account of their impact on [dependent receptors] and the local hydrogeological conditions.

ARTICLE 6

— Appropriate pollution prevention and control measures which focus on preventing hazardous substances from entering groundwater, and other substances from polluting groundwater, with a range of exemptions to avoid actions and obligations which are disproportionate or impossible to meet.

4. In addition to the use, at Article 4, of the nitrates and pesticides standards as “triggers” for further investigation, the agreed text includes wording in Annex I explicitly aimed at the avoidance of unnecessary duplication or conflict with the Nitrates Directive. The net effect would be that the action programmes under the Nitrates Directive would not be overridden by a need to meet a 50mg/l compliance standard, (and unrealistic timescales) but that Member States might need to take additional measures where necessary to meet the broader environmental requirements of the Water Framework Directive. Any such additional measures would be subject to proportionality tests and derogations allowed for under that Directive.
5. The Commission’s formal response to the European Parliament’s First Reading Amendments at B is, like the amendments themselves, somewhat mixed. There is certainly much in the overall thrust of the response which the UK could agree with—in particular the need to ensure consistency with the Water Framework Directive. However some of the specific amendments, which the Commission could accept would have worrying practical implications. Examples are amendment 24, which would result in Member States needing to restore groundwater to an arbitrary “baseline concentration”; amendment 36 which leaves the door open for further “common standards”; and amendments 76–78 and 83–86 which prescribe time periods for trend assessment and reversal without any reference to the natural recharge times of individual groundwater bodies. However the European Parliament’s amendments relate to the Commission’s original proposal, rather than the text agreed in Council, and it is to be hoped that the text agreed by the Environment Council on 24 June will provide a more coherent basis for the European Parliament’s Second Reading. The Commission has publicly welcomed the Council text.

6. In your letter of 17 June you also express interest in the progress of the Regulatory Impact Assessment: The next formal revision will be to produce the Final RIA, which will reflect the final text following the European Parliament’s Second Reading and any further deliberations on the part of the Environment Council. Our feeling at the moment is that the estimates and assumptions made in the Partial RIA remain valid, but the document is subject to regular review and I will ensure that you see any relevant updating of the Partial RIA as soon as it is available.

20 July 2005

HUMANE TRAPPING STANDARDS (12200/04)

Letter from Ben Bradshaw MP, Minister for Nature Conservation and Fisheries, DEFRA
to the Chairman

Thank you for your letter regarding points raised by the Sub-Committee D (Environment and Agriculture). I will answer these points in turn.

The UK proposed extending the scope of the standards to cover all trapped species to avoid a two-tier trapping system. This position is more consistent with current UK legislation but was not supported by the Commission or by a majority of Member States. However, it is hoped that such an extension may be possible in the future and the UK will continue to suggest all trapped species are included in the Directive.

The proposal may also present difficulties for the control of new and existing traps. Some traps, such as drowning traps are being developed to meet the new standards in other Member States, are normally considered to be inhumane in the UK. The Directive would permit these traps. We will strongly resist measures which would lead to any reduction in animal welfare in the UK and ensure that there is not an increased use of less humane traps or illegal pest control options.

We understand that snares are not included in the proposed directive. Article 2 of the Directive specifies that “traps means mechanical capturing devices designed for killing or restraining animals of the species set out in Annex 1”. The Commission has confirmed that the proposed Directive concerns restraining (e.g., cage traps) and killing traps (spring traps) but not snares.

We will very shortly undertake further discussions with the Commission to raise our concerns on the proposed Directive. Also, we will carry out a Regulatory Impact Assessment and full public consultation on the Directive later this year.

4 February 2005

HUSKED RICE (9198/05)

Letter from Lord Bach, Minister for Sustainable Farming and Food, DEFRA
to the Chairman

I am writing to inform you of the position reached in consultations conducted by the EU Commission with the United States of America and the likely need for the Agriculture and Fisheries Council on 20–21 June to vote on the outcome and the exchange of letters giving effect to the Agreement relating to the method of calculating import duties for husked rice for a transitional period until 30 June 2006.

I am very sorry for the short notice in putting this to your Committee, but the Commission did not adopt the proposal until 24 May 2005 and it was discussed for the first time in Brussels at the Special Committee on Agriculture on 6 June.

A copy of an Explanatory Memorandum setting out the detail, background and UK implications of the proposed Decision as set out in Council Document 9198/05 COM (2005) 202 Final, dated 24 May 2005 is attached (not printed), together with a partial Regulatory Impact Assessment (not printed). The proposal also extends the interim rice import regime, agreed last year at the Agriculture and Fisheries Council on 19 July 2004 and which was the subject of Explanatory Memorandum 11294/04–11295/04 of 30 September 2004 from Lord Whitty. These interim measures as set out in the Council Decisions 2004/617/EC, 2004/618/EC and 2004/619/EC, adopted in July 2004, are therefore extended until 30 June 2006. You will see that the latest proposal for a Council Decision maintains the import duty rate for husked rice of €65/tonne (£44.01 using the June 2005 exchange rate of €1 = £0.6771), but provides a mechanism for it to fall to as little as €30/tonne (£20.31) (with a middle rate of €42.50/tonne (£28.78)) depending on the actual level of imports. In due course, and before 30 June 2006, the Commission will need to table a further proposal to amend the rice Common Organisation of the Market (CMO) Regulation (EC) No 1785/2003 in order to give permanent effect to these new arrangements.

You should be aware that there is a potential complication on timing. The arrangements referred to above, which provide for basmati rice to be imported duty free from India and Pakistan, expire on 30 June 2005 and it will be necessary to adopt the new proposal at the Agriculture and Fisheries Council on 20–21 June 2005 in order to avoid an unfortunate hiatus.

The UK strongly supports the agreement with the USA because it offers the potential for rice to be imported with lower duties and because it means that a damaging trade dispute with the US has been avoided. UK rice millers, the main UK trade sector affected, have welcomed the proposal and want it to be adopted as quickly as possible in order to benefit from access to lower priced supplies of rice. They are also extremely concerned for the proposal to be implemented before 1 July to prevent a hiatus with the expiry of the current arrangement with India and Pakistan.

10 June 2005

INFRASTRUCTURE FOR SPATIAL INFORMATION IN THE COMMUNITY, INSPIRE (11781/04)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman

I am writing to inform your Committee of the current position on this dossier. I attach Council Document 9837/05 that sets out the result from the First Reading in the European Parliament (not printed).

The substance of the original Commission proposal was set out in Explanatory Memorandum (EM) 11781/04 + ADD I of 11 October 2004 and a Supplementary Explanatory Memorandum (SEM) 11781/04 + ADD I of 26 May 2005, which cleared scrutiny by your Committee on 19 October 2004 and 14 June 2005 respectively. The House of Commons Scrutiny Committee examined the proposal on 27 October 2004 and was withholding clearance until the submission of a partial Regulatory Impact Assessment, which was subsequently submitted on 25 May 2005 under the cover of the SEM.

I can confirm that in the period since the submission of the SEM considerable progress was made in the Council Working Group to address all of the UK’s key concerns, namely, to ensure that INSPIRE:

— is compatible with UK Government policy on information trading by public authorities and fully respects intellectual property rights, including those of public authorities themselves;
— does not compromise public security, national defence or international relations;
— is compatible with the existing legal framework including Directive 2003/4/EC on public access to environmental information, Directive 2003/98/EC on the re-use of public sector information, competition and intellectual property law; and
— is built on and complements Member States’ infrastructures, rather than replacing them with a disproportionately expensive harmonised model including ensuring that it makes use of existing international standards.

The political agreement reached at the June Environment Council, which the UK supported, addresses these concerns.
The Luxembourg Presidency had hoped to reach a First Reading agreement with the European Parliament. However, at the end of May, the Presidency concluded that this would not be possible and indicated that they would aim to secure a political agreement at the June Environment Council.

The European Parliament voted in plenary on the 7 June 2005 and adopted 49 amendments (contained in document 9837/05) to the original Commission proposal. The majority of these amendments relate to improving the textual clarity of the Commission proposal.

The European Parliament amendments included four compromise amendments, which had been tabled with the intention of securing a First Reading agreement with the Council. The UK was unable to support any of the compromise amendments, as they did not cover our concerns sufficiently, although one of these amendments, a recital acknowledging that public authorities can obtain financial compensation from those using their data, indicates that the European Parliament recognises the Council’s concerns in relation to charging.

The text agreed at the Environment Council has been substantially amended from the original Commission proposal. We will therefore need to work closely with the European Parliament during a Second Reading. The Council text will now go to jurist linguist. Hence, it is very unlikely that a Second Reading will occur under the UK Presidency.

6 September 2005

MARKETING STANDARDS FOR EGGS (9466/05)

Letter from Lord Bach, Minister for Sustainable Farming and Food, DEFRA to the Chairman

I am writing to inform you of an egg proposal, which is scheduled to come before the 20–22 June 2005 Agriculture and Fisheries Council, possibly as an “A” point.

An Explanatory Memorandum (EM 9466/05) was prepared and submitted on 13 June 2005. The Commission did not table the proposal until the 27 May and there has not been time to obtain Parliamentary Scrutiny in the normal way.

Currently, producers of Class A eggs (ie graded fresh or first quality eggs), are required to stamp those eggs, to identify the country of origin, production unit, and farming method. However, egg producers are exempt from stamping ungraded eggs, from their own production, sold direct to consumers until 1 July 2005. From that date all such eggs, sold at local public markets, would be required to be stamped. This proposal introduces a discretionary derogation providing an exemption from the requirement to stamp such ungraded eggs, sold at local public markets, if produced from holdings of 50 or fewer laying hens. Initial estimates suggest that that there are about 20,000 producers in the UK with 50 or fewer hens. However, only a few hundred would appear to be selling at local public markets.

The Government does not oppose the proposal in principle and agrees the derogation should be exercised by discretion by individual Member States. In the circumstances it is clearly desirable for this proposal to be adopted by the Council and unfortunate that scrutiny procedure could not be completed in time. I wish to inform the Committee of the Government’s decision to proceed. Whether the UK exercises the derogation will be a decision informed by consultation with interested parties.

15 June 2005

NOISE EMISSION IN THE ENVIRONMENT—“NOISE DIRECTIVE” (11825/05)

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

Thank you for your Explanatory Memorandum of 30 June 2005 which Sub-Committee D (Environment and Agriculture) examined at its meeting on 13 July.

The Committee recognises that the Government are taking urgent steps in order to deal with this problem effectively. However, the Government have not explained why consultation on the 2002 Noise Directive did not reveal that it would be impossible for manufacturers to make the equipment to the required stage II limits. Such action would surely have avoided the need for urgent legislation now.

The Committee is aware that a formal consultation is to be held during the summer. However, we would appreciate at this stage an estimation of how the public would be affected by adoption of this amendment. Also, we are not clear why the items presented in the first footnote in your Explanatory Memorandum are included at all, and we would therefore appreciate an explanation of their inclusion.
We would also be grateful if you could explain the basis on which the Stage I and II decibel levels were decided upon during development of the original 2000 Noise Directive. Given that the reduction of emissions to Stage II levels was originally agreed in order “to protect the health and well-being of citizens”, it would be particularly disappointing if certain equipment were now allowed to be exempt from these mandatory levels. The Committee decided to hold the proposal under scrutiny. We look forward to receiving the Regulatory Impact Assessment in due course.

15 July 2005

Letter from Lord Sainsbury of Turville to the Chairman

As promised in our Explanatory Memorandum (EM) of 30 June, I am attaching an initial Regulatory Impact Assessment (RIA) on the above Commission Proposal to amend the Noise Directive 2000/14/EC (Annex A).

I look forward to receiving your comments on the EM and the RIA. Overall it is difficult to estimate the costs of this proposal but if nothing is done, the eight types of equipment, with annual European sales of some £1.3 billion (the equivalent UK figure is about 18 per cent of this amount ie £234 million) would have to be withdrawn from the single market. There is also a risk that without the amendment, society will lose the advantage of such equipment not being available for major building and infrastructure projects throughout Europe.

The UK position thus far has been that, in principle, the proposed amendment should be given strong support in order to avoid the situation of an Article 95 Directive—designed to enhance trade—actually preventing the trade in such equipment. Industry supports this proposal and NGOs consulted so far have not objected.

The proposal is likely to be introduced by the Commission, at a meeting scheduled for 7 September 2005, under the UK Presidency. In order to incorporate the initial RIA in the UK Consultation document on the proposal, it is necessary to seek Scrutiny Committee clearance before the Summer recess.

18 July 2005

Annex A

Initial Regulatory Impact Assessment Standards and Technical Regulations Directorate

INTRODUCTION

1. This is an initial assessment of the costs and benefits of the European Commission’s proposed Directive to amend Directive 2000/14/EC, relating to the noise emission in the environment by equipment for use outdoors.

PURPOSE AND INTENDED EFFECT OF MEASURE

The Objective

2. The Commission’s amending proposal is intended to:

- Allow certain types of equipment (for which clear evidence has been provided that the stage II limits of Directive 2000/14/EC are not presently technically feasible) to be placed on the market and/or put into service in the European Community from 3 January 2006;
- Provide the Commission with sufficient time to fulfil its obligations under Articles 16 and 20 of the Directive 2000/14/EC;
- Allow for the incorporation of the Report foreseen at Article 20(3) into the Report foreseen at Article 20(1) of Directive 2000/14/EC.

5 Walk behind vibratory rollers;
Vibratory plates (> 3kW);
Vibratory rammers;
Dozers (steel tracked);
Loaders (steel tracked) > 55Kw;
Combustion- engine driven counterbalanced lift trucks;
Compacting screed paver finishers;
Hand-held internal combustion engine concrete breakers and picks (15 < m < 30) (as well as lawnmowers, lawn trimmers/lawn edge trimmers which are already covered by the existing footnote in Directive 2000/14/EC).
Background

3. The “Noise” Directive of 2000 set noise limits for 22 equipment types and was applicable in two stages. Stage I was set at 3 January 2002 and Stage II, which tightened the noise limits, was set at 3 January 2006. DG Enterprise have now accepted that some eight equipment types will be unable to meet the “Stage II” noise limits for technical reasons.

Risk assessment

4. If nothing were done, the eight equipment types with annual European sales of some £1.3 billion would have to be withdrawn from the single market. (The equivalent UK figure is about 18 per cent of the above ie £234 million.) DG Enterprise have announced that, subject to agreement by the College of Commissioners, they intend to introduce an amending Directive to the Council and European Parliament in July which, when enacted will dissaply the Stage II limits for the eight named equipment types thus allowing them to remain on the European market.

5. The UK position thus far has been that, in principle, the proposed amendment should be given strong support in order to avoid the situation of an Article 95 Directive—designed to enhance trade—actually preventing the trade in such equipment. Not surprisingly, industry supports the proposal. NGOs consulted so far have not objected. The only reason for objection would appear to be if anyone is able to prove that some or all of the equipment on the list in fact is able to meet the Stage II limits. For this reason we have taken all possible steps to ensure that equipment is only on the list if it is impossible for it to be made to comply with Stage II limits for technical reasons at any cost and not for economic reasons.

6. The proposal is based on direct inputs from Member States (18 of which have already agreed in principle to support the amendment), as well as a technical working group made up of MSs, industry and the Commission and other interested parties (WG7). The Commission has consulted widely and given the unusual situation of equipment being removed from the market in January 2006, it is likely that the proposal, when published will receive 100 per cent support.

7. There is a risk that without the amendment, society will lose the advantage of such equipment not being available for major building and infrastructure projects throughout Europe.

8. “Lost” benefit to those who would wish a quieter environment is minimal, the average difference between Stage I and Stage II is 2db—an amount which is inaudible to the human ear.

Costs

9. The total economic impact of some £1.3 billion is reflecting the fact that depending on the product type, some machines will be Stage II compliant, some others will not be. In any case, it remains a huge burden on the construction equipment industry, and especially the many SMEs may suffer irreparable economic damage. Beside the impact on industry, consideration should also be given to the following:

- Due to the unavailability of new equipment, users may face serious problems in the realisation of planned important construction and infrastructure works;
- Longer usage of less environmental friendly machines;
- Increased import of non-compliant machines from outside the EU (grey market imports).

Benefits

10. The allowance of certain types of equipment (for which clear evidence has been provided that the Stage II limits of Directive 2000/14/EC are not presently technically feasible) to be placed on the market and/or put into service in the European Community from 3 January 2006, thus providing for the continuation of the “single market” in this sector.

11. The continuation of major building and infrastructure projects throughout Europe.
Consultation

12. Considerable Europe wide consultation has already been undertaken by the Commission. Member States and stakeholders were consulted on the draft amendment text in May 2005 and so far some 18 Member States have given support to the need for a legal solution to the issue of Stage II limits that are technically impossible to meet. The Department of Trade and Industry, which is responsible for negotiating the proposal, has already carried out informal consultation with industry associations, individual manufacturers, DEFRA, NGOs concerned with noise matters including the Noise Abatement Society and the National Association for Clean Air and Environmental Protection. So far no objections have been received but more detailed responses will be requested during a formal consultation over the Summer.

13. A major factor on consultation is the tight timescale. It is expected that in the circumstances, on an exceptional basis, the consultation will take place starting in advance of the formal Proposal, over a four week period. It will inform the negotiating line in Council but will also deal with the form of the eventual domestic Regulations that will need to be brought into force urgently (and without time for further consultation).

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letter received by email of 18 July enclosing an initial Regulatory Impact Assessment (RIA) of the above proposal. Sub-Committee D (Environment and Agriculture) considered your letter at their meeting on 20 July.

The Committee raised a number of queries with regard to this proposal in my letter of 15 July. These queries remain and, given that scrutiny clearance is not required in order to incorporate the initial RIA in the UK consultation document on the proposal, and the official text is still to be received by the Committee, the Committee decided to continue to hold the proposal under scrutiny.

We look forward to receiving your reply to my letter of 15 July and the official text when it is introduced. We would also like to be informed of the outcome of the UK’s consultation exercise.

20 July 2005

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 15 July concerning the Explanatory Memorandum (EM) of 30 June, relating to the proposed amendment to the Noise Directive 2000/14/EC.

When the original Noise Directive was negotiated over the 1998–99 period, there was of course considerable consultation with industry and other parties over the content. However, industry were more concerned about the cost burdens imposed by the conformity assessment procedures than they were about the actual limit values being applied. All indications at that time were that industry could meet most of the limits (whether stage I or stage II) by applying appropriate engineering solutions. In addition, given that there was a six-year gap between these consultations and stage II limits coming into force, there was general agreement that there would probably be technological innovations which would help manufacturers meet the more challenging limits. However, by 2003, industry did begin to realise that for some equipment, they would not be able to meet the stage II limits of 3 January 2006 at any cost. They began lobbying the European Commission (at that time DG Environment led on this issue). However, no moves were made by the Commission to instigate a more organised amendment to the Directive. They did, however, set up a technical working group to initially verify industry’s claim that for some equipment it was technically impossible to meet the stage II limits. The WG effectively endorsed the industry claims by mid-2004. However, there was no action from the Commission until the beginning of 2005 (when the lead was transferred to DG Enterprise). Unfortunately, as you pointed out, this leaves us with the need for very urgent legislation.

In terms of the effect of this proposal on the public, they could be affected in two ways. If the proposal is adopted, it is true that there will be some equipment being placed on the market which will be marginally noisier than was envisaged. However, it is worth emphasising the average difference between stage I and stage II is about 2db—an amount which is inaudible to humans. In addition, for most of the equipment types, individuals are generally not exposed to noise from such equipment for long periods of time and in most areas of the EU local controls limit the use of such equipment to daytime. However, if the equipment is not exempted in the way proposed, it will have to be taken off the market and in this case there will be a cost to society in terms of old (probably noisier/more polluting) equipment being used for longer to fill the gap. There could also be a loss to society in terms of delayed building and infrastructure programmes.

The eight equipment types are included in the proposal because it is technically impossible for them to meet the stage II limits. An example might be steel tracked dozers. In their case experts agree that the dominant noise from them comes from the metal tracks acting on other metal components. In such cases even if the
Engine and transmission noise has been reduced to a minimum this makes little difference to the overall noise measurement. It is accepted in these cases that simply spending more on development would not allow stage II limits to be reached. This is quite different from some other equipment groups where industry have sought exemption because modification costs to meet stage II limits is (in their view) disproportionately high. These requests have been refused.

During the 1998–99 negotiations the noise limits agreed by Council were to a large extent those contained in the original Commission proposal. As I have mentioned, they were not really challenged by industry or experts. However, it is understood that the Commission based Stage I limits on levels contained in earlier noise directives, covering various types of outdoor equipment, that were revoked when Directive 2000/14/EC was adopted. Stage II was an attempt to lead industry in the right direction by indicating marginally tighter limits well in advance so that they could attempt to solve the problems before the effective date. It was also envisaged in the original Directive that a review of limits and the possibility for further tightening of them would take place and a Stage III would be introduced if appropriate. For most equipment (14 types) covered by the Directive, this strategy was effective in that such equipment will indeed meet stage II limits. It is only the eight equipment types where this has not been possible. However, it is probably fair to say that, on balance, Directive 2004/14/EC has had a positive effective in reducing noise from outdoor machinery.

You will have received the initial Regulatory Impact Assessment, under cover of my letter of 18 July. This will be followed, in due course, by a more detailed impact assessment as part of the formal consultation process.

I hope this is helpful and clarifies the position and that your Committee is able to clear this proposal from scrutiny during its 8 September meeting. Subject to the official Commission proposal being made available, the UK Presidency intends calling the first Council Working Group early in September with a view to the Council reaching political agreement in October or November. This schedule may allow for the formal adoption of the proposal before the 3 January 2006 deadline. However, even with the most rapid handling of the proposal through the Council and European Parliament, unachievable limits are still likely to take effect for a time. We are continuing to work alongside other Member States and the European Commission to find ways of minimising their impact.

3 August 2005

Letter from Lord Sainsbury of Turville to the Chairman

You will recall the Explanatory Memorandum (EM), reference OTNYR, of 30 June 2005, referring to the above Commission proposal and also my letter of 18 July and enclosed initial Regulatory Impact Assessment. I would like to bring to your attention the official published text, now available under the reference COM (2005) 370; I attach a copy for your information (not published). The changes to the text of the Directive Articles are editorial/grammatical in nature, rather than substantive and do not change the effective. Although the Recitals have been redrafted, they have been reduced and simplified and do not have any operative legal effect.

The proposal will be introduced by the Commission at a meeting scheduled for 7 September 2005, under the UK Presidency. At that meeting, the UK intends to enter a Scrutiny Reserve that hopefully can be lifted at the next meeting scheduled for 21 September. In my letter of 3 August, I have responded to the points made in your letter of 15 July and it is hoped that your Committee will now be in a position to clear the proposal from scrutiny when they meet on 8 September for an “extraordinary” meeting.

5 September 2005

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letters dated 3 August and 5 September enclosing the official published text of the proposal. Sub-Committee D (Environment and Agriculture) considered the proposal at their first meeting following the recess on 12 October.

The Committee found your letter of 3 August particularly helpful in explaining the need for the legislation and the history behind its urgency. We were surprised to learn that industry had voiced concerns as early as 2003 about potential problems with the 2000 Directive but no action was taken to introduce the now urgently required legislation until the lead on the proposal was transferred from DG Environment to DG Enterprise at the beginning of 2005.

This lack of action appears to have led directly to the highly likely and unsatisfactory situation of industry being asked to attain unachievable noise limits in its machinery. We ask you to note our serious regret that the Commission failed to act earlier resulting in the situation whereby last-minute legislation is required and unachievable limits are likely to be imposed on an industry which voiced concerns at an early stage.
Once again we stress that it is disappointing to us that the original Directive as agreed will not be fully implemented. As stated in our earlier letter, given the reduction of emissions to Stage II levels was originally agreed in order “to protect the health and well-being of citizens”, it is particularly disappointing that, certain equipment will now be allowed to be exempt from these levels if the proposal is agreed.

The Committee decided to clear the proposal from scrutiny.

13 October 2005

REACH (15409/03)

Letter from Lord Bach, Minister for Sustainable Farming and Food, DEFRA to the Chairman

I am writing to inform you of new developments on the above dossier, which is likely to come before the Competitiveness Council for political agreement on 28 November. Your Committee considered Explanatory Memorandum 15409/03 of 17 December 2003 and Supplementary Explanatory Memorandum 15409/03 of 17 April 2004 on 6 January and 27 April 2004 respectively and decided to retain them under scrutiny.

On 6 September 2005 the UK Presidency put forward a compromise package for discussion by Member States and, if all goes well, political agreement in November. I would therefore be extremely grateful if you could make this dossier a high priority for early consideration by your Committee so that we may obtain Parliamentary scrutiny clearance well before this date.

REACH is one of the UK Presidency’s major priorities. As Presidency we are working with the European Commission, the European Parliament and Member States in order to find a workable compromise on REACH that protects public health, the environment and industrial competitiveness. The EU has been debating REACH for several years now and industry and others want the certainty agreeing REACH will bring for their forward planning. Following on from the hard work of previous Presidencies, we are now in a position to move forward and build on the excellent progress made to date.

Given the broad scope of REACH (which applies to all chemical substances, including for instance metals), the Commission, proposal has been the subject of over 50 impact assessments across the EU. The UK partial Impact Assessment has estimated direct costs to UK industry would be £515 million over 11 years or just over £47 million per year. A study we commissioned into the indirect costs—which are more problematic to assess accurately—concluded that the costs of REACH were likely to be absorbed by industry without having a significant impact on competitiveness, investment in the UK or market structure. However, although the number of substances withdrawn from the market may not be high, this was most likely to affect low volume substances and those produced by Small and Medium Sized Enterprises (SMEs). These appear to be similar findings to the Commission’s own recent study of indirect costs (carried out in collaboration with sectors of EU industry).

Discussions have taken place in both Environment and Competitiveness Council and have highlighted issues needing to be addressed in the search for political agreement. The European Parliament has also been fully engaged and has given consideration to over 3,000 amendments. A First Reading is now expected around 14–17 November 2005.

The UK Presidency compromise text proposes to make the following amendments to the European Commission’s REACH proposal:

REGISTRATION

Registration is the part of REACH, which is most critical to achieving the essential core data around which decisions can be taken. It is also the area which has the potential to impose significant burdens on industry, particularly SMEs, and to require a high level of animal testing. We have included the main elements of the Hungary/UK proposal for “One Substance One Registration” (OSOR), which aims to rationalise the registration process in a way that can be beneficial to SMEs by reducing total registration costs by up to £450 million across the EU and by reducing animal testing. The proposal has attracted significant support among Member States and the European Parliament. I am hopeful that we can secure the essential elements of OSOR.

The overall risk-based approach to REACH has been strengthened by proposing to focus on substances of concern first. Substances suspected and known to be persistent, bioaccumulative and toxic (PBT) or very persistent and very bioaccumulative (vPvB) are to be included in the first phase of registration. To reduce the impact on SMEs, a proposal for targeted information requirements for low volume substances has been put forward based on an idea from Malta and Slovenia.
EVALUATION—ROLE OF THE AGENCY

REACH establishes an Agency with a key role in all aspects of the regime. There has been much debate over the role of the Agency, its funding and structure, with most Member States—including the UK—favouring a stronger role. To ensure that evaluation is carried out more efficiently and consistently across the EU, responsibility for dossier evaluation has been transferred to the Agency. A minimum number of compliance checks must be performed to maintain the credibility of the system. Substance evaluation will be carried out by Member State competent authorities based on a single EU wide rolling plan for substance evaluation prepared by the Agency, with input from the Member States.

AUTHORISATION AND SUBSTITUTION

Authorisation will allow a limited use of an otherwise banned substance. There has been great debate as to whether or not the authorisation provisions need to be strengthened to provide a greater driver towards substitution. An amendment has been introduced to require all authorisations to be subject to a review. This would enable further consideration of the availability of alternatives at some point in the future. In addition to this, a specific requirement has been included to allow an authorisation to be reviewed at any time should a third party supply new information on possible substitutes to the Agency.

To make the system more transparent, a proposal has been put forward to prepare a list of all substances agreed as meeting the authorisation criteria. This should assist downstream users with their forward planning and encourage manufacturers to develop substitutes.

25 September 2005

Letter from the Chairman to Lord Bach

Thank you for your letter of 25 September, updating the Committee on the progress of this dossier. The Committee have decided to clear the proposal in advance of the Competitiveness Council this month.

The Committee has been in receipt of the views of the UK Metals Industry Research Group (MIRG). A member of the Committee met with representatives of UK MIRG on 7 September and a formal record of the meeting is attached. I also attach a letter dated 26 October from UK MIRG which notes a difference in approach between the Commission and UK Government to the authorisation process. I trust you may take the views of UK MIRG into consideration in your preparation for the Council.

10 November 2005

Annex A

NOTE OF MEETING WITH UK METALS INDUSTRY REACH GROUP (UK MIRG)

7 SEPTEMBER 2005

Present: The Lord Lewis of Newnham, Mr Nigel Haigh (Specialist Adviser on REACH), Dr Ivor Kirman, Head of UK MIRG and Ms Sandra Carey; accompanied by the Committee Secretary.

Dr Kirman opened by saying that UK MIRG was an adhoc group which had been formed in order to coherently present the UK metal industry’s views on the proposed REACH Regulations to the UK Government. Its purpose is to improve the dialogue with the UK Government and MEPs on possible consequences of REACH on the industry. It was a group formed of around 25 organisations involved in the metal industry.

Dr Kirman commented that the metal industry had initially been slow to realise that the REACH proposals would apply to it, yet the effect REACH could have on its products and key supply chains could be “deep and fundamental”. The development of risk assessments under the existing chemicals regulations which REACH was designed to replace had been “very painful” as methodologies had had to be developed at the same time as the risk assessments had taken place. REACH should aim to heed and learn lessons from this old system.

Dr Kirman commented that UK MIRG had been “seriously disappointed” by the European Commission’s response to their concerns. UK MIRG had also submitted a 20–30 page consultation paper to both Defra and DTI but the consultations were one-way exercises and no detailed feedback had been received. Asked whether he considered that the Government had understood UK MIRG’s comments even though they had not received a response, Dr Kirman said that their views appeared to have been understood at the time of discussion; but due to REACH being such a challenging piece of legislation, their comments would need to be remade at the next meeting. (Since the meeting, the UK Presidency has circulated a compromise text on
Agriculture and Environment (Sub-Committee D)

REACH which, by excluding waste from scope, and ores from registration under REACH, may meet at least two of the matters of concern to UK MIRG.

Lord Lewis drew attention to the issue of definitions of a substance and of a preparation. He did not consider it accurate to define a mixture as a preparation. For example, an alloy should not be considered as a preparation. Dr Kirman agreed that alloys were different from typical preparations. He gave the example of nickel, chromium and iron which behaved like stainless steel when mixed rather than behaving like the materials it was made from. He noted that there had always been some recognition of that by the authorities but an unwillingness to abandon the regulatory simplification.

Mr Kirman said the significance of the difference between substances and preparations was enormous in terms of classification. Under the current Dangerous Preparations Directive, the classification of alloys would result in an alloy inheriting the classification categorisation of its component metals. This could result in a more severe classification for an alloy than its actual properties would merit. Dr Kirman considered the classification system needed to be revised in order to ensure a more appropriate treatment of alloys.

Dr Kirman confirmed that UK MIRG’s central concern was not the registration of elements or compounds as would be required by REACH, but by the incorporation of what UK MIRG considered to be the problematic treatment of alloys under the Dangerous Preparations Directive into REACH. This would not allow a special case to be made of the treatment of alloys. UK MIRG were seeking the proposed REACH text to be amended to include the GHS definition of alloys as a special form of a preparation. The European Commission had recognised and noted this in an annex to the REACH proposals, but UK MIRG did not consider the annex to be part of the legal text.

Dr Kirman informed the meeting that UK MIRG had met with representatives of Defra and DTI two weeks previously and had submitted a further set of comments to the Government. He said UK MIRG had been “seriously disappointed” with the hearing and the lack of response they had had with Government departments, particularly DTI. Their main concern related to the UK Government’s proposal for a more restrictive policy on substitution and authorisation of chemicals than was included in the Commission’s original proposal. The UK Government were seeking the eventual substitution of all substances of very high concern regardless of whether or not it could be shown that the risk of the substance could be adequately controlled.

If agreed to, this policy of the eventual replacement of all substances which would attract a hazard or “of very high concern” classification would have long-term and far reaching implications for the metal industry. UK MIRG strongly felt that such a strategy would not advance the cause of sustainable development as it would cut off the ability of metals and alloys to contribute towards the more effective use of resources. UK MIRG had made such representations to DTI but had encountered a “total lack of support” for their arguments from the department.

UK MIRG were invited to inform the Committee by letter in due course on whether their concerns had been met by the Opinion of the European Parliament or by the UK Presidency’s compromise text.

Annex B

Letter from Sandra Carey, UK Metals Industry REACH Group (HSE Executive, International Molybdenum Association) to the Chairman

REACH and the Metals Industry

Further to our meeting with Lord Lewis on 7 September 2005, we wish to provide you with further detail for your consideration about the Authorisation aspect of REACH, which is a key unresolved issue for the UK metals industry. The meeting record of 7 September correctly indicates that the UK Government is proposing, in its September 2005 REACH Compromise Text, that ores and concentrates be exempt from Registration and Evaluation. This is useful progress, but these substances should also be exempted from Authorisation, and as yet, they are not.

In the original Commission proposal, Authorisation is a risk-based policy, intended to ensure proper control of the risks associated with certain hazardous substances OR encouragement of eventual substitution. The UK Government however, is strenuously promoting a hazard-based approach to Authorisation, seeking eventual substitution on the basis of hazard, even if the risks are properly controlled. Recent proposals by the EU Environment Committee go further, stipulating “proper control and progress towards phase-out after a single non-renewable five year authorisation period”.

Intrinsic hazard classification alone is an inadequate indicator of actual risk for metals and alloys. It is important for future value-added innovation in the metals sector that REACH adopts a policy on authorisation that is practical and risk-based. The driver should be net risk reduction, not simply hazard.

If ores and concentrates remain liable to Authorisation, it will prejudice against the development of future metal-based enabling technologies for society—such as fuel cells, photovoltaic energy systems, advanced telecommunications, bio-fuel plants, pollution control and remediation equipment, etc. The current inadequately sophisticated Authorisation policy must be re-designed to ensure that these innovative technologies, which support the EU wider global sustainable development objectives, are encouraged, not destabilised.

Both the Commission and UK Government have advised us not to be unduly concerned, as ores, concentrates and metals are not the prime target of the legislation and it would be many, many years before Authorisation may be sought to apply. This provides no comfort, as the stigmatisation of our products would be immediate. It suggests that our industries are to be targeted and prejudiced, as described above, for no tangible benefit, or reduction in risks to society, other than compliance with tick-box bureaucracy.

Persisting with an inadequate Authorisation policy for metals will unnecessarily damage not only UK and EU competitiveness, but also those of many developing nations, such as those of South Africa and Chile. The Heads of State of those nations have recently directly appealed to Prime Minister Blair to take action on the fact that metals don’t fit within the simple regulatory concepts of REACH. The social and infrastructure development programmes of developing countries, heavily dependent upon mining sector export revenues, will be needlessly prejudiced by an EU Regulation for which no credible evidence has been advanced to show that including minerals and metals will bring any benefit to human health and the environment over and above already existing legislation.

REACH threatens to disrupt global trade flows of key materials for the still present strategic European industries (ie aerospace, automobile, electronics, engineering, etc). European competitiveness will be eroded as companies have to compete even more aggressively for their raw material feedstock in a world marketplace with markedly more severe entry barriers for Europe. The majority raw material source for the metals sector is outside the EU. Non-EU suppliers will simply desist from supplying into the EU because they have multiple customers for their raw materials elsewhere (ie China, India, etc).

MIRG fully supports the drivers behind REACH, but to be workable for metals, the proposal must be amended to reflect the special properties of metals and alloys. Without amendment it will have the unintended effect of hindering the effective use of metals compared to less sustainable alternatives. This discrimination will result in socio-economic harm to the UK metals and alloys industries, with no net benefit to the EU environment and health. In its current form, REACH will also distort international trade, undermine EU competitiveness, and that of other developing nations.

In summary, to be workable for both the Authorities and the metals industry REACH must properly accommodate the special nature of metals and alloys—anything less will be a huge disservice to UK competitiveness and global trade flows. The Authorisation issue described above, plus the other key concerns indicated in Annex I attached, must be adequately reflected in REACH to permit metals and alloys to continue to play vital roles in further EU sustainable development policies, eg long-life products, increased recycling, efficient resource use, whilst still remaining internationally competitive and value-adding businesses based in Europe. Much is at stake.

To conclude on Authorisation, the appropriate treatment for ores and concentrates under REACH is:

Either:
- Exemption from Registration and Evaluation.
- Exemption from Authorisation.

(The above does not totally place ores and concentrates outside the Scope of REACH, because they remain liable to the restriction clauses)

Or:
- Exemption from Scope.

MIRG greatly appreciates the continuing concern shown by the House of Lords European Scrutiny Committee to properly address these complex issues.

MEMBERS OF THE UK METALS INDUSTRY REACH ALLIANCE
- Anglo American.
- BHP Billiton.
In REACH, “chemicals” covers all substances. The biggest industry affected by REACH is the EU inorganic substances industry, which uses ten times more substances in volume than what is usually understood to be the EU “chemicals industry”. The metals and alloys industry is the biggest EU inorganic industry, and is the EU industry most heavily affected by REACH in its proposed form.

Relatively minor changes in REACH will correct many of these adverse effects, without compromising the intended protection levels of health and the environment. These minor changes will greatly reduce the workload on the authorities and improves the chances of REACH being workable.

— Ores and concentrates—the naturally occurring complex raw materials of our industry are in the current scope of REACH. Because of the peculiarities of nature, many of them will require Authorisation. The workload associated with the inclusion of such complex materials will be daunting. The expected benefits will be negligible. There is no need for regulation additional to the IPPC Directive (96/61/EC). These raw materials should be excluded from REACH, as have other naturally occurring raw materials—oil, coal, gas.

— Secondary raw materials—the feeds for the very efficient EU metals recycling industry appear to be in the scope of REACH. And again, many of them will require Authorisation. This is will result in less recycling, and a less competitive EU recycling industry. Secondary raw materials should be excluded from the Scope of REACH.

— Metals are mostly used as alloys that are designed to have properties and risks that are different from those of their constituents. The special nature of alloys should be recognised in REACH.

— Metals and alloys are mostly used in product forms that pose very low risks to man and the environment. Metals and alloys in these low risk forms should either be excluded from REACH, as have been polymers, or should attract greatly reduced requirement for meeting Registration and Authorisation obligations.
— Volume-based **prioritisation** puts most burden on large volume industries such as ours. The prioritisation system should be risk-based, taking into consideration exposure, volume and hazard properties.

— The relation between **innovation and substitution** in metals and alloys is highly complex, requiring special consideration. It is important for future value-added innovation that REACH adopts a policy on Authorisation that is practical and risk-based. An over-simplistic policy on substitution would act heavily and disproportionately against the effective, safe and sustainable use of many metals, for which complex issues such as specific alloy behaviour, product form, speciation and exposure route can have an enormous influence on the risks associated with use.

### Letter from Lord Bach to the Chairman

Thank you for your letter of 10 November regarding the UK Metals Industry REACH Group and their concerns about the proposed REACH regulation.

UK Metals Industry REACH Group have asked why ores are subject to authorisation. Inorganic substances such as minerals and ores are regulated under existing chemicals regulations and this is why they have been taken forward to form part of REACH. The UK Presidency has put forward proposals to make clear that minerals, ores and ore concentrates are exempt from the requirements of registration and evaluation. This should greatly benefit the metals industry.

However, the authorisation provisions under REACH are intended to deal with substances of very high concern and therefore need to be flexible enough to enable the EU to respond to any new information about such priority substances. Because certain minerals and ores could contain carcinogenic compounds above a certain level, they could meet the criteria for authorisation. We appreciate that such compounds are not easily substituted, that is why the proposals allow for a pragmatic and proportionate approach to authorisation which is risk-based. The proposals as they stand allow for prioritisation to ensure the most dangerous substances are dealt with first. Ores are likely to be of lower concern and therefore lower priority for any further action. Furthermore, uses or categories of uses may be exempt from authorisation requirements. Under the Presidency compromise text, the establishment of such exemptions would take account of the proportionality of the risk to human health and the environment related to the nature of the substance, such as where the risk is modified by the physical form. This exemption could therefore apply to metals in the massive form if appropriate.

REACH is a high priority for the UK Presidency. We are working closely with stakeholders, the European Parliament, Member States and the Commission in order to secure an agreement that is workable and based on an effective balance between economic, social and environmental considerations.

24 November 2005

### Letter from Lord Bach to the Chairman

I am writing to inform you of the latest developments on the above dossier ahead of the Competitiveness Council on 13 December 2005 at which the UK Presidency is aiming to achieve political agreement. As you may be aware we had to delay the vote from 29 November to allow all Member States, particularly those with newly elected Governments, time to finalise their positions.

Since I last wrote to you in detail on 25 September, the European Parliament voted through a package of First Reading amendments on 17 November. The package, in most of the key areas, is very similar to the (revised) UK Presidency compromise text, tabled in Council on 28 October 2005.

On registration, the European Parliament’s Registration package is very similar to the UK Presidency text. Both texts include a targeted approach to the registration of 1–10 tonne substances whereby registrants need only provide a full registration package (Annex V) if the substance meets certain criteria (eg it is likely to be carcinogenic).

The Parliament and Presidency texts both put forward similar provisions with regard to “One Substance One Registration” (whereby registration costs are reduced via the sharing and joint submission of data). Both texts include the possibility of opting out of joint submission—for example in cases where registrants will incur disproportionate costs for so doing—though the Parliament’s approach seems to offer more flexibility for registrants to also opt out of sharing the data in the first place.

On Evaluation both the Parliament and the Council have taken similar approaches. Here the central European Chemicals Agency has been given a greater role to ensure that evaluation is carried out more efficiently and consistently across the EU.
We are therefore confident that the core elements of the registration and evaluation amendments will form part of the package to be agreed at Council on the 13 December.

Perhaps the main difference between the approach of the Parliament and that of the Presidency compromise concerns the Authorisation regime (the part of REACH that would permit the use of certain substances of very high concern only if they meet certain criteria). In contrast to the Presidency text, the Parliament’s First Reading provides for mandatory substitution if alternatives are available, even if the socio-economic case against substitution of this kind is strong or the substance can be shown to be “adequately controlled”. Both texts provide for review periods of each authorisation granted, but the Parliament’s text sets an explicit deadline (five-year reviews), whereas the Presidency text opts for a case-by-case approach. Many Member States consider the European Parliament amendments too burdensome, particularly the requirement to have five-yearly reviews. We are hopeful we can achieve agreement on authorisation that is closer to our compromise text. Any proposals to strengthen the role of substitution must be workable and not impose unnecessary costly burdens on industry.

REACH is one of the UK Presidency’s major priorities. As Presidency we will continue to work with the European Commission, the European Parliament and Member States in order to find a workable compromise on REACH that protects public health, the environment and industrial competitiveness.

8 December 2005
To facilitate adjustment, the Commission has offered restructuring grants to sugar processors who will be compensated at levels which decline from €730 to €420 over four years. Where processing plants close the related quota will be extinguished. This is intended to bring about the necessary reduction in supplies by making it attractive for the highest cost plants to close, leading to an increase in the overall efficiency of the industry. One effect is likely to be the end of sugar beet production in some Member States. The Committee, whilst noting the concerns of some Member States about the future of their sugar industries, supports the Commission’s proposal and the implicit changes in the pattern of sugar production within the EU.

Part of the Commission’s proposals includes the phasing out of the cane-refining margin. The Committee heard with concern that this, combined with the possibility that sugar beet processing factories might otherwise compete in the market for raw sugar, could threaten the survival of existing EU cane refiners, whose businesses would otherwise be competitive in a global unregulated market. We believe that the balance between sugar beet and cane processing within the new regime should be made more equitable and we suggest the Commission should consider how this could be done.

**Retention of Quota**

The Commission’s proposal retains quotas and offers an increase in quota of 1 million tonnes which will be sold on the basis of a once for all payment. The Committee notes that there is widespread resistance to the removal of quota restrictions among Member States but believes that if the price cuts and restructuring process reduce production sufficiently quota will become redundant and could be removed. In that context the requirement to leave the new regime unchanged until 2014 is inappropriate. The Committee is, however, aware and concerned that quota would become necessary if price cuts proved insufficient in reducing production.

**Compensation Payment**

In common with the reform packages offered for other commodities the proposed sugar reform envisages direct payments to sugar producers amounting to 60 per cent of the price cut. This is generous, especially to the less efficient producers. The direct payments are to be administered within the framework of Single Farm Payments that exist in Member States. This means that, in most countries, they will continue to be based on historic criteria and go to former sugar producers. In the United Kingdom, in contrast, the historic basis will be phased out and the payment for sugar will be merged with other entitlements and paid on a regional basis. The Committee shares the concerns of some witnesses that these payments might not be completely decoupled in all Member States. If they are not, sugar growers in other Member States, including the United Kingdom, may be placed at an unjustified competitive disadvantage. Partially decoupled payments lead to the continuation of a partially distorted market. We strongly recommend that all direct payments relating to sugar should be decoupled.

The Committee accepts the need for transitional adjustment aid to sugar producers, however, we believe that such payment should be limited to assisting the process of adaptation and must not become a permanent payment to farmers. There is no net advantage in terms of cross compliance since all farmer recipients already have to observe the relevant conditions in order to receive Single Farm Payments that resulted from earlier reforms. We recommend that a date be set by which direct payments relating to the new sugar regime would be phased out.

**Sugar Protocol Countries**

The reform of the sugar regime confronts countries that, under the Sugar Protocol, have been entitled to sell annually 1.3 million tonnes to the EU at the level of prices paid within the EU, with a sharp reduction in revenue. The 18 countries concerned form a diverse group. Many suffer from low incomes and their revenue from sugar not only provides foreign currency but also underpins a substantial level of employment. Some countries will be able to compete effectively at the new price and may benefit if, as a result of lower EU exports, sugar prices in the world market rise. Some may be able to diversify their sugar industries finding new uses for sugar as a source of locally produced energy. In others, sugar production may become wholly uneconomic.

The Committee shares the concerns expressed by witnesses from the ACP countries. Sugar plays a very different role in the economies of each of the countries concerned. The Commission proposes that adjustment assistance should be given in the form of “Action Plans” devised with each country and supported by the Development Directorate of the Commission.

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7 See Defra RIA pp 114.
8 ACP—African, Caribbean and Pacific Countries—who were signatories to the Lomé Convention and benefit from the Sugar Protocol.
Changes are inevitable as the sugar regime is brought into line with other CAP regimes. Prices will be allowed to fall and production decisions made in response to market forces. Such changes will lead to lower prices which will result in lower revenues for Sugar Protocol countries. Sugar producers in these countries, like sugar producers in the EU, will have to adjust to this new situation. Simply maintaining the sugar price in the Sugar Protocol countries would obstruct rather than promote adjustment. The vulnerability of these economies to an EU policy regime demonstrates the need for a more widely based process of economic development. However, transition cannot happen immediately. It needs to start now but must be supported for a significant number of years.

Whilst the Committee agrees with the Commission’s analysis of the ACP situation there are serious grounds for concern about the effectiveness of the Commission’s proposed solution. The funds available in the first six months of the reformed regime, €40 million, fall far short of the loss of revenue from lowered sugar prices. However, they are a seed corn to begin transition upon which further action can be built. For later periods there are promises of continuing support, but no firm commitments can be given until a settlement is reached about the future financing of the EU itself.

Effective development programmes require joint planning and execution between the recipient country and the Commission. Understandably the Sugar Protocol countries look for firm assurance that the EU will find appropriate resources and workable support mechanisms. Simply transferring money is not enough. However, the Committee has not seen robust evidence of the capacity of DG Development to provide and monitor this support.

The Committee accepts the need for assistance to be tailored to the needs of each country and designed to facilitate each country’s long-term economic development. However, we are concerned that price reductions will take place before any adjustment assistance is made available. We believe that the funding provision is unsatisfactory. We seek assurance that more support for adjustment will be provided and evidence that this support will be effective in promoting sustainable economic growth among the countries affected.

ENVIRONMENTAL IMPACT AND ALTERNATIVE LAND-USE

The reform of the sugar regime will have a significant impact on land use in areas where sugar beet proves no longer to be viable. What happens to the land released will depend upon the competitiveness of alternative land uses. The range of alternative uses will depend upon the situation of the farms affected but in many cases this seems likely to be an extension of cereal production. The Committee notes the concern of some witnesses that habitats valuable for some species of wild life will be lost. The area concerned is not known with certainty although it will be only a small proportion of the total farmed area.

Several witnesses drew the Committee’s attention to the potential use of sugar beet as a source of ethanol. Recent rises in the price of oil have made biofuels more attractive but the volatile nature of that market discourages investments in alternative sources which may ultimately find themselves competing with lower oil prices than prevail today. It was suggested that imposing a renewable energy requirement on the transport industry could provide a firmer basis for development of the biofuel industry. The Committee noted this suggestion and believed it deserved fuller analysis. However, we concluded that in establishing a biofuel industry, it was important that sugar should be seen as only one potential source of raw material and be used only where it could compete and where it could do so without specific subsidy.

ECONOMIC COST OF REFORM

Evidence provided in Defra’s Regulatory Impact Assessment indicates that the new regime will significantly reduce the economic cost of support for the sugar sector, from £4,500 million to £2,100 million. However, a substantial net economic cost remains. In effect the EU is made poorer by maintaining a larger sugar industry than would survive in a fully liberalised market. The Committee concludes that whilst we welcome this reform, it must be seen as only a step towards a sugar industry that is able to compete in a world market without the need for levels of protection substantially greater than those given to other sectors of the EU economy.

The Committee continues to hold the proposals under scrutiny. We would welcome a full report of the outcome of the discussions at the Council meeting on 22–24 November as soon as possible after the Council.

10 November 2005
Letter from Gareth Thomas MP, Parliamentary Under-Secretary of State, Department for International Development

I am writing to thank you for your letter of 10 November, setting out the conclusions that you have reached from the evidence presented to your inquiry.

I thought it would be helpful to set out developments since the submission of the Explanatory Memorandum in July 2005, and the process going forward. On 22 June 2005 the Commission released a draft Regulation setting out their proposals for the provision of transitional assistance in 2006. This Regulation contained the financial reference amount of €40 million (£27.1 million). All aspects of the Regulation have been agreed upon by Member States and the European Parliament, apart from the level of funding for 2006 assistance. This will be finalised as part of the broader negotiations between Member States and the European Parliament over the European Community’s 2006 budget. There have been no official proposals by the Commission as yet on levels of funding for 2007–13. This would in any case be determined as part of the broader negotiations on the next Financial Perspective.

Once this issue of funding is resolved, we are aiming for approval of the Regulation by the Committee of Permanent Representatives (COREPER) and the Plenary of the European Parliament in early December, in time for approval by the General Affairs and External Relations Council on 12 December. I would therefore be grateful if your Committee could re-consider sugar reform at your next available meeting, prior to this date. The Regulation would then be implemented in the beginning of 2006, at about which time Africa Caribbean and Pacific (ACP) countries should be completing their country plans.

The approach outlined by the Commission in their proposal for an Action Plan (released in January 2005) and the Regulation itself, is an appropriate one for the delivery of transitional assistance. Individual country plans will allow assistance to be tailored to each country. The involvement of the countries themselves and the Commission in the drafting of these plans, should also ensure that they are appropriate to individual country needs. Whilst it is unfortunate that total levels of funding are not yet known, this is a function of the timetables under which the relevant budget processes operate. Within the parameters of the Presidency, we will be aiming for agreement to be reached in a timely manner, and for adequate levels of assistance to be provided.

23 November 2005

Letter from Lord Bach to the Chairman

Thank you for your letter of 10 November summarising the emerging conclusions of the inquiry by Sub-Committee D (Environment and Agriculture) into the proposed reform of the EU sugar regime, to which I myself gave evidence on 12 October.

I am extremely grateful to you and the Committee for sharing these with us ahead of the November Agriculture and Fisheries Council, when we hope that it will be possible for agreement to be reached on the Commission’s approach.

I am also grateful for the very clear and constructive analysis and support of the Commission’s aims in these negotiations, which we, as Presidency are trying to bring to a successful conclusion.

I hope you will understand my not responding in detail at this stage. But I should be more than happy to agree to your request to let you have a full report of the outcome of discussions at the Council meeting as soon as possible afterwards.

May I conclude by thanking you once again for this very valuable and timely contribution to our preparations for the Council, both as Presidency and in representing the United Kingdom interest.

22 November 2005

Letter from the Chairman to Gareth Thomas MP

Thank you for your letter dated 23 November which Sub Committee D (Environment and Agriculture) considered at its meeting on 30 November.

As you are aware, the Committee is undertaking an in-depth inquiry into the reform of the EU sugar regime and the proposed accompanying measures for Sugar Protocol countries. Your letter provided us with a useful update on the progress of the Sugar Protocol proposal in advance of publication of our report on 12 December.

We note that you are seeking scrutiny clearance ahead of possible approval of the proposal at the General Affairs and External Relations Council (GAERC) on 12 December. However, the Sub-Committee has recommended that the report be made to the House for debate; therefore, under the terms of the Scrutiny
Reserve Resolution, we continue to hold the proposal until the report has been debated and our scrutiny has formally ended.

I will endeavour to send you the Committee’s report on the sugar reform in advance of the GAERC and trust that you will take note of our recommendations and conclusions during your preparation for the Council.

1 December 2005

Letter from Lord Bach to the Chairman

In my letter of 18 November replying to yours of 10 November, I promised to let you have a full report of discussions at the Agriculture and Fisheries Council on 22–24 November.

I am pleased to be able to confirm that the Council succeeded in reaching overwhelming agreement on a radical reform package, closely based on the proposals tabled by the European Commission on 22 June, on which your Committee’s inquiry is based.

This is the first substantive sugar reform in nearly 40 years and marks a major step change by aligning the regime with other recent CAP reforms. It also introduces welcome new elements of market orientation and competition which should put the sector in a much more sustainable position and help contribute to the achievement of the EU’s wider trade and development objectives, particularly in the context of the WTO Doha Round.

Agreement was made possible by a Presidency compromise since circulated as document 14982/05. Formal adoption of legislative texts reflecting this outcome will take place as soon as the European Parliament has delivered its Opinion as required by the consultation procedure.

Although the total price cut will now be 36 per cent instead of 39 per cent, the main grower compensation remains fully decoupled and at the same budgetary cost as before. There is, however, specific recognition of the differential impact of price cuts in the UK and other Member States which previously had higher derived prices resulting from their deficit area status. 60 per cent of this premium will be added to compensation payments in those Member States in the first four years of reform.

The initial price cut for both processors and grower is unchanged in 2006–07, but new interim steps are introduced in 2007–08 and 2008–09 prior to the final cut in 2009–10.

This re-phasing has two main effects: it allows more money to be raised for restructuring through the processor levy; and it also provides more time for ACP and LDC suppliers to adjust by keeping their prices constant for the first two years of reform.

The extra funds available for restructuring will allow the rate of aid to be maintained at 730 euro/tonne in 2007–08, as well as providing for additional diversification aid at regional level over and above the main payments. A minimum of 10 per cent of the basic restructuring aid is also now reserved for sugar beet growers and machinery contractors to compensate them for the loss in value of their specialised equipment when production is abandoned.

Other changes to the restructuring fund provide for more flexibility in terms of partial closure or re-use of buildings, but at reduced rates of aid. There is also clarification of the role of Member States in approving company plans and the kinds of actions that can be required in terms of environmental and social issues, including re-training and redeployment.

Apart from this, Member States in which more than 50 per cent of quota is being given up can qualify for additional nationally funded top-up aid can also be authorised in certain circumstances.

Other changes include:

— deletion of the 10 per cent minimum beet price flexibility in Article 5 paragraph 1 of the basic Regulation;
— the introduction of a limited safety net intervention scheme for four years, with a ceiling of 600,000 tonnes a year at a price set at 80 per cent of the reference level for the following year;
— additional quota in lieu of C sugar for 10 Member States not included in the earlier allocation key, bringing the possible total to 1.1 million tonnes;
— additional isoglucose quota for 3 Member States, in return for a payment of 730 euros/tonnes;
— a reduction to 50 per cent of the levy contribution payable by the isoglucose sector;
— new assurances about the availability of sugar at competitive prices for non-food uses;
— new assurances about the possibility of exports within the revised WTO limits;
— additional clarification of the circumstances in which existing safeguard provisions might be invoked for imports under Everything But Arms where fraud is suspected (though the safeguard provisions themselves remain unchanged and no quantitative limits are introduced);
— a new transitional aid for traditional cane refiners to adjust to new market conditions, set at 150 million euros in total up to 2009–10.

The Government regards all these changes as consistent with the central aims of the reform and many of them as meeting specific concerns raised by your Committee and the separate, now published, Commons Efra Select Committee inquiry, to which we will be making a formal response in due course. It believes that the package as a whole will lead to long term economic benefits for the EU as well as for our trading partners. The partial RIA which we submitted with our original memorandum will be updated to take account of the final agreement.

The question of accompanying measures and transitional assistance for ACP Sugar Protocol Countries, on which DFID lead, was not under discussion at this Council and will be considered in the General and External Affairs Council. In these discussions it remains the Government’s objective to secure good, timely arrangements which are acceptable to the countries concerned and which effectively help them to adjust to the reform which has now been agreed.

9 December 2005

RESTRICTIONS ON GM MAIZE AND GM OILSEED RAPE (8633/05, 8634/05, 8636/05, 8637/05, 8638/05, 8639/05, 8641/05, 8642/05)

Letter from Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA to the Chairman

I am writing to inform you of an issue which is likely to come before the Environment Council in June, probably as “A” points. This concerns proposals requiring Austria, France, Greece, Luxembourg and Germany, to repeal their respective decisions, which have been in place for a number of years, to prohibit or restrict the use and sale of certain approved Genetically Modified Organisms (GMOs).

Votes on these proposals have previously been taken in Regulatory Committee and the UKs voting position has not changed. An Explanatory Memorandum was prepared covering these eight proposals and submitted on 16 May 2005 but as the European Scrutiny Committee is still in the process of being re-established it is unlikely that this can be considered before the Council meeting on 24 June. In the circumstances, it is clearly unfortunate that scrutiny procedures cannot be completed but I wish to inform the Committee of the Government’s decision to proceed.

9 June 2005

Letter from the Chairman to Elliot Morley MP

Thank you for your Explanatory Memorandum of 17 May which Sub-Committee D (Environment and Agriculture) considered at their meeting on 15 June in advance of the June Agriculture and Fisheries Council.

The Committee welcomed the opportunity to scrutinise these proposals which arose through the comitology procedure. The Committee decided to clear the documents from scrutiny but expressed strong concerns about the decision-making procedure used. Despite recent EU legislation the use of Genetically Modified Organisms (GMOs) in Europe remains controversial and not all Member States favour their exploitation. Indeed there is an argument that the marketing and use of these crops should be an issue for Member States to decide and not the EU.

It is therefore of heightened importance that the decision-making process relating to these GMOs is as democratic and transparent as possible. We would like to see the comitology procedure opened up to allow some parliamentary scrutiny of GM legislation of such political and practical significance. We recognise the difficulties faced by the Government in ensuring this when the proposed measures are often not made available to Member States more than a few days before the relevant comitology committee (Government Response to para 176 of our Review of Scrutiny of European Legislation, 1st Report Session 2002–03, HL 15). We also note, however, the Government’s commitment to enabling scrutiny committees to examine particularly significant proposals going forward under comitology procedures.
Given the highly political and controversial nature of GM legislation, we request that in future every effort is made by the Government to deposit for scrutiny all documents pertaining to GM legislation. We also ask to be kept fully informed of the outcome of committee meetings where such legislation is discussed.

21 June 2005

Letter from Elliot Morley MP to the Chairman

Thank you for your letter of 21 June regarding the decision making process in relation to genetically modified organisms (GMO) and the scrutiny of all documents pertaining to GM legislation.

You say in your letter that the marketing and use of GM crops should be an issue for Member States to decide and not the EU and request that in future every effort is made to deposit for scrutiny all documents pertaining to GM legislation. Under EU legislation each proposed release of a GM crop or GM food ingredient for commercial marketing is subject to a detailed safety assessment involving all 25 EU Member States. Approval will only be granted if the crop in question is considered not to pose an unacceptable risk to human health or the environment. Decisions are taken within a set time frame based on scientific assessment of the potential risks. The aim is to reach unanimous agreement, though if necessary final decisions can be taken by qualified majority, either at 2001/18 Regulatory Committee or at Council. If Member States cannot reach a decision by qualified majority the Commission are legally obliged to take the decision based on scientific evidence. These are the procedures agreed by Member States and laid down in Council Decision 1999/468/EC.

I agree that the time allowed for Parliamentary Scrutiny is very limited because Member States are only notified a short time in advance of when the proposed measures are due to go before the relevant comitology committee. However, we could offer to provide you with an Explanatory Memorandum on proposed GM legislation following discussion at the official level 2001/18 Regulatory Committee, instead of waiting until the issuing of the final proposal for the consideration of Council (the current practice). This should give the Committee enough time in which to consider a specific proposal, as it is often several months between the two meetings.

3 July 2005

Restrictions on the Marketing and Use of Certain Polycyclic Aromatic Hydrocarbons and Extender Oils and Tyres (7190/04)

Letter from Lord Bach, Minister for Sustainable Farming and Food, DEFRA to the Chairman

Following the recent deposit of Council document 9840/05, which sets out the result from the First Reading in the European Parliament, I am writing to inform your Committee of the current position on this dossier. The substance of the original proposal was set out in Explanatory Memorandum 7190/04 of 26 March 2004 which was cleared by the House of Commons Committee on 31 March 2004 and the House of Lords on 6 April 2004. Following discussion in the Council Working Group and the Environment Committee of the European Parliament, the Presidency presented a compromise text to an informal meeting of representatives of the Council, the European Parliament and the Commission. The text reflects amendments which provide for clearer guidance to the Commission on the conditions under which it should consider initiating implementing measures including derogations permitted and an expected timescale for implementation. These amendments are all in line with the UK negotiating objectives.

The European Parliament adopted the compromise amendments at its plenary meeting on 9 June 2005. The dossier is now expected to be adopted as an “A” point at one of the Councils scheduled for July.

7 July 2005

Shipments of Waste (11145/03, 7410/04)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, DEFRA to the Chairman

Following the recent deposit of Council document 13680/05, which sets out the result from the Second Reading in the European Parliament, I am writing to inform your Committee of the current position on this dossier. The Parliament proposed a number of amendments at the Second Reading, particularly regarding the relationship between ships destined for dismantling and the Regulation and the enforcement of the Regulation more generally. The “ships” issue had been considered during the First Reading by the Parliament (see EM
11145/03 of 14 September 2003 and SEM of 29 March 2004 and EM 7410 of 2 April 2004 and Minister’s letter of 4 June 2004), and was re-introduced during their Second Reading consideration. This issue was the main obstacle to reaching a Second Reading agreement, since some Member States felt that this is a problem that requires a global solution and that ongoing work at the international level, in particular within the International Maritime Organisation, to develop a an international mandatory instrument should be the focus of EU efforts. Presidency suggested the agreed compromise, involving a joint Council and European Parliament Declaration that Member States would do their utmost to increase ship dismantling capacity in the EU and to ensure good progress to establish mandatory requirements at the global level.

The Council Common position has also been amended to include provisions that address MEP concerns about poor enforcement of the Regulation by Member States. The compromise package requires Member States to carry out physical inspections of waste shipments and to co-operate in the detection of illegal waste shipments (existing practices in the UK).

I expect the Council to agree in due course, the changes proposed by the Parliament at its Second Reading. The new Regulation is expected to enter into force early next year.

2 December 2005

SUSTAINABLE DEVELOPMENT (9507/05)

Letter from the Chairman to Elliot Morley MP, Minister of State for Climate Change and Environment, DEFRA

Thank you for your Explanatory Memorandum of 16 June regarding the above proposal. Sub-Committee D (Environment and Agriculture) considered the Communication at their meeting on 13 July.

The Committee considers the development of a comprehensive EU sustainable development strategy to be essential. We therefore were pleased when the Secretary of State for Environment, Food and Rural Affairs confirmed during her evidence to us on 6 July that the UK would be promoting sustainable development throughout their Presidency. We were also pleased to hear that Defra would pursue adoption of a new sustainable development strategy as one of their five Presidency priorities.

Given the importance the UK Presidency is placing on sustainable development we are interested to know how Defra intends to ensure the successful implementation of sustainable development across all Government departments, given that it is a wide reaching initiative which cuts across all areas of Government policy. The Committee would also appreciate being kept informed on progress on the new sustainable development strategy.

13 July 2005

Letter from Elliot Morley MP to the Chairman

Thank you for your letter of 13 July regarding the EU sustainable development strategy and Commission proposal on a declaration of principles.

As you will be aware, the European Council adopted the declaration of principles at its June meeting. We expect these to be integrated into the Commission’s forthcoming proposals for a revised EU sustainable development strategy, expected this Autumn. We are looking for a strategy that is both more ambitious and unites currently disparate policies and objectives into a single coherent document. Whilst the Commission’s proposal will not appear until some way into the UK Presidency, we nonetheless hope to have it presented to and discussed by several key Council formations before it is finally adopted during the first half of next year.

You also ask about how we intend to ensure the successful implementation of sustainable development across Government departments. Chapter 7 of the new UK Sustainable Development Strategy (Securing the Future) contains a set of commitments designed to ensure that all departments put sustainable development into practice. These include a requirement on central Government departments and their executive agencies to produce focused sustainable development action plans based on the strategy by December 2005, and to report on their actions by December 2006, for example, in their departmental annual reports and regularly thereafter.

The strategy committed to strengthen the Sustainable Development Commission (SDC) and expand its role to act as an independent “watchdog” looking at Government’s progress on the strategy. Officials are currently working with other Departments, the SDC and the Devolved Administrations to put this new role into effect.

A new set of indicators were outlined with the Strategy through which to review progress and, along with other evidence, determine whether we are succeeding in our goals or whether we need to develop different policies and act accordingly. These indicators are closely linked to Public Service Agreement targets across
Government. A baseline assessment of the indicators, from which future progress will be reviewed, was published on 30 June in Sustainable development indicators in your pocket, a copy of which is enclosed (not printed).

26 July 2005

TARIFF QUOTA FOR IMPORTS OF COFFEE SOLUBLES (11110/05)

Letter from Lord Bach, Minister for Sustainable Farming and Food, DEFRA to the Chairman

I am writing to give you details of the above proposal, which was adopted as an A point at the Agriculture and Fisheries Council on Monday 19 September.

The proposal abolishes the tariff quota for imports of soluble coffee covered by CN code 2101 11 11 from 1 January 2006 (see Explanatory Memorandum 11110/05 of 30 August 2005).

I attach great importance to the work of the Committee and I very much regret that the Explanatory Memorandum could not be considered due to Recess and before its approval at the Council of Ministers. The Regulation requires the tariff quota to be revised no later than three months before the date of closure of the annual quota, otherwise the quota automatically extends for a further year. As the date of closure was 31 December this meant that the proposal had to be adopted before 1 October. The proposal was not contentious and was supported by virtually all Member States, including the UK. In the circumstances it was clearly desirable for the proposal to be adopted by the Council. This is not a step that was taken lightly. I hope that the Committee will accept my apologies for any appearance of discourtesy.

27 October 2005

THEMATIC STRATEGY ON AIR POLLUTION (12735/05)

Letter from the Chairman to Ben Bradshaw MP, Parliamentary Under-Secretary of State, DEFRA

Thank you for your Explanatory Memorandum of 28 October which Sub Committee D (Environment and Agriculture) considered at their meeting on 23 November.

The Committee was interested in the suggestion that, under the strategy, more flexibility would be given to Member States to implement air pollution legislation. Although we welcome legislative action being taken at a level as close to citizens as possible, it will be important to ensure that Member States do implement pollution control measures promptly. Therefore what time limit do you envisage would be set upon Member States to comply with air pollution legislation?

The Committee was further interested in the strategy’s proposal for control of human exposure to PM$_{2.5}$ in ambient air. These fine particles are particularly abrasive to the human respiratory system. We consider it particularly important that any legislation resulting from the strategy takes due account of this and imposes a stringent cap on PM$_{2.5}$ particles.

The Committee decided to retain the proposal under scrutiny and we await receipt of the Regulatory Impact Assessment (RIA). The Committee would also be particularly interested to receive further briefing from your officials who work on the strategy and my office will be in touch with your department to arrange.

28 November 2005

TOLUENE AND TRICHLOROBENZENE (9123/04)

Letter from the Chairman to Rt Hon Alun Michael MP, Minister for Rural Affairs and Local Environmental Quality, DEFRA

Thank you for your Supplementary Explanatory Memorandum of 21 February which Sub-Committee D (Environment and Agriculture) examined at its meeting on 16 March.

The Committee decided to clear the proposal from scrutiny. We are aware that the Directive only applies to certain products, however, the Committee would like to know whether any pharmaceutical companies were consulted on this proposal and, if so, what their reaction was to the proposal.

We look forward to receiving this information.

17 March 2005
Letter from Rt Hon Alun Michael MP to the Chairman

Thank you for your letter of 17 March in which you confirm the lifting of the scrutiny reserve on the above document.

The Committee asked whether any pharmaceutical companies were consulted on these proposals and if so, their reaction.

In line with Cabinet Office guidance a 12 week public consultation was conducted with the consultation documents placed on both the Defra and DTI websites and therefore available to any interested parties to respond to. Specifically the consultation was sent directly to three organisations involved in pharmaceuticals Boots Plc, 3M and the British Medical Association—organisations that have previously expressed an interest in this area of legislation.

No responses were received. This is to be expected as the EU Risk Assessment for TCB conducted by the Danish Competent Authority indicated there was no use in the pharmaceuticals area. For toluene the use in pharmaceuticals was not considered in the risk assessment.

6 April 2005

TOTAL ALLOWABLE CATCHES (8258/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, DEFRA to the Chairman

I am writing to inform you of a proposal to amend the TAC (total allowable catch) and quota annual Regulation, and the deep sea Regulation, which is likely to come before the next available Council, probably as an “A” point.

The proposal covers a number of areas related to total allowable catches and associated measures. Firstly it is correcting mistakes that occurred in the drafting of the TAC and quota Regulation, such as the new TACs for ling and northern prawn. The regulation mistakenly established a derogation for vessels fishing with more selective gears in the Kattegat and Skagerrak to the North Sea. The different circumstances in the North Sea meant that this error could have led to an increase in fishing effort in the threatened North Sea cod stock. Secondly, the amendment will take into account additional fishing opportunities that have been agreed with Greenland and Iceland since the publication of the TAC and quota Regulation. In the deep sea regulation the deep sea shark TAC was increased to allow for unavoidable bycatch in the fishery and prevent unnecessary discarding, and the roundnosed grenadier TAC was amended to correct the allocation of the TAC to the Member States. An Explanatory Memorandum was prepared and submitted to Parliament on 24 May 2005.

The Explanatory Memorandum was delayed due to the election, so it was not possible for the Scrutiny Committee to consider it before the May Council. We consider the text to be of a non-contentious nature, likely to be agreed by all parties. Amendments will prevent unwanted and unintended fishing to take place on certain deep sea species, and on cod in the North Sea. It will also allow UK fishermen to take up opportunities in Iceland and Greenland waters as soon as possible. We regret that scrutiny could not be completed in time for this month’s Agriculture and Fisheries Council, but I believe that it would not be in the UK’s interests to delay the adoption of the proposal and the UK will therefore be prepared to agree the regulation at the May Council.

27 May 2005

TSEs: PREVENTION, CONTROL AND ERADICATION (15874/04, 11408/05)

Letter from the Chairman to Ben Bradshaw MP, Minister for Nature Conservation and Fisheries, DEFRA

Thank you for your Explanatory Memorandum of 31 January which Sub-Committee D (Environment and Agriculture) examined at its meeting on 16 March.

The Committee is concerned by aspects of this proposal. Article 6a would force Member States to instigate permanent breeding programmes “to select for resistance to TSEs in their ovine populations”. The Committee is not aware that there is sufficient published scientific evidence at this time to establish the effectiveness of genetic selection of ovines for TSE resistance to justify a permanent programme. Regard needs to be taken of reports from breeders of flocks of “high genetic merit” of the effects upon conformation and breeding abilities of the reduction in the gene pool. The Committee would be very interested to receive the current scientific
evidence relating both to the effectiveness of genetic selection and its effects upon the quality of the breeding flock.

The Committee shares the Government’s concerns over the proposed amendments to Article 12 which would place official movement restrictions on all bovine, ovine and caprine animals in holdings where scrapie is suspected. Such a restriction could have severe implications for the functioning of mixed sheep and cattle farms in the UK. Like the Government, we would seek scientific evidence to confirm whether such a restriction would be proportionate to the TSE risk.

The Committee decided to hold the proposal under scrutiny. We look forward to receiving the information requested. We also ask to be kept informed of developments on the proposed restrictions on holdings where scrapie is suspected, and also on the proposed re-definition of mechanically recovered meat which you raised concerns over in your Explanatory Memorandum.

17 March 2005

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter dated 17 March, requesting further information on elements of the proposal. I respond to your questions in the order they appear in the letter:

Breeding Programmes

The Committee has queried whether sufficient scientific evidence existed to support the introduction of permanent genotype based breeding programmes to select for resistance to TSEs in ovine populations in all Member States.

As paragraphs 34–37 of the Explanatory Memorandum explain, the Government’s proposals for a long term plan for a compulsory breeding programme were subject to a detailed public consultation last year. As part of that consultative process, the Government’s independent advisory body, the Spongiform Encephalopathy Advisory Committee (SEAC), were asked specifically to consider whether breeding for resistance remained appropriate and, in addition, for their views on the four strategic options contained in the consultation document itself.

These issues were considered by the SEAC Sheep Sub Group in July 2004, who concluded, based on existing scientific knowledge, that breeding for resistance remained appropriate but that such strategies should be subject to continued review in the light of scientific developments. These conclusions were subsequently endorsed by the full SEAC Committee in September 2004, and a copy of the final SEAC Sheep SUB-Group statement is attached for your information (see Annex A).

The Government therefore remains supportive of the proposal to provide a permanent legal basis for breeding programmes to select for resistance to TSEs in sheep and I hope the Committee is reassured that we have sought independent scientific advice on the continued appropriateness of such breeding strategies.

Movement Restrictions

On the proposed amendments to Article 12, we raised our concerns about the potential application of movement restrictions to bovine animals with the Commission. I am pleased to report that the Commission has now amended its proposals so that official movement restrictions will only be placed on ovine and caprine animals on holdings where scrapie is suspected. This reflects the current position under Commission Regulation 1492/2004.

Definition of “Mechanically Separated Meat”

The FSA initially sought clarification from the Commission on this definition being included in the TSE regulations. The Commission has confirmed that the definition of “mechanically separated meat” in Regulation (EC) No 999/2001 provided for in other Community legislation on food safety is applicable in the context of TSE eradication measures. The FSA have now removed their reservation.

Please advise me if you require any further information and whether you are able to endorse the proposal.

6 April 2005
Annex A

SEAC SHEEP SUBGROUP

STATEMENT—OCTOBER 2004

Defra is consulting stakeholders on four strategic options for the future operation of the National Scrapie Plan (NSP). The SEAC sheep subgroup’s views were sought as part of this consultation.

The subgroup concluded that the strategy of the NSP underlying breeding for scrapie resistance remains appropriate. However, the basis for the strategy should be kept under review in the light of emerging scientific findings with respect to the possible detection of scrapie infections in animals of genotypes currently thought to be most resistant to infection.

The subgroup was of the view that those strategies that reduced the prevalence of infection in the national flock most rapidly were the most desirable. On this basis Option A was considered inadequate. The subgroup considered that although Options A and B addressed scrapie in VRQ sheep these would not reduce scrapie in ARQ sheep, which may be more susceptible than assumed in the modelling, or the hypothetical possibility of BSE in sheep, which appears to preferentially target the ARQ allele. The subgroup considered a solution close to Option D was the most scientifically desirable given the importance of reducing the prevalence of scrapie and the potential risk of BSE.

The subgroup recognised there may be potential practical difficulties and in some cases genetic constraints for the sheep industry as well as cost issues associated with option D and therefore recommended that an additional option, Option E (mandatory Option B combined with voluntary Option D) be considered. This option, together with a further option, Option F (Option E combined with voluntary ewe genotyping and removal of VRQ ewes) were modelled. The subgroup considered the outcome of the additional modelling work and agreed that Option D remains the most scientifically desirable given the importance of reducing the prevalence of scrapie and the potential risk of BSE.

SEAC sheep subgroup

Letter from Ben Bradshaw MP to the Chairman

I am writing to inform you of new developments on the above dossier which has been split in two to allow the speedy adoption of a legislative act just extending the Commission’s option of adopting transitional measures until 1 July 2007. The proposal, to extend transitional arrangements established under Article 23 of Regulation (EC) No 999/2001 (TSE Regulation), is likely to come before the Council at the end of May, probably as an “A” point.

The European Parliament (EP) delivered its opinion at First Reading on 10 May 2005, adopting a number of amendments to the original (wider) Commission proposal 15874/04 (see Explanatory Memorandum 15874/04 of 31 January 2005—currently retained under scrutiny in the House of Lords Sub-Committee D). The outcome reflects the compromise agreement between the institutions and should be acceptable to the Council. The proposed Regulation is the first of the two parts. The EP and the Council are continuing their examination of the remainder of the Commission proposal which represents the second part.

The proposal is non-contentious and simply extends the transitional measures (we currently operate under) for a further two years to allow for a full package of measures for tackling BSE to be put in place. In the circumstances, the Government endorses, and it is clearly desirable for this proposal to succeed and be adopted by the Council as failure to extend transitional measures will create a legal void, with some countries no longer subject to BSE related import conditions (if they have applied to the EU for categorisation) and others defaulting to category 5 status for BSE, effectively a trade ban. We therefore regret that scrutiny could not be completed before this development.

24 May 2005

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letters of 6 April and 24 May which Sub-Committee D (Environment and Agriculture) examined at its meeting on 29 June.

The Committee regrets that agreement on this proposal was reached before parliamentary scrutiny could be concluded, particularly given the concerns the Committee expressed in our letter of 17 March. However we understand that the agreement was purely on the basis of extending the existing measures in order to provide more time for the revision of permanent measures and the creation of an overall strategy on TSEs.
We consider this a sensible move and look forward to scrutinising the new proposal when it is deposited for scrutiny. We believe the employment of voluntary schemes, such as genotype breeding programmes, teamed with balanced regulation can play a major role in the control and eradication of TSEs. We urge the Government to make sure the agreed change to the above proposal which would ensure bovines are not subject to movement restrictions in holdings suspected of containing animals infected with scrapies, is reflected in the new proposal.

We also ask that every effort is made to ensure sufficient time is made available to us to scrutinise fully the new proposal when it is deposited.

The Committee decided to clear the proposal from scrutiny.

5 July 2005

Letter from Ben Bradshaw MP to the Chairman

I am writing to inform you that the EU Commission has prepared a strategy for dealing with Bovine Spongiform Encephalopathy (BSE) in the future as the BSE epidemic declines in the EU (deposited document 11408/05).

EU-wide measures have been in place for several years to reduce and eventually eradicate the incidence of BSE and scrapie and reduce potential consumer exposure to BSE. These measures have resulted in a significant reduction in the numbers of cases of BSE. The European Commission is considering whether changes to the controls might be appropriate, providing that the positive trend continues, the changes have a sound scientific basis and consumer protection is maintained. The Roadmap outlines in general terms the way in which controls might alter in the future, leading to the achievement of the strategic goals listed below, both in the short and longer terms.

The Commission has sent the Roadmap to the European Parliament and to Member States. Although the Roadmap does not contain specific proposals, we anticipate that discussions would lead in due course to changes in the Transmissible Spongiform Encephalopathy (TSE) Regulation (EC) No 999/2001.

During the UK Presidency of the Council the Government will work closely with the European Parliament, other Member States and the European Commission to take forward discussions on the Roadmap. Although we intend to make progress on this, and on the related changes to the TSE Regulation, it is unlikely that adoption of changes will occur before the UK Presidency ends, other than the increase from 12 to 24 months in the age threshold above which bovine vertebral column must be removed and destroyed as SRM: this is subject to comitology procedure and was agreed by Member States in October. This change will not affect the UK until our beef export ban is lifted, which the Government hope will be early next year.

The protection of human health remains the Government’s priority, with controls that are soundly based on science and are proportionate.

28 November 2005

UK PRESIDENCY: DEFRA’S PRIORITIES

Letter from Rt Hon Margaret Beckett MP, Secretary of State DEFRA, to the Chairman

I was pleased I had the opportunity to talk to the Lords Environment and Agriculture Committee on 6 July about my Department’s priorities during the UK Presidency. I am writing to further outline our plans and the main business I hope to advance, following the good progress made by the Luxembourg Presidency across the EU agriculture, fisheries and environment agenda, and taking forward the work outlined in the 6 Presidency multi-annual programme, and the 2005 Luxembourg—UK Annual Programme.

Climate change will be a major cross-cutting theme of our Presidency. We will build on synergies with the G8 process, in particular on the success of the Environment and Energy Ministers’ Roundtable and the G8 summit at Gleneagles, and wish to make climate change and energy a major theme of EU summits with Third Countries. Most notably, the EU-China Summit will provide an opportunity to explore with a key player the positive impact that climate change measures can bring to a rapidly growing economy. We will have some serious work to do in preparing for the first meeting of the parties to the UN Framework Convention on Climate Change in Montreal. We will also need to take forward the work commissioned by the 2005 Spring Council on the development of an EU strategy for reducing greenhouse gas emissions in the medium and long term. I will be looking more widely for opportunities to make real progress in tackling climate change, in particular in relation to aviation emissions.
We will invest major efforts in taking forward work on the Chemicals Regulation (REACH) and we will aim to secure political agreement in the Council on a package that improves the protection of human health and the environment while maintaining the competitiveness and enhancing the innovative capability of the EU chemicals industry.

We have the opportunity to consider the future direction for EU environment and sustainable development policy through the review of the EU Sustainable Development Strategy and the various thematic strategies required by the 6th Environmental Action Programme. Communications on all of these are expected soon from the Commission, and the precise timing will have an effect on what we can discuss during the UK Presidency. The European Council has asked that the review of the EU Sustainable Development Strategy should be completed by the end of 2005 if possible, and we will aim to make as much progress as we can. However, the timetable for publication of the revised strategy means that we will not be able to complete the process under our Presidency. We will therefore work in close partnership with Austria to deliver a high quality Strategy, bringing together the internal and external policy objectives of the EU and helping to maintain the momentum on better policy making, especially through balanced impact assessments.

We aim to have a substantive debate in Environment Council on at least some of the thematic strategies. We are also likely to begin negotiations on some of the associated legislative dossiers once they are published and Member States have had the opportunity to form a view on the proposals; in particular we hope to be able to make progress on the proposal for a new Air Quality Directive.

Integration of environmental considerations into wider EU policy making will be a key theme of our Presidency. We want to help strengthen the Cardiff process by demonstrating practical examples of environmental integration across the Council formations.

The Commission published its proposal for sugar reform on 22 June and hopes the Council will reach agreement on the dossier in advance of the WTO meeting in Hong Kong, which effectively means at the November Agriculture and Fisheries Council. I will do everything possible to try and meet this ambitious target, whilst ensuring we have plenty of time in the Council to discuss this important subject. I also plan to give Mariann Fischer Boel opportunities to update the Council on the progress towards Hong Kong. Following the political agreement on 20 June on the new rural development regulation, we will take forward the next steps on rural development, namely work on the EU strategic guidelines.

In the field of animal health and welfare, the main dossiers we will deal with are the updating of EU rules to combat avian influenza, and the proposal setting out new welfare rules for broiler chickens. Our aim is to reach political agreement in Council on both of these dossiers if possible, but do not anticipate being able to adopt either proposal as European Parliament opinion on each dossier is unlikely to be reached in time. We will also look to make progress on proposals to amend the Transmissible Spongiform Encephalopathy Regulation and consideration of the Commission’s review of the implementation of the Animal By-Products Regulation.

We will be following the excellent progress made by earlier Presidencies, particularly Netherlands and Luxembourg on the Forest Law Enforcement Governance and Trade (FLEGT) dossier, which aims to tackle illegal logging in developing countries. We will aim to adopt the Regulation and conclude discussions on the negotiating directive during our Presidency. We will also begin the discussions on a major package of work on pesticides, covering the approvals procedures and the Commission’s thematic strategy for the sustainable use of pesticides, which we expect to hand on to the Austrian Presidency having made a good start.

For fisheries items on the Agriculture and Fisheries Council agenda, fisheries minister Ben Bradshaw will chair the Council. In addition to the usual end of year TACs and quotas negotiations, we will be working on stock recovery plans and other measures to cement a sustainable fisheries policy. We plan to initiate a discussion with Member States on how we might organise work in the fisheries area, to see whether there is a better alternative to the traditional end-of-year rush. There are also a number of important proposals to progress in relation to the Mediterranean and Baltic Seas.

This is not, an exhaustive list of dossiers, but is designed to give you a flavour of the key ones. In conducting all our business we will be guided by the principles of better regulation, in accordance with the six Presidencies initiative. We will aim to ensure that in taking decisions we are in a position to take account of a realistic assessment of their impact on the ground, and we will be pleased to take forward work on simplification which Commissioners Fischer Boel, Kyprianou, Borg and Dimas are all carrying out. We will also aim to take environmental considerations fully into account in all our decision-making.

Finally, I am also pleased to announce that I will be hosting the first ever joint informal meeting of Environment and Agriculture Councils in London on 9–12 September. The joint informal Council will focus on the relationship between climate change and agriculture.

20 July 2005
Letter from Rt Hon Margaret Beckett MP to the Chairman

I am writing to let you have my assessment of what I believe has been a very successful Presidency for my Department. We made significant progress and achieved targets on many of our Presidency priorities across the agriculture, fisheries and environment agenda (further detail on this and on the work in the year ahead are in the attached annex). We also worked closely with the incoming Austrian and Finnish Presidencies to ensure the good work continues through 2006.

Climate change was a major priority of both the UK G8 and EU Presidencies, and we led negotiations on behalf of the EU at the successful UN Climate Change Conference in Montreal. This delivered our objective of reinvigorating the international climate change negotiations by agreeing to start consideration of commitments beyond 2012 for developed country signatories of the Kyoto Protocol, and launching a dialogue on long-term co-operation to tackle climate change between all countries under the UN Framework Convention on Climate Change. Separately, in December, the European Council recognised that the inclusion of the aviation sector in the EU Emissions Trading Scheme was the best way forward, and the Council welcomed the Commission’s intention to bring forward a legislative proposal by the end of 2006.

In September, I successfully hosted the first ever joint Environment and Agriculture Informal meeting, attended by Environment and Agriculture Ministers from all Member States, plus the 4 candidate countries. The theme of the meeting was the relationship between climate change and agriculture—focussing on the opportunities that climate change presents to European agriculture. This was well-received, and the Commission are now considering how to take forward the ideas we discussed.

At the December Competitiveness Council, we settled a complex dossier and successfully achieved political agreement on the EU’s new chemicals regulation, REACH (Registration, Evaluation and Authorisation of Chemicals). This was in line with the UK’s approach to better EU regulation. REACH will provide proper protection of our citizens and of the environment while safeguarding the competitiveness of European industry. This is a huge leap forward in our awareness of the impact of chemicals.

Also in December, the European Commission released its proposals for the review of the EU’s Sustainable Development Strategy. But the delay in publishing these meant that we were not able to take work forward as planned, but we have agreed a broad approach on the way forward with the Austrian Presidency.

We made significant progress in advancing the Better Regulation agenda in Europe. I chaired the first-ever Environment Council debate on Better Regulation, where we were able to reach a consensus on the importance of Better Regulation to future environmental policy making in Europe. We made good progress on the Commission’s Communication on Simplification and Better Regulation for the CAP, with an agreement at December Agriculture Council which will embed the principle of measuring and reducing administrative burdens. And the Commission, in support of the better regulation theme presented an Action Plan on the Simplification of the Common Fisheries Policy at December Agriculture and Fisheries Council.

I am particularly pleased that at the Agriculture Council in November, we were able to reach agreement on the first major reform of the EU sugar regime since its introduction nearly 40 years ago. EU sugar prices will be cut by 36 per cent over four years while a voluntary restructuring scheme will aim to reduce production by about 6 million tonnes in the same period. This agreement marks a major step change in the operation of the EU sugar regime, introducing more competition and producing significant wider economic benefits. It brings sugar into line with other reformed CAP sectors. In parallel, the Council and the European Parliament also agreed a transitional assistance of €40 million in 2006 for the African, Caribbean and Pacific countries affected by the reform.

In fisheries, we were able to agree total allowable catches and fishing quotas based on scientific advice, both in the Baltic Sea and elsewhere, which will contribute to the sustainability of fish stocks.

We also agreed on a new Directive updating Community controls on Avian Influenza.

We also used the Presidency to promote energy efficiency, and successfully achieved a Second Reading Deal with the European Parliament to secure adoption of the Energy End-Use Efficiency and Energy Services Directive, a major achievement.

Working with the European Commission and Chinese leaders, we pledged to tackle the problem of illegal logging in the Asian region. And in December, EU Agriculture Ministers adopted the EU Forest Law Enforcement Governance and Trade regulation and negotiation directives.

There are other dossiers where we also made significant progress, for example, with European Parliament on Directives on Bathing Water, Waste Shipments and Mining Waste and on the Commission’s proposal on tariffs for banana imports.

26 January 2006
VERIFICATION OF AGRI-ENVIRONMENT EXPENDITURE (12921/05)

Letter from the Chairman to Jim Knight MP, Parliamentary Under-Secretary of State, DEFRA

Thank you for your Explanatory Memorandum of 25 October which Sub-Committee D (Environment and Agriculture) considered at their meeting on 9 November.

The Committee found the Court of Auditors’ conclusions regarding the verification of agri-environment schemes to be of particular concern. The shortcomings identified in the supervision of agri-environment systems should be taken very seriously by the Commission and Member States. Given the Government’s commitment to the development of Pillar 2 within the CAP, and the emphasis placed upon cross-compliance measures within Pillar 1, it is of the utmost importance to ensure public money is being spent on measures which can be satisfactorily audited.

We note that the scope of the Court of Auditors’ report did not extend to an assessment of the environmental benefits of spending. We nonetheless believe it is essential that such an assessment is undertaken in order to determine whether agri-environment schemes meet their objectives. We therefore would be very interested to hear what work Defra undertakes to monitor the environmental benefits of such schemes within the United Kingdom. In the meantime, the Committee agreed to clear the proposal from scrutiny.

10 November 2005
Law and Institutions (Sub-Committee E)

AGREEMENT OF COOPERATION AND ASSISTANCE BETWEEN THE EU AND THE INTERNATIONAL CRIMINAL COURT

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

The next meeting of the General Affairs and External Relations Council (GAERC) is on 25 April 2005. At this meeting Foreign Ministers are expected to agree to a Council Decision concerning the conclusion of the Agreement of cooperation and assistance between the EU and the International Criminal Court (ICC). The EU’s Common Position of 28 May 2003 underlined the EU’s firm support for the ICC. To give this support practical effect, the EU is negotiating, at the request of the Court, a cooperation agreement. The agreement provides for the provision of information to the Court and sets out the terms under which it might be used and secured. It allows for the testimony of EU staff before the Court and sets out the terms under which such testimony may be made. Finally, it provides for training support and secondment of staff to the Court. The Agreement will be complementary to the arrangements, which the UK will be making on a bilateral basis with the Court.

The Government supports this proposal. It will give practical effect to the EU’s Common Position in support of the ICC. The Court cannot fulfil the mandate it has been given by the States Parties to the Rome Statute without the active practical cooperation of its States Parties and the relevant international and regional organisations. The Court is already requesting access to EU documents which might be of use on its investigation into the Democratic Republic of the Congo (DRC), so formal arrangements need to be in place as soon as possible. The 25 April GAERC will be the next opportunity to agree this Council Decision. The UK would not want to hold up the work of the Court in its investigations into suspected war crimes and crimes against humanity in the DRC.

In light of the dissolution of Parliament and Scrutiny Committees I will have to agree to this Council Decision at the GAERC before scrutiny can be completed. I hope you will understand our reasons.

20 April 2005

APPLICABLE LAW AND JURISDICTION IN DIVORCE MATTERS (7485/05)

Letter from the Chairman to Baroness Ashton of Upholland, Parliamentary Under Secretary of State Department for Constitutional Affairs

The Green Paper was considered by Sub-Committee E (Law and Institutions) at its meeting on 22 June. We are grateful for your Explanatory Memorandum and in particular the clear statement you have provided of the Government’s position.

It will come as no surprise to you to learn that the Committee shares the Government concern about the need for applicable law rules at Union level for divorce matters. You will recall that in our Report on The Hague Programme we said: “We believe that EU action in civil law is acceptable only if it adds value and is absolutely necessary to improve the everyday life of EU residents in situations having a cross-border dimension. This is even more so in the sensitive area of family law, where action at the EU level may challenge deeply founded legal and social principles in Member States” (The Hague Programme: a five year agenda for EU justice and home affairs, 10th Report, 2004–05, at para 63). As you indicate, a number of the problems identified by the Commission may be caused by existing jurisdictional grounds and we agree with the Government that revision of the jurisdictional rules might be more appropriate than introducing applicable law rules.

We are pleased to see that the Government are consulting widely before providing its response to the Green Paper. We would be grateful if you could, in due course, provide a brief summary of the results of that consultation and a copy of the Government’s Response to the Commission.

The Committee decided to retain the Green Paper under scrutiny.

28 June 2005
COMBATING RACISM AND XENOPHOBIA

Letter from Caroline Flint MP, Parliamentary under Secretary of State, Home Office to the Chairman

I am writing to advise you of the Council’s decision to resume negotiations on the draft Council Framework Decision on Combating Racism and Xenophobia, which were suspended under the Greek presidency in 2003. The Council agreed at the recent JHA on 24 February to the Presidency’s proposal to open the negotiations on the basis of 7280/03 Droipen 14 of 2003, which was deposited with the Scrutiny Committees in 2003, but which I enclose for ease of reference (not printed). We supported the resumption of negotiations on the basis of this text, as it was the result of extensive negotiations, commanded a wide level of agreement in the Council, and addressed the UK’s concerns.

The Presidency has scheduled a meeting of the Substantive Criminal Law Working Group on Tuesday 8 March to examine the text.

The Presidency also suggested an amendment to the draft Framework Decision as in 5976/05 Droipen 9 to include language relating to symbols in this measure, but withdrew the proposal because of lack of support in the Council. The Government opposes the inclusion of such a provision in this Framework Decision as we believe that it should be down to Member States to decide whether they need to legislate on this issue, taking into account their own particular historical and legal circumstances. There remains the possibility that one or two member states might continue to push for its inclusion. We will keep the Committee informed of the progress of negotiations on this proposal.

9 March 2005

COMITOLOGY (9087/04)

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

This matter has been under scrutiny for some time. I last wrote to your predecessor on 17 March but unaccountably have not received a reply. Of course, I appreciate that circumstances have changed dramatically since then and it was decided at the meeting of Sub-Committee E (Law and Institutions) on 6 July to ask the Government to clarify the present position and their intentions regarding reforming comitology.

You will recall that detailed consideration of the Commission’s amended proposal was put to one side at the time of the Dutch Presidency, the Council preferring to direct its resources in preparing the way as to how comitology might be dealt with under the Constitutional Treaty. There followed correspondence between the Committee and the Government aimed at obtaining information as to how, in practice, the hierarchy of rules provided for in Chapter 1 of Title V of the Constitutional Treaty would apply in relation to comitology. In the light of developments in the European Council on 16–17 June it would not seem sensible to pursue that line of inquiry at the present time. However, we would like to know what is happening in relation to the Commission’s amended proposal. In view of the fact that the Constitutional Treaty, even if all 25 Member States were to ratify it, would now be unlikely to enter into force until one or two years from the date originally envisaged, can reform of comitology be neglected in the meantime? Do the Government intend to take any action to progress the Commission’s proposal during the term of the UK Presidency?

The Committee retains the proposal under scrutiny and would be grateful for a prompt reply to this letter.

7 July 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 7 July. I agree that there is little point for the time being in exploring in detail how the arrangements for comitology set out in the Constitutional Treaty would work in practice.

But as you point out, the Commission’s proposals to update the 1999 Decision, on which my predecessor was in touch with you some time ago, remain on the table. The Commission has not yet put forward any new revised proposal but we suspect that they may do so in the next few months.

My officials have begun informal consultations with other Member States, the Commission and the European Parliament to gauge others’ views on the next steps. I shall write to you to update you on the Government’s position in due course, when things look clearer.

22 July 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

You wrote to me on 7 July about whether there were any plans, in the light of developments on the Constitutional Treaty, to revive the Commission’s 2002 proposal for reforming comitology. I replied on 22 July to let you know that my officials had begun informal consultations and that I would write again once things were clearer.

As you know, the Council and the European Parliament are equal partners under the codecision procedure but this position is not reflected in the existing comitology arrangements. I am persuaded that there are strong arguments for exploring a horizontal reform of comitology on the basis of the Commission 2002 proposal, amended in 2004 (EMs 15878/02 and 9087/04), to make the system more transparent and democratic.

You will recall that we support the principle behind the Commission’s proposal, which makes the EP and the Council equal partners in dealing with co-decided legislation. But we do have some concerns. For example, as you indicated in your letter to my predecessor of 5 July 2004,2 a position that would enable the Commission to adopt implementing measures regardless of objections by the Council and Parliament would be unacceptable.

Exploring a horizontal reform of comitology now also has the advantage of unblocking progress on two important Directives—the 8th Company Law and Capital Requirements Directives—where the EP has been raising concerns about comitology. There are also sunset clauses in the so-called Lamfalussy financial services Directives, whereby the power of the Lamfalussy committees to adopt implementing measures is suspended four years after the Directive comes into force. The first such clause would come into effect in early 2007.

Consultations over the summer showed that there was likely to be appetite amongst other Member States, the Commission and the Parliament to look at reforming the comitology procedures once more. The UK’s Permanent Representative to the EU therefore raised the matter in his weekly meeting with his EU counterparts on 7 September. They agreed that the UK Presidency should set up a Friends of the Presidency Group, which met for a preliminary discussion on 22 September.

It is difficult to determine now how long these discussions may take and how much progress can be made under our Presidency. I will write again to update you in due course with the Government’s proposed position on the detail of the Commission’s proposal.

29 September 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letters of 22 July and 29 September describing the outcome of your consultations with other Member States, the Commission and the European Parliament. We were interested to hear that progress is being made and note the Government share the Committee’s view that reform of comitology should not be neglected.

We would be pleased to be kept informed of developments. The proposal is retained under scrutiny.

13 October 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 13 October in response to mine of 29 September. I wrote to you then to let you know that we had set up a Friends of the Presidency working group to discuss reforming comitology on the basis of the Commission’s 2002 proposal, which it revised in 2004 in the light of an Opinion from the European Parliament.

Under the Commission’s proposal, the three existing comitology procedures would be replaced with two for codecided legislation: the current advisory procedure would remain for “measures having an individual scope or concerning procedural arrangements”; the other, a new regulatory procedure, would cover “executive measures designed to widely implement the essential aspects of the basic instrument”. The Commission’s proposal for the regulatory procedure would provide for four options in case of objections from the Council and Parliament, including adoption of the Commission proposal without amendment.

As you know, we support the revision of comitology procedures to reflect the European Parliament’s powers in co-decision areas. We have concerns about the Commission’s suggestion to abolish the management level of comitology committee because of the level of oversight we consider the Council should retain. We would not accept the Commission proposal that under the new regulatory procedure it could adopt its proposal despite opposition by the Council or Parliament.

In kicking off the working group discussions of this proposal, we considered that these concerns were likely to be shared by other Member States. The Friends of the Presidency group has now met three times. Most Member States have spoken and it is clear that our views do indeed have a wide level of support. There are two further meetings of the working group scheduled under our Presidency and the Austrian Presidency is then committed to fortnightly meetings. I shall be happy to keep you up to date with progress.

21 November 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

At its meeting on 7 December Sub-Committee E (Law and Institutions) considered your letter of 21 November. We are grateful for the information provided and will look with interest at the outcome of the work of the Friends of the Presidency Group. Thank you for your assurance that you will keep the Committee informed of developments.

The Committee decided to retain the proposal under scrutiny.

8 December 2005

COMPANY LAW AND CORPORATE GOVERNANCE PROPOSALS (14119/04, 14197/04)

Letter from Rt Hon Jacqui Smith MP Minister of State for Industry and the Regions and Deputy Minister for Women and Equality, Department of Trade and Industry to the Chairman

I am writing to enclose a copy (not printed) of a consultation document entitled “Consultative document on European Company Law and Corporate Governance—Directive Proposals on Company Reporting, Capital Maintenance and Transfer of the Registered Office of a Company” which has today been published by the Department in order to assist consideration of the three proposed Directives covered in the consultation. I would also wish to take the opportunity to bring the Committee up to date with developments in respect of the proposal on company reporting, which remains under scrutiny.

The Consultation period will run until 3 June. By covering all three proposals in one single consultation, we hope to give stakeholders the opportunity not only to consider all proposals at the same time but also to understand how they relate to the overall framework of modernising company law and corporate governance in the EU.

You have cleared from scrutiny the published proposal relating to the amendment of the Second Company Law Directive regarding capital maintenance submitted in November last year (Sub-Committee E did not report).

In respect of the proposal relating to the amendment of the 4th and 7th Company Law Directives, this is currently held under consideration by Sub-Committee E (Law and Institutions) who have asked to be kept informed of developments (Session 04/05, sift number 1199, Progress of Scrutiny of 14 February 2005). The proposal is currently being discussed in Council Working Groups chaired by the Luxemburg Presidency (there have been two such meetings to date). The Presidency are seeking to reach agreement on this dossier at the ECOFIN council to be held in June. It is not yet clear whether this timetable will be achievable. The European Parliament have yet to formally consider the dossier which has been allocated to Legal Affairs Committee (JURI) as the lead Committee.

The main issues that have arisen in the Council Working Groups to date are as follows:

(a) Disclosure of off-balance sheet transactions (proposed new article 43(1)(7a) of 4th Directive and article 34(7a) of 7th Directive). Whilst there is support for the general thrust of this provision (aiming, in particular, to ensure greater transparency in respect of so-called Special Purpose Entities), there remains concern about the lack of precision with which the reporting requirement is described. Presently, the draft refers to disclosure of “company’s arrangements not included in the balance sheet”. Potentially, this could be a very wide requirement. Currently, we are seeking to constructively explore with other Member States and the Commission how the reporting provision may be expressed with more precision to ensure unclear and unnecessarily burdensome reporting requirements are not imposed on companies.

(b) Disclosure requirements as regards related party transactions (proposed new article 43(1)(7b) of 4th Directive and article 34(7b) of 7th Directive.) Again, whilst there is support for the overall aim of this provision, there are some technical differences between the provision as expressed in the Commission proposal and similar reporting requirements under International Accounting Standards (IAS). This would have the anomalous result that a stricter reporting requirement might be imposed on the,
generally, smaller companies to which IAS does not apply than on those companies reporting under IAS. The Government is, therefore, seeking to have the new proposed provision brought fully into line with IAS.

(c) The scope and extent of the proposed corporate governance statement (proposed new article 46a of 4th Directive). The Government supports, as a minimum, the establishment of an EU wide rule requiring companies traded on a regulated market to adhere on a “comply or explain” basis to a corporate governance Code. However, the Government is keen to ensure, wherever possible, that the use of Codes and Best Practice is promoted as the way forward in the field of corporate governance reporting rather than a heavily prescriptive legislative approach. The Government is, therefore, seeking to explore with other Member States the extent to which the contents of such a statement should be prescribed in EU legislation and the degree to which this should remain a matter for Best Practice.

(d) Collective responsibility of directors for financial and non-financial statements—there is general support for this proposal. The current discussion is primarily of a technical nature focussing on the operation of collective responsibility in the context of a two tier board system (with a supervisory and management board). Generally, UK companies maintain unitary board systems and so the extent of this issue for the UK is limited.

The third proposal to be consulted upon, a Directive on the Cross Border Transfer of Registered Office, has yet to be published by the Commission. This proposal will establish a legal framework for companies registered in the EU to transfer their registered office from one Member State to another without having to be wound up. In Great Britain, both public and private companies registered under the Companies Act 1985 would be able to utilise the proposed transfer structure. The Government supports the measure as one which should extend the opportunities for corporate restructuring across the EU. This consultation is based on the proposals contained in the Commission’s e-consultation carried out in spring 2004. It explores whether the overall proposal will be useful to UK companies and seeks views on the details of the procedures to be followed.

The Department would, of course, be happy to provide further information if the Committee requires this.

7 March 2005

Letter from the Chairman to Rt Hon Jacqui Smith MP

Thank you for your letter of 7 March which was considered by Sub-Committee E (Law and Institutions) at its meeting on 23 March. The Committee is grateful for your keeping it informed of developments, in particular the issuance of your consultation document and your account of the discussions in the Council Working Groups under the Luxembourg Presidency.

The Committee decided to retain the proposal under scrutiny and would be grateful if in due course you could provide a brief summary of the results of your consultation exercise.

24 March 2005

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

The proposal is held under consideration by Sub-Committee E (Law and Institutions) who have asked to be kept informed of developments (session 04/05, sift number 1199, progress of scrutiny of 11 April 2005).

I am now writing to bring you up to date with developments with regard to the proposal and, in particular, to confirm that general approach agreement was reached at the ECOFIN Council on 7 June and, as requested in your letter to Jacqui Smith of 24 March, to provide a brief resume of the results of our public consultation exercise which ended on 3 June 2005. In writing, I would also wish to request clearance of the proposal from scrutiny on the basis of the further information and explanations set out in this letter.

I am sorry that I was not able to write to you in advance of the ECOFIN general approach agreement last week, due to the reformulation of the scrutiny Committees post the election and our assumption that the first Committee meeting to clear proposals would not take place until mid June, the relatively rapid pace at which discussions moved in COREPER and attaches meetings in the later stages and, most importantly, the wish to respond to your request for an appraisal of the results of our public consultation exercise which only closed one working day before the ECOFIN Council.
GENERAL APPROACH AGREEMENT

Following intensive work on behalf of the Luxembourg Presidency, general approach agreement to the proposed Directive was obtained as an “A” point at ECOFIN Council on 7 June 2005. A copy of the text that was agreed is enclosed with this letter (not printed).

The agreement was based substantially on the three main elements of the Commission proposal, with the following key changes which, in our view, contributed to a text which contained substantial improvements from the original Commission proposal and which represents a satisfactory outcome.

A. Accounting Disclosures

— The scope of the proposed new “off balance sheet disclosure” requirements was clarified (in particular by examples of such “off balance sheet arrangements” being set out in recital 7 to provide context to the substantive article);

— Greater consistency was achieved between the proposal requiring “related party transactions” to be disclosed and International Financial Reporting Standards (IFRS) (this has the important effect of ensuring that more onerous reporting obligations are not being placed on companies not subject to IFRS than on the generally larger companies which report in accordance with those standards);

— Right for companies to be able to aggregate individual related party transactions according to their nature to reduce the reporting burden; and

— Clarification in the recitals of the interaction of the new disclosure requirements with IFRS.

Another key issue that arose late in Council discussions was the possible raising of the threshold under which Member States may exempt small companies from the accounting disclosure provisions of the Directives as a deregulatory measure. The Council has asked the Commission to carry out a study on this and it is our intention to discuss this matter further with UK stakeholders.

B. Corporate Governance Statement

— Clarifications were made to reflect the different corporate governance reporting structures within EU Member States (some Member States require companies to follow corporate governance Codes, others facilitate such Codes on a voluntary basis and some Member States have no provision for Codes). The Directive does not seek to impose substantive requirements upon companies to adopt a corporate governance Code, but it does require companies to state where such a Code is applied (and, if no Code is applied, give reasons for this);

— An option has been provided to Member States either to make the corporate governance statement a part of the annual report or allow companies to produce the statement as a separate document; and

— “Debt listed companies” (eg bond issuers) have been relieved of substantial requirements under this provision where they do not also have shares traded on a public trading facility (this reflects the generally more sophisticated nature of investors in debt instruments).

C. Collective Responsibility of Directors for Annual Accounts and Report

— It was clarified that collective responsibility of directors would extend to the new proposed corporate governance statement and to accounts produced under IFRS; and

— To address concerns relating to companies with two-tier boards (administrative and supervisory boards), the proposal explicitly provides that the respective competences of those boards under national law will not be overridden.

EUROPEAN PARLIAMENT CONSIDERATION

The lead committee on this dossier is Legal Affairs Committee (JURI) with the Rapporteur being Mr Lehne (Germany). Economic and Monetary Affairs Committee (ECON) are also preparing an opinion. It is currently envisaged that the dossier will be subject to final consideration by JURI in September and a full vote by plenary of the European Parliament in October.

It will, clearly, now fall to the UK Presidency to work with the European Parliament to seek to achieve a Directive that is acceptable to both the Parliament and Council.
OUTCOME OF PUBLIC CONSULTATION EXERCISE

The Committee specifically asked for information concerning the public consultation exercise which Department of Trade and Industry launched in March. The consultation period only closed on 3 June and responses have been received after that date (to date we have over 20 detailed responses from representatives of business, institutional investors, accountants/auditors, lawyers, regulators, etc). We shall be preparing a full summary of replies and formal Government response which will be forwarded to the Committee in due course. In the meantime, to assist the Committee, I enclose by way of Annex a brief digest of the main views of stakeholders and some more detailed concerns that emerged (see Annex A).

I am, of course, happy to respond to further requests for information or clarification.

15 June 2005

Annex A

Proposed amendments to 4th and 7th Company Law Directives outline views of stakeholders responding to the DTI public consultation exercise (which closed on 3 June 2005) on the Commission proposal of October 2004

A. Accounting Disclosures

There was general support in principle for disclosure of off balance sheet arrangements and related party transactions by companies (especially in the light of recent financial scandals that have raised this issue). However, views were divided as to whether this was better achieved by EU legislative action rather than being driven by convergence of accounting standards. Particular concerns expressed about the original Commission proposal included:

— Lack of clarity as regards the meaning of “off balance sheet arrangements”;
— Need to clarify the application of these provisions to companies reporting under International Financial Reporting Standards (IFRS) and companies not reporting under IFRS;
— Need for greater consistency between the proposal and IFRS (otherwise greater reporting burdens might be imposed on companies which did not apply IFRS than on those companies which do apply IFRS); and
— To minimise reporting burdens, the proposal should include the right for companies to aggregate individual transactions in appropriate circumstances.

B. Corporate Governance Statement

Respondents were generally supportive of EU legislative recognition of good quality corporate governance practices. This was tempered by the clear message that such recognition should involve minimal legislative intervention and the detail of corporate governance standards should remain a matter very much for Codes and best practice. To this end, there was very little support for additions to the provisions in the Commission proposal concerning the corporate governance statement and some elements of that proposal caused more detailed concerns to be expressed. There were varied views on whether the corporate governance statement should be required to form part of the directors’ report or be a completely separate document (some respondents commenting that this should be left as a matter for Member States or companies).

Specific points made included:

— Over prescriptive legislative provision on corporate governance would hinder, not help, corporate governance reporting standards by leading to a tick box or boiler plate approach to reporting—rather than facilitating meaningful disclosures;
— Some respondents were concerned about the overlap/possible incompatibility between the requirement to report on internal control and risk management systems with current UK non-statutory (“Turnbull”) guidance on this matter. It was also stressed that the proposal should not prescribe a duty to report on the “effectiveness” of internal controls (as is required, for instance, under legislation in the USA);
— There was concern that some of the reporting requirements might be duplicatory or unnecessary (for instance, it was queried whether it was necessary for companies to have to include basic information about the operation of the annual general meeting, etc where this was laid down in the law);
— There was discussion about the extent of auditor liability for the corporate governance statement; and
— Concerns were also raised as to whether the proposal would allow companies to “jurisdiction shop” for the corporate governance Code they chose to apply (rather than being bound by, for instance, the rules applicable in the Member State of primary listing).

C. Collective Responsibility of Directors for Annual Accounts and Report

There was general support for an EU wide rule confirming collective responsibility of directors for the annual accounts and report of the company. Respondents considered that this responsibility should extend solely to the company (and not go further, for instance, to individual shareholders or groups of shareholders). Advantages cited for such a rule included the certainty across EU such clarification provided for users of accounts (particularly with the “passporting” of company prospectuses within EU) and the need to avoid an approach based on individual executive responsibility for accounts (such as in the USA).

Specific issues raised included:
— Small number of respondents considered that responsibility of directors in this respect should be left to Member States (and not be prescribed as a matter of EU law); and
— There was a need for the proposal to properly address the position as regards the respective responsibility of administrative and supervisory boards in companies with two tier boards.

Letter from Gerry Sutcliffe MP to the Chairman

The proposal was considered by Sub-Committee E (Law and Institutions) who cleared it from scrutiny at their meeting on 29 June 2005 (Progress of Scrutiny, 18 July 2005, Session 05-06).

Further to my letter of 15 June 2005 (setting out details of the ECOFIN Council General Approach agreement reached on 7 June 2005 and summarising the outcome of our public consultation exercise), I am now writing to bring you up to date with the negotiations on this dossier that have since taken place with the European Parliament under the UK Presidency.

The dossier has been considered by the Legal Affairs (JURI) Committee of the European Parliament (Rapporteur: Mr Lehne, Germany). The Rapporteur was concerned to remove from the original Commission proposal (and text agreed by Council) what he considered to be costly and inefficient over-regulation and to reduce burdens for small and medium companies (SMEs). He proposed a complete deletion from the draft Directive of the new transparency provisions (related to off balance sheet arrangements and related party transactions) and much of the detail of the corporate governance statement.

A number of Member States considered that a more measured reduction in the reporting burdens was appropriate. The UK Presidency has sought through intensive discussions with the Parliament, Commission and Council over the last three months to reach an acceptable compromise.

In the context of a global compromise package for adoption of the draft Directive at First Reading, the Rapporteur finally agreed to withdraw his proposals if the Council accepted some relaxation of the transparency obligations and an immediate 20 per cent increase in the monetary thresholds in the Accounting Directives used to define SMEs (companies below those thresholds can be relieved by Member States of certain accounting and audit requirements of the Directives). The SME thresholds define small and medium companies on the basis of three criteria, ie the balance sheet total (for small companies currently £2.8 million, for medium £11.4 million), the net turnover (for small companies currently £5.6 million, for medium £22.8 million) and the average number of employees (50 for small companies, 250 for medium) during the financial year in question. To benefit from these exemptions companies must fulfil two of the three criteria for two consecutive years. The thresholds were last increased by a 2003 Directive.

Additionally, late in the negotiations it was decided to include within the amending package a provision concerning a relaxation allowed in the Directive for “fair value” accounting (valuation of assets and liabilities on a “fair value” basis). This amendment received consensus support following consideration by the Accounting Regulatory Committee of Member States, and brings the provisions in the Directive into line with the existing position under International Financial Reporting Standards (specifically IAS 39).
These amendments formed the basis of the Rapporteur’s final report which was unanimously accepted by JURI Committee on 28 November and will now be voted upon at the plenary session of the Parliament, probably on 14 December.

The text resulting from the JURI Report was discussed at COREPER on 30 November and was unanimously accepted by all Member States (subject to a declaration by the Commission clarifying its intentions regarding future examination of the SME thresholds in the 4th Directive and minor textual amendment to a recital regarding duty and liability of directors which are expected to be acceptable to the Rapporteur). The path should now, therefore, be clear for a First Reading deal.

We will consult fully on implementation of the Directive.

I am, of course, happy to respond to further requests for information or clarification.

13 December 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter of 13 December which was considered by Sub-Committee E (Law and Institutions) at its meeting on 18 January. We were interested to learn of the compromise reached under the UK Presidency. We are pleased to see that you will consult fully on the implementation of the Directive. We would be pleased to receive a copy of your consultation document in due course.

19 January 2006

COMPANY LAW DIRECTIVE: MANDATORY AUDIT COMMITTEES (7677/04)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

I understand that members of your committee have raised concerns over issues raised by the CBI and ABI, that have been reported in the Financial Times in recent weeks, over the compositional and functional requirements for audit committees contained in the draft audit directive (8th Company Law Directive).

The Commission’s proposal, published in March 2004, set out a mandatory requirement for public interest entities to have an audit committee. The proposal included a requirement for this committee to have at least one independent member with competence in accountancy or auditing.

During negotiations in council the UK, with other Member States, sought the deletion of this Article. Under the UK’s Combined Code we have a ‘comply or explain’ model that sets out best practice guidance but allows companies flexibility regarding audit committees.

The Audit Committee article was a key area for the Commission and one on which they were not willing to either delete or significantly modify the text. As the Commission would have put any changes to a qualifying majority vote the UK took the decision (as there was insufficient support from other Member States for deletion) to seek a reduction in the scope of the Article and we were able to negotiate an exemption for special purpose vehicles. On 7 December 2004 Member States Finance Ministers (ECOFIN) gave their agreement on the general approach adopted in the Council text.

Since that time the Legal Affairs Committee (JURI) of the European Parliament have been considering the proposed Directive. The effect of the JURI amendments is to provide a text that does not significantly differ from the ECOFIN text.

As a result of significant lobbying by European stakeholders (primarily the CBI and ABI) JURI adopted an amendment that allows Member States to rely on their national laws regarding the composition and functions of the audit committee although the mandatory requirement to have one remains.

Based upon discussions with other Member States and the Commission the UK as presidency tabled compromise text that provides flexibility for companies that is acceptable to the Commission, Member States and the Rapporteur of JURI. The CBI and ABI have also welcomed this amendment.

We anticipate that this compromise will be adopted, along with other compromise texts that deal with other issues raised by the JURI amendments, at an Attaché meeting on 15 July 2005. If other Member States agree to these compromises this draft Directive will be considered at a COREPER meeting in either July or September.
The European Parliament, at plenary, are due to vote on their amendments in the last week of September. The UK as presidency hopes that these amendments are consistent with those previously agreed with the Council. If that is the case we will have achieved a “first reading deal”. We would, therefore, expect this matter to be considered by Finance Ministers at ECOFIN in December.

I trust that this addresses the issues raised by your members.

12 July 2005

Letter from Gerry Sutcliffe MP to the Chairman

I am writing to inform you that European Finance Ministers at ECOFIN gave political agreement to this Directive on 11 October 2005. Clearance to the UK’s negotiation strategy on this Directive was given by you on 18 March 2005.

The European Commission published the proposed 8th Company Law (Audit) Directive on 16 March 2004. This proposal dealt with the statutory audit of annual and consolidated accounts and was a response to the Enron/Worldcom and Parmalat financial scandals. The purpose of this proposed Directive was to increase confidence in the both statutory audit and statutory auditors.

After lengthy and detailed discussions between Member States, in the Council, and between the Council and the European Parliament (led by the UK as Presidency) a number of compromises were reached that allowed this Directive to reach a “first reading deal”.

As I know you have previously raised two areas that were proposed in the Directive I wanted to take this opportunity of informing you on the compromises that were reached.

Audit Committees

The Commission proposed that every public interest entity (listed companies, banks, building societies and insurance undertakings) must have an audit committee. This proposal included a compositional requirement for this committee as well as specifying the functions it carried out. Whilst the UK supports the use of audit committees we consider that the appointment of an audit committee is a decision for the board of the company. Despite a number of Member States supporting the UK request for deletion of this Article the Commission were only willing to reduce its scope. As a result of pressure from UK stakeholders (CBI and ABI) the Legal Affairs Committee, of the European Parliament, adopted an amendment that allowed companies an exemption that removed the compositional requirement and allowed the appointment of a body that performed equivalent functions to those in the Article. This amendment was satisfactory to UK stakeholders.

Comitology

The Committee voted on an amendment that gave the European Parliament the right to review the implementing decisions of the Commission. Whilst this right had been included in the European Constitution it is not currently part of European legislation. As this was a horizontal issue for the EP (it had been raised in one other Directive) possible compromises were sought. For this directive a “sunset clause” (the effect of which is to allow the Commission to implement measures for a maximum of two years, or longer, with EP agreement) was considered appropriate. This will allow the wider issue of EP involvement in the Commission’s implementing measures to be discussed fully.

Although a considerable number of areas contained in the Directive already form part of the UK approach to statutory audit I consider that this Directive will increase confidence in stakeholders and shareholders in the audit function.

The forthcoming Company Law Reform Bill will include two areas where our legal advice has indicated that primary legislation is necessary to implement the requirements in the Directive. These are (a) defining “statutory audit” to include the audits of banks and other financial institutions and insurance undertakings and (b) making requirements for statutory auditors of traded non Community Companies (third country auditors).

31 October 2005
Letter from Gerry Sutcliffe MP to the Chairman

The proposal was considered by Sub-Committee E (Law and Institutions) who cleared it from scrutiny at their meeting on 29 June 2005 (Progress of Scrutiny, 18 July 2005, Session 05–06).

Further to my letter of 15 June 2005 (setting out details of the ECOFIN Council General Approach agreement reached on 7 June 2005 and summarising the outcome of our public consultation exercise), I am now writing to bring you up to date with the negotiations on this dossier that have since taken place with the European Parliament under the UK Presidency.

The dossier has been considered by the Legal Affairs (JURI) Committee of the European Parliament (Rapporteur: Mr Lehne, Germany). The Rapporteur was concerned to remove from the original Commission proposal (and text agreed by Council) what he considered to be costly and inefficient over-regulation and to reduce burdens for small and medium companies (SMEs). He proposed a complete deletion from the draft Directive of the new transparency provisions (related to off balance sheet arrangements and related party transactions) and much of the detail of the corporate governance statement.

A number of Member States considered that a more measured reduction in the reporting burdens was appropriate. The UK Presidency has sought through intensive discussions with the Parliament, Commission and Council over the last 3 months to reach an acceptable compromise.

In the context of a global compromise package for adoption of the draft Directive at First Reading, the Rapporteur finally agreed to withdraw his proposals if the Council accepted some relaxation of the transparency obligations and an immediate 20 per cent increase in the monetary thresholds in the Accounting Directives used to define SMEs (companies below those thresholds can be relieved by Member States of certain accounting and audit requirements of the Directives). The SME thresholds define small and medium companies on the basis of three criteria, ie the balance sheet total (for small companies currently £2.8 million, for medium £11.4 million), the net turnover (for small companies currently £5.6 million, for medium £22.8 million) and the average number of employees (50 for small companies, 250 for medium) during the financial year in question. To benefit from these exemptions companies must fulfil two of the three criteria for two consecutive years. The thresholds were last increased by a 2003 Directive.

Additionally, late in the negotiations it was decided to include within the amending package a provision concerning a relaxation allowed in the Directive for “fair value” accounting (valuation of assets and liabilities on a “fair value” basis). This amendment received consensus support following consideration by the Accounting Regulatory Committee of Member States, and brings the provisions in the Directive into line with the existing position under International Financial Reporting Standards (specifically IAS 39).

These amendments formed the basis of the Rapporteur’s final report which was unanimously accepted by JURI Committee on 28 November and will now be voted upon at the plenary session of the Parliament, probably on 14 December.

The text resulting from the JURI Report was discussed at COREPER on 30 November and was unanimously accepted by all Member States (subject to a declaration by the Commission clarifying its intentions regarding future examination of the SME thresholds in the 4th Directive and minor textual amendment to a recital regarding duty and liability of directors which are expected to be acceptable to the Rapporteur). The path should now, therefore, be clear for a First Reading deal.

We will consult fully on implementation of the Directive.

I am, of course, happy to respond to further requests for information or clarification.

13 December 2005

CONTROLS OF CASH ENTERING OR LEAVING THE COMMUNITY (14064/04)

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

I refer to your letter of 28 February3 in which you asked for your Committee to be updated on discussions in the European Parliament on the cash controls proposal.

At its meeting on 26 May 2005, the EP adopted some minor amendments to the Council common position draft to ensure that individual rights and personal data were protected (see enclosed Council doc. 9839/05). In accordance with arrangements provided for under the co-decision procedure, these amendments took account of informal discussions with representatives of the Commission and the Council. The purpose of this was to ensure that any amendments made by the EP would also be acceptable to the Council, thus avoiding the

need for conciliation. At present, the proposal as amended by the EP is scheduled to go before the Permanent Representatives Committee (COREPER) this week for subsequent adoption by ECOFIN on 12 July.

The Government is satisfied that the EP’s amendments simply serve to clarify the existing provisions in the proposal for exchange of information with other Member States, the Commission and third countries, and therefore it intends to support adoption of the proposal as it now stands.

We shall continue to keep your committee informed of any further developments concerning this proposal.

29 June 2005

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you for your letter of 29 June which was considered by Sub-Committee E (Law and Institutions) at its meeting on 13 July. The Committee are grateful for the information you have provided and note the proposed changes put forward by the European Parliament.

You will recall that in my letter of 28 February I drew attention to the Committee’s disappointment regarding the handling of scrutiny of this Regulation. I trust that you will ensure that the necessary procedures are put in place in your Department so that in future information is provided more promptly to enable Parliament to carry out its scrutiny in the manner which the Government have agreed.

14 July 2005

COUNTER TERRORISM MEASURES AND EXCHANGE OF INFORMATION
(8200/04, 14009/04, 14999/04, 15999/04)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee E (Law and Institutions) considered the proposal on 9 March. We are extremely disappointed by the manner in which the Government has handled scrutiny of this important proposal. The Decision was first tabled last June and, as it is obvious from the accompanying texts, negotiations on the text took place throughout 2004. This led to the Council reaching a “general approach” on the proposal on 2 December (a fact which we note that you neglect to mention in your EM). Yet the relevant text was only deposited for scrutiny in February 2005. In effect the Committee was not given any opportunity to examine revised drafts of the proposal, although we raised concerns on the text as early as last June.

This approach to scrutiny is unacceptable and wholly inconsistent with the Government’s policy as stated in their response to the Select Committee’s Annual Report (attached to Baroness Amos’ letter of 2 February). Parliamentary scrutiny of EU legislation cannot be strengthened if documents are not made available and delivered on time.

You say that the delay in submitting the documents and EM for scrutiny was “due to extensive consultation with other Government departments”. We cannot understand why consultation with other departments was necessary before depositing the documents for scrutiny. Can you please explain?

On the substance of the proposal, our main concern remains the absence of specific provisions in the text on data protection. As we noted in our letter of 10 June, specific provisions on data protection are essential in view of the intensification of information exchange envisaged by the Decision. We urge the Government to press for the inclusion of such provisions even at this late stage.

We understand that the Commission will put forward a specific proposal on data protection in third pillar matters later in the year. We look forward to examining this proposal in detail and hope that it will cover information exchanges like those envisaged by the draft Decision.

The Committee decided to retain document 15599/04 under scrutiny. The other drafts have been cleared.

10 March 2005

Letter from Rt Hon Charles Clarke MP, Home Secretary, Home Office to the Chairman

I am writing to you concerning the above dossier and its handling in response to the discussions I and my colleagues in the JHA Council had following the attacks on London on 7 July.

At the Special JHA Council on 13 July, EU Ministers agreed that it was vitally important that we ensured the speedy adoption of measures to help to protect the citizens of the EU from further indiscriminate attacks by those determined to destroy the way of life and the freedoms that we enjoy. This dossier is a vital part of the

package of measures discussed then and as you will know a general approach dossier was reached at the December 2004 JHA Council. On 13 July it was agreed that the measure should go as an A point to the Agricultural & Fisheries Council on 19 September. The Council Decision will improve the flow of information to Europol and Eurojust in particular concerning those persons convicted of terrorist offences.

In order to meet the deadlines agreed by all Member States, the Council Decision need to be adopted as an A point on 19 September. I am very sorry that this will mean that you have not had the opportunity to clear this dossier from scrutiny. I believe that this measure’s importance in facilitating the exchange of information between EU institutions, which could be used to help prevent similar attacks to those of 7 July from occurring in the UK or elsewhere in the EU, warrants its earliest possible adoption.

I realise that you have already expressed concern (in your letter to Caroline Flint of 10 March 2005) over the handling of this dossier and the Government agreeing to a general approach at the December 2004 Council, before your concerns over the data protection issues in the Council Decision could be addressed. It is always my wish to avoid reaching general approaches without the scrutiny process being completed, but I have to consider whether there are occasions when it is necessary if a compromise is on the table which meets the needs of the UK.

However, this does not mean that the Government did not give full consideration to the concerns you raised about data protection before agreeing to the quicker timetable for adoption on 13 July. I completely agree with you that it is vital that we ensure there are appropriate data protection safeguards when considering any form of exchange of information at EU level. However, I do not believe that it is essential that specific provisions on data protection are included in this Council Decision. The exchange of information covered by the Decision will either be with Eurojust, in accordance with the Eurojust Council Decision for which data protection rules have now been adopted and for which a Joint Supervisory Board has been appointed, or with Europol, in accordance with the Europol Convention for which stringent and extensive data protection rules apply and for which a Joint Supervisory Board has also been appointed. In addition, the Commission will be presenting a Framework Decision on Data Protection in the very near future that will supplement and build upon the Convention and Directive.

I am very sorry that the process of adoption on this dossier means that your scrutiny process has not been completed, but believe that its importance warrants adoption now so that there is no further delay in beginning to exchange information that can help to prevent and catch terrorists.

I have specifically asked my officials to work with the clerks to your and the Commons committees to address whatever areas there are where improvements in the system can be made. I am aware, for example that we did not respond to your letter of 10 March at the time and I am determined that we improve our level of service in the future. I believe that it is vital, with the ever growing importance of the work that we do at an EU level in the Justice and Home Affairs field that the Home Office’s performance on scrutiny is among the very best in Whitehall. I and my officials are committed to ensuring that this is the case and I will be writing to you in the near future with my thoughts on how the Home Office can improve its service to the Committee.

16 September 2005

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS AND STRENGTHENING THE CRIMINAL LAW FRAMEWORK TO COMBAT INTELLECTUAL PROPERTY OFFENCES (11245/05)

Letter from the Chairman to Fiona Mactaggart MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee E considered the proposal at its Meeting of 26 October 2005. The documents raise a number of questions.

LEGAL BASE

The Committee agrees that there is an issue surrounding the legal base of the proposed Directive and we would be grateful for a fuller explanation of the Government’s position now that the European Court has handed down its judgment in Case 176/03 Commission v Council. We are also concerned by the Commission’s assertion (in its Explanatory Memorandum) that the mere existence of disparities between the national systems of penalties distorts the internal market and justifies the adoption of this Directive. Do the Government agree with this position, which would appear to have potentially wide implications in the context of Article 95 (internal market) as well as Article 65 (judicial cooperation in civil matters)?
Law and Institutions (Sub-committee E)

Subsidiarity

You draw attention to the potential subsidiarity issues raised by Article 4 of the draft Directive (Penalties). It would be helpful if you would identify the Government’s specific concerns in this regard.

Definitions

We agree with the Government that it is necessary to clarify the scope of the terms “intellectual property rights” and the meaning of “on a commercial scale”. We would be grateful for an explanation of how the Government understand these terms. Would it be helpful to have a list of intellectual property rights as in the Commission Statement (OJ L 94, 13.4.2005, p37)? Further, what is meant by the phrase “where they carry a health and safety risk” in Article 2 of the Framework Decision? What situations are envisaged here?

Article 2(1) of the Framework Decision refers to offences committed “under the aegis of a criminal organisation within the meaning of” the Framework Decision on the fight against organised crime. Is the reference to the latter only intended to mean that “criminal organisation” is to have the same meaning in both Decisions or is something more intended? We note that the organised crime Decision does not use the phrase “under the aegis of” but “within the framework of”.

Articles 4 and 6

We note that you question the adequacy of the legal base of Articles 4 and 6 of the proposed Framework Decision. You say that “[n]either of these provisions is concerned with co-operation between the competent authorities of the Member States, which is the general basis for action under Title VI of the EU Treaty”. You did not raise this concern in relation to Article 10 of the Framework Decision on combating terrorism or in relation to Article 8 of the Framework Decision on the fight against organised crime, where there are similar provisions to Article 6 of the present proposal. The Committee would be grateful for clarification of the Government’s position on the scope of Article 31 of the EU Treaty.

On a more practical point, the purpose of Articles 4 and 6 in the Framework Decision is not clear to the Committee. In particular in relation to Article 4, why is a specific right to be “allowed to assist” thought to be necessary? Is there some suggestion that assistance would not otherwise be possible?

Relationship with TRIPS

One point which you do not explain is the relationship of the proposal to the TRIPS Agreement. Is this proposal intended to implement TRIPS so far as the Community has competence in relation to IP rights? The Committee has decided to hold this document under scrutiny pending the Government’s full submissions on the above matters.

27 October 2005

Letter from Fiona Mactaggart MP to the Chairman

I am writing in response to your letter of 27 October 2005 in which you raise a range of issues. I will respond to these in the order you raised them.

You enquired about the Government’s position on the legal base for this measure. The UK is still considering the ramifications of the ECJ Judgment in Case 176/03 (which concerned an action to annul the Council Framework Decision on the Protection of the Environment through the Criminal Law) in which the Court ruled in favour of the Commission, and went further than the Advocate-General’s opinion as set out in the Explanatory Memorandum, drawing no distinction between requiring a criminal penalty and specifying what it should be (at least to the extent set out in Articles 5 and 7 of that Framework Decision). The UK, along with several other Member States, intervened in support of the Council. We are still assessing the implications of the verdict and have not yet reached a final position. Accordingly we will write to you again concerning this issue.

You also asked whether we supported the Commission’s statement that the mere existence of disparities between the national systems of penalties distorts the internal market, and you also pointed out the implications in the context of Articles 95 and 65 TEC. We are grateful to you for raising these points which merit closer examination and will write to you again on this issue.

You further enquired about the subsidiarity issues raised by Article 4 of the Directive. Whilst accepting that following ECJ Case 176/03, there is first pillar competence to legislate for criminal penalties, our concerns pertain to the fact that the measure seems to go into considerable, and in our view unnecessary, detail of the
precise types of penalties that should be available. We believe that this is an excessive incursion into national legislative competence, and could be an uncomfortable precedent.

You also enquired about the Government’s understanding of the terms “intellectual property rights” and “commercial scale.” Defining the terms “intellectual property rights” was a difficulty with the adopted Directive on enforcement of intellectual property rights (2004/48/EC) and consequently the Commission issued their Statement (OJ L 94 13.4.2005 p 37) after the Directive had been adopted. For implementation of the Directive 2004/48/EC we have essentially accepted the definition set out in the Commission’s Statement. However for the proposed Directive we do not believe that criminal sanctions should be available for the enforcement of all intellectual property rights and the scope of the proposed Directive will need careful consideration. It was not possible to agree a list of the rights covered in Directive 2004/48/EC and it may also be difficult to include such a list in the proposed Directive. Certainly it would need careful consideration and discussion at Working Group level.

The term “commercial scale” was also discussed extensively during the negotiation of Directive 2004/48/EC and as a result a definition was included in recital 14:

“Acts carried out on a commercial scale are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts carried out by end consumers acting in good faith.”

It would seem sensible to use the same definition for the proposed Directive, rather than revisit the issue.

You enquired about the phrase “where they carry a health and safety risk.” I would agree that it is not precisely clear what situations are envisaged here and there has been no opportunity to ask the Commission about their intention in this drafting. I will inform you of progress on this.

You also asked about Article 2(1) of the Framework Decision and whether the reference to offences “committed under the aegis of a criminal organisation” simply meant that the meaning of criminal organisation was the same in both measures, or whether something further was intended. Again, unfortunately, this is not something we have an answer to, but we will pursue this at the next opportunity. If the intention is that “criminal organisation” should have the same meaning in both measures then it would better that there is consistency between both instruments.

You enquired about our position on the scope of Article 31 of the TEU and also the legal base on Articles 4 and 6. In the light of the context in which you raised this we will write further on this when we respond concerning our approach to case 176/03.

We would, however, tend to agree with your practical assessment of Articles 4 and 6 of the Framework Decision. We can also see no need for the inclusion of a specific right to be “allowed to assist” or indeed for specific provision on Joint Investigation Teams here, given the existence already of a Framework Decision on Joint Investigation Teams. We are not aware of any specific circumstances requiring additional provisions for rights holders. We will raise our concerns about this Article at the next opportunity.

You further enquired about the relationship between this measure and the TRIPS agreement. These proposals are already intended to go beyond TRIPS as the Community already complies with TRIPS. In particular Article 61 of TRIPS deals with Criminal Procedures and reads as follows:

“Members shall provide for criminal procedures and penalties to be applied, at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed willfully and on a commercial scale.”

In general negotiations are at an early stage on this instrument. The measure was introduced for negotiation on 4 October 2005. Time constraints only permitted initial comments to be given. There has not yet been an opportunity for substantive discussion of the individual Articles of the measure. We regret that we are not quite yet in a position to able to address some of your questions at this stage. However we will write to you again concerning the outstanding points and inform you on the progress of the substantive negotiations.

17 November 2005
Letter from the Chairman to Fiona Mactaggart MP

Thank you for your letter dated 17 November 2005 which was considered by Sub-Committee E (Law and Institutions) at its meeting on 30 November 2005. We note that there has been limited discussion of the substantive articles so far and look forward to hearing your response to the points raised in our previous letter as negotiations progress.

The Committee has decided to hold this document under scrutiny.

1 December 2005

EUROPEAN ARREST WARRANT (6815/05)

Letter from the Chairman to Andy Burnham MP, Parliamentary Under Secretary of State, Home Office

The Commission’s Report was considered by Sub-Committee E (Law and Institutions) at its meeting on 19 October. The Committee decided to clear the document from scrutiny. In doing so, we would like to thank you for your very full and helpful Explanatory Memorandum, without which we might have drawn a quite different picture of the position in the United Kingdom. As you indicate in your Explanatory Memorandum, it is a matter of considerable concern that the Commission did not show the Member States the Report in draft. We assume that the points made in your Explanatory Memorandum have also been communicated to the Commission and would be interested to learn what response they have given.

The Committee also noted that the EAW has come under attack in the Constitutional Courts of Poland and Germany and has become the subject of a reference from the Belgian Court to the European Court of Justice. We propose to keep a close eye on these developments.

20 October 2005

Letter from Andy Burnham MP to the Chairman

Following my Explanatory Memorandum, submitted on 1 September 2005, the Committee asked whether the points I raised in that document had been communicated to the European Commission and that they were interested in any response that may have been received from the Commission.

The points raised in my Explanatory Memorandum were passed on to the Commission and have been published in a document that sets out the responses of all Member States to the Commission’s report. I have enclosed a copy of this document (not printed) for ease of reference and it is also available on the Internet at: http://ue.eu.int/cms3—Applications/applications/PolJu/details.asp?lang=EN&c msid=720&id=178

To date, no response has been received from the Commission on any of the points raised by Member States in reaction to the report produced in March this year. I do not know if the Commission is proposing to respond to individual Member States’ comments, however, if I do receive any reaction to the points that I have raised, I will of course be happy to pass that on to the Committee.

7 November 2005

EUROPEAN CONTRACT LAW (13056/05)

Letter from the Chairman to Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

The Commission’s Report was considered by Sub-Committee E (Law and Institutions) at its meeting on 16 November.

The Commission’s Report provides a useful description of recent work on European contract law. We share the Government’s concern that there should be greater transparency in the development of the Common Frame of Reference (CFR). As you may be aware, when the Committee last undertook an inquiry into this subject, we received a complaint from legal practitioners that they had not received sufficient time to consider and comment on discussion documents and also that participation in workshops was restricted. Are you satisfied that these concerns have now been properly addressed by the Commission?

We note that the Commission has abandoned the idea of producing European-wide Standard Terms and Conditions (STCs). This development comes as no shock or disappointment to the Committee.
Finally, we share your concern about the development of these optional instrument or so-called “26th regime”. We note that the Commission is to conduct a number of feasibility studies and that the recent Green Paper on mortgage credit (itself the subject of separate scrutiny) floats the idea of a standard form mortgage contract. These are matters on which the Committee will keep a very close eye.

The Committee decided to clear the document from scrutiny. In so doing, the Committee welcomed your clear statement that the general law of contract should remain a matter for Member States and that you see no need for the optional instrument/26th regime.

17 November 2005

Letter from Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 17 November regarding the Sub-Committee’s consideration of the Commission’s first annual progress report.

You raised the issue of greater need for transparency in the development of the Common Frame of Reference (CFR). As you may know, the Commission has taken steps to address this issue after concerns were expressed by members of the CFR-Net and I am encouraged by the progress that has been made. Specifically, the Commission’s progress report addressed the issue of the CFR-Net members having insufficient time to comment on the research documents by extending the period for comments from one month to two months.

The issue of the restricted participation in workshops has not been as easy to resolve as in practical terms, attendance at each Workshop has had to be limited to ensure a useful discussion and also to ensure that the maximum number of Member States, and therefore legal traditions, are represented. However, I understand that, prior to each Workshop, the Commission has begun publishing the names of those attending on the restricted access website. It is therefore possible for CFR-Net members to co-ordinate their efforts to ensure that all those who wish to contribute to a certain Workshop have the opportunity to do so by liaising with other CFR-Net colleagues. This has certainly been the case amongst the UK members of the CFR-Net.

I also note your comments regarding the Commission’s abandonment of the project on European Standard Terms and Conditions. I am pleased that the Commission has taken such a pragmatic view of this issue. We note your comments on the development of the optional instrument in certain areas and will keep a close eye on developments.

I am grateful for the Committee’s decision to clear this document from scrutiny.

15 December 2005

EUROPEAN ENFORCEMENT ORDER AND THE TRANSFER OF SENTENCED PERSONS BETWEEN MEMBER STATES (5597/05)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

The proposed Framework Decision was considered by Sub-Committee E (Law and Institutions) at its meeting on 23 March. The proposal is the initiative of three Member States and unlike proposals brought forward by the Commission does not include a detailed Explanatory Memorandum. We are grateful for the information you have given but there remain a number of outstanding questions.

We note that the transfer of prisoners is one aspect of the programme of mutual recognition measures envisaged by the Tampere conclusions (recently replaced by the Hague Programme). But the document contains no explanation of the need for an EU measure. We would like to know what special problems or considerations arise which cannot be dealt with under the 1983 Council of Europe Convention on the Transfer of Sentenced Persons. Have the three States promoting this initiative prepared an explanatory background note which we can see?

The document COPEN 13 contains no statistical information concerning the volume of traffic involved and the projected effects of the Framework Decision. You say that as at 30 June 2004 there were 854 British nationals held in prisons in other EU Member States and approximately 1,855 EU nationals held in UK prisons. Given these numbers it is interesting to note how few transfers are made under the Convention (Written Answer to Simon Hughes MP, on 30 July 2003). Do the Government expect the number of transfers to increase under the proposal and, if so, by how many and for what reasons? How far is the current small number of transfers due to the fact that the prisoner has to consent to the transfer?
Under the proposed Framework Decision the prisoner’s consent to transfer would not be required and the procedure envisages a speedy transfer being effected. Where the prisoner does not consent, what rights does the prisoner have to challenge his transfer without consent? Further, what are the implications of compulsory transfers where there may be differing release arrangements in the executing State and the State of the sentencing court?

Finally, we note that the Home Office is to consult NGOs, in particular Prisoners Abroad and the Prison Reform Trust. We would be grateful if you could provide the Committee with a note of the results of the consultation exercise.

24 March 2005

Letter from Caroline Flint MP to the Chairman

Thank you for your letter of 24 March about the EU proposals on prisoner transfer between Member States. Your Committee may find it helpful to read Council Doc 5598/05. This document was prepared by the Governments of Austria, Sweden and Finland, and sets out their reasons for bringing forward the initiative. A copy of the document is attached for your information (not printed).

You have asked whether the Government expects the number of transfers to increase as a result of the EU proposal, and if so by how many and for what reasons? How far the current small number of transfers is due to the fact that a prisoner has to consent to the transfer, and what are the implications of compulsory transfers where there may be differing release arrangements in the executing State and the State of the sentencing court?

It is true that only a small number of prisoners are transferred each year under the current arrangements. This is a reflection of the small number of prisoners who apply for transfer each year. In 2004, only 252 prisoners out of approximately 3,350 prisoners who originated from countries with which the UK has a prisoner transfer agreement, applied for transfer. The Prison Service has not done any research into why so few prisoners apply for transfer. However, it is likely that better prison conditions here and the likelihood of earlier release from custody play a significant part. In addition, a number of foreign national prisoners will have strong family ties to the UK. Given that under the current arrangements a prisoner must apply for transfer and give written consent to its terms, there is little the Prison Service can do to significantly increase the number of transfers.

Under the EU proposals a prisoner would not be required to give consent to transfer. It would be for both States involved to determine whether or not a transfer should take place. A prisoner would be invited to express an opinion but he would not be able to prevent a transfer from taking place simply by withholding consent. Under the proposals a prisoner does not have a formal right to appeal a decision to transfer, but a prisoner detained in the UK would, of course, have the right to seek judicial review of any decision made.

Since transfers will not be initiated by the prisoner or be subject to their consent, it is likely that the number of prisoners transferred will increase. It is difficult to say at this stage by how many. Member States may well continue to have reservations about transferring prisoners to other States where they may be released earlier than would otherwise have been the case. The United Kingdom, however, would seek to take full advantage of the new arrangements by putting in place procedures to ensure that all eligible prisoners were identified at an early stage in the sentence and that where appropriate applications for transfer submitted.

You will be aware that release arrangements across the EU differ considerably and it is for this reason that the Government has some concerns about the effect of the compulsory nature of the transfer. Under the proposal once a prisoner is transferred he will be subject to the release arrangements appropriate in the receiving State. This is likely to mean that some prisoners may be required to serve longer in custody than would otherwise be the case. With the introduction of the release provisions of the Criminal Justice Act 2003, release from custody will fall at an earlier stage in the UK than in most other Member States. We believe that we may be susceptible to judicial challenge from prisoners who find themselves disadvantaged in this way. We are in the process of seeking further legal advice on the likelihood of such a challenge being successful and the implications this would have for the application of the proposals in the UK. But a successful challenge would clearly have an impact on the number of prisoners that we could successfully remove from the UK.

As you know, we are consulting Prisoners Abroad and the Prison Reform Trust on the proposals and we will, of course, share their views with your Committee and with the Commons European Scrutiny Committee when the consultation exercise is complete.

3 May 2005
Law and Institutions (Sub-committee E)

Letter from the Chairman to Andy Burnham MP,
Parliamentary Under Secretary of State, Home Office

Caroline Flint MP’s letter of 3 May was considered by Sub-Committee E (Law and Institutions) at its meeting on 8 June. We are grateful for reference to Council Doc 5598/05 and for the further information given in Caroline Flint’s letter. A number of concerns remain.

The Note prepared by Austria, Sweden and Finland provides some useful background information, particularly as regards the political justification for their proposal and refers to the principle of mutual recognition. On the other hand the Note provides no factual information or indication of the practical difficulties which have been faced under the Council of Europe Convention. This is disappointing and we would be grateful if you could fill this gap.

We note the emphasis given in the Note to the compatibility of the Convention with the principle of mutual recognition which we recognise, as the European Council has stated, is the “cornerstone of judicial cooperation in both civil and criminal matters within the Union”. We can see how some of the proposed changes to the Convention regime might be justified on a mutual recognition basis; for example, the removal of the need for consent of the executing State. However, we do not believe that the requirement to remove the consent of the prisoner can be justified under the principle of mutual recognition. Indeed, removal of the prisoner’s consent appears to run counter to the humanitarian aim of the Convention and of the draft Framework Decision. How do the Government reconcile removing prisoners’ consent with the humanitarian aim?

The Committee asked about the possible increase in the number of prisoners that might be transferred. Caroline Flint offered the following explanation why so few prisoners currently apply for transfer: “it is likely that better prison conditions here and the likelihood of early release from custody play a significant part. In addition, a number of foreign national prisoners will have strong family ties to the UK.” It would appear that the Government’s policy, were the Framework Decision to become law, would be actively to seek to have prisoners transferred. In this context we note the last sentences of the fourth and sixth paragraphs of the letter. Can you confirm whether this is the Government’s intention? Further, can you identify the criteria the Government would apply in determining when it would be “appropriate” to submit applications for transfer? More generally, what factors are influencing the determination of Government policy towards the draft Framework Decision? To what extent is the Government’s policy in relation to transfers being determined by the potential financial implications of the proposal? It would seem from the Government’s Explanatory Memorandum that there would be a net saving if all those who could be transferred were transferred (para 17 mentions 854 British nationals held in prisons in other EU Member States and 1855 EU nationals held in prisons in the United Kingdom).

As to the question whether a prisoner who was being transferred without his consent could appeal against that decision, Caroline Flint said that there would be no formal right to appeal a decision to transfer but the prisoner detained in the United Kingdom would have the right to seek judicial review of any decision made. Can you confirm that any such challenge could include infringement of rights under the European Convention on Human Rights and that any domestic legislation implementing the Framework Decision would make that clear?

Thank you for the helpful elaboration of the Government’s concerns about the effect of differing release arrangements across the EU. We would be pleased to have further clarification of the Government’s position when they have obtained the further legal advice referred to by Caroline Flint.

Finally, we are most grateful for the Government’s confirmation that it will report back to the Scrutiny Committees when they have finished their consultation with Prisoners Abroad and the Prison Reform Trust.

The Committee looks forward to receiving your response to the points and questions raised above. In the meantime the proposal is retained under scrutiny.

13 June 2005

Letter from Rt Hon Baroness Scotland of Asthal, QC,
Minister of State, Home Office to the Chairman

Thank you for your letter of 13 June to Andy Burnham about the EU proposals on prisoner transfer between Member States. You have indicated that your Committee has a number of concerns about the proposals. I am replying as I have responsibility for this area.
The Council of Europe Convention on the Transfer of Sentenced Persons (“the Convention”) is the principal international prisoner transfer agreement to which 57 countries, including all Member States of the EU, are a party. The Convention, however, can be slow and bureaucratic. The EU proposals are intended to speed up and simplify the transfer process with the introduction of time limits and the use of a standard form.

The draft Framework Decision is also intended to address deficiencies caused by the interaction of the Convention and the Council Framework Decision of 13 June 2000 on the European Arrest Warrant (“the EAW”). Difficulties have arisen over the extradition of prisoners under the EAW. It is the policy of some Member States not to agree to the extradition of their own nationals under an EAW unless an assurance is given that the prisoner will be allowed to serve any subsequent sentence in his own State in accordance with the provisions of the Convention. However, the Convention requires that the offence for which the prisoner has been convicted is an offence in both States. Where dual criminality does not occur, the prisoner cannot be returned under the Convention. As a result extradition is refused. The EU proposal seeks to solve this difficulty by removing the requirement for dual criminality in relation to EAW offences.

You have highlighted that the EU proposal does not require the prisoner to give his consent to the transfer. Instead Member States are only obliged to consult the prisoner. You have asked how the Government reconciles this with the humanitarian principles of the Convention.

The Government accepts that the removal of the requirement for the prisoner to consent to the transfer could appear to weaken the humanitarian aims of the proposals. However, the Government believes that in almost all cases it is better for a foreign national prisoner to serve his sentence in his own country. Doing so removes the disadvantages often faced by prisoners because of cultural and language differences. Transfer to a prison nearer to their homes means that prisoners are able to rebuild and strengthen family relationships through regular visits and temporary release from prison aiding their reintegration on final release. Regular visits can also reduce the stress placed on family members. In addition, prisoners can undertake offender behaviour and rehabilitation courses appropriate to that country. Reducing the likelihood of re-offending in this way is of benefit to the prisoner, his family, and to the State.

You have also asked more general questions about how the Government would seek to use the Framework Decision were it to become law, what criteria it would use to identify suitable prisoners, and to what extent its policy is determined by potential financial savings.

In her letter of 3 May, Caroline Flint explained that the Government would seek to take full advantage of the new arrangements by putting in place procedures to ensure that all eligible prisoners were identified at an early stage in the sentence. However, this does not mean that we would necessarily seek to transfer all eligible prisoners. Each case would be considered on its individual merits and would take into account representations made by the prisoner during the consultation process. We have not yet given detailed consideration to the criteria the Government would use to identify suitable prisoners. This will to some extent depend on the final shape of the proposals, but it is likely that we initially would be looking at those prisoners whose sentence was final and who were not subject to any further criminal proceedings in the UK; those subject to a recommendation for deportation; and those who have no links with the United Kingdom and will be leaving the country upon release. A further criterion may well be based on sentence length.

While fully supporting the humanitarian benefits of prisoner transfer, it would be disingenuous not to acknowledge the potential benefits of these proposals to the State at a time when the prison service is facing significant pressure from a rising prison population. The benefit from increasing the number of prisoners transferred, at an earlier stage of their sentence, while ensuring that the sentence of the court is enforced, could be significant.

You have asked about the appeal process and whether any challenge from a prisoner by way of judicial review could include infringements of rights under the European Convention on Human Rights. You have also asked whether any domestic legislation implementing the Framework Decision would make that clear.

A prisoner could seek a judicial review on the basis that a transfer breached his rights under ECHR. However, the Government does not believe that a transfer without consent would breach ECHR. We understand that the European Court has recently rejected such a challenge from a prisoner transferred from Estonia to Finland without consent under the provisions of the Additional Protocol to the Convention. A copy of the judgment in this case is awaited. It is not possible at this time to say what will be included in any domestic legislation implementing the Framework Decision, however, given that a prisoner already has the right to seek judicial review on the basis of a perceived breach of ECHR, the Government does not believe that it would be necessary to explicitly state that in any subsequent legislation.
The Government continues to have concerns about the effect of differing release arrangements across the EU. However, the sponsors have sought to address this concern in Article 13 (4). This would allow the executing state to take into account the conditional release entitlements of the issuing State. We will need to have further discussions with our partners to ascertain whether this would be a workable solution.

I have attached for your information a copy of the comments of Prisoners Abroad (not printed). I will let you have copies of any comments the Prison Reform Trust may wish to make when they have been received.

11 July 2005

Letter from the Chairman to Rt Hon Baroness Scotland of Asthal, QC

Thank you for your letter of 11 July which was considered by Sub-Committee E (Law and Institutions) at its meeting on 13 July. We are most grateful for the explanations you have given. However, a number of points arise.

(a) Background to the proposal

You draw attention to the practical problems that have arisen in the operation of the European Arrest Warrant (EAW). Some States have been reluctant to agree extradition unless given an assurance that the prisoner will be allowed to serve any subsequent sentence in his own State in accordance with the Convention. Two points in particular concern the Committee. First, we still have no clear indication of the size of the problem to which the proposal is directed. What are the numbers and how many States are seeking such assurances before extradition? Second, we note that you do not express any view on the compatibility of such refusals with the EAW. In this context the Commission’s report on the operation of the EAW (COM (2005) 63 final—a document which is yet to be deposited for scrutiny) would appear to be helpful. Para 2.2.1 suggests that making surrenders so conditional might be inconsistent with the EAW. What is the Government’s view?

The present proposal draws attention to a more general problem raised by Member State initiatives under the Third Pillar. The failure to conduct the necessary preliminary factual enquiries, to prepare an impact assessment and to provide a full Explanatory Memorandum to accompany the proposal makes comprehension particularly difficult in cases such as the present. This is a matter of concern to which we will be returning the context of our forthcoming Report on Human Rights Proofing EU Legislation.

(b) The prisoner’s consent

We note the arguments you give as to why serving a sentence in the prisoner’s own country may be beneficial. This does not, however, remove the question as to who is to decide what is beneficial and in the taking of that decision what weight should be given to the prisoner’s consent. As you are aware the number of transfers under the present arrangements is very small. This might suggest that not all would agree, and especially the prisoners concerned, that transfers are beneficial. It is imperative that the views of the prisoner should be taken into consideration.

(c) Implementing the Framework Decision

We are most grateful for the description of the criteria which the Government might employ in identifying suitable prisoners for transfers. You acknowledge that there would be potential financial benefits to the State. Thank you for this helpful and candid response.

(d) Appeals

Thank you also for confirming that there would be a right of judicial review when ECHR could be raised. You draw attention to the recent judgment of the Strasbourg Court in the Mairold Veermae case, from which the Government conclude that a transfer without consent would not breach the ECHR. But as can be seen from page 11 of the judgment the European Court’s finding is not unqualified: “The Court does not exclude the possibilities of a flagrantly longer de facto sentence in the administering State could give rise to an issue under Article 5, and hence engage the responsibility of the sentencing State under that Article.”

As regards the implementation of the Framework Decision. You say that the Government do not believe that it will be necessary to state explicitly the right of any appeal in any implementing legislation. We note your position on this but expect the need for any express provision implementation to be reconsidered at the time of implementation, if not by this Committee then by the Joint Committee on Human Rights.
(E) **Differing Release Arrangements**

You draw attention to Article 13(4) and indicate that the Government are not certain whether this provision would be adequate to deal with the problem of differing release arrangements. We note that position and would be grateful to be kept informed of the results of your discussions with other Member States.

Finally, thank you for providing a copy of the comments of Prisoners Abroad. We look forward to receiving any comments the Prison Reform Trust may make in due course.

20 July 2005

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**Letter from Rt Hon Baroness Scotland of Asthal QC, to the Chairman**

Thank you for your letter of 20 July about the EU proposals on prisoner transfer between Member States of the EU.

The Framework Decision on the European arrest warrant ("the EAW") does contain provisions that allow a Requested State to request assurances from the Issuing State that, should any custodial sentence be imposed after they have been extradited, then the prisoner will be transferred back to the Issuing State to serve any custodial sentence there. This provision may only apply in relation to extradition requests for nationals or residents of the Requested State. We understand that, in practise, Member States are only seeking such assurances in relation to own nationals. The reason for the inclusion of this provision is that many Member States were not able to extradite their own nationals prior to the introduction of the EAW and were only prepared to accept such a change in policy if they were able to request a guarantee that the Requested Person could serve any sentence in their country of origin/residence if they were given a custodial sentence in the other State.

The difficulties that have arisen are not because of any incompatibility with the Framework Decision, which allows for extradition to be refused where no guarantee can be given that a prisoner will be returned to the Requested State to serve a sentence. The difficulty is that the Framework Decision does not go into detail as to the terms and means of transfer. For example, Member States who wish to adapt the duration of any sentence (to re-sentence the prisoner in accordance with its own law) cannot do this under the Framework Decision and so continue to request that any transfer takes place under the 1983 Council of Europe Convention. This then can cause further difficulties because of the requirement in the Convention that dual criminality must apply. The draft Framework Decision aims to address this problem by requiring States to continue to enforce sentences imposed by the courts in the Issuing State and removing the requirement for dual criminality for certain specified offences.

As I have mentioned this provision does not apply to all cases but only EAW requests for own nationals. Therefore the problem is limited, especially for the UK as we have a longstanding policy that we are prepared to extradite our own nationals and we therefore never seek these types of assurances from other Member States when we receive an EAW request. Since the introduction of the EAW on 1 January 2003 we have provided assurances in only five cases.

You have mentioned that it is imperative that the views of the prisoner should be taken into consideration when deciding whether or not to seek a transfer under the draft Framework Decision. The EU proposal makes consulting the prisoner a specific requirement. You may recall that I mentioned in my letter of 13 July that the UK would not necessarily seek to transfer all eligible prisoners. Each case would be considered on its individual merits and would take into account representations made by the prisoner.

Thank you for drawing to my attention the result of the recent ruling of the European Court in the *Mairold Veermae* case. We have noted the circumstances in which the Court has indicated that a possible breach of Article 5 ECHR may occur. We believe that Article 13(4) of the draft Framework Decision may well reduce the likelihood of prisoners serving longer in custody as a result of transfer. However, officials have yet to hold detailed discussions on this Article. I will, however, keep you informed of developments in this area.

I will let you have a copy of the comments of the Prison Reform Trust as soon as they have been received.

28 September 2005
EUROPEAN EVIDENCE WARRANT (7828/05, 11288/05)

Letter from the Chairman to Andy Burnham MP, Parliamentary Under Secretary of State, Home Office

The Framework Decision was considered by Sub-Committee E (Law and Institutions) at its meeting on 6 July. The Committee examined the new text of the proposal and decided to retain it under scrutiny. We were grateful for the information provided in your Explanatory Memorandum of 2 June. There are, however, a number of matters on which we would be pleased to have the Government’s views.

(A) Definitions (Article 2)

We note that “Court” has been added to the list in Article 2(c). Could you please confirm that this would enable the defendant in criminal proceedings to make application for an (European Evidence Warrant) EEW? If the procedure is only available to the police and prosecuting authorities this might offend the principle of equality of arms.

You say that it remains a matter for discussion whether police authorities should be able to issue EEWs and the matter is to be resolved during the UK’s Presidency. We would be pleased if you would keep us informed as to the progress of the discussions.

(B) Scope of the EEW (Article 3)

While Article 3(2)(a) provides that an EEW cannot be used for the purpose of conducting interviews or taking statements from suspects etc the new text permits an EEW to cover taking statements of persons with whom the executing authorities is confronted during the execution of the EEW. What safeguards will exist to prevent Article 3(4)(b) defeating the restriction contained in Article 3(2)(a)?

(C) Coercive measures (Articles 11 and 13)

You draw our attention to the amendments made to Articles 11 and 13. While the reference to coercive measures has now been removed from the latter you indicate that the new Article 13 could still cover coercive measures but, as you say, the new provision requires that “formalities and procedures” indicated by the issuing authority would not be contrary “to the fundamental principles of law of the executing State”. Are you sufficiently clear as to what this phrase refers in the case of the United Kingdom?

A separate point arises as regards the relationship between Article 13 and Article 11(2). We believe that this could usefully be clarified so as to ensure that any coercive measures are governed by the law of the executing State. Article 11(2), it is suggested, should be amended by the deletion of the word “additional”. Article 13 should be made subject to Article 11(2). Do you agree?

(D) Grounds for Non-recognition (Article 15)

You have also drawn our attention to two matters. The first is the inclusion of a territoriality clause in Article 15. We understand that this clause has been the subject of discussion at Ministerial level in the Council and has not been agreed. We would be grateful if you could explain the concerns of Member States and what position the Government are taking on this clause.

A second point arises out of paragraph 11 of your Explanatory Memorandum. You say: “We have been successful more recently with including under Article 15 an additional grounds of refusal to protect essential national security interests”. In an earlier Explanatory Memorandum, the Government explained their concern that the United Kingdom might be required to disclose sensitive material which is now protected by public interest immunity. Is this the issue for which the Government are seeking amendment of Article 15?

(E) Legal remedies for coercive measures

You say that the United Kingdom and other Member States have argued for the deletion of part of Article 19(6). The first sentence of Article 19(6) would seem to be important in safeguarding the interests of, for example, the third parties whose property, documents or data could be seized under the EEW. Can you confirm that it is only the second and third sentences of Article 19(6) which, in the Government’s view, should be deleted?
The Committee decided to retain the proposal (COPEN 68) under scrutiny. The earlier version of the proposal (COM (2003) 688) has been cleared from scrutiny.

7 July 2005

Letter from the Chairman to Andy Burnham MP

Thank you for furnishing COPEN 108 for scrutiny. The new text was considered by Sub-Committee E (Law and Institutions) at its meeting on 2 November. The Committee was grateful for your full and clear Explanatory Memorandum outlining the main changes and also responding to the questions raised by the Committee and the Commons European Scrutiny Committee. We would be grateful if you could pass on our thanks to all those concerned in the preparation of the EM. You will not be surprised, however, that a number of concerns remain.

(A) Article 1—Safeguards

We welcome the amendment to Article 1(3) as a general statement that the Framework Directive must be read and applied consistently with fundamental rights obligations, including those in the ECHR. However, the deletion of Article 12 is a matter of very considerable concern. The certainty of Article 12 is preferable to the amended Article 1(3). Why not have both? If Article 12 is not to be included, is it the intention of the Government to specify in the legislation implementing the EEW specific safeguards of the sort set out in Article 12? If not, why not?

(b) Article 2—Definitions

Two points arise under this heading. First, thank you for confirming that a defendant in criminal proceedings would be able to make an application for an EEW: the reference to “court” is sufficient to encompass such an application. How do the Government intend to give effect to this in England and Wales? Is it another matter for the implementing legislation or would it be dealt with by way of amendment of the Criminal Procedure Rules?

Second, we note that Article 2(c) has been amended to indicate that an issuing authority would include a police, customs or frontier authority. We are concerned that an EEW issued by the police in one Member State would not necessarily require judicial approval for the executing authorities in the other Member State to use coercive measures to obtain the evidence in question. While the Framework Decision contemplates that some form of judicial authorisation be required in the issuing State in some cases, the situation might still arise where the police in one Member State use coercive force to obtain evidence upon the simple request to do so by the police in the issuing State. We are sure that you will agree that this would be unsatisfactory. How is it envisaged that the UK would apply these provisions in its relations with other Member States? Can you confirm that there will be no possibility of coercive measures being used in the United Kingdom without prior judicial approval and control?

(c) Coercive Measures—Articles 11 and 13

You will recall that we sought clarification of the relationship between Article 11(2) and Article 13(1). We understand that the Government accept that while Article 13(1) is necessary to facilitate the admissibility of the evidence in the issuing State, the laws of the executing State should govern the procedures, including coercive measures, needed to give effect to the EEW. Do you therefore agree that the word “additional” should be deleted from Article 11(2) and that Article 13 should be made expressly subject to Article 11(2)? We believe this will be helpful in securing the safeguard which you agree would be useful.

(d) Article 15(2)(c)—The Territoriality Clause

Thank you for your explanation of the relationship between Article 15(2)(c) and the double criminality provision in Article 16. You helpfully explain the concerns of some Member States and we note that the provision remains under discussion. We would be grateful if you would keep us updated on this point. In the meantime can you confirm that the term “criminal offences” when used in Article 15(2)(c) means “acts said to constitute the offence the subject of the proceedings in the issuing State”?

The Committee decided to retain the proposal under scrutiny. The earlier version (Doc 7828/05) has been cleared, as it has been superseded by Doc 11288/05.

3 November 2005
Letter from Andy Burnham MP to the Chairman

Thank you for your letter of 3 November with the comments of Sub-Committee E (Law and Institutions) on COPEN 108. The Committee identified a number of outstanding concerns with the proposal for a European Evidence Warrant.

ARTICLE 1—SAFEGUARDS

The Committee found the deletion of Article 12 of very considerable concern and suggested that this Article should be reinstated together with the new human rights clause in Article 1(3). The consensus among the delegations in the working group, however, was that it is unnecessary to specify safeguards for the execution of an EEW. Their view is that Member States already have established law and practice addressing these concerns and that their national provisions are consistent with the obligations under the European Convention on Human Rights (ECHR). To attempt limited harmonisation of Member States’ procedural law in the context of this Framework Decision would unnecessarily complicate the implementation of the Framework Decision. Instead it has laid down that the procedural law of the executing State should govern the measures required to execute an EEW, while the general human rights clause in Article 1(3) confirms the absolute protections which exist under ECHR. The UK’s implementing legislation will therefore provide for an EEW to be executed in a manner consistent with existing search and seizure and production order powers.

ARTICLE 2—DEFINITIONS

You asked how the right of a defendant to apply for an EEW would be given effect domestically. We have yet to determine the detailed legislative requirements arising from the Framework Decision, but we envisage that this issue will have to be addressed in the implementing legislation. In the existing legislation covering mutual legal assistance requests, Article 7(3)(c) of the Crime (International Co-operation) Act 2003 provides that a defendant may apply to a court for assistance in obtaining evidence from abroad.

The Committee asked for confirmation that there would be no possibility of coercive measures being used in the UK without prior judicial approval and control. Article 11 of the Framework Decision allows the executing authority, in a specific case, to decide that it will not execute a warrant using search or seizure unless it has been validated by a judge, court, investigating magistrate or public prosecutor. A new paragraph has been added to Article 11 to provide that a Member State may make a notification requiring such validation in all cases where the issuing authority is not a judge, court, investigating magistrate or public prosecutor and where the measures necessary to execute the EEW would have to be ordered by one of those authorities in a similar domestic case. We are giving careful consideration to whether it would be appropriate for the UK to require such a validation. However, we envisage that the courts here will continue to be responsible for issuing search warrants or production orders required for the execution of an overseas EEW, in the same way that the authorities at present must obtain a search warrant or production order from the courts in order to execute an overseas mutual legal assistance request.

COERCIVE MEASURES—ARTICLES 11 AND 13

The Committee suggested that the word “additional” in Article 11(2) should be deleted and that Article 13 should be made expressly subject to Article 11(2). I can confirm that “additional” has now been deleted. The requirement in Article 13 to comply with certain formalities and procedures is already qualified by the safeguard that they should not conflict with the fundamental principles of the law of the executing State. Article 13 is intended to cover procedural issues, for example the official stamping of a document, the presence of a representative from the issuing State, or the recording of times and dates to create a chain of evidence. Coercive measures do not come within the scope of this Article and this has now been made explicit in the text. We do not therefore consider it is necessary that this Article should be made subject to Article 11.

ARTICLE 15(2)(c)—THE TERRITORIALITY CLAUSE

You asked whether “criminal offences” when used in Article 15(2)(c) means “acts said to constitute the offence the subject of the proceedings in the issuing State”. There is no definition of criminal offence in the Framework Decision and it is ultimately for the Courts to rule on a point of law, but we agree that, in the context of Article 15(2)(c), this interpretation of “criminal offence” is reasonable.
Finally, negotiations on the European Evidence Warrant have reached an advanced stage and it remains the UK Presidency’s intention to seek a general approach on the main text of the Framework Decision at the JHA Council on 1–2 December. The latest text of the Framework Decision (COPEN 174) has also been deposited for scrutiny and an Explanatory Memorandum is being prepared. I hope that you will find it helpful in addressing the issues covered here.

29 November 2005

Letter from the Chairman to Andy Burnham MP

Sub-Committee E (Law and Institutions) considered the revised (Presidency) text of the proposed Framework Decision at its meeting on 30 November. We are grateful for your providing a complete copy of COPEN 174, which clearly identifies a number of issues outstanding, and for your Explanatory Memorandum identifying the main changes since the Committee considered the last version of the Framework Decision (Doc 11288/05).

We note the political priority which has been attached to this proposal and that the Presidency aims to reach a general approach at the Justice and Home Affairs Council on 1–2 December. We also note that you did not invite us to clear the proposal from scrutiny but in view of the imminence of the Council meeting and notwithstanding that the Committee has not received your response to the questions raised about Doc 11288/05 (my letter of 3 November) the Committee proceeded to examine the new text as a matter of urgency.

COPEN 174, in addition to setting out a revised text of the Framework Decision, identifies and includes a summary of six matters where a substantial measure of disagreement among Member States remains. As you will be aware, some of these matters have been the subject of concern to the Committee and the subject of earlier correspondence with your Department.

(A) Competent Authorities

As you indicate in your EM the definition of “issuing authority” in Article 2 has been revised. You will recall that we expressed concern about the earlier definition which would have expressly included police, customs and frontier authorities. The new text substitutes a reference to (briefly) “any other judicial authority”. It is unclear what authorities are likely to come within this category. Are there any such bodies in the UK? What approach do the Government propose to take in implementing the Framework Decision to the proposed “validation procedure” under Article 11(2)(3)? The Committee would be grateful for clarification.

(b) Coercive Measures

COPEN 174 discloses that there is no common understanding of the term “coercive measures” among Member States. The Presidency’s proposed compromise is to include a new definition in Article 2 (dd) of “search and seizure”. You will recall that we sought clarification of the relationship between Articles 11(2) and 13(1) in the earlier version. The language of both provisions has changed and it is now clearer that Article 13 does not enable the issuing State to impose an obligation on the executing State to take coercive measures. While this issue may have been resolved, there remains a further issue as to safeguards. You will recall that we expressed concern at the removal of Article 12, which in earlier versions included quite detailed rules providing safeguards in the execution of EEWs. Our concern remains and we look forward to receiving your response to the questions raised on this point in my earlier letter.

(c) Legal Remedies (Article 19)

You will recall that Article 19 has also been the subject of continuing concern. We were therefore particularly interested to discover that a number of Member States share the concerns of the Committee about the absence of any available remedy in the executing State. In this context we note that COPEN 174 does not address the concern of one Member State (Germany) which considers that it is necessary to provide for an effective legal remedy in the executing State against the decision to issue a warrant in order to allow that State to protect its citizens. We are mindful of the position taken by the German Constitutional Court in relation to Germany’s implementation of the European Arrest Warrant. Is Germany now satisfied with Article 19 in the light of the new recital proposed in COPEN 174? Can you confirm that the Framework Decision does not exclude a human rights based challenge (Article 1(3) confirms that fundamental rights, including the ECHR, prevail) in the executing State?
(d) Computer Data

COPEN 174 reveals two outstanding questions relating to computer data. The first is whether to retain Article 21. The second question is whether, irrespective of what happens to Article 21, the Framework Decision should exclude execution of a warrant in relation to data which is not physically present in the executing State but may be lawfully accessible in that State. We have examined the new text being put forward by the Presidency and would be grateful if you could provide further clarification. What is meant by “directly accessible”, a term which is contrasted with “located”? Does “directly accessible” cover the situation where information is held on a server in a third State (EU member or non-member)? If so, the Framework Decision does not envisage the need for any agreement from the third State. Might not the effect of this be to circumvent data protection and human rights protection (Article 8 ECHR) in that third State?

(e) Data Protection

In your Explanatory Memorandum, you draw attention to the fact that Article 10(2) has been deleted. You will recall that this provision contained an obligation to keep personal data confidential. You explain that Article 10(2) has been deleted “in the light of plans for a Commission proposal to address the same issue as a horizontal measure”. We assume that this is a reference to the Commission’s proposed Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, currently held under scrutiny in Sub-Committee F. We are concerned about the adequacy of data protection safeguards if Article 10(2) is deleted and in particular what protection will be given if the Commission’s proposal is for any reason delayed. We have enquired of the European Data Protection Supervisor as to whether he has considered the implications of the deletion of Article 10(2).

The Committee decided to retain the proposal under scrutiny. We look forward to receiving your response to the points and questions raised above. We would also be grateful for a summary of the discussions of the EEW at this week’s Justice and Home Affairs Council.

1 December 2005

Letter from the Chairman to Andy Burnham MP

I wrote to you on 1 December setting out the Committee’s reactions to the latest text (Doc 14246/05). In that letter I said that the Committee had not received a response to the questions raised on Doc 11288/05 set out in my letter of 3 November. When Sub-Committee E met on 30 November and when I wrote my letter of 1 December we were not aware of your letter of 29 November giving the Government’s response to the questions raised in my letter of 3 November. This is regrettable but I do not believe it affects the decision taken by the Sub-Committee on 30 November which was based on the new text.

We are grateful for the information provided in your letter of 29 November but, as you will be aware, a number of the issues discussed in that correspondence have now been overtaken by the delivery of the new text (Doc 14246/05), in particular the points we had raised in relation to Articles 2, 11 and 13. We remain concerned, however, about the adequacy of safeguards and the deletion of Article 12. You say that “to attempt limited harmonisation of Member States’ procedural law in the context of this Framework Decision would unnecessarily complicate the implementation of the Framework Decision”. We consider that some indication, not necessarily exhaustive, about procedural safeguards, such as those formerly set out in Article 12, would have been helpful. We believe that there could be no objection to saying that those provisions were without prejudice to greater safeguards applying under Member States’ laws. You say that the UK’s implementing legislation will provide for an EEW to be executed “in a manner consistent with existing search and seizure and production order powers”. It would be helpful if you could describe what safeguards there will be for the person to whom the order is addressed and/or the owner of the property concerned.

To avoid any confusion may I suggest that you respond to this question at the same time as you respond to my letter of 1 December.

The Committee decided to clear Doc 11288/05 but to retain the proposal under scrutiny.

8 December 2005

Letter from Andy Burnham MP, to the Chairman

Thank you for your letters of 1 and 8 December detailing the concerns of Sub-Committee E (Law and Institutions) on COPEN 108 and COPEN 174.
This Framework Decision was considered at the Justice and Home Affairs Council on 2 December. Negotiations were inconclusive, with outstanding issues remaining on Article 2 (issuing authorities), Article 15 (grounds for refusal), Article 16 (dual criminality) and Article 19 (legal remedies). We expect the Austrian Presidency to take forward negotiations on this proposal.

The Committee highlighted a number of outstanding issues in the proposal.

**ARTICLE 2—COMPETENT AUTHORITIES**

The Committee sought clarification as to what authorities are likely to come within the revised category of “any other judicial authority”. As the proposal states, only those authorities defined by the issuing state as competent under their law to order evidence to be obtained from abroad would be included. Some Member States’ police or customs authorities carry out this function under existing mutual legal assistance arrangements and would therefore be able to continue to do so under the EEW. In the UK, requests for mutual legal assistance are issued by prosecutors. We do not intend that this would change as a result of the implementation of the EEW.

The Committee asked what approach the Government proposed to take with regard to the “validation procedure” under Article 11. This Article of the Framework Decision allows the executing authority, in a specific case, to decide that it will not execute a warrant using search or seizure unless it has been validated by a judge, court, investigating magistrate or public prosecutor. It is also possible for a Member State to make a declaration requiring validation more generally of any EEW issued by another judicial authority. We are giving careful consideration to whether it would be appropriate for the UK to require validation. However, we intend that the courts within the UK will continue to be responsible for issuing search warrants or production orders required for the execution of an overseas EEW, in the same way that authorities at present must obtain a search warrant or production order from the courts in order to execute an overseas mutual legal assistance request.

**ARTICLE 11 AND 13—COERCIVE MEASURES**

The Committee remains concerned over the adequacy of the safeguards governing the execution of the EEW and the deletion of Article 12, which detailed certain safeguards. I note the Committee’s preference for some indication of the safeguards which would apply under the EEW, even though this would be without prejudice to more extensive national provisions. The negotiations have established that the EEW will be executed using the measures available under the executing State’s law. Therefore, in the UK, EEWs will be executed subject to the safeguards which apply to the domestic use of search or seizure powers, as laid down for example by the Police and Criminal Evidence Act (PACE) 1984 and the Codes of Practice made under it. Article 1(3) also makes clear the obligation to respect the protections which exist under the European Convention on Human Rights.

**ARTICLE 19—LEGAL REMEDIES**

The Committee asked for confirmation that the Framework Decision does not exclude a human rights based challenge. In our view the inclusion of a general clause on the protection of fundamental human rights is helpful and would allow the possibility of a human rights based challenge. Although an explicit refusal on human rights grounds was not included in the Framework Decision, as many Member States opposed its inclusion, the Government will consider whether we need to legislate for a specific human rights ground for refusal, along the lines of the legislation implementing the European Arrest Warrant.

In connection with your question as to whether Germany is satisfied with Article 19 in light of the recital proposed in COPEN 174, you will appreciate that we cannot comment on the views or opinions of particular Member States. Negotiations on this issue were not resolved at the Justice and Home Affairs Council in December and will continue under the Austrian Presidency.

**ARTICLE 21—COMPUTER DATA**

The Committee asked what is meant by the term “directly accessible” computer data. We understand this to mean data that is lawfully accessible from the executing State and therefore covers the situation where information may be held on a server in a third State. We do not believe that the EEW should exclude data simply because the person who extracts it from a computer database has no means of knowing precisely where
the information is physically held. The use of the data cannot be said to be controlled by the third State if it is directly accessible to users elsewhere, and we do not therefore believe that this circumvents data protection and human rights protection in the third state.

**ARTICLE 10(2)—DATA PROTECTION**

The Committee also expressed concern about the deletion of Article 10(2) on confidentiality of personal data; a decision which reflected the Commission’s proposal for a Framework Decision on the protection of data processed in the framework of police and judicial co-operation in criminal matters. You were concerned about the implications should the Commission proposal be delayed. I would point out that the requirement on confidentiality does not exist in the 1959 and 2000 MLA Conventions, although all Member States have signed up to the 1981 Council of Europe Convention on the automatic processing of personal data. We therefore believe that the same level of protection will exist as it does under MLA.

*16 December 2005*

**Letter from the Chairman to Andy Burnham MP**

Thank you for your letter of 16 December which was considered by Sub-Committee E (Law and Institutions) at its meeting on 18 January. We are grateful for your providing a brief description of the outcome of the discussion of the proposed Framework Decision at the Justice and Home Affairs Council in December. We note that the matter has been referred back to COREPER and is likely to be on the agenda for the JHA, under the Austrian Presidency, next month.

We are grateful for the responses you have given to the questions we raised in our letters of 1 and 8 December and will be pleased to be kept up to date with any developments relating to Articles 2, 15, 16 and 19, on which the Committee, as you will be aware from the earlier correspondence, also has concerns.

(a) **ARTICLE 2—COMPETENT AUTHORITIES**

We were pleased to see that the Government are considering whether it would be appropriate for the UK to require validation. We believe that such a procedure would be highly desirable where the issuing authority is not a judicial authority or the EEW has not been subject to judicial approval in the issuing State.

(b) **COERCIVE MEASURES**

We regret that the Government are not persuaded that detailed safeguards, along the lines of the former Article 12, should be reintroduced into the Framework Decision. It seems likely that the EEW will be another example of where “strengthening freedom”, in the European area of freedom, security and justice, would seem to be given secondary importance. We look to the Government to make good any defects in the Union instrument upon its implementation in the UK.

(c) **LEGAL REMEDIES**

We are encouraged by your response and we would urge the Government to include a human rights ground for refusal in any legislation implementing the EEW.

As regards the position of Germany and Article 19, we note that you regard yourself as bound by confidentiality. We propose to seek the information from the German Parliament.

(d) **COMPUTER DATA**

We note your explanation of what is meant by “directly accessible”. Your explanation seems remarkable on two grounds. Firstly, it appears that the word “directly” is redundant. Secondly, you demonstrate how extensive the reach of an EEW may be and how, if your data protection and other fundamental rights interpretation is correct, rights and safeguards provided to individuals in third countries may be disregarded.
(e) **Data Protection**

Thank you for outlining the position which will apply if the EEW is adopted in advance of the proposed Framework Decision on the protection of data. We would invite the Government to consider some form of statement in the Council drawing attention to this measure and the need for adequate safeguards at Union level to be put in place as soon as possible. Otherwise the EEW would be seen as yet another measure where “freedom” would appear to be a secondary priority.

(f) **Evidence Obtained Under Torture**

The recent judgment of the Appellate Committee in A and others v Home Secretary has caused us to consider whether there would be any implications for the EEW. In this context you may be aware of the concerns raised by Fair Trials Abroad (for example in *the Guardian*, 12 December 2005). The problem envisaged is where statements, obtained under torture, emanating from third countries, appear in police files within the Union. We assume that UK authorities would not seek such statement from the authorities in another Member State. But what if the authorities in another Member State, not knowing of the existence of torture, sought the document from authorities in the UK? What would be the response?

The Committee decided to retain the proposal under scrutiny.

*19 January 2006*

**EUROPEAN ORDER FOR PAYMENT PROCEDURE (7615/04)**

**Letter from the Chairman to Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs**

The proposed Regulation was considered by Sub-Committee E (Law and Institutions) at its meeting on 23 March.

In your Explanatory Memorandum you draw attention to the main areas where the Presidency has put forward amendments.

(a) **Limitation to Cross-border Cases**

We note that a “very large majority” of Member States do not want the proposal to apply to purely national cases. Accordingly the Presidency has produced a text seeking to limit the scope of application of the Regulation to “cross-border cases”—new Articles (A) and (X). The parties must be domiciled or habitually resident in different Member States, to be determined when the application for an order for payment is submitted. The definition makes no reference to the subject matter of the claim. Nor does it appear to be relevant whether the defendant is domiciled or habitually resident in the Member State where the court is sitting or where the decision is to be enforced.

The fact that a number of Member States are taking the “cross-border” point is encouraging. The Committee’s concern has been that the Regulation should not exceed the scope of Article 65 EC, which only permits “Measures in the field of judicial cooperation in civil matters having cross border implications . . . and in so far as necessary for the proper functioning of the internal market”. But determining “cross border implications” for these purposes is difficult, as the Commission acknowledged in their Explanatory Memorandum to the original proposal. It would be helpful if you could explain why you believe the definition in Article X is adequate to define cross border cases.

(b) **Jurisdiction**

It appears that a number of Member States have suggested that the Regulation should include its own jurisdictional rules. You doubt the need for such rules. We share that view. There seems no reason to have to depart from the rules in the Brussels I Regulation. But you do not say whether this view will prevail. It would be helpful, therefore, if you could explain why other Member States believe that the Brussels Regulation rules should not apply.
(c) Procedure

We note that the Government are content with the proposed changes because they would equate with current procedures in the UK and reduce burdens on judges and court staff. Can you confirm that your Department is keeping in touch with and regularly consulting the judges and other practitioners on this proposal and that they are content with the changes suggested by the Presidency?

(d) Service of Documents

The Presidency proposes to align the service provisions with those of the European Enforcement Order (EEO) Regulation. The Government appear prepared to accept the changes. However, you also say the cross-border service rules would continue to be determined by Regulation 1348/2000. That Regulation provides that a Member State may specify the conditions under which it will accept service of judicial documents by post (Article 14 of Reg 1348/2000). But Article 9(2) of the present proposal seems to set out quite detailed rules on service by post. What will be the relationship between these two Articles?

24 March 2005

Letter from Baroness Ashton of Upholland to the Chairman

Your Committee wrote to me before the General Election on 24 March asking me why the Government believed that the definition in Article X was adequate to define cross-border cases, why some Member States believed that the Brussels I rules on jurisdiction should not apply, whether we had contacted our consultees about the changes in the Presidency text and what the relationship would be between the rules on service by post under the Service Regulation and Article 9-2 of this proposal. I am replying to these points now that both scrutiny committees have been re-established.

The Dutch and Luxembourg Presidencies based Article X on the definition of cross-border cases in Article 2 of Council Directive 2002/8/EC on legal aid. Following this precedent the majority of Member States in the Civil Law Committee expressed satisfaction that the definition as drafted did comply with the requirements of Article 65 TEC.

Following the Informal meeting of ministers in Newcastle in early September there has been agreement between the Council and Commission that this procedure should be limited to cross-border cases, subject to the definition of cross-border which is the subject of current negotiations between the Council and the Commission. That might mean that Article X as drafted could be changed. I shall keep you informed.

Where Member States have advocated departing from the jurisdiction rules in the Brussels I Regulation it has been in order to simplify the procedure by minimising the need for judicial or court staff intervention and thereby allow it to be possible to process claims electronically. The need to check that a court has jurisdiction makes automatic processing more difficult. One Member State suggested limiting jurisdiction to the courts of the Member State where the defendant is domiciled. The Government explored in the Civil Law Committee whether there was a need for any jurisdiction rules, especially as a defendant will only have to tick a box on a standard form to bring an end to the procedure and will not be required to provide a defence or attend a court. It is clear from the discussions in the Committee that the majority of Member States think that there should be jurisdiction rules in this proposal which are aligned with those in the European Enforcement Order (EEO) Regulation. As the current Presidency we are taking forward negotiations on that basis.

The Government has not as yet contacted its consultees on the revised Presidency text. Most of the changes follow the suggestions made by our consultees when the proposal was first issued. For example, as you will see in the summary of our consultation which I sent to the Committee in October, the general consensus was for a simplified procedure which would require little or no judicial intervention and only one opportunity for the defendant to object to the claim. I can confirm that we shall carry out further consultation if there are major changes to the proposal that go against the thrust of the previous comments.

The alignment by the Luxembourg Presidency of the service provisions in this proposal with those in the EEO Regulation applies both to Articles 9-1 and 9-2 of the proposal and to the use of the Service Regulation. Under both procedures service by post across borders will have to be under the conditions specified by each Member State in the Service Regulation (in practice by the equivalent of recorded delivery). The procedures under Article 9-2, however, relate to situations where postal service without acknowledgement of receipt is internal in the Member State where the court has been seised.

5 October 2005
Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 5 October which was considered by Sub-Committee E (Law and Institutions) at its meeting on 26 October. We are grateful for the information you have given, particularly as it relates to negotiations by the UK Presidency. However, a number of points remain outstanding.

(A) Limitation to Cross-border Cases

You say that the definition of cross-border cases is “based” on Article 2 of Council Directive 2002/8/EC on legal aid. But you do not explain how and why a different test is being proposed for the present Regulation. Further, you offer no comment on whether the test in the new Article X (the parties must be domiciled or habitually resident in different Member States) is appropriate to determine what is “cross-border”, in the present context. We note, however, that the definition is the subject of negotiations between the Council and Commission. It would be helpful if you could say whether and, if so, why the Government believe Article X is satisfactory as presently drafted. We have our doubts about it. Where, for example, a transaction takes place in the UK between an English company and a French company, both with places of business here and with the contract being performed here, why should recovery of a debt arising from that transaction be classified as “cross-border”? Why should the recovery of a debt arising from a transaction concluded between an English company (here) and a Ruritarian company present and trading (though not habitually resident) in France not be so classified?

(b) Jurisdiction

You report that the majority of Member States are advocating that the Regulation should contain its own jurisdiction rules and that those rules should be aligned with those in the EEO Regulation. You do not say whether the Government agree with this approach but we note that as the current Presidency are taking forward negotiations on that basis. Is the United Kingdom one of the “majority of Member States” proposing alignment with the EEO? If so, can you explain why the UK has changed its position and why you believe the rules in the EEO are appropriate for the present Regulation?

(c) Procedure

Thank you for drawing our attention to the outcome of your consultation exercise. We note that you say the Government will carry out a further consultation “if there are major changes to the proposal that go against the thrust of the previous comments”. We are grateful for this assurance.

(d) Service of Documents

You will recall that the Committee sought clarification of the service rules that would apply, in particular in what circumstances service would be governed by Regulation 1348/2000 and when by the detailed rules set out in Article 9(2). You explain that the service by post rules in the Service Regulation would apply and that Article 9(2) is intended to deal with the specific case where postal service without acknowledgement of receipt is “internal in a Member State were the court has been seised”. What is meant by “internal in a Member State” in this context? Would Article 9(2) be needed if the scope of application of the Regulation became truly “cross-border”?

The Committee decided to retain the proposal under scrutiny.

27 October 2005

Letter from Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 27 October in which you ask questions about the limitation to cross-border, jurisdiction rules and the methods of service of documents in this proposal. I answer your questions below. I also give details of the main changes in the latest Presidency text, a copy of which I attach for your information. You will want to be aware that as Presidency we would like to obtain political agreement on this text at the Council on 1 and 2 December. As a result it would be helpful if your Committee is able to clear this proposal from scrutiny before then.

I deal first with the issues that you raised.
LIMITATION TO CROSS-BORDER CASES

As I explained in my letter of 5 October, at the Informal Council in Newcastle in September there was agreement between the Council and Commission that this procedure should be limited to cross-border cases, subject to the definition of cross-border. This decision was confirmed at the Council in Luxembourg on 14 October.

You say that you have your doubts about whether the definition in Article X is satisfactory as drafted. The examples that you cite demonstrate that it is not perfect, in the sense of including all cases that might conceivably be considered cross-border, and excluding the rest. It does, however, have the merit of simplicity, something which has commended it to many Member States and, as you know, it follows the precedent of the Legal Aid Directive.

Following that precedent and using the example you cite, it is already possible for an English party to apply for legal aid in a dispute against a French company trading in England but having its headquarters in France on the grounds that this would be a cross-border dispute.

The definition is the subject of continued and high-level negotiations which are likely to continue until the next Council on 1 and 2 December, when Ministers will make a decision. The Government believes that Article X could be used as a workable definition of cross-border. Equally, other definitions are possible. However it is unlikely that whatever definition is eventually agreed will be able to cover all of the cases that could possibly be envisaged as cross-border, especially if it is simple enough to allow the parties and courts to apply easily. Even if the agreed definition does not cover your example of the Ruritanian company trading in France that company will not be denied access to justice. It would still be able to use Brussels I or, more appropriately in this case, the new European Enforcement Order (EEO) procedure.

As Presidency we will take forward the Council’s majority view. We consider, however, that the root of the Committee’s concerns,—that the measure should be restricted to cross-border disputes—has been resolved favourably, and we will want to take the opportunity presented by the Council on 1 and 2 December to settle that question formally.

JURISDICTION

When the Civil Law Committee first considered the inclusion of jurisdiction rules it is right that the Government indicated its wish to explore whether there was a need for such rules in this proposal. Following detailed discussions the Government was persuaded that there was a case for such rules to prevent possible “forum shopping” and to ensure that there were sufficient safeguards for vulnerable defendants. The Civil Law Committee decided that the best way forward was to look at the rules in either Brussels I or the EEO Regulation.

During the negotiations of the EEO Regulation Member States decided that as that instrument dealt with uncontested cases it would be useful to have safeguards for the defendant in addition to those in Brussels I. As the European Order for Payment deals with the same types of case as the EEO Regulation nearly all Member States, including the UK before we assumed the Presidency, agreed that it was appropriate to follow the same jurisdiction rules as in the EEO Regulation. This is something that all Member States now agree.

SERVICE OF DOCUMENTS

You asked whether the rules on service by post under the proposed Article 9-2 would be needed if the Regulation is to be truly cross-border given that Article 9-2(1)(e) deals with cases where service will be internal in a Member State where the court has been seized. The rules on jurisdiction under the proposed Article 2-1 mean that in certain circumstances (such as where the creditor is a business and the defendant is a consumer) the case will have to be brought in the Member State where the defendant lives, even though the creditor will be in a different Member State. In such circumstances, service from the court to the defendant will be internal.

THE NEW PRESIDENCY TEXT

I attach for your information the latest Presidency text of 25 October. I sent you in March the Luxembourg Presidency text of 31 January. You will see that the main change is the way that the claimant’s evidence of his or her claim is required and considered.

At the Council in Luxembourg last month Ministers agreed that under Article 3 creditors should only be required to provide a description of the evidence used to justify a claim and the court should carry out only a prima facie examination before issuing the Order.
Courts will be able to ask the creditor to complete or rectify an application under Article 4-1, can correct excessive interest rate claims under Article 4-2 or can reject an application under Article 5. A rejection of an application will not prevent a creditor from making another application or stop him or her from initiating a claim under a different procedure.

Defendants will have one opportunity to oppose the claim under Article 11 but will have the added safeguard of applying for a review of the Order under Article 12-1 if service of notification of the claim is not effected in sufficient time to arrange his or her defence or if there are other extraordinary circumstances which prevented the defendant from objecting to the claim.

This procedure, both in terms of the examination of the claim and the safeguards for the defendant, is very similar to the current national procedures in England and Wales.

The rules on service and enforceability are very similar to those in the European Enforcement Order Regulation and as with that Regulation enforcement procedures themselves are to be governed by the laws of the Member State of enforcement.

The Government believes this now uniform procedure will be of benefit to citizens and businesses alike and will be a useful complement to the European Enforcement Order Regulation. For that reason, as I said earlier, it hopes to reach agreement on the text during the UK Presidency at the Council on 1 and 2 December.

4 November 2005

Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 4 November which was considered by Sub-Committee E (Law and Institutions) at its meeting on 16 November. You have helpfully supplied a copy of the latest Presidency text and described the main changes you have proposed. You also indicate that it is hoped to reach “political agreement” at the JHA on 1 and 2 December. Against this background the Committee concentrated on two main concerns.

(A) LIMITATION TO CROSS-BORDER CASES

You will recall that we gave two examples which, as you agreed, pointed out some of the difficulties with the definition set out in Article X. You say that the test has the merit of simplicity and also follows the precedent of the Legal Aid Directive. We would take issue with both these statements. The procedure would require the claimant to be able to identify the domicile and/or habitual residence of the defendant and establish both his and the defendant’s domiciles according to the rules of the court in which the claim is made. This may not be simple in all cases, either for the claimant or for the court which has to decide whether to accept the application pursuant to Article 4-1. Secondly, Article X is quite different from the two-limb test employed in the Legal Aid Directive. Article 2(1) of the latter provides as follows:

“For the purposes of this Directive, a cross-border dispute is one where the party applying for legal aid in the context of this Directive is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced”.

It is clear that that is substantially different from Article X: “the creditor and the debtor are domiciled or habitually resident in different Member States”. It would have been helpful to know why Member States consider the Article 2(1) test to be inappropriate in the context of the European order for payment procedure, particularly when the second limb of the Legal Aid Directive test includes such a clear requirement that the claimant or the judgment will have to travel to another Member State.

We are sure that you will agree that it is necessary to find a definition of a “cross-border” case which satisfies the requirements of Article 65 TEC (including the requirement to be necessary for the proper functioning of the internal market—defined in Article 14(2) TEC) and the principle of subsidiarity. In short, “internal” as opposed to “cross-border” cases should not be caught up in the Regulation. The text in Article X is not immediately attractive. As we sought to emphasise in the earlier correspondence, the mere fact that the parties do not have the same domicile or habitual residence does not, in our view, necessarily mean that the matter is cross-border. Similarly, there may be “cross-border” cases where the parties have the same domicile. Further, determining domicile may not be easy in a particular case and legal certainty is not increased by the fact that there is no uniform approach across Member States as to what domicile/habitual residence means.

We offer the following suggestion as to how “cross-border” cases might be defined in the present instrument. The proposal, as we understand it, is aimed at encouraging free movement of persons, goods and services between Member States by providing a means by which debts might be more easily recovered and enforced where the creditor is in one Member State and the debtor in another. That there should be a simple recognisable procedure available in all Member States, the outcome of which all Member States will enforce,
The requirement that the measure be “necessary for the proper functioning of the internal market” suggests the advantages of a different approach: a “cross-border” case might be defined as one where the pecuniary claim/debt in question has arisen from the supply of goods or services across the border from one Member State to another. This approach links the proposal far more closely to the internal market. It would not, for example, extend the procedure to maintenance claims or matters similarly remote from the essential characteristics of the internal market. Enforcement abroad of maintenance claims would be dealt with by the EEO or the Brussels Regulation. We believe the test should be workable: Q. “How did the debt arise?” A. “From the failure to deliver the goods from Rome, to pay for the hotel room in Nice” . . .

We note that you say that negotiations are continuing and are likely to continue on the definition of “cross-border” until the Council meeting on 1 and 2 December. We would be pleased to be kept informed of developments. You believe that “the root of the Committee’s concerns has been resolved favourably”. As is clear from the foregoing we do not agree. What is important, not just for the present proposal but for other proposals (including the Mediation Directive and ESCP), is that any definition of “cross-border” must be clear, in accordance with the Treaty, and workable in practice.

(b) Jurisdiction

Thank you for explaining some of the background to the change in position taken by the Government. You say that all Member States believe it is important to have the same jurisdiction rules as the EEO Regulation, which has safeguards in addition to those in the Brussels Regulation. It would be helpful if you could explain what safeguards are being provided.

The EEO Regulation appears merely to require that the judgment in question does not conflict with the jurisdiction rules in the Brussels Regulation (see Article 6(1)(b) of the EEO Regulation) and the new Article 2-1 in the UK Presidency text appears to do little more than say that the jurisdiction will be determined in accordance with the Brussels Regulation (paragraph 1).

Paragraph 2 of Article 2-1 appears to reiterate the rule in Article 16(2) of the Brussels Regulation. Is this the case? Or are there other “relevant rules of Community law” which would not apply but which Article 2-1 has the effect of applying and thereby giving additional safeguards which Member States consider necessary? It would be helpful if you could clarify the position.

The Committee decided to retain the proposal under scrutiny.

Letter from the Chairman to Baroness Ashton of Upholland

I write to confirm that Sub-Committee E (Law and Institutions) has now cleared this document from scrutiny. We are most grateful for your coming to meet the Committee yesterday evening and explaining the Government’s position on the definition of “cross-border cases” and what you hope to achieve at this week’s Justice and Home Affairs Council meeting.5

In clearing the document from scrutiny, the Committee wishes to make clear that it does not accept that the definition set out in Article X of the proposed Regulation should be a precedent for other measures brought forward under Title IV of the EC Treaty. As you are aware the “cross-border cases” issue also arises in relation to the proposed Mediation Directive and the European Small Claims Procedure Regulation. In our view each measure needs to be considered separately. While you have made clear your aspirations for the definition now being proposed in the context of the European order for payment we trust that you will continue to consider the views of the Committee on this issue, which is key to defining the competence of the Community under Title IV and the application of the principle of subsidiarity.

Finally, we wish you every success at the JHA this week and would be pleased to hear from you about the outcome. We would be particularly interested to know the results of the discussion on the European order for payment procedure and the European Small Claims Procedure. The latter would be especially helpful as we prepare our Report on the proposed Regulation.

1 December 2005

5 See Annex A: Minutes of Evidence.
Annex A

Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON THE EUROPEAN UNION
(SUB-COMMITTEE E)

WEDNESDAY 30 NOVEMBER 2005

Present

Brown of Eaton-under- Lucas, L
Heywood, L (Chairman)
Clinton-Davis, L
Lester of Herne Hill, L

Memoranda submitted by Baroness Ashton of Upholland

Examination of Witnesses

Witnesses: BARONESS ASHTON OF UPHOLLAND, a Member of the House, Under-Secretary of State for Constitutional Affairs, MISS PAT REED and MR EDWIN KILBY, Department for Constitutional Affairs, examined.

Q1 Chairman: Minister, thank you very much for coming. We are grateful to you and your officials who, as I understand it, will play perhaps a larger role in the next stage, which is when we examine the other matter, the claims procedure. We are starting by looking at the proposed Regulation for a European order for payment and that, we understand, is a matter which you are anxious that we progress as far as possible today because I understand it is for discussion tomorrow and Friday at the Justice and Home Affairs Council meeting?

Baroness Ashton of Upholland: That is right, yes.

Q2 Chairman: You are obviously anxious to have approval. Before you start, could I just say how grateful we are that recent exchanges of correspondence have undoubtedly clarified matters to some considerable degree. I think I can say that we are fairly reassured on certain of the more technical aspects, but the one particular matter which we remain a little concerned about and certainly want your help on is the definition and effect of the cross-border element. We have a yet further revised Article X. So we have the original draft Regulation from the Council, the Presidency revision and now this further revision. I gather you want to say a few words by way of opening remarks?

Baroness Ashton of Upholland: I would be very grateful if I could, my Lord Chairman. Thank you very much indeed. I have delayed my departure to Brussels by some hours deliberately because I wanted to be at this Committee meeting in order to do two things, if I may. One was to obviously respond to your desire to have further information both on the order for payment and with my colleagues on the small claims procedure, but I also wanted to take the opportunity to perhaps say, if I might, just a word or two about the Presidency and civil justice because in the course of the Presidency I have not had the opportunity to talk to this Committee. I was saying to my colleagues in the Department, my Lord Chairman, that I know the members of the LIBE and JURI Committee probably better than I know the membership of this Committee, and that is to my discredit, if I might put it that way. What we have achieved in terms of the Presidency, my Lord Chairman, I think is very significant in that it is a step-change in the way in which civil justice has been viewed. It is the first time, we have been able to establish, that on Friday we will have three items of civil justice business on a justice and home affairs agenda. We have had a number of comments from other colleagues in other Member States, and indeed from the Commission, that they have seen a significant change in the way in which civil justice has been dealt with and we have attended all of the committee meetings they have invited us to and dealt with the European Parliament. If we are successful—and COREPER is meeting as we speak to discuss the issue on the order for payment—it will, of course, also be the very first co-decision making civil justice procedure which has been adopted. I wanted to say that because it has been to the credit of my officials, and two of them are here today, but also I think to the work the ministerial team has done, working very closely with our colleagues in the Home Office, that we have actually put in a huge amount of energy in order to position the UK beyond the Presidency as being in the forefront of civil justice.
30 November 2005  Baroness Ashton of Upholland, Miss Pat Reed and Mr Edwin Kilby

We anticipate the Lord Chancellor will make a speech to the European Parliament later this month to look at the future of civil justice. We are also anxious to ensure that all civil justice matters are approached by the Parliament, the Commission and the Council from the principle that our job is to make life for our citizens easier as they live, work, travel and study in the European Union. I wanted to put that on record, if I may, and to say that perhaps beyond the Presidency there might be an opportunity to come back to the Committee and talk more about our ambitions for the way in which we propose to take forward civil justice as a key part of our working European Union.

Q3 Chairman: That is very helpful. Thank you very much. In the letter which Lord Grenfell wrote to you on 17 November he said, and this is a general comment which it is perhaps worth reminding ourselves of with regard to this proposed Regulation: “The proposal, as we understand it, is aimed at encouraging free movement of persons, goods and services between Member States by providing a means by which debts might be more easily recovered and enforced where the creditor is in one Member State and the debtor in another.” Can I confirm that that is how you, too, see the overall object of the Regulation? It is designed essentially to enable somebody to recover uncontested pecuniary claims against somebody in another Member State without the hassle, the delay and the expense of going and getting some further order in that other Member State where the payment order is to be executed.

Baroness Ashton of Upholland: Indeed.

Q4 Chairman: Obviously it is very important to get a good definition of what cross-border cases are and we now have before us, as I say, this re-revised text of Article X and it drops the first option which was originally in the Presidential draft. It has dropped the Brussels parenthesis from that and I just read it into the record: “For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a state other than the state of the seised court.” That, as I understand it, is your present thinking, the present assumption that it indeed does.

Baroness Ashton of Upholland: Yes.

Q5 Chairman: Is anything else on the table at the moment? I wonder not least about the suggestion which was advanced in the letter of 17 November, to which I have referred, where we put forward a suggestion which we thought might tie the case more closely to what is the essential object of this Regulation, that a cross-border case might be defined as one where the pecuniary claim or debt in question has arisen from the supply of goods or services across the border from one Member State to another. Has that been considered by you and your officials in this round of negotiations?

Baroness Ashton of Upholland: We, of course, take very seriously any proposals which come from the Committee. However, as you will appreciate, during the Presidency we are in a constant state of negotiation, which is, for example, the reason why you have had a variety of texts which have appeared before you at rather short notice. We did look at that. It did not work in terms of the physics for this particular need in the order for payment, but we did consider it. We are now in a position, which you will appreciate, my Lord Chairman, where the letter which was sent out by the Lord Chancellor and Commissioner Frattini was a compromise in the best sense of that word between the Commission and the Presidency about what we felt would be an appropriate form of words to suggest to Member States. There is a number of Member States who are very wedded to that form of words and others who find it impossible. The latest text which is before you, Article X, is the text which is currently being negotiated at COREPER as we speak and it is a text for which we hope and believe we will get enough agreement to enable us to be able to proceed at the Council meeting on Friday. It deals with the issues which Member States have raised in terms of the particular reference to the Brussels Regulation by removing it, but we believe it captures the essential element with which, of course, the Committee was much taken about recognising precisely how we define a cross-border case. So we did look at your proposal. We believe this takes us to the point where we are able to put something which captures the essence of that and also recognises what Member States, the European Parliament and the Commission have been saying.

Q6 Chairman: The reference in X(1) to “State” in both cases, “resident in a State other than the State of the seised court,” is that in each instance intended to refer to “Member State”?

Baroness Ashton of Upholland: Indeed, and there is a possibility that there would be an amendment at COREPER to insert the word “Member” into the first reference to “State”.

Q7 Chairman: It would seem desirable. Is there any argument from anybody that it should not refer to “Member State”?

Baroness Ashton of Upholland: No, and there is an assumption that it indeed does.

Q8 Chairman: Well, I would have thought you should write it in, or you will get an American trying to invoke this procedure, will you not?
Baroness Ashton of Upholland: I do not think they can, because it is obviously an EU procedure which works through the Commission, the Council and the Parliament. However, I will of course make sure that we feed that into COREPER.

**Q9 Chairman:** This is a definition which is being negotiated and determined very specifically in the context of this particular proposal, this particular Regulation?

Baroness Ashton of Upholland: Indeed.

**Q10 Chairman:** It is not intended to spill over into other ongoing proposals with regard, for example, to the small claims procedure, or indeed mediation, which are other proposals on the table?

Baroness Ashton of Upholland: I will not hide from the Committee that I have an ambition within this, which of course the Committee would need to endorse and which I do not propose to suggest you are endorsing today, which is that if we are able to get a co-decision agreement on this particular option as a definition it is quite possible that one could use this definition (if we can get agreement) for the similar cross-border issues around small claims. Of course, the Committee would need to look at that separately. I appreciate that, but there is a possibility, if one is able to get that level of agreement. I leave mediation on one side because the Commission takes a very different view and I do not have the details, because they have not given me the details, but they believe it would not work for mediation. But there is an ambition which I personally have, having spent six months of my life negotiating around this, that if we come up with a definition which might be appropriate, it might stand us in good stead as at least the starting point for other civil justice cross-border measures. Member States, the Commission and the Parliament may wish to decide it is not appropriate, but at least it would be a starting point and in a sense that would be quite an interesting legacy from this Presidency. So I do not ask the Committee to endorse that approach, rather to note it, but I would not wish the Committee to be under any illusion that that is what I would like to achieve ultimately if that was possible.

**Q11 Lord Lester of Herne Hill:** Speaking for myself, that sounds very sensible, but no doubt we will have to think about it in the future. Since there seems to be common ground that although it does not say “Member State” in Article X(1) in the two places, that is what is intended, presumably there will be no difficulty in making that clear in drafting to rule out the American taking advantage of this against an Israeli in Europe. If that is not controversial, can that not be now communicated to COREPER so that they get on with it?

Baroness Ashton of Upholland: I am hoping that somebody will leave the room now and actually communicate that to COREPER.

**Lord Lucas:** Before she does, could I just say that I see advantages. The wording at the moment will allow an American who is suing a French company in a British court to use this method to get money out of the French company, which seems entirely appropriate. The idea of an Israeli suing an American through this—whichever Israeli or American court was asked to execute the European order for payment would say, “Get lost,” so it would not work. So I do not see the problem.

**Lord Lester of Herne Hill:** It is not for me to answer the question in a way, since I am probably the dunce, but it seems to me, speaking for myself, that this is all about cross-border cases involving intra-European Union disputes and therefore it would be strange if the mechanism could be used for an extraneous purpose.

**Lord Lucas:** Is this not an intra-European dispute if one of the litigants happens to be American—

**Q12 Chairman:** I think we might usefully discuss this together in private. I gather there is a division and therefore apparently we must adjourn for the moment.

Baroness Ashton of Upholland: If I could just finish that point by saying that it is being discussed at COREPER and it is on the agenda to be discussed. There is no difference between us on this and I am sure that either in the specifics or in the wording which goes around it, if you see what I mean, it will be made absolutely clear that this is precisely and only about Member States.

**Q13 Lord Lester of Herne Hill:** What is the answer to Lord Lucas’s question, though, when he says it would be a good thing to extend it beyond? I do not know whether there is a policy about that?

Baroness Ashton of Upholland: As far as I understand it, what we are dealing with—and it is difficult enough to do that—is what happens within the 25 Member States. If the noble Lord would like me to take forward the idea of extending it—

**Chairman:** I think we really must adjourn.

The Committee suspended from 4.38 pm to 4.47 pm for a division in the House

**Q14 Chairman:** I am not sure that Lord Lucas would wish to, and certainly Lord Lester is unable to carry that last question any further, but I think the consensus really is that the Committee would rather wish to see “State” in the revised text qualified in each case by “Member”, so perhaps you could bear that thought in mind.
Baroness Ashton of Upholland: Of course.

Chairman: For my part, I have no further questions on this part of our inquiry and unless, Minister you have anything, or indeed your officials, to add we could perhaps bring this part of the proceedings to a close.

Q15 Lord Neill of Bladen: My Lord Chairman, I have a question on paragraph 2. Minister, it is probably too late now to handle this, but in principle I feel that legislation should be drafted so that it is intelligible to an ordinary person without a law library or without any research at all, and in paragraph 2 you have got one of these referential definitions which is unintelligible to somebody who does not have access to that particular Regulation. Is there no way in which you can put into English the substance of what you are saying in paragraph 2?

Baroness Ashton of Upholland: I could not agree more with the noble Lord about the need to make sure that it is comprehensible. One of the things I have had to learn in dealing with Europe is the ways in which I can do precisely what Lord Neill is suggesting. The reason why the wording is as it is, as you will appreciate, is that we are up to the wire in terms of negotiation and this particular wording means something to the members of COREPER currently negotiating. I could not agree more, though, that we should turn it into English and what I will do, if I may, my Lord Chairman, is produce a version of this (assuming we are successful) which actually spells out precisely what paragraph 2 actually means.

Q16 Lord Clinton-Davis: Could you not do it by way of a footnote, which is not enforceable?

Baroness Ashton of Upholland: I am very happy to do that, Lord Clinton-Davis. I would be delighted to do that. I completely take the point. I just wanted you to see the text as it literally is, as our Ambassador is currently negotiating on. The point is well made and well understood.

Baroness Ashton of Upholland: I am delighted you do.

Q17 Lord Neill of Bladen: I understand it and I appreciate your response to it, but we have seen examples elsewhere of this technique and I try always to object to it whenever I see it!

Q18 Chairman: I just enter this word of caution. As I understand it, paragraph 2 is designed specifically to incorporate the definitions in Articles 59 and 60 of the Brussels Regulation in relation to what “domicile” is, so you cannot depart from that. By all means, footnote the actual Article, but you cannot, with respect, without changing the substance, then start trying to paraphrase those Articles.

Baroness Ashton of Upholland: I am not saying anything different to you, my Lord, Chairman.

Q19 Chairman: So instead of having to look at another document, to search your law library for another document, footnote Articles 59 and 60 of Brussels. That is all I think you can usefully do.

Baroness Ashton of Upholland: That is what I intended to do.

Q20 Chairman: I am sorry, I wondered whether you were going to try and explain it in plainer English than Articles 59 and 60 do themselves?

Baroness Ashton of Upholland: No, indeed, for precisely the reasons you state, my Lord Chairman. It is more that if one does not have before one Articles 59 and 60, it is not always possible to know what is being said.

Q21 Chairman: Absolutely. Could we then bring this part of the proceedings to an end and we will move on to the ESCP part of the hearing. I just add at this stage, as I think I have already indicated, that we shall deliberate on our scrutiny of this particular Regulation when we finish these proceedings and no doubt later on this afternoon you will be told how matters stand.

Baroness Ashton of Upholland: I am very grateful to you, my Lord Chairman. As I say, I have delayed my departure to the latest possible time, which is a flight at 9.30 with the Home Secretary, by which time hopefully I will have heard from you on your deliberations.

Letter from Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 1 December in which you confirmed that you had cleared the European Order for Payment from scrutiny and in which you asked to receive the results of the discussions at the JHA Council on both the European Order for Payment and European Small Claims Procedure.

I was very pleased to have the opportunity to appear before your Committee on 30 November. I would like to thank your Committee for amending the timetable of meetings to enable me to do so, and for clearing the European Order for Payment from scrutiny on that occasion. As I indicated was my hope, at the meeting of the Council on 1–2 December we were able to agree a “general approach” on the text. Subsequently, on 13 December the European Parliament voted to adopt amendments in line with the Council text.
The text included agreement on the definition of “cross-border” as follows:

“For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the seized court.”

This is, I think, the version of the definition which found most favour in the Committee, and I hope you agree that it represents a satisfactory outcome.

I note your view that this definition should not automatically set a precedent for other measures such as the proposed Mediation Directive and the European Small Claims Procedure Regulation. It does not, of course, do so, although as I said at the hearing it will at least be the starting point for discussions in relation to the European small claims procedure. I shall of course keep you informed of the progress of these discussions. Mediation is in a slightly different category and we will need to examine that particularly carefully.

As Presidency we also sought and gained Council agreement to six key principles underpinning the European small claims procedure. They were:

1. that the procedure should primarily be in writing;
2. that time limits should apply to each stage of the procedure;
3. that modern communications technology should be used for hearings;
4. that the parties should not be required to be represented;
5. that costs should be proportionate to the claim; and
6. that implementation of the procedure should be reviewed after a few years.

These principles will guide future negotiations and represent a good outcome of our Presidency efforts on the proposal. Although quite a lot of work remains to be done on the detail, we are confident that significant progress will be made under the Austrian Presidency.

5 January 2006

EUROPEAN REGULATORY AGENCIES (7032/05)

Letter from the Chairman to Rt Hon Douglas Alexander MP, Minister for Europe, Foreign & Commonwealth Office

The proposed Interinstitutional Agreement was considered by Sub-Committee E (Law and Institutions) at its meeting on 8 June. The Committee decided to retain the proposal under scrutiny pending clarification of the Government’s position.

In its Explanatory Memorandum, the Government have drawn attention to a number of areas of policy interest, including scope, legal base, agency sites, composition of management board and better regulation/accountability. However, no view is expressed as to the desirability or otherwise of the Interinstitutional Agreement or to those Articles within the Agreement dealing with those matters. The Government refer to the fact that the European Parliament’s views have been incorporated into the proposal in a number of areas and say that they are considering the implications for their negotiating position. What is the Government’s general approach to the draft Interinstitutional Agreement?

We note that the House of Commons European Scrutiny Committee has queried the need for a binding agreement rather than a check list. The Commons Committee has invited the Government to take account of this point when preparing their negotiating position. We look forward to seeing the Government’s response to the Commons Committee.

One particular point which we wish to raise at this stage is the reference in the draft Agreement to Article 308 of the EC Treaty under the heading “8: Legal Base”. As you will be aware both Scrutiny Committees watch carefully the use of this Article, which has the potential of extending Community competence. In the Explanatory Memorandum, the Government appear to accept that Article 308 might be used to set up a Regulatory Agency “in exceptional cases”. It would be helpful if you could give examples of what sort of cases the Government might consider to be “exceptional” and identify the criteria the Government would apply in determining when use of Article 308 might be justified.

We look forward to receiving your response to the above points.

13 June 2005
Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 13 June concerning the draft Interinstitutional Agreement on the operating framework for the European Regulatory Agencies. You wanted to know what the Government’s approach to the draft Interinstitutional Agreement (IIA) was in general. You also asked about Article 308 being used in “exceptional” cases and requested examples of the sort of cases the Government might consider to be exceptional and you sought clarification of the criteria the Government would apply in determining when use of Article 308 might be justified.

In the Explanatory Memorandum (EM) submitted by Rt Hon Denis MacShane MP on 22 March, he explained that the Commission had proposed an Interinstitutional Agreement to ensure that the three institutions were involved from the outset in establishing the basic conditions to be met when acts are subsequently adopted to set up sectoral Agencies. Since the EM was submitted, discussions at Working Group level have taken place about whether an IIA is an appropriate instrument for this measure.

The Government’s view is that, if there is to be an instrument on Regulatory agencies, we would prefer a broad framework for the co-ordinated development of agencies. We recognise that it would be difficult to negotiate current and future Agency proposals if specific Working Groups were too tightly bound. One possibility that we are looking at is that the draft IIA might use discretionary rather than mandatory language.

It seems likely that it will fall to us to take this forward during the UK Presidency. Before deciding how best to do so, my officials will need to have discussions with the Parliament, the Commission and the Council Secretariat. We will keep the Scrutiny Committee updated.

In relation to Article 308, this provision permits the Council to act to attain one of the Community’s objectives where the Treaty has not provided the necessary powers elsewhere. The Article requires that a proposal be necessary for the attainment of a Community objective and have unanimous support at the Council. The Government approaches its use on a case by case basis, supporting the use of Article 308 where it judges it to be appropriate.

Examples of the Government’s approach can be seen in the cases that we are currently challenging before the European Court of Justice. In relation to two particular measures, the Government considered that the Article 95 legal base adopted by the Council and Parliament was incorrect and the only means of adopting these particular measures was under Article 308. The measures in question are Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods (Case C-66/04 UK v Council and Parliament) and Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Agency (Case C-217/04 UK v Council and Parliament). In addition, the UK has intervened in Case C-436/03 in support of the adoption under Article 308 by the Council of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society, which is the subject of challenge by the Parliament.

It is the view of the Government that there is an important principle at stake in all these cases concerning the proper use of Article 95. Article 95 is concerned with the harmonisation of national law. Setting up bodies or procedures at the Community level does not in itself amount to the harmonisation of national law because it is outside the scope of national law. It is not something that any national legislator can do. Therefore, in the absence of any other appropriate legal base in the EC Treaty, Article 308 is, in our view, the only lawful means of adopting such measures. Whether it is right to do so is a matter that can be determined on a case by case basis.

19 July 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 19 July which has been considered by Sub-Committee E (Law and Institutions). We are grateful for your clarification of the Government’s position and note that you say that you are considering whether it should use “discretionary rather than mandatory language”. No doubt you will supply the Committee with a copy of any revised text of the Interinstitutional Agreement.

As regards the use of Article 308 of the EC Treaty you say that “The Government approaches its use on a case by case basis, supporting the use of Article 308 where it judges it to be appropriate”. You then refer to a number of cases where the Government are challenging the use of Article 95 arguing that measures should be based on Article 308. It may be that the written pleadings in those cases reveal more detail of the Government’s thinking on Article 308. But to say that Article 308 may be used where the Government “judges it to be appropriate” goes little way in answering the Committee’s request for you to identify the criteria the
Government would apply in determining when use of Article 308 would be justified in the context of the creation of European Regulatory Agencies. One might be tempted to conclude that the Government are content that Article 308 be used when they are satisfied there is a political case for the establishment of a European Agency and the Government supports its creation.

We would be grateful for further clarification of the Government’s position.

13 October 2005

EUROPEAN STRATEGY FOR COMBATING RADICALISATION AND RECRUITMENT TO TERRORISM (14781/05)

Letter from the Chairman to Rt Hon Charles Clarke MP, Secretary of State, Home Office

This document was considered by Sub-Committee E (Law and Institutions) at its meeting of 30 November 2005. It is highly regrettable that a document of this political significance and which is to be considered at the JHA Council on 1–2 December has been deposited for scrutiny only two days before the meeting. We are sure you will agree that this scarcely affords Parliament any opportunity to scrutinise the Strategy. We received the Communication at the end of October and we note that the Government offer no explanation or apology for the delay in submitting the Strategy and their Explanatory Memorandum.

The Committee welcomes initiatives aimed at combating terrorist recruitment and radicalisation. However, it is mindful of the balance which must be struck between the fight against terrorism and the need for respect of fundamental rights. In this regard, we are concerned by the inclusion in the Strategy of a resolution to “ensure that the voices of mainstream opinion prevail over those of extremism”. We would strongly oppose any attempts to limit the freedom of expression of individuals simply because the views they express do not accord with majority opinion. We would therefore be grateful for the Government’s explanation of what is intended by this resolution. In particular we seek the Government’s assurances that in their implementation of this Strategy, protection for fundamental rights, and in particular freedom of expression, will be given the utmost consideration.

We note that it is intended that the Strategy be adopted at the European Council of 15–16 December. However, we have decided to retain the document under scrutiny. Should we receive the assurances we seek, we should be in a position to clear it from scrutiny prior to the European Council meeting.

1 December 2005

Letter from Rt Hon Charles Clarke MP to the Chairman

Thank you for your letter of 1 December regarding the EU Strategy on Radicalisation, and for your comments reflecting the Committee’s view that there is a need to develop policy in this area. You raise two particular points that I would like to address. First, that the Committee was not given a reasonable amount of time to scrutinise the document; and second, a request for clarification of the meaning of a particular phrase in the Strategy. This passage states that the EU wishes to “ensure that the voices of mainstream opinion prevail over those of extremism”. The Committee asked if there were implications for freedom of expression.

I accept that the time between submitting the Strategy for scrutiny and subsequent adoption at the JHA Council was tight. You will appreciate that over the last six months, in my capacity as President of the JHA Council, I have had a responsibility to ensure that all voices in the EU are heard in putting together this strategic document. This has been a protracted and time-consuming process during which the Strategy has been redrafted many times in order to reach agreement. The final version was agreed and issued on 24 November. My officials passed it to Cabinet Office to be deposited for scrutiny on this same date. The EM was sent to the Committees on 29 November.

I regret that in these circumstances the process afforded the Committee little time to scrutinise the document. However, I have only been able to work within the tight timescales the Presidency affords. I understand the very real importance of scrutiny and the political significance of the dossier, but it is precisely because of this importance that a final draft took considerable time to negotiate.

I am happy to make a commitment to you that any legislative proposals or financial initiatives that may emanate from the Strategy in the future, will be submitted to the Committees for Scrutiny as soon as is practicably possible.
Your second point refers to concerns that “protection of fundamental rights, and in particular freedom of expression, [should] be given the utmost consideration”. I can assure the Committee that this is the case. The passage to which the Committee refers reflects the EU view that there is a need to encourage debate within our Muslim communities. It is not about limiting the freedom of expression of any individual, but ensuring that there is a proper and safe space to discuss what it means to be a Muslim in non-Muslim societies.

The Committee will be aware of the proliferation of extremist material in recent years. This has been brought about through the growth of global communication via the internet and satellite television, as well as through more traditional channels, such as bookshops. “[Ensuring] that the voices of mainstream opinion prevail over those of extremism” is indicative of the importance the EU ascribes to communities, and in particular disaffected youth, having access to a range of opinions. This suggested measure is not about preventing particular views, but about enabling moderate Islam to be heard clearly as part of our effort to counter the corrosive effects of hate propaganda.

16 December 2005

EUROPOL ANNUAL REPORT 2004

Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

I enclose for your information the Europol Annual Report for the calendar year 2004 (not printed).

The report describes the main activities of the organisation and reviews its performance against its priority objectives for the year. I would like to take this opportunity to highlight some of the key issues raised by the report, outline the Government’s view on the progress made by Europol in 2004 and identify priorities for the year ahead.

The Government is once again a little disappointed with the absence of output and performance indicators in the Annual Report and we would wish to see more specific and quantitative reporting of Europol’s performance in meeting key priorities. We have made these points at the Europol Management Board (EMB) and received some support but no general agreement on this approach could be reached. We will continue to press for further changes and reform through the UK Presidency of the EU.

The Role of Europol and Current Activities

Europol’s primary role is to support Member States’ own operations. Since commencing its full activities in 1999, Europol’s progress has been well supported and strongly influenced by the UK through our Europol National Unit based at the National Criminal Intelligence Service. The Government continues to firmly believe that Europol has an important role to play in the fight against serious, organised cross-border crime in the European Union.

The Report highlights the role Europol plays in key priority crime areas by providing operational support to Member States’ operations, sharing specialist knowledge, technical expertise and delivering training. The Report also highlights progress made in improving information exchange and intelligence analysis, strengthening Europol’s role in the field of combating euro counterfeiting and negotiating co-operation agreements with third states and other organisations. The Government recognises and welcomes the achievements made during 2004.

Key Challenges for 2006

It is important that Europol builds upon its progress in 2004. Key priorities Europol has identified for the forthcoming year, 2006, include:

— further implementation of the Europol Information System;
— transformation of the EU Organised Crime Report into an Organised Crime Threat Assessment; and
— development of relations with other EU institutions such as Eurojust, the Border Management Agency and the EU Joint Situation Centre (Sitcen); and with other international organisations—such as Interpol and the World Customs Organisation.

The Government welcomes the positive and clear commitment Europol has shown to these priorities. Delivery on these priorities will assist Europol in becoming a more efficient, more effective organisation and better able to support Member States in the fight against serious and organised crime.
OTHER EUROPOL EVENTS

— Appointment of new Europol Director: The new Europol Director, Max-Peter Ratzel, assumed his post on 16 April 2005. We supported Ratzel’s selection for the post as he was identified by the Selection Committee appointed by the EMB to be the best candidate for the job. We are very much looking forward to working closely with Ratzel.

— Ratification of the three protocols to the Europol Convention: Once all Member States have ratified the protocols this will allow Europol to operate more effectively within the Convention and thereby do better what it was set up to do, which is to support Member States’ operations. The UK has ratified all three protocols. Not all Member States have yet done the same although we expect more Member States to do so in the coming months.

— Completion of the changes to Europol’s organisational structure. These changes will establish a structure consisting of both specialised officers with responsibility for particular crime areas and a pool of analysts and experts to support Member States’ operations. This will allow Europol to more effectively meet the diverse needs of Member States from providing strategic overviews and products to supporting Member States operations.

I hope that you find this letter helpful.

12 August 2005

EXCHANGE OF INFORMATION EXTRACTED FROM THE CRIMINAL RECORD (15281/04)

Letter from Caroline Flint MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter of 3 February6 with the comments of Sub-Committee E (Law and Institutions) on the above proposal.

The Committee has concerns about the use of personal data transmitted to a Member State under Article 2 and notes that data passed under Article 3 is protected by restrictions on the use of such data in Article 4. The Committee is correct that data passed under Article 2 is not covered by those restrictions. However, this distinction simply reflects current co-operation arrangements.

The provision of information under Article 2 of this instrument is already required by Article 22 of the 1959 MLA Convention. Article 2 simply requires that the information be supplied immediately rather than on an annual basis. Since Article 22 is not subject to the limitations on the use of the data envisaged by Article 4 of the draft Council Decision, it was not thought appropriate to introduce such limitations now. However, the Recitals to the Council Decision make clear that data exchanged under Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The fact that information provided pursuant to Article 2 will be subject to the existing protection in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data.

The Committee also asks whether Member States will be obliged to manage information they receive in accordance with the rules that would apply in the Member State which passed the conviction, in particular in cases where convictions would be regarded as “spent” after a period of time.

Again, the same rules that apply under the current arrangements will apply now. As such Member States will not be subject to additional obligations to treat the data in accordance with the rules that would apply in the State of conviction.

The Committee is concerned that this will have an impact on national rehabilitation policies. But the Government does not believe that to be the case. In particular, there is no evidence that such consequences have arisen from the application of the existing provisions in the 1959 MLA Convention (both Articles 22 and 13). Nor is it the purpose of these provisions to regulate rehabilitation, or indeed punishment, for the conduct which gave rise to the conviction. They are simply intended to ensure that information on an individual is centralised and accessible in order to address the fact that, with the free movement of persons, individuals can not easily move across borders leaving behind records of past criminal activity.

The Committee has raised the issue of requests for criminal record information in cases other than criminal proceedings. Negotiations on this issue since the December JHA Council have resulted in a proposal to amend Form A to clarify the additional circumstances under which information may be sought and provided. A revised text has now been deposited for scrutiny and an Explanatory Memorandum will be sent to the Committee which sets out in greater detail the Government’s views on the amendments.

As the Committee is aware, this Council Decision is regarded as an interim measure to improve the operation of existing arrangements on exchange of convictions through the imposition of deadlines for assistance and the use of standard Forms. In the longer term the Commission and Council have in mind the creation of a computerised register of convictions in the EU to replace these arrangements. A White Paper on this issue has recently been produced by the Commission, which will also be deposited for scrutiny with an Explanatory Memorandum.

1 March 2003

EXCHANGE OF INFORMATION EXTRACTED FROM THE CRIMINAL RECORD (6137/1/05)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee E (Law and Institutions) examined the proposal at its meeting on 23 March. The Committee notes that the amendments in Form A help to provide a clearer mechanism of co-operation. However, the Form as currently drafted does not address the proportionality concerns arising from the proposal. On the basis of Form A, information may be exchanged for purposes other than criminal proceedings, without these purposes being specified therein. These purposes may be specified in the Manual of Procedure, which is not part of the text and has not been deposited for scrutiny. It would be helpful for the Committee to have sight of the Manual in order to assess fully the implications of Form A.

The Committee believes that express safeguards should be included in the proposal regarding access and use of data on individuals whose convictions have been spent or who have been rehabilitated. You note that the proposal is intended to address the fact that “with the free movement of persons, individuals can not easily move across borders leaving behind records of past criminal activity”. We assume that you mean that individuals should not be allowed to move easily. Please confirm that this is what you are saying. However, the abolition of internal borders should not, on the other hand, penalise further individuals whose criminal record no longer exists.

Finally, we would urge the Government to press for an equivalent level of data protection for data provided after a Member State’s request and data provided by Member States on their own initiative. The fact that the EU Mutual Legal Assistance Convention provides enhanced protection for the former does not mean that such a level of protection cannot or should not be provided for the latter. In this context we note the recommendation of the European Data Protection Supervisor in his Opinion on the proposal.

The Committee decided to retain document 6137/1/05 under scrutiny. Document 15281/04 has been cleared.

24 March 2005

Letter from Andy Burnham MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter of the 24 March 2005 to Caroline Flint MP, which outlines the views of Sub-Committee E (Law and Institutions) of the European Union Committee, relating to the above proposal. I have been asked to reply.

I am pleased that the Committee recognises that the amended form will help to provide a clearer mechanism of co-operation, but have taken note of its concerns about proportionality and of the suggestion that these can be addressed through the Manual of Procedure. The Manual of Procedure will be compiled by the European Commission, who will be asking Member States to provide details on their specific requirements for exchanging criminal record information. It will not be compiled prior to adoption of this Council Decision, but instead probably during the implementation period. It will not be a binding legal document but will seek to ensure that Member States understand the systems and practices in other Member States for exchanging criminal record information.

The Government is still considering the technical details of UK input into this Manual. However, we consider the issue highlighted by the Committee as to the use to which information being exchanged will be put of great importance. In this light, we will seek to make clear the circumstances under which our national law would allow us to respond to requests for information. The Government considers that the information on the form and the guidance that we will provide in the Manual of Procedure will provide sufficiently detailed
explanations of the use to which the criminal record information we are providing will be put. Should the information request and the use to which the information will be put mean that the UK can provide the information requested in compliance with our national law, then we will go forward with responding to the request. We will, though, highlight in the Manual of Procedure, the importance of receiving fingerprint identification information, so that we can be absolutely certain that the information that would be sent to a Member State corresponds correctly with the person identified as the subject of a request.

The Government notes the Committee’s concerns relating to the use of spent convictions by overseas authorities and the implications for the rehabilitation of offenders. The aim of the Council Decision is to make more efficient the current systems for exchanging information as set out in the 1959 Mutual Legal Assistance Convention and the 2000 Convention on Mutual Assistance on Criminal Matters. It creates no new exchange mechanisms but speeds up the existing systems. Moreover, there is no evidence to suggest that the existing provisions as set out by the Mutual Legal Assistance Conventions have had any impact on rehabilitation policies. As such, the Government can find no reason to believe that this Council Decision will cause any changes to the current use of spent convictions by overseas authorities.

The issue of how information exchanged under the Council Decision provisions will be used in criminal proceedings is addressed in a recently published proposal (Proposal for a Council Framework Decision on taking into account convictions in the Member States of the European Union in the course of new criminal proceedings—Document 7645/05). The Government will shortly be providing an Explanatory Memorandum to Parliament, which will set out our consideration of the merits of the proposal. We will be considering the issue of rehabilitation of offenders in the context of our analysis.

Individuals should be allowed to move easily throughout the EU but Member States must be able to access accurate criminal record information on individuals. The abolition of internal borders should not penalise individuals whose criminal record no longer exists but, where information is still held on a record in the UK and can still be considered in the UK, this should therefore still be available to be considered in other Member States. The Government believes that the EU should not harmonise rules on the use of criminal convictions, including spent convictions, but should do what is necessary to ensure effective information and judicial cooperation.

The Government has analysed the opinion of the European Data Protection Supervisor. We are grateful for his views but note that his recommendations are non-binding as this is a third pillar instrument (Treaty on European Union legal base), and the Data Protection Supervisor’s opinions are binding only on first pillar measures (Treaty establishing the European Community legal base). The Data Protection Supervisor acknowledges the necessity of an interim instrument urgently to address the current flaws in the systems for exchanging criminal record information in the EU. He expresses his view that such information exchange is vital for ensuring a citizen’s safety in an area of freedom, security and justice. It also recognises that third parties may legitimately need access to certain data for example in employment vetting. However, the Data Protection Supervisor does believe there should be greater provision within the proposal for the protection of information exchanged.

The Government is committed to ensuring that there is adequate protection as to the use of personal data exchanged within the EU. This Council Decision is entirely consistent with the data protection afforded by the current Mutual Legal Assistance Conventions. The Committee is correct in its observation that there is no obligation within the Council Decision that own-initiative information must be sent in accordance with national law. It is up to Member States to ensure that, when sending own-initiative information, they do so in accordance with their own legal standards. It was felt by Member States in negotiations that there was particular need for including a reference to “in accordance with national law” for replies to requests for information in order to ensure that Member States were not obliged to reply to requests where making such a reply would be inconsistent with their national legal provisions. The Government considers that this provides adequate safeguards.

The Government considers that this Council Decision provides some vital interim improvements to the current systems for information exchange and is looking at issues surrounding implementing the Council Decision to ensure that efficient mechanisms exist in the short term and long term. Having easily accessible and up to date criminal record information, combined with the ability to use such information in criminal proceedings, is vital for effective crime prevention and detection. We understand that the EU Presidency will be pushing for adoption as soon as possible.

19 May 2005
Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 19 May which was considered by Sub-Committee E (Law and Institutions) at its meeting on 29 June. As you will recall, there are three matters of concern.

(a) The Manual of Procedure

We are grateful for the information you have provided about the preparation of the Manual and the Government’s present position. We note that you are still considering “the technical details of UK input”. We would be grateful if you would keep us informed of developments.

(b) Spent Convictions

We note your continuing resistance to the inclusion of safeguards dealing with spent convictions. You draw attention to the proposed Framework Decision on taking into account previous convictions (COPEN 60) which, as you may know (my letter of 28 June refers) was considered by the Committee on 22 June. You will therefore be aware that the Committee shares the Government’s concerns about spent convictions in the context of COPEN 60. We remain somewhat concerned that you are maintaining the line that nothing is necessary in the present Decision (COPEN 29). We note that “new criminal proceedings” are given a wide definition in Article 3 of COPEN 60 but there is no definition of “criminal proceedings” in COPEN 29. We would therefore welcome clarification of the scope of application of COPEN 29 and its relationship with COPEN 60. In view of what you say in your Explanatory Memorandum to COPEN 60 we are sure that you will agree that there should be no gap which might permit of an individual whose conviction is, or would become, spent being treated unfairly.

(c) Data Protection

Thank you for your comments on the status and content of the Supervisor’s Opinion and for the information relating to the change being made in the case of requests for information. We note that the Government consider that the proposed Decision now provides adequate safeguards. We continue to believe that the Framework Decision (COPEN 29) should expressly provide an equivalent level of data protection for data provided upon request as for that supplied on an own initiative basis.

The Committee decided to retain the proposal under scrutiny.

5 July 2005

Letter from Andy Burnham MP to the Chairman

Thank you for your letter of 5 July, which outlines the views of Sub-Committee E (Law and Institutions) of the European Union Committee, relating to the above proposal. I would like to take this opportunity to respond to the points raised in your letter.

Manual of Procedure

We are working with the European Commission to finalise a short questionnaire to be sent to Member States upon adoption of this instrument. It will seek details of procedures in place at the national level. This information, once received from all Member States, will be collated into a Manual. The Manual is not intended to add to the Council Decision but will simply inform Member States how best to proceed when exchanging information extracted from the criminal record. We will provide you with a copy of the Manual as soon as we receive it.

Spent Convictions

We note the Committee’s continuing concerns relating to spent convictions but can only reiterate our previous comments. This Council Decision deals only with exchange of information on convictions and not with the use made of such convictions. The aim of the Council Decision is to make more efficient the current systems for exchanging information as set out in the 1959 Mutual Legal Assistance Convention and the 2000 Convention on Mutual Assistance on Criminal Matters. It creates no new exchange mechanisms but rather speeds up and makes more effective the existing systems. There is no evidence to suggest that the existing
provisions, as set out by the Mutual Legal Assistance Conventions, have had any impact on rehabilitation policies.

With regard to spent convictions, the United Kingdom considers these to be part of a person’s criminal record and believe that it is important that Member States are provided with as complete and accurate a criminal record as possible. We are still considering how spent convictions should be used (in the context of the discussions regarding the proposal for a Framework Decision on taking account of convictions in the course of new criminal proceedings—COPEN 60) and will provide further information to the Committee on our consideration of this issue in due course. However, we do not see this issue as a barrier to the simple exchange of information extracted from the criminal record. This Council Decision does not change the circumstances under which we would exchange information on the criminal record and so will not have any adverse effect on the current system. Negotiations on the new proposal on taking account of convictions in the course of new criminal proceedings will not start until the beginning of next year at the earliest and we will use this time productively to engage in a public consultation exercise to aid our consideration of this, and other, issues.

DATA PROTECTION

We note the Committee’s views on data protection. The Government is of the opinion that this Decision provides adequate safeguards for the reasons set out in our previous responses, ie that any exchange of personal information by the UK Government would have to be done in accordance with the Data Protection Act. We do not believe that we can add further to these comments and are content with the substance of the text with regard to data protection issues.

A general approach has been reached on this Decision and all other Member States are in a position to adopt the measure. The Government is content with the text and is not minded to reopen negotiations at this stage. We consider it vital that this measure, which provides for information on convictions to be exchanged more rapidly and effectively, is adopted as a matter of urgency.

14 July 2005

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 14 July which has now been considered by Sub-Committee E (Law and Institutions).

We are grateful for your assurance that you will provide the Committee with a copy of the Manual of Procedure as soon as it is available. We are also pleased to note that you share some of the Committee’s concerns relating to spent convictions. This is a matter to which both the Government and the Committee will return in the context of the Framework Decision on taking account of convictions in the course of new criminal proceedings—COPEN 60.

As regards the data protection issue, it may not surprise you to learn that we are disappointed that the Government are not persuaded by the arguments of the Committee and the European Data Protection Supervisor of the need to include safeguards in the present Decision. We note the Government’s position on this and also the importance which all Member States give to the speedy adoption of the Decision. In these circumstances the Committee decided to conclude its scrutiny of the proposal. Our concerns, however, remain and we shall keep an eye open to see whether any practical problems arise in the operation of the Decision.

13 October 2005

EXCHANGES OF INFORMATION ON CONVICTIONS AND THE EFFECT OF SUCH CONVICTIONS (6584/05)

Letter from the Chairman to Andy Burnham MP, Parliamentary Under Secretary of State, Home Office

The White Paper was considered by Sub-Committee E (Law and Institutions) at its meeting on 8 June. The Committee noted that the White Paper could lead to potentially far-reaching proposals which might have a substantial impact on the rights of the individual as well as on the allocation of competence between the Union and Member States to act in criminal matters.
DATA PROTECTION AND THE RIGHTS OF THE INDIVIDUAL

The Commission’s system is based on data included in national criminal records. As is noted in the White Paper, and indicated in the accompanying Staff Working Paper, there is considerable diversity as to the form and content of criminal records in different Member States. The proposed European Index would disregard these disparities and would include only the names of individuals that have been convicted in Member States. As the scheme would apply to any offence, there might be cases where there is no dual criminality. This may lead to situations where the name of an individual is transmitted to the police authority of another Member State for an act that is not an offence in that State.

As the Committee has noted in its scrutiny of the draft Decision on the bilateral exchange of criminal records, problems may also arise in cases of individuals who have been rehabilitated/pardoned, as it is not standard practice in Member States for these developments (a) to be recorded in the criminal record and (b) to be transmitted in other Member States. The extension of the scheme to cover disqualifications may also be problematic, as the Committee has noted in its scrutiny of the proposal for exchange of information on disqualifications resulting from convictions on sexual offences.

THE ISSUE OF EU COMPETENCE

The White Paper contains ambitious proposals for the establishment of common EU definitions of convictions and for a “dictionary” of legal terms of criminal law in Member States. It also advocates a common EU approach on the consequences of a previous “foreign” conviction in sentencing in EU Member States. These initiatives have, at first sight, the potential seriously to curtail national sovereignty in criminal procedure and sentencing and would appear to fall outside EU competence in criminal matters.

The Government acknowledge that there are limits to EU competence in this area, but support the extension of the application of the Commission proposals to crime prevention. However, EU competence on crime prevention is limited, if not questionable. An express legal basis for EU action on crime prevention would be introduced by the Constitutional Treaty (Article III-272). Even this provision calls for supporting EU action which excludes harmonisation.

We would welcome your comments on these points. In the meantime, the Committee decided to retain the White Paper under scrutiny.

13 June 2005

Letter from Andy Burnham MP to the Chairman

I am writing in response to your letter of 13 June 2005. I apologise for the delay in responding. I have considered the Committee’s observations and will respond to the points in the order in which they were raised. However, it may be useful to first provide an update on the latest developments with regard to criminal record exchange initiatives within the EU in order that it may help the Committee to frame my answers within the current context.

In parallel to the development of the Commission White Paper, four Member States have embarked upon a pilot project to link their respective national criminal record registers. This initiative is based upon the principle that information on criminal convictions is recorded in, and obtained from, the State of nationality. The Commission White Paper proposals and the Member State pilot project were discussed at the Justice and Home Affairs Council in April 2005. As a result, the Luxembourg Presidency invited the Commission to prepare an instrument to provide for a future system of criminal record exchange within the EU using the pilot project as its model. The Commission was asked to table this instrument by summer 2005.

In many respects, this approach is markedly different from the White Paper proposals. We are expecting proposals from the Commission that will require the electronic networking of Member States criminal record systems, as well as an obligation on Member States (States of Nationality) to record criminal record information sent to them by another Member State (State of Conviction). One of the key problems with the current system is that even when information is sent to the State of Nationality, it is not, for a variety of reasons, recorded. It is necessary to ensure that Member States do record this information if a system based on information being held in the State of Nationality is to be a useful tool. A third aspect of the Commission proposals will be a common format for information to be exchanged. We understand this to mean that this will be an agreement to make use of a common form on which information should be exchanged between Member States, in order to make it easier to understand the information being sent. We will carefully consider these proposals and they will of course be deposited for Parliamentary scrutiny.
Whilst the White Paper has been overtaken by these developments, I will seek to respond to the Committee’s concerns as raised in the letter of 13 June. I note the Committee’s concerns about the potential impact of the Commission proposals on data protection and the rights of the individual. The Committee suggests that information from a national criminal register relating to an offence in the State of conviction may be transmitted to the police authority of another Member State where that offence is not an offence in the receiving Member State. The Government believes that it is important that Member States have access to complete criminal record information on individuals. Criminal record information exchanged under the current Mutual Legal Assistance Conventions is not weeded for those offences that are not an offence in the requesting/receiving State. Nor does the Government believe that we should begin weeding them now. Offences can be indicative of criminal behaviour in a certain area and it may be useful for investigative bodies to be aware of previous crimes even if the State where an offence is being investigated does not have the same offences. We do not believe that making a Member State aware of such convictions through the exchange of criminal record would disadvantage an individual accused of a crime in another Member State.

In addition, the Committee expressed concern that individuals that have been “rehabilitated” or pardoned would potentially be disadvantaged by the onward disclosure of their criminal history. We have been considering the issue of spent convictions and accept that UK rules on spent convictions are a matter of national law which is not replicated in other Member States to the same extent or on the same basis as in the United Kingdom.

Whilst we do not believe it is practicable to seek to harmonise these rules entirely, we think that there may well be grounds to believe that spent convictions should not in practice unduly prejudice UK nationals. The Rehabilitation of Offenders Act 1974, which is the legislation dealing with spent convictions, is focused on increasing the employment opportunities for ex-offenders, rather than seeking to provide protection in legal proceedings. In UK criminal courts, judges may consider spent convictions, if they believe their consideration is necessary in order for justice to be done.

The issue of how spent convictions may be used during the course of criminal proceedings overseas is being considered in the context of the Framework Decision on the taking into account of previous convictions in the course of new criminal proceedings. The provisions in article 4(d) of this Framework Decision ought to ensure that the greatest degree of equivalence possible is reached when judges are deciding to what extent to take into account previous convictions. Minor non-UK convictions will often be “weeded” from national criminal records and will not therefore be used in evidence. The drafting of article 4(d) suggests that foreign courts should ignore UK spent convictions that would not have been available under national rules. We will be looking closely at the drafting and effect of article 4(d): fair and equivalent treatment of convictions will remain one of our negotiating aims on this Framework Decision and we update the Committee on our further consideration of this issue during the course of negotiations on this Framework Decision.

The proposals in the White Paper for the establishment of common EU definitions of convictions and for a “dictionary” of legal terms of criminal law in Member States have been overtaken by events and we do not expect these to be taken forward. We are considering whether there is competence for the EU to apply the mutual recognition principle to the consequences of previous foreign convictions and will provide further information in the context of negotiations of the Framework Decision on taking into account previous convictions.

Whilst we agree that there is only limited competence for the EU in the area of crime prevention, the Government takes the view that we should be able to use criminal record information for crime prevention purposes, ie employment vetting purposes. The Council Decision on the exchange of information extracted from the criminal record allows for criminal record information to be exchanged for other purposes and we believe that information should also be available to be used for other purposes, which may include employment vetting, in any future proposals or systems for exchanging information.

27 July 2005

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 27 July which was considered by Sub-Committee E (Law and Institutions) at its meeting on 19 October. We are grateful for the information given. We note that the Commission has been mandated to bring forward a proposal based on the scheme used in the pilot project linking national criminal record registers. We are also grateful for the clear explanation of the Government’s position on the use of exchanged information. As you indicate this is a subject of another proposal, COPEN 60, which we are also
holding under scrutiny. The Committee has decided to clear the White Paper from scrutiny and to concentrate on the issues raised by COPEN 60 and, when it is deposited for scrutiny, the new instrument providing for a system of criminal record exchange within the EU. As you indicate, the latter may not contain some of the potential problems (eg the “dictionary” of legal terms) raised by the White Paper.

20 October 2005

FIGHT AGAINST ORGANISED CRIME (6582/05)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

The Proposed Framework Decision has been examined by Sub-Committee E (Law and Institutions). The Committee decided to retain the proposal under scrutiny and to invite you to clarify certain matters.

We note that the proposed Framework Decision, if adopted in its present form, would require amendment to UK criminal law and, in particular, would require the creation of the criminal offences of participating in a criminal organisation and directing a criminal organisation. We understand that the Government have relied on the law of conspiracy to meet its obligations under the 1998 Joint Action—Article 2 (1)(b) of the Joint Action allowing Member States an alternative offence, conduct consisting of an agreement to pursue an activity which would amount to the commission of an offence. You say that the Government will need “to look carefully at the implications for domestic law before forming a view on the Framework Decision as a whole, in particular Articles 1 and 2 and will need to seek clarification on Article 3”. We agree that this is most necessary.

The definitions, in Article 1, of “criminal organisation” and, in turn, “structured association” need close examination. Article 1 refers to offences “which are punishable by deprivation of liberty or a detention order . . .”. Punishable under whose law? Solely under the domestic law of the Member States concerned or does Article 1 extend to offences punishable under international law? Careful consideration also needs to be given to the two offences set out in Article 2. What, in the Government’s view, would be needed to prove commission of the offence of “directing a criminal organisation”, which would attract a higher sentence? Is there any experience in common law jurisdictions or in other Member States which would be helpful in this context?

Your Explanatory Memorandum is silent on Articles 5 and 6 dealing with the liability of legal persons. What changes, if any, would these Articles introduce? The Commission’s Explanatory Note states that “The term liability should be construed so as to include either criminal or civil liability”. Do you agree that the term should be so construed? If you do agree, how do the Government envisage implementing Articles 5 and 6? To what extent might corporate liability, civil or criminal, be increased? An incidental question is whether the vires quoted by the Commission are sufficient to impose civil, as opposed to criminal liability. What is the Government’s view on this?

Article 8 deals with the protection of, and assistance to, victims. You say that the Government “would be examining closely the text of Article 8(1) on the investigation and prosecution of offences to ensure that it does not hamper the effectiveness of investigations”. This is somewhat puzzling. As the Commission explains, Article 8(1) is taken from Article 10(1) of the 2002 Framework Decision on combating terrorism. If the Government could accept Article 10(1) of the 2002 Decision it is unclear why there should be a problem with Article 8(1). Could you explain to what special problems Article 8(1) might give rise?

Article 9 deals with the repeal of existing provisions and provides for the substitution of the Framework Decision for the Joint Action in other measures adopted pursuant to Title VI of the TEU and the TEC. This Article raises another vires question. Are the vires quoted by the Commission adequate to effect such a change? Is this the first time where powers under the TEU have been used to effect amendments to legal instruments made under the EC Treaty?

Finally, as the preamble to the draft Framework Decision indicates, the United Nations Convention against trans-national organised crime (the Palermo Convention) is relevant in the present context. Two issues arise. First, the United Kingdom has signed the Convention but, we understand, has not yet ratified it. Do the Government intend to ratify the Convention? If so when? What legislative change would be necessary before the UK could ratify the Convention? To what extent would the Government’s decision on ratification be dependent on the ability to restrict criminalisation of participation in an organised criminal group to the offence set out in Article 5(1)(a)(i) of the Convention?
The second issue relates to the Community/Union’s external competence. The Community has become a party to the Palermo Convention but only as regards those matters for which it has competence under the First Pillar/EC Treaty (especially money laundering). What will be the effect if the proposed Framework Decision is adopted? Would this extend Community external competence? We assume not, because the instrument, like its predecessor the 1998 Joint Action, is made under the Third Pillar (Title VI) TEU and not the EC Treaty. How would the position change if the Constitutional Treaty were to enter into force? What would be the effect of Article I-13(2) in this context?

7 April 2005

Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

I am writing in response to your letter of 7 April 2005 to Caroline Flint MP. This subject now falls under my responsibility.

In your letter you posed several questions and I will seek to deal with these in the order you raised them.

You asked about the definitions of Article 1 and whether offences were punishable under domestic or international law. At this stage we are working on the basis that this provision covers domestic law only but agree that this drafting of these definitions is not clear and we will seek further clarification during negotiations.

You also enquired about the text concerning the definition of directing a criminal organisation. We believe that the term “directing” is intended to convey being in a position of authority within such an organisation so as to counsel or command others to undertake certain conduct some of which may amount to the commission of criminal offences or conduct ancillary thereto. We are not yet in a position to take a view on whether there is any relevant experience in other jurisdictions.

You have also enquired about the provisions in Articles 5 and 6 on liability of legal persons. The language used here is standard and has appeared in many approximation instruments. We would agree that the applicability of this offence to legal persons is less obvious. It is difficult, however, to answer your query about the changes that these Articles would introduce, before the text defining the offences themselves has been finalised as the form they take will determine what legal changes, if any, we may be required to make. Similarly until we have reached a decision as to how to respond to the offences provision, we cannot confirm the impact that this provision will have on the current sanctions imposed for liability of legal persons.

You asked whether we would agree that liability should be construed so as to include civil as well as criminal liability. We would agree with this. We would consider that a measure based on Articles 29 and 31(1) TEU can provide for a range of “penalties” for legal persons including civil penalties, where this relates to criminal acts committed by natural persons connected with the legal persons.

As regards Article 8, we are fully supportive of the need to take victims’ concerns seriously, but believe that the language of Article 8(1), which corresponds exactly to Article 10(1) of the Framework Decision on combating terrorism, may not be drafted in the most appropriate manner for an instrument dealing with the prosecution of organised crime. The successful prosecution of organised crime, in particular human trafficking cases, though not in law strictly dependent on it, is in practice extremely difficult in the absence of the evidence of the victim. This differs from terrorism prosecutions where there is typically more corroborating evidence. We will therefore examine the possibilities of amending the language so that it is more appropriate for organised crime, although we anticipate that the consensus will favour the existing precedent.

You asked about Article 9 of the Framework Decision. In terms of vires, we would agree that a third pillar (Treaty on European Union based) measure cannot amend first pillar (Treaty establishing the European Community based) legislation. However we do not believe that this is the intention of this Article. Rather the intention is for references to the Joint Action in first pillar measures to be understood to be references to the Framework Decision. We believe that the provisions of this Article will be acceptable.

You enquired about the relationship between this measure and the United Nations Convention against trans-national organised crime (UNTOC). The Government does intend to ratify the Convention and will do so as soon as all legislative requirements have been met. We are currently addressing UNTOC’s requirements on the seizure of instrumentalities of crime and in relation to extradition. We have not identified any further legislative requirements. You also asked whether our ratification is dependent on retaining the approach in Article 5(1)(a)(i) of the Convention to criminalisation of participation in an organised criminal group. Article 5 is currently drafted in an either or format and our approach with our offence of conspiracy falls under 5(1)(a)(i).
You also asked about the competence issues and the role of the Constitutional Treaty. I agree that the adoption of a third pillar measure does not extend Community external competence. Under the Constitution the normal community rules on external competence will apply in relation to the adoption of internal measures in the area of police and judicial co-operation.

Article 1-13(2) of the Constitution is intended to be a statement of these rules. As stated by that Article the Union will have exclusive competence for the conclusion of an international agreement insofar as its conclusion may affect an internal police and judicial co-operation measure adopted under its constitution.

14 June 2005

Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 14 June which was considered by Sub-Committee E (Law and Institutions) at its meeting on 29 June. We are grateful for the explanations and information you have given. There remain, however, a number of matters of continuing concern to the Committee. I will deal with them in the order adopted in the earlier correspondence.

(a) Article 1 (Definitions)—Scope of Framework Decision

We note that you agree that the drafting of the definitions in Article 1 is not clear, including whether the offences referred to are those punishable under domestic and/or international law. We would encourage you to secure the necessary clarification and hope that you will be able to use the United Kingdom Presidency to advantage in this respect.

(b) Directing a Criminal Organisation

Thank you for your helpful description of what you understand the term “directing” to mean. I am sure that you will agree that it is important that the Framework Decision should be as clear as possible as to what would constitute, and what needed to prove, the offence of “directing”. Do the Government intend to put forward an amendment to Article 2?

(c) Legal Persons

We note that the Government take the view that a measure based on Articles 29 and 31(1) TEU can provide for a range of penalties for legal persons including civil penalties. However, the Committee would be grateful for reassurance that this is all that is intended by the Commission when it refers in its Explanatory Memorandum to the term “liability” being construed so as to include either criminal or civil liability. Is there a risk that Article 5 might be construed not just as requiring Member States to impose a penalty (criminal or civil) but also as creating a form of civil liability for which companies might be liable to third parties?

(d) Protection of Victims

We are grateful for the explanation given in your letter and note your conclusion.

(e) Article 9—Vires

You say that “the intention is for references to the Joint Action in First Pillar measures to be understood to be references to the Framework Decision”. Admittedly Article 9 is not drafted in terms expressly requiring the substitution, for references to the Joint Action, of references to the Framework Decision. But the effect of the second sentence of Article 9 clearly says how references in certain TEC instruments should be construed. It would be helpful if you could explain in more detail the Government’s legal analysis which concludes that a rule in an instrument made under the TEU stipulating how a TEC instrument should be construed is intra vires the TEU powers cited in the proposal.

(f) The UN Convention Against Transnational Organised Crime

Your explanation of the present position as regards the United Kingdom ratifying UNTOC is most helpful.
(g) **Effect of the Constitutional Treaty**

Again, we are grateful for explanation of the implications of the Framework Decision for Community external competence. As you indicate, the position would change under the Constitutional Treaty. The clarification you have given will be helpful in any future discussions of the effects of that Treaty.

The Committee decided to retain the proposal under scrutiny and looks forward to receiving the further information requested above.

*5 July 2005*

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**Letter from Paul Goggins MP to the Chairman**

I am writing in response to your letter of 5 July 2005.

In your letter you posed several questions and I will deal with these in the order you raised them.

You asked about the definitions of Article 1 and whether the Government will be seeking further clarification as to whether the offences in question are punishable under domestic or international law. You further hope that the Working Group will give consideration to this issue. The Government will work hard during our Presidency of the EU to ensure that the consensus reached on negotiations is drafted in the clearest and most unambiguous terms possible.

You also enquired whether we would be seeking to amend Article 2. The Presidency is in dialogue with the Commission and other Member States over this and hopes to produce a revised proposal for discussion in the autumn which meets the concerns of all delegations.

You ask whether there is a risk that Article 5 might be construed not just as requiring Member States to impose a penalty (criminal or civil) on legal persons but also as creating a form of civil liability for which companies might be liable to third parties. The Government considers that Articles 5 and 6 of the Framework Decision have to be read together. Article 5 sets out the circumstances in which legal persons are to be held liable. Article 6 sets out what such liability requires. It requires that the legal person is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as those listed in Article 6. These Articles do not require Member States to create any form of civil liability whereby companies are liable to third parties.

You raised a *vires* point concerning Article 9 of the Framework Decision. The intention behind Article 9 (updating references in TEC and TEU measures to take account of the repeal and replacement of Joint Action 98/733/JHA) is sensible. We take your point, however, that it is not clear that there is *vires* to do this in a third Framework Decision in relation to TEC measures. We are not aware of any precedent for this approach. We will raise this point during negotiations.

Negotiations are continuing in the Working Group, and I will keep you updated on the progress of these.

*29 July 2005*

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**Letter from the Chairman to Paul Goggins MP**

Thank you for your letter of 29 July which has been considered by Sub-Committee E (Law and Institutions). We are pleased to learn that you are taking forward a number of concerns which we have raised and we hope progress will be made during the UK Presidency.

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**(A) Article 1 (Definitions)—Scope of Framework Decision**

We are pleased to note that the Government are working hard to ensure that Article 1 is drafted “in the clearest and most unambiguous terms possible”. We assume that this means that you will be seeking to ensure that the text makes clear whether the offences in question are punishable under domestic and/or international law.

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**(B) “Directing” a Criminal Organisation**

We note that you hope to produce a revised proposal for discussion in the autumn. We look forward to seeing that text.
(c) **LEGAL PERSONS**

Thank you for the clear statement as to the Government’s understanding of Articles 5 and 6, namely that they do not require Member States to create any form of civil liability. You do not say whether other Member States share that view.

(d) **ARTICLE 9—VIRES**

We note that you have taken the Committee’s point that it is not clear there is *vires* for an instrument made under the TEU to stipulate how a TEC instrument should be construed. We are pleased to note that you will raise this point during the negotiations.

The Committee decided to retain the proposal under scrutiny. We look forward to receiving news as to the progress of the negotiations.

13 October 2005

**Letter from Paul Goggins MP to the Chairman**

I am writing in response to your letter of 13 October 2005 in which you posed several questions. I will deal with these in the order you raised them.

You asked whether the Government was intending to ensure that Article 1 clarifies whether the offences are punishable under domestic or international law. The UK Presidency is currently focusing discussions at official level on text aimed at clarifying the definitions in Article 1. The Council is discussing texts that make it clear that the offences referred to are punishable under national law.

You enquired about the revised proposal for Article 2. There are currently two alternative proposals for Article 2(c) which, if accepted, would provide an alternative option to Articles (2)(a) and (b). One proposal reverts to the language used in the Joint Action.

The other proposal, made by the Presidency, seeks a compromise between the Joint Action language and an obligation to criminalise, directing and participating in a criminal organisation. This proposal, currently constituting a footnote to the text, focuses on the conduct of participants in organised crime in such a way so as to require a specific offence or specific offences but not the directing or participating offences as currently drafted. Negotiations are still ongoing as to whether either proposal will form part of the final text.

You asked about Articles 5 and 6 dealing with the liability of legal persons. The Working Group has not yet had chance to consider, in detail, the language of Article 5. This is at present drafted on the basis of precedent from other Framework Decisions. Once this Article has been discussed further the attitude of other Member States should become clearer.

You mentioned Article 9 of the Framework Decision. I note your comments about whether there is *vires* for a TEU instrument to stipulate how a TEC instrument should be construed. I will keep you informed of the outcome of discussions of this Article.

Negotiations are continuing in the Working Group, focusing on Articles 1 and 2 primarily but also with some discussion of Article 7 and the issue of conflicts of jurisdiction. We are hoping to put Articles 1 and 2 to the December JHA Council for discussion and guidance from Ministers. I will keep you informed of progress of negotiations on this measure.

10 November 2005

**Letter from the Chairman to Paul Goggins MP**

Thank you for your letter of 10 November which was considered by Sub-Committee E (Law and Institutions) at its meeting on 30 November. You indicate that negotiations are ongoing, at official level, under the UK Presidency. We look forward to receiving more detailed information in due course. In the meantime we would be grateful if you could confirm that in relation to Articles 1 and 2, which contain key definitions, particular attention will be paid to the implications of the recent judgment of the European Court of Justice in Pupino. If Framework Decisions are to have indirect effects, then it is important in the interests of legal certainty that the language of Framework Decisions be as clear and precise as possible.

The Committee decided to retain the proposal under scrutiny and looks forward to receiving the information promised in your letter of 10 November.

1 December 2005
Letter from Paul Goggins MP to the Chairman

I am writing in response to your letter of 1 December.

You asked whether the Government had taken into account the implications of the Pupino judgment when negotiating Articles 1 and 2 of this Framework Decision. We have considered this judgment and agree that there is a need for clarity of language in Framework Decisions to aid legal certainty. We have taken this into account during negotiations.

Work is continuing on the negotiation of Articles 1 and 2 but a considerable difference of opinion has emerged between those States wishing to see an alternative to Articles 2(a) and (b) and those preferring to restrict the scope of the measure to the directing and participating offences. We are looking to the incoming Austrian Presidency to take work forward on this measure.

Discussions have focused recently on Articles 1 and 2 of the measure with little time allocated to discussion of other Articles. We will inform you of the outcome of any further negotiations and any revised proposals for these Articles.

19 December 2005

FUNDAMENTAL RIGHTS AGENCY (10774/05)

Letter from the Chairman to Baroness Ashton Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Sub-Committee E (Law and Institutions) examined the proposal at its meeting on 19 October 2005.

While you acknowledge the need for careful consideration of various aspects of the proposal, you do not give any indication of the Government’s view on these matters. Nor, I am sure you will agree, is the list of subjects you identify exhaustive. There is a need for further examination of the proposal, and the Committee would be grateful for a full statement of the Government’s position on the following matters:

— the adequacy of the legal basis of the proposal and whether or not a Regulation creating an EU (as distinct from an EC) agency can be based on Article 308 of the EC Treaty. We note that the Commons European Scrutiny Committee has also raised this point;

— the extent to which the Agency may “refer” to international human rights instruments other than the EU Charter (Article 3(2));

— whether the remit of the Agency should extend beyond Community law to encompass Foreign Common and Security Policy (Article 2 refers only to Community law);

— the geographical scope of the Agency, in particular the extent to which it should include participation by non Member States and therefore stretch beyond the Union;

— the extent to which the Agency should be involved in pre-legislative scrutiny;

— the extent to which the Agency should be involved in monitoring Member States’ compliance with fundamental rights under Article 7 TEU;

— the degree of any overlap between the Agency and the Council of Europe and other agencies (at national, Community and international level) in the field (including in particular the proposed EU Institute for Gender Equality) and how this can be minimised; and

— the structure of the Agency and its independence and accountability (particularly the role of the Commission in setting the Agency’s Work Programme and whether or not its representatives on the Management Board ought to be subject to the requirement of independence which applies to the other board members).

The Committee has decided to hold this document under scrutiny pending receipt of the information requested.

20 October 2005
Letter from Baroness Ashton of Upholland to the Chairman

You wrote on 20 October asking me to clarify the Government’s position on various aspects of the Commission’s proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights, and its proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the TEU. I would like to address each of your questions in turn:

The Government’s position on the adequacy of the legal basis of the proposal and whether or not a Regulation creating an EU (as distinct from an EC) agency can be based on Article 308 of the EC Treaty

In the Government’s Explanatory Memorandum of 20 July 2005, we set out our views on why we consider Article 308 of the TEC to be an appropriate legal base for the Regulation establishing the Agency. As Presidency we are working with other Member States to agree on the appropriate legal base for the Agency.

Article 308 TEC provides the Council with the means to attain the objectives of the Community if the Treaty has not provided the necessary powers. The importance of fundamental rights in Community law has been accepted for many years. While ensuring respect for fundamental rights is not specifically listed as a Community objective in Articles 2 and 3 TEC, the European Court of Justice has found that it is a condition for the lawfulness of Community acts, and respect for fundamental rights thus forms an underlying or implied objective of the Community. Member States are also required to respect fundamental rights when implementing such acts. We consider, therefore, that Article 308 is available as a legal base for the TEC proposal insofar as it aims to provide the Community Institutions with assistance to ensure that they respect fundamental rights (and so far as there is no specific legal base or bases for the proposal).

The legal base for the Regulation is in the TEC and this establishes the powers for the Agency with respect to Community law. As proposed, the Agency’s remit on the third pillar derives from the Council Decision which has a TEU legal base. Given this dual legal basis which will ultimately result in a single Agency, we feel it is reasonable for the Agency to establish a European Union Fundamental Rights Agency, the name of which does not affect the scope of activity as set out in the substantive provisions of the Regulation.

The Government’s position on the extent to which the Agency may “refer” to international human rights instruments other than the EU Charter (Article 3(2))

It is proposed that the Agency will refer to the Charter of Fundamental Rights, but this does not exclude it from referring to other human rights instruments. The Charter is not legally binding, but instead showcases the rights, freedoms and principles that already exist at the European level. Many of the rights in the Charter are reaffirmations of rights and freedoms contained in other international human rights instruments, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). By referring to the Charter, the Agency will implicitly and unavoidably be referring to the ECHR and to other international human rights instruments from which the Charter’s provisions are drawn. As the Attorney General stated in his conference paper of 25 June 2004 “The Charter exercise is not minting new rights, but rather increasing the visibility of existing rights” (published in [2004] EHRLR (5), p 473).

The Government’s position on whether the remit of the Agency should extend beyond Community law to encompass the Common Foreign and Security Policy and the Government’s position on the geographical scope of the Agency, in particular the extent to which it should include participation by non Member States and therefore stretch beyond the Union

We do not support a second pillar remit for the Agency, and consider that the Agency’s external role should be well defined and limited. Any substantial third country remit would overburden the Agency, and run the risk of duplication with other organisations and mechanisms and with the foreign and human rights policy of Member States.

The Government’s position on the extent to which the Agency should be involved in pre-legislative scrutiny

The Government believes that the Agency could provide independent guidance and advice on fundamental rights to Community Institutions upon request. This could be of assistance to them in policy formulation to ensure that fundamental rights considerations are adequately taken into account in proposals for Community legislation. Thus although the Institutions do their own impact assessments, the Agency could provide an informal means of pre-legislative scrutiny to the Community Institutions but not the Member States.
The Government’s position on the extent to which the Agency should be involved in monitoring Member States’ compliance with fundamental rights under Article 7 TEU

The proposal gives the Agency an advisory role under Article 7 TEU, in cases where a major breach of human rights is alleged to have taken place within a Member State on a matter falling within the Agency’s competence. However, such a role would be only at the request of the Council. We are content with this from a policy perspective, provided that the Agency does not have the right of initiative in this regard.

The Government’s position on the degree of any overlap between the Agency and the Council of Europe and other agencies (at national, Community and international level) in the field (including in particular the proposed EU Institute for Gender Equality) and how this can be minimised

It is clear in negotiations that all Member States are keen to ensure that the Agency should not duplicate the work done by other international organisations. The main focus of the Agency will be to provide assistance to Community Institutions when they are implementing Community law. This should avoid duplication of monitoring done by the Council of Europe as well as the more international, external monitoring work done by other organisations. The Commission has included a provision in the Regulation (Article 9 of Commission’s proposal) for the Agency and the Council of Europe to enter into a co-operation agreement. This will require a member of the Council of Europe to sit on the Management Board of the Agency. We are keen to ensure that the Council of Europe is represented in the Agency’s Executive Board with the same voting rights as it currently has at the European Monitoring Centre on Racism and Xenophobia (EUMC). Maximising co-operation with other relevant bodies such as the European Gender Institute, the OSCE and the UN is also important and is being considered.

The Government’s position on the structure of the Agency and its independence and accountability (particularly the role of the Commission in setting the Agency’s Work Programme and whether or not its representatives on the Management Board ought to be subject to the requirement of independence which applies to the other board members)

The independence of the Agency is crucial but the Agency should also be accountable to the Council for its operation. We are working with other Member States to ensure that the Agency’s structure and working methods are designed to ensure its independence and accountability. With regard to the requirement of independence for the Commission’s representatives at the Management Board, the Government deems it appropriate to consider other models of agencies established by the EU to provide a firm foundation for the Agency’s management and for its accountability to the Council.

8 November 2005

Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 8 November 2005, which was considered by Sub-Committee E (Law and Institutions) at its meeting on 30 November 2005. We are grateful for the clarifications you provide, particularly in respect of the legal base and the ability of the Agency to refer to a range of human rights instruments. However, there are a number of matters which remain unresolved.

Common Foreign and Security Policy

We note the Government’s position and would be grateful for an explanation of why they consider that the Agency should have no CFSP remit.

The Geographical Scope

The Committee welcomes your statement that the Agency’s external role should be well-defined and limited. To what extent should the Agency be competent to provide information on countries with which an association agreement containing human rights clauses has been agreed? Should candidate and potential candidate countries be able to choose to participate in the Agency?
PRE-LEGISLATIVE SCRUTINY

While we are reassured by your view that the Agency would have some role to play in the pre-legislative process, we consider that this role should be clearly defined and should not be merely an “informal means” of pre-legislative scrutiny. The Agency’s participation at the early stages of all legislative proposals would ensure maximum consideration of and respect for human rights and we urge the Government to press for a more precise role for the Agency in this regard, in line with the views expressed in paragraphs 113–116 of our recent Report Human Rights Proofing EU Legislation, 16th Report of Session 2005–06, HL Paper 67.

OVERLAP WITH THE COUNCIL OF EUROPE AND OTHER AGENCIES

Your response is very helpful. We support the Government’s desire to prevent duplication and ensure maximum cooperation between the Agency and other bodies in the field. By focusing on the acts of Community institutions when implementing Community law, the Agency will be carrying out a function not currently exercised by other bodies. However, the Agency will have a Third Pillar remit and its scope extends to Member States’ institutions and agencies. This may increase the risk of overlap. The Dutch Senate has recently urged its Government to prevent the establishment of the Agency on the grounds that it unnecessarily duplicates the work of the Council of Europe and the Organisation for Security and Cooperation in Europe and that it makes an undesirable distinction between EU Member States and other European countries. What is the position of the other Member States on this issue and can anything more be done to reassure the Council of Europe that its role in protecting human rights will not be adversely affected by the Agency?

You say that maximising cooperation with other relevant bodies such as the European Gender Equality Institute, the OSCE and the UN “is being considered”; what suggestions have been made? You may be aware that the proposal for a Gender Equality Institute is currently under scrutiny by Sub-Committee G and evidence submitted by the Equal Opportunities Commission expresses a firm preference for “one integrated European body covering all equality strands including gender”. What is the Government’s view?

STRUCTURE OF THE AGENCY

We note that the Government are currently working with other Member States to ensure that the structures adopted guarantee the Agency’s independence and accountability. Have there been significant changes to the provisions in the proposal? In respect of the independence of Commission representatives on the Management Board, you say “The Government deems it appropriate to consider other models of agencies established by the EU to provide a firm foundation for the Agency’s management and for its accountability to the Council”. We would welcome an explanation of this statement.

We have decided to retain the proposal under scrutiny and look forward to hearing from you.

1 December 2005

Letter from Baroness Ashton of Upholland to the Chairman

You wrote on 1st December 2005 asking me to clarify further the Government’s position on various aspects of the Commission proposal (reference COM(2005) 280 final) for a Council Regulation establishing a European Fundamental Rights Agency and Council Decision to extend the remit of this Agency to Title VI of the Treaty on European Union (Police and Judicial Co-operation in Criminal Matters). I have also taken note of the publication of the Committee’s Sixteenth Report on 29 November 2005 on the subject of “Human Rights Proofing of EU Legislation” for which I will send you a separate reply.

I would like to address the Committee’s concerns in turn:

Common Foreign and Security Policy—We note the Government’s position and would be grateful for an explanation of why they consider that the Agency should have no CFSP remit.

The Government is clear that the primary focus of the Agency should be to provide assistance and expertise on fundamental rights issues to EU Institutions. The Commission’s proposal does not include a second pillar remit and there seems to be little appetite for such a remit among Member States. The Government believes that, with limited resources, it is necessary for the Agency to concentrate upon areas in which it has the greatest potential for relevance and utility. The Agency’s primary purpose, building upon the mandate of the European Monitoring Centre on Racism and Xenophobia, should be as a fact-finding and opinion-giving body able to serve EU Institutions. The Agency should also have a role to play in promoting best practice through the provision of guidance and generic advice.
For these reasons, the Government thinks that an extension of the Agency’s remit to second pillar matters would run the risk of overloading the Agency. A remit based on Title V of the Treaty on European Union would dilute its role and also lead to unwelcome and inefficient duplication with other established human rights bodies (particularly the Council of Europe and the Council Working Group on Human Rights—COHOM—which acts within the scope of the CFSP).

The geographical scope—The Committee welcomes your statement that the Agency’s external role should be well-defined and limited. To what extent should the Agency be competent to provide information on countries with which an association agreement containing human rights clauses has been agreed? Should candidate and potential candidate countries be able to choose to participate in the Agency?

The Government is concerned that an extension of the Agency’s geographical scope would threaten the Agency’s efficiency and effectiveness. Just as the Agency could be overburdened by too wide a thematic mandate, so there is a risk that too wide a geographical mandate would also risk overburdening the Agency and compromising efficiency. The Government, together with many Member States, is clear that an extension of the Agency’s scope to third countries could easily overwhelm the Agency, particularly in its early days, and thus should be avoided. However, the Government believes that the Agency should play a role in assisting candidate countries prepare for membership of the EU.

The issue of whether candidate or potential candidate countries “choose” to participate in the Agency’s work is covered by article 27 of the proposed Regulation on the Fundamental Rights Agency. This article gives candidate countries the possibility of participation in the Agency subject to the decision of the relevant Association Council.

Pre-legislative scrutiny—While we are reassured by your view that the Agency would have some role to play in the pre-legislative process, we consider that this role should be clearly defined and should not be merely an “informal means” of pre-legislative scrutiny. The Agency’s participation at the early stages of all legislative proposals would ensure maximum consideration of and respect for human rights and we urge the Government to press for a more precise role for the Agency in this regard, in line with the views expressed in paragraphs 113–116 of our recent Report “Human Rights Proofing of EU Legislation”, 16th Report of Session 2005–06, HL Paper 67.

I am responding separately to your Committee’s Sixteenth Report on “Human Rights Proofing of EU Legislation”. However, to clarify the point raised in your letter, the Government believes that the volume of EU legislation is such that a formal pre-legislative role for the Agency would be unfeasible and would also create duplication with the work of the Commission Legal Service. The Commission itself highlighted in its internal Communication of 27 April 2005 (reference COM(2005) 172 final) the limited role of the Agency in this respect. The Commission acknowledged that the data collection and expertise of the future Agency should be “used as input for the methodology” but does not formally entrust the Agency with the task of scrutinising all EU legislation for compliance with fundamental rights. This is the task of the Commission which, as guardian of the Treaties and hence of fundamental rights, is ultimately responsible for monitoring compliance with fundamental rights by EU Institutions.

Overlap with the Council of Europe and other agencies—The Agency will have a Third Pillar remit and its scope extends to Member States’ institutions and agencies. This may increase the risk of overlap. The Dutch Senate has recently urged its Government to prevent the establishment of the Agency on the grounds that it unnecessarily duplicates the work of the Council of Europe and Organisation for Security and Co-operation in Europe and that it makes an undesirable distinction between EU Member States and other European countries. What is the position of the other Member States on this issue and can anything more be done to reassure the Council of Europe that its role in protecting human rights will not be adversely affected by the Agency?

You say that maximising co-operation with other relevant bodies such as the European Gender Equality Institute, the OSCE and the UN is “being considered”; what suggestions have been made? You may be aware that the proposal for a Gender Equality Institute is currently under scrutiny by Sub-Committee G and evidence submitted by the Equal Opportunities Commission expresses a firm preference for “one integrated European body covering all equality strands including gender”. What is the Government’s view?

The Council of Europe should be reassured by the knowledge that the Government together with the overall majority of Member States are very clear that the Agency should not duplicate the work of existing human rights organisations, particularly the Council of Europe. This is a central theme in the discussions related to the Agency’s management structure where the Council of Europe should be adequately represented. As you pointed out in your letter, the Dutch Senate has questioned the Commission’s proposal for creating a possible duplication of the Council of Europe by extending the Agency’s remit to third pillar matters. Discussions in the Council of the EU Working Group have not yet reached the subject of the Agency’s third pillar remit and
the Government is still considering its position on this matter. However, the Government sees, in this remit, the potential risk of overloading the Agency and duplicating the work carried out by the Council of Europe.

The Government deems it crucial that the work of the Agency should take full account of the gender dimension and that any overlap with the European Institute of Gender Equality should be avoided. The Commission's proposal clearly states that the Director of the European Institute of Gender Equality may attend as observer the meetings of the Agency’s Management Board. Some Member States have also suggested the modification of the text of the proposal, specifically article 8(1), explicitly to indicate that the Agency will co-operate with the Office for Security and Co-operation in Europe and the UN System. The Government takes a positive view of these steps in so far as they avoid any potential overlap between the Agency and other international human rights bodies.

The Government believes that merging the European Institute for Gender Equality with the Fundamental Rights Agency, or other human rights agencies, would marginalise gender equality issues within the wider context of fundamental rights. Establishing two separate but co-operating Agencies, one on fundamental rights and one on gender equality, will raise the profile of these important topics within the European Union and will avoid any unnecessary duplication.

Structure of the Agency—Have there been significant changes to the provisions in the proposal? In respect of the independence of Commission representatives on the Management Board, you say “The Government deems it appropriate to consider other models of agencies established by the EU to provide a firm foundation for the Agency’s management and for its accountability to the Council”. We would welcome an explanation of this statement.

The Government believes the management structure should ensure both the operational independence of the Agency and its ultimate accountability to the Council. The Government and the other Member States are currently examining a French proposal for an alternative management structure of the Agency. Although the proposal was only recently made available to Member States and has not yet been fully analysed, the Government takes the preliminary view that a dual structure, based on a Management Board and a Scientific Committee, might prove a better means of ensuring the independence of the Agency from the Commission, the Agency’s accountability to the Council and effective advice and expertise in human rights issues.

15 February 2006

INFORMATION ON THE PAYER ACCOMPANYING TRANSFERS OF FUNDS (11549/05)

Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury

Sub-Committee E (Law and Institutions) considered the above proposal at its meeting on 16 November 2005.

The Committee welcomes this proposal to facilitate the investigation and prosecution of money laundering and terrorist financing. However we do have some queries regarding the text and would be grateful for your response.

OBLIGATIONS ON THE PAYER’S PAYMENT SERVICE PROVIDER

Article 5 introduces a general obligation on Payment Service Providers (PSPs) established within the Community to provide complete information when transferring funds. Articles 6 provides a derogation where the transfer is made between two PSPs both situated in the Community. Article 7(1) then appears to reiterate the provisions of Article 5, requiring complete information to be provided for transfers of funds from the Community to “payees outside the Community”. What is the purpose of this Article? Is there some significance in the use of the term “payees” instead of “PSPs”? We note that Article 2, defining the scope of the Regulation, provides that the Regulation shall apply to “transfers of funds […] sent or received by a payment service provider” (emphasis added).

Article 5 requires PSPs to verify the complete information provided “on the basis of documents, data or information obtained from a reliable and independent source”. What sources are contemplated here and will PSPs understand adequately the extent of their obligation?

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Obligations on the Payee’s Payment Service Provider

Article 9 deals with the situation where the necessary information is not received by the payee’s PSP. It provides that a PSP may reject the funds or ask for complete information. It does not appear to allow a PSP to ask for the “basic” information envisaged in Article 6 for transfers of funds within the Community, even where the transfer in question is of this nature. Is this intentional?

In the event that the PSP asks for complete information, it can hold the funds or make them available to the payee. What factors should a PSP use in deciding what to do with the funds? What happens if it makes them available to the payee and the complete information does not arrive? Although there is provision for reporting where the payer’s PSP “repeatedly fails” it is not clear what this means. Is it failure to provide information on a transfer after several requests or failure over several transfers to provide the information timeously, or at all?

Penalties

Article 15 requires Member States to lay down rules on penalties for infringements of the Regulation. The penalties must be “effective, proportionate and dissuasive”. What penalties do the Government intend to introduce? Will there be criminal sanctions?

We have decided to retain this proposal under scrutiny and look forward to hearing from you.

17 November 2995

Letter from Ivan Lewis MP to the Chairman

Thank you for your letter of 17 November regarding the European Commission’s proposal for a Regulation on information on the payer accompanying transfers of funds.

Your letter set out a number of questions relating to the proposal that arose at your meeting on 16 November. Since the Commission adopted the proposal, a number of substantial changes to the text have been agreed between Member States in discussions in the working party. The Permanent Representatives Committee (COREPER) was invited on 25 November to examine the annexed text with a view to submitting it to Council (ECOFIN) for agreement on a General Approach on 6 December 2005.

Rapporteurs have recently been appointed to the committees of the European Parliament that will consider the Commission’s proposal (LIBE and ECON) and Austria, as Presidency of the EU, expects to secure formal Political Agreement on the basis of the General Approach agreed at ECOFIN in the first half of 2006.

The Commission’s proposal sought to implement the Interpretative Note that had been agreed for Financial Action Task Force Special Recommendation 7 (FATF SRVII). An important principle of that agreement was that FATF SR VII should be implemented without interfering with the efficient operation of payment systems or imposing the need for major technical changes.

Many of the revisions to the text of the Commission’s proposal reflect the consideration by Member States of the technical implications of that proposal and provide legal certainty to allow for the preservation of “Straight Through Processing” of the billions of payments processed annually, including “batch-file” (eg salary) payments and payments traffic with territories that are part of a Member State’s payment system, but are not in the EU, such as the Channel Islands, the Isle of Man, etc.

Other changes were agreed to ensure consistency with the Third Money Laundering Directive and to avoid pre judging policy decisions in other areas. These changes are largely seen in Article 2, which sets out the scope of the Regulation and Article 5, which includes provision for verification of the information on the payer that is required.

The changes ensure consistency with the Third Money Laundering Directive. If such consistency had not been ensured, the Commission’s proposal carried the risk of a £2 billion cost to UK banks in respect of the verification of the addresses of holders of accounts opened before 1994.

The changes to Article 5 also allow the Joint Money Laundering Steering Group (JMLSG) to continue to take account of financial exclusion issues in their guidance. The lack of a compulsory identity card in this country and other Member States presented certain difficulties with regard to the requirements of the Commission’s proposal. These have now been fully addressed.

UK Industry has expressed its satisfaction that its concerns with the technical and verification requirements of the Commission’s proposal have been fully addressed. The Regulation attains the anti-money laundering and anti-terrorist financing goals of FATF SRVII in accordance with the principle of establishing protocols that allow international payments systems to be used without imposing substantial burdens on the industry and citizens.
In this context, I have directly addressed the questions raised by your Committee in the annexed paper (Annex 1).

Once again I would like to express my appreciation of your Committee’s consideration of the issues raised by this Regulation. I trust that your Committee will now be in a position to conclude that a General Approach should be agreed at ECOFIN on 6 December on the basis of the attached revised text of the Commission’s proposal.

29 November 2005

Annex 1

Response to queries raised by House of Lords Sub-Committee E (Law and Institutions) regarding a proposal of the European Commission for a regulation on information on the payer accompanying transfers of funds

OBLIGATIONS ON THE PAYER’S PAYMENT SERVICE PROVIDER

ARTICLE 7

Your Committee asked what was the purpose of Article 7 and was there any significance in the use of the term “payees” instead of “PSPs”.

Purpose of Article 7

Article 5(1) introduces the general obligation to transmit with the transfer the information on the payer set out in Article 4. Article 6 establishes a derogation from the obligation of Article 5(1). The general obligation is reiterated in Article 7 for clarity.

Use of term “Payment Service Provider of the Payee”

Your letter rightly points out the distinction between the terms used in Articles 2 and 7. The latest version of the text corrects this, with the term “payment service provider of the payee” used in Article 7, ensuring consistency with Article 2.

ARTICLE 5: VERIFICATION

Your Committee identified a number of questions in relation to the requirement in Article 5 that information on the payer be verified on the basis of documents, data or information obtained from a reliable and independent source.

Distinction between account-based and one-off transfers

The revised text makes a distinction between account-based transfers and transfers not drawn on accounts. For account-based transfers, verification may be deemed to have taken place if payment service providers have met the obligations of existing money laundering legislation. This means that banks will be able to rely on the information they have from previous and ongoing know-your-customer checks.

For transfers not drawn on accounts, verification of complete information is required, except in the case of transfers below 1,000 euros where only the name needs to be verified. The text requires that the complete information is verified where the transaction is carried out in several operations that appear to be linked and exceed 1,000 euros, addressing the risk of larger payments being divided into multiple smaller payments.

This requirement to verify the full information reflects the lack of previous know-your-customer checks in the case of such transfers.

The requirement to only verify the name in the case of transfers of or below 1,000 euros reflects the policy that it is important to preserve remittances within the regulated sector. Burdensome regulation risks displacing remittances from communities that have legitimate difficulties with address verification to underground providers, with all the consequent risk of providing opportunities for money laundering and terrorist financing that would entail.
Guidance on documents required for verification

Guidance for the financial sector on how to meet the identification requirements of the 2003 Money Laundering Regulations and the FSA handbook is produced by the Joint Money Laundering Steering Group (JMLSG). This guidance is currently being revised to make it more risk based, including with regard to how firms should verify the identity of their customers. A consultation draft of March 2005 lists examples of what checks might be undertaken to achieve verification. I understand the JMLSG is currently considering responses to its consultation and amending the draft accordingly.

The British Bankers’ Association and the Association for Payment and Clearing Services have been consulted closely throughout the process to agree the text of the Regulation. Several individual banks have also been consulted closely.

A number of money remitters have also been consulted. HM Treasury and HM Revenue & Customs are aware that the obligations under the Regulation will need to be publicised to this sector. Both Departments are conducting a review of the sector with a view to tightening money laundering and terrorist financing controls in the sector and the obligations under the Regulation will be taken account of in that review and in subsequent follow up action to ensure that the Regulation is complied with by 1 January 2007.

Obligations on the Payee's Payment Service Provider

Article 9 gives a degree of flexibility to industry and to law enforcement agencies in situations where the information required by the Regulation is not transmitted with a transfer. This is to take account of both the need to preserve the efficient operation of the payments system and the need to preserve the options available to law enforcement agencies in combating money laundering and terrorist financing. (In certain circumstances, for example, law enforcement agencies may request that a suspicious transfer be allowed to proceed so that the recipient can be further traced.)

Article 9: “required information” and “complete information”

Your Committee identified a potential difficulty in interpreting Article 9. The requirements imposed by Article 9 must be understood within the structure of the Regulation:

— Article 4 defines complete information on the payer.
— Article 5 requires that the complete information on the payer must accompany a funds transfer.
— Article 6 introduces a derogation allowing intra-EU transfers to be accompanied by only an account number or unique identifier.
— Article 8 determines, on the basis of the systems that Payment Service Providers will be required to put in place, which transfers will be found to have “missing” or “incomplete” information for the purposes of Article 9.
— Article 9 requires that where information required under the regulation is missing or incomplete the recipient payment service provider may either reject the transfer or request “complete information” before allowing the transfer to proceed. The choice must be undertaken within general guidelines or specific guidance given by law enforcement agencies.

Your committee asked specifically about intra-EU transfers. When a recipient bank receives an intra-EU payment without the required information on the payer they can either reject the payment outright, as most automated systems will do, or ask for complete information on the payer.

On receipt of a request for complete information, the Payment Service Provider of the payer can then either provide the complete information set out on, or, if their systems allow, they can cancel the payment and resubmit the transfer.

For intra-EU transfers, as Article 6 makes clear, transfers, resubmitted or otherwise, need only be accompanied by an account number or unique identifier enabling the transaction to be traced back to the payer.

The Government will use JMLSG guidance to make the requirements of the Regulation clear to Payment Service Providers.
Article 9: Use of funds when complete information is requested

Your committee raised the issue of guidance for Payment Service Providers that ask for complete information in respect of transfers sent with incomplete or missing information.

In the UK, JMLSG guidance reflects requirements in the Proceeds of Crime Act for dealing with suspicious transactions. UK payment service providers will therefore need to consult existing guidance in whether to hold the money or to make it available to payees, and whether or not to make a suspicious activity report. The Regulation, as now drafted, provides sufficient clarity to Payment Service Providers, while providing the necessary flexibility to law enforcement agencies to deal with the particularities of individual cases of suspected money laundering and terrorist financing.

Article 9: Meaning of “repeatedly fails”

Given the differences in the volume and type of transactions that different payment service providers are involved with, the practical interpretation of “repeatedly” was not defined in the Regulation. Member States may decide whether to set this out in national law or in national guidance.

Penalties

The Government is still considering how it will meet the requirements in Article 15. However, the competent authorities, the Financial Services Authority in respect of authorised institutions, and HM Revenue & Customs in respect of money remitters, will be responsible for the penalties applicable.

Letter from the Chairman to Ivan Lewis MP

Thank you for your very helpful reply which was considered by Sub-Committee E (Law and Institutions) at its meeting of 7 December 2005. I deal with points arising from your letter before turning to the Committee’s comments on the UK Presidency draft.

Obligations on the Payer’s Payment Service Provider (PSP)

We note what you say regarding the repetition in Articles 5(1) and 7. We do not agree that the general obligation should be repeated in Article 7 “for clarity”; we believe that its repetition may have the opposite effect. We recall the words of a former Parliamentary Counsel: “spare words turn septic”. We invite you to consider deleting the first paragraph of Article 7.

Your explanation of the position in respect of verification is helpful and we note that the Presidency draft has been amended to clarify and simplify the verification obligations. We welcome the intended aim of the changes to Article 5; they should make it easier for PSPs to understand and satisfy obligations incumbent on them. It would further assist the Committee if you would provide a copy of the Joint Money Laundering Steering Group (JMLSG) guidance once the review process has been completed and a revised version has been agreed.

Obligations on the Payee’s Payment Service Provider

The Committee welcomes your assurances that PSPs need only ask for the basic information, rather than complete information, where this was not provided with the original transfer in respect of a transfer within the EU. While we note your explanation that the requirements will be clarified in the JMLSG guidance, the proposal is to be a Regulation, and thus directly applicable. It is therefore important the text reflect clearly the intention behind the Article. You say that under current Article 9(1) a PSP is entitled to ask for basic information where it receives a transfer from within the EU and the required information is missing. However, the text says that “it shall either reject the transfer or ask for complete information” (emphasis added). We do not understand how you can maintain your position in light of the clear words of the text.

We note your view that the JMLSG guidance will assist PSPs when deciding whether to release or retain funds. It would appear that Article 9 in the new draft also goes some way to addressing our concern by referring to obligations under applicable law. We presume that existing law at Community or national level adequately sets out what the PSP should do in the situation envisaged by Article 9. We would be grateful if you would confirm that this is the case.
Your response to our point regarding when a PSP “repeatedly fails” to provide the required information does not allay our concerns. If, as you say, Member States have been unable to define this term due to “differences in the volume and type of transactions that different service providers are involved with”, it seems unlikely that individual PSPs will have any clearer idea of when this might apply. You suggest that this could be clarified by national law or guidelines; you do not, however, indicate what, if anything, the Government intend to do in this respect. We would also be grateful if you would clarify the extent to which national legislation can be introduced in “implementation” of this Regulation.

**Penalties**

We are pleased that the matter of penalties is being considered; what is your present thinking? Given the uncertainty of some of the obligations, notably the obligation to advise authorities of a repeated failure discussed above, we urge the Government to ensure that where criminal sanctions are introduced, the extent of obligations is sufficiently clear.

**The Presidency Draft**

The Committee welcomes the provision of the latest draft of the text, which helps us to focus on the key issues in the Regulation. However we have found the recent Presidency draft problematic. The amendments are not marked up in the new draft and changes have been introduced for which little or no explanation is given in the text.

**Recitals**

A number of changes have been made to the Recitals. These appear, for the most part, to be aimed at ensuring consistency with Directive 2005/60/EC on money laundering. What is the purpose behind the change made to Recital (9)? While the content of the protection afforded by the original draft of this Recital was not entirely clear, is there not scope for some limitation on the use to which data transferred to third countries in accordance with this Regulation can be put? We would be grateful if you would confirm that no further substantial changes have been made here which are not reflected in the Articles in the text.

Is Recital (16a) intended to displace the definition of working day which would apply under Regulation 1182/71? If so, what is its practical effect? Greater clarity in the drafting would be welcome.

**Scope (Article 2)**

What is the purpose of the changes to Article 2(2)? Are they merely intended to clarify the scope or do they introduce a substantive change?

**Information accompanying transfers (Article 5)**

We welcome the changes to eliminate additional verification obligations where verification has already been carried out. In Article 5(2a), the references to Articles of existing Directives raise questions. In Article 5(2a)(a), should the reference be to Articles 8(1) and (2)? In Article 5(2a)(b), we note that Article 9(6) of Directive 2005/60/EC does not refer to a category of individuals, as implied by that Article, but to a procedure of customer due diligence. Is the exception intended to cover the case where the payer has been subject to the customer due diligence obligations outlined in Article 9(6)? If so, might that be made clearer?

**Missing information (Article 8)**

We find Article 8(3) confusing. Would it not suffice to refer to the information required by Article 7, rather than setting out the obligation again in different words?

**Co-operation obligations (Article 14)**

Why has the provision limiting the use which may be made of information obtained by authorities been removed?
In your letter you asked the Committee to conclude that a General Approach should be agreed at ECOFIN on 6 December. Regrettably your letter of 29 November was not received in time for the new text to be considered by Sub-Committee E at its meeting on 30 November. As our comments indicate, the text raises a number of concerns and the Committee concluded that the proposal should be retained under scrutiny.

8 December 2005

LANGUAGE POLICY (9508/05)

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

I thought you and your Committee would like to be made aware of decisions taken at the General Affairs and External Relations Council on 13 June on language policy in the EU.

The most important decision was the Council’s adoption of conclusions, on a proposal from Spain, for a degree of official recognition in the EU of all languages that have official status in Member States, either through their constitutions or national law. These conclusions allow Member States to enter into an arrangement with the EU institutions over which languages may be used in relations with them, with the requesting Member State meeting all the direct or indirect costs incurred. The purpose of this is to allow, in the first instance, Spanish citizens to communicate with the Institutions in Spanish regional languages. The texts make clear that this can only happen if there is no effect on the otherwise efficient functioning of the Institutions. I attach the conclusions and related texts.

The Council also agreed to add Irish as an official and working language of the EU. (It is of course already a Treaty language.) This was done by means of an amendment to Regulation 1/58, which can be done without a Commission proposal. The cost will be €3.5 million per year, to be met from the annual administrative ceiling, with a separate one-off cost for introducing a new language of €960,000. This will have to be met from within the next financial perspective ceiling.

The Government supports both decisions. In particular, the Spanish-inspired proposals offer a way, at no cost to anyone apart from Spain, of helping bring citizens closer to the EU, by allowing them to use the language with which they are most familiar when dealing with it. It is of course possible that there will be pressure from speakers of other EU regional languages to have the same treatment.

20 June 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Following my letter to you of 20 June 2005, I now attach an Explanatory Memorandum (EM) (not printed) on the amendment made at the General Affairs and External Relations Council of 13 June to Regulation 1/58 to include Irish as an official and working language of the EU.

Your legal adviser has been in touch with my officials to request this EM. He also alerted them to the temporary derogation measures to Regulation 1/58 made last year relating to the use of Maltese by the EU institutions. I attach a belated EM on that proposal too (not printed).

I am afraid that both these proposals bypassed the usual scrutiny procedures. This was because they were made through letters from the Irish and Maltese Governments to the Council rather than via Commission proposals, which would have been picked up as a legislative proposal by our internal system. We also wrongly considered the proposals to be internal EU institutional housekeeping measures of which scrutiny was not required. Officials in both London and Brussels have been made aware of this problem and it should not recur.

5 July 2005

MEDIATION IN CIVIL AND COMMERCIAL MATTERS (13852/04)

Letter from Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

Thank you for your letter of 28 February.9 You asked whether the Government has tabled an amendment to secure the restriction of the scope of the Directive to cases having cross-border implications and if not when it proposes to do so. Linked to this point you asked how the Government proposed to decide whether to opt-in to the proposed Directive before this issue has been resolved. You also suggested amending the proposed Directive to exclude family matters from the scope. I am sorry for the lengthy delay in responding to this letter.

As I said in my letter of 26 January, the view that proposals brought under Article 65 must be limited to cross-border disputes is one which is held by a clear majority of Member States. As you will be aware, this has resulted in a suggested restriction of the proposed European order for payment procedure to cross-border cases in the Luxembourg Presidency text of that proposal. Whilst this does not guarantee that such a restriction will finally be agreed, the size of the coalition is such that one can afford a degree of confidence in that result in the context of both proposals.

The UK Presidency has no plans to propose an amendment that would exclude family disputes from this proposal. As Presidency we believe that the majority of Member States consider that the primary use of this measure is likely to be in the field of civil and commercial matters. However, they also support the inclusion of family matters where there is an opportunity to provide a genuine, simple and proportionate procedure for resolving some family disputes with the added benefit of judicial sanction should the parties require it.

This will not be the first time that primarily civil and commercial instruments have been available for family matters. The Service and Taking of Evidence Regulations (1348/2000 and 1206/2001) adopted before civil matters were subject to qualified majority voting and co-decision can be used for family cases. In addition the recently adopted European Enforcement Order Regulation (805/2004) and the proposed European order for payment will both be available for some maintenance claims.

So far as the opt-in decision is concerned, in view of the fixed timetable it was necessary for the Government to communicate its decision before 8 April 2005, even though the issue of restriction of the measure to cross-border cases only was yet to be resolved. If we had missed the opt-in timetable under the terms of the Protocol, the opportunity to signify our intention to participate in the Directive would not have been available until after adoption of the measure, and would have been subject to seeking a favourable Opinion from the Commission. Not opting in might have given adverse signals that conflict with our general support for ADR and in particular mediation, and would also significantly have limited our opportunity to influence the negotiations before and after our Presidency.

5 August 2005

Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 5 August which was considered by Sub-Committee E (Law and Institutions) at its meeting on 19 October. We are grateful for your clear explanation as to the reasons why the Government have opted in to the present proposal and are pleased to learn that a number of Member States share our view that proposals brought under Article 65 TEC should be limited to cross-border disputes. You do not make clear whether the Presidency will be tabling a proposal to this effect. We hope you will be doing so.

As regards the position of family law matters, you say that “the UK Presidency has no plan to propose an amendment”. It would appear that the Presidency’s position is being dictated by the majority of Member States and the UK is not maintaining a separate voice. We note that you do not say what the Government’s position would have been in the absence of holding the Presidency.

Finally, we note that you do not expressly address the issue of subsidiarity. As indicated in my letter of 28 February, the Committee proposes to return to this question when it has had sight of the cross-border limitation to be included in the Directive. It would be helpful if when furnishing that amendment for scrutiny you could provide a fuller analysis of the Government’s position on the subsidiarity issue.

The Committee decided to retain the document under scrutiny.

20 October 2005

Letter from Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 20 October where you sought clarification as to whether the Presidency would be tabling a proposal to the effect that measures brought under Article 65 TEC should be limited to cross-border disputes. You asked whether it is the Government’s position that family law matters should be included in the Directive. And in regard to subsidiarity you asked for a fuller analysis of the Government’s position. I deal with these questions below. I also briefly outline the main changes in the Presidency text of the draft Directive, a copy of which is attached for your information (not printed).

You will want to be aware that as Presidency we would like to obtain agreement on a general approach on this text (except for Article 1) at the Council on 1 and 2 December. In light of this we would find it helpful if your Committee could clear this proposal from scrutiny before then.
LIMITATION OF ARTICLE 65 TEC TO CROSS-BORDER DISPUTES AND SUBSIDIARITY

Ministers agreed at the Justice and Home Affairs Informal Council in Newcastle in September that proposals brought under Article 65 should be limited to cross-border disputes. The Commission agreed with this view, subject to definitions of what constituted a cross-border dispute. The Commission argues that because the nature of mediation is different from court processes, such as the Order for Payment that it would not be appropriate to have the same definitions in each instrument. For this reason the UK Presidency has decided not to pursue a definition of cross-border in regard to the Mediation Directive at this time, but rather to concentrate on a definition for the Order for Payment and await the outcome of those discussions. In saying that, I must re-iterate that the majority of Member States maintain the view that Article 65 should be limited to cross-border disputes.

FAMILY LAW MATTERS

Your letter also seeks the Government’s position as to whether family law matters should be included in the Directive. I can only re-iterate what I said in my letter of 5 August, that there are precedents where primarily civil and commercial instruments have been available for family matters. For example, the Service and Taking of Evidence Regulations (1348/2000 and 1206/2001), adopted before civil matters were subject to qualified majority voting and co-decision. In addition the recently adopted European Enforcement Order Regulation (805/2004) and the proposed European Order for Payment will both be available for maintenance claims.

The majority of Member States have accepted the inclusion of family matters and the Government believes that the inclusion of such matters, with suitable measures to protect the special position of family mediation would be beneficial in providing a simple and proportionate procedure for resolving some family disputes.

THE LATEST VERSION OF THE PRESIDENCY TEXT OF THIS DIRECTIVE

In general the changes have ensured there is only a light touch to the regulation of mediation and made certain that the provisions dealing with the relationship between mediation and the courts are now more flexible. You will note the main differences are:

Article 1—there has been clarification of the types of disputes that should be excluded from the Directive.

Article 2—the definitions of mediation and mediator are made clearer, as a result of concerns raised by a number of Member States during negotiations. The definitions retain the necessary degree of flexibility, whilst ensuring only structured meetings fall within the scope of the proposal.

Article 4—is now Article 2a and provides more leeway for Member States to decide how best to ensure the quality of mediation.

Article 5—is redrafted to clarify that Member States can decide for themselves the method for rendering mediated agreements enforceable. It stipulates that this action can only be taken when an agreement is capable of being enforced in accordance with national, or Community law. It also clarifies that even though an agreement is rendered enforceable, Community law must be followed to enable it to be enforced in another Member State.

Article 6—this has been simplified a great deal, but it still includes the necessary provision for protecting children’s best interests.

Article 7—this has also been simplified and explains the importance of ensuring that parties involved in mediation are not prevented from initiating subsequent judicial proceedings. The provision as now drafted is less prescriptive in that it allows Member States to decide the way in which this objective should be achieved. I trust that your Committee will support this approach.

9 November 2005

Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 9 November enclosing a copy of the Presidency text (Doc 14041/05) of the proposed Directive. You have asked us to deal with this as a matter of urgency in view of the fact that the matter is on the agenda for the Council on 1 and 2 December. We note that the fundamental question relating to the scope of application of the Directive remains outstanding. The new text also raises a number of questions. Although we are sympathetic to the wish of the UK Presidency to make progress on this matter, we do not feel that the proposal is in a fit state to be released from scrutiny.
It is necessary to find an appropriate definition of “cross-border” for the purposes of the Directive. As you will be aware from the correspondence we are having relating to the European order for payment procedure (Doc 7615/04) this is a matter of considerable importance to the Committee and in that context we have put forward a proposal for your consideration. Whether the test we propose there would also be appropriate for the present Directive is a matter for further consideration. Clearly there would be implications for the application of the Directive to family law matters. We propose to revisit the whole issue when we have your response on the order for payment procedure, including a description of the progress of negotiations in that matter.

While there is a measure of agreement between the Committee and the Government on the issue of limiting proposals made under Article 65 TEC to cross-border matters, the position as regards the application of the principle of subsidiarity is less clear. You will recall that we asked for a fuller analysis of the Government’s position. We do not find that in your letter of 9 November. We hope that this is a matter to which you will give further consideration when responding on the issue of the cross-border limitation.

Turning to the new text, you say that Article 1 is not to be the subject of discussion at next month’s Council meeting. However, in addition to the fundamental question relating to the scope of the Directive, the new Article 1(2) raises a number of questions. We are by no means clear as to what is intended by the exception set out in the first sentence: “except when certain such matters are excluded from mediation by the relevant applicable law”. We would be grateful if you could explain what circumstances this exception is intended to cover. Second, we note that the text now seeks to exclude claims relating to the liability of the State for acts and omissions in the exercise of State authority. Why does the Community wish to discourage mediation in litigation between the citizen and the State? Which of the rules/standards laid down in the Directive (qualifications of mediator, enforceability of settlements, confidentiality of mediation, effect of mediation on limitation periods) are thought to be inappropriate for disputes between the citizen and the State?

We note that the definitions in Article 2 have been widened to meet the concerns of certain Member States. We are slightly puzzled about the inclusion of the words “in a professional, impartial and competent way” in Article 2(b). Are there really any situations where a mediator would be asked to conduct a mediation in any other way?

You say that Article 2(A) (formerly 4) is intended to give Member States more leeway to decide how best to ensure the quality of mediation. Paragraph 2 of this Article, however, raises the question how the conduct of a mediation is “competent” in relation to the parties. We can see that the mediator should be competent and that the conduct of the mediation should be effective and impartial. Again, it would be helpful if you could explain what these words are intended to encompass.

We note that the following words have been deleted from the end of Article 3(2), “in particular in situations where one of the parties is resident in a Member State other than that of the Court”. The footnote does not indicate whether or not this deletion is related to the question of defining “cross-border” in the context of the Directive. We would be grateful if you could explain the reason for the deletion.

Article 5 now makes clear that Member States will determine how mediated agreements will be made enforceable. However, Article 5(1) envisages a settlement agreement only being enforceable where “possible under and not contrary to the law of the Member State where the request is made”. What circumstances are envisaged which require the inclusion of the words “and not contrary to” in this clause? Is this just drafting or is there a point of substance?

Article 6, as you say, has been greatly simplified. Significantly it now contains only a minimum level of harmonisation and hence the definition of public policy exceptions may be less critical. We assume that the recital will make clear that public policy will be a matter for the Member States and that this instrument does not create any notion of European public policy. If you agree, would it be helpful if the words “of the Member State concerned” were inserted after “public policy” in Article 6(1)(a)?

We note that Article 7 has also been simplified. We can agree this approach but would recommend that the words “that are not compatible with this Article” be deleted from Article 7(2).

The Committee decided to retain the document under scrutiny.

17 November 2005

Letter from Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 17 November. Since you wrote this proposal was considered at the Justice and Home Affairs Council of 1 and 2 December and a common understanding was agreed on all issues except a restriction to cross-border and the question of subsidiarity. This means that negotiations on the parts of the
text on which there was a common understanding will be halted until the European Parliament has reported on this proposal.

As you know, during our Presidency we decided to concentrate on finding a suitable definition of cross-border for the European Order for Payment. When I appeared before your Committee on Wednesday 30 November I explained that the Commission maintains that the same definition would not work for the proposed Directive on mediation. There is clearly much still to be discussed. I shall of course keep your Committee informed of the progress on these discussions.

You asked about the Government’s position as regards subsidiarity. The Government believes that, assuming the issue of a restriction to cross-border is resolved, this instrument will respect the principle of subsidiarity. Mediation is at different stages of development in the Member States and a Directive such as is currently proposed will provide a framework within which parties involved in cross-border disputes will know that certain basic principles will apply if they undertake mediation. In particular the way the mediation will relate to subsequent court proceedings under Articles 5, 6 and 7. Such a framework, in the European context, cannot readily be achieved by the Member States acting alone.

In terms of the other specific points you raised, regarding Article 1 you ask what is meant by: “except when certain such matters are excluded from mediation by the relevant applicable law”. This text was included to ensure that if in the Member State where the mediation is to take place the law of that Member State does not allow certain disputes to be settled by mediation, the Directive will not apply to those matters.

You also asked why the text now excludes claims relating to the State for acts and omissions in the exercise of State authority (“acta iure imperii”). The new wording has been included as it is a matter of political importance to several Member States. The Government is of the view that the effect of this exclusion is very limited. Most, perhaps all, acts the wording would cover do not fall within the meaning of civil and commercial matters. Moreover, agreement of both parties is necessary before mediation can occur, so in the example you have given the State could choose not to mediate in any case.

In Article 2 you questioned the need to state that a mediator should be asked to conduct a mediation “in a professional, impartial and competent way”. Many Member States had concerns that the definitions of both mediation and mediator in the Commission’s original proposal were too wide and could encompass ad hoc situations that would not generally be considered to be mediations. For example there were concerns that the original definitions could include situations where two people in a dispute asked a friend to help them resolve it. This would not be considered as a usual mediation and could have consequences for the later provisions on the relationship between mediation and the courts if such disputes later went to court. When read with the changes to the definition of mediation, Member States believe that the inclusion of these additional words resolves these concerns. Just before the Council there was a slight amendment to the text to change “professional, impartial and competent” to “effective, impartial and competent” to ensure consistency with Article 2a(2).

You asked why the words “in particular in situations where one of the parties is resident in a Member State other than that of the court” have been deleted from the end of Article 3(2) and whether that was linked to the question of defining cross-border. In general terms the Civil Law Committee decided that these words added little to the Directive and in any event, once the issue of a restriction to cross-border is resolved, they are likely to become superfluous.

In Article 5 Member States wanted to make a distinction between settlement agreements that by their nature are capable of being enforced under national law and those where the agreement itself is not contrary to national law. It is for that reason that the words “and not contrary to” have been included. Another slight amendment before the Council means the text now refers to “the content of the settlement agreement” rather than just the “settlement agreement”.

You are correct that Article 6 is not meant to create any notion of European public policy. The Government would be prepared to suggest a technical amendment to clarify this once the text is considered again in the light of the report of the European Parliament.

On Article 7 you recommend that the words “that are not compatible with this Article” should be deleted from paragraph 2. Again this is a point the Government would be prepared to suggest after our Presidency and once the text is considered again following the report of the European Parliament. For your information the first paragraph of Article 7 has been simplified further from the last text you have seen to say:

“Member States shall ensure that parties who choose mediation to try to solve a dispute are not prevented from subsequently initiating judicial proceedings by the expiry of periods of limitation or prescription during the mediation process”.

5 January 2006
Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 5 January, which was considered by Sub-Committee E (Law and Institutions) at its meeting on 25 January. We are grateful for the explanation you have given on the detailed points we raised on Articles 1, 2, 2(a), 3 and 5. We are also most pleased to see that you will take forward the amendments we have proposed relating to Articles 6 and 7. But, as your letter indicates, there is not yet agreement on the definition of “cross-border” and the related question of the application of the principle of subsidiarity. We note that the Council of Ministers, at the Justice and Home Affairs of 1–2 December, reached a common understanding on the text of the Directive subject to these two major points. We would accordingly be grateful if you would keep us closely informed of the progress of negotiations.

The Committee decided to retain the proposal under scrutiny.

26 January 2006

MINIMUM STANDARDS FOR GRANTING AND WITHDRAWING REFUGEE STATUS

Letter from the Chairman to Rt Hon Charles Clarke MP, Secretary of State, Home Office

On 14 October 2004 I wrote to the then Parliamentary Under Secretary of State at the Home Office, Caroline Flint, about this proposal. I have yet to receive a reply. There have been a number of developments in the meantime and, as I shall explain below, the matter has now become more urgent.

As I indicated in my previous letter, the proposed Asylum Procedures Directive has been the subject of detailed scrutiny by Sub-Committee E (Law and Institutions) since it was first proposed in September 2000. We have consistently expressed concerns as to whether the standards being set by the Directive are sufficiently high and whether the Directive goes far enough in safeguarding the rights of the asylum seeker.

Because of the substantial changes made during the negotiation of the Directive in the Council, the proposal was resubmitted to the European Parliament in November 2004. We understand that the further consultation is taking place on the basis of Doc 14203/04 and that that document was not deposited in Parliament for scrutiny. There have been reports in the media that the United Nations refugee agency (UNHCR) has strongly criticised the draft Directive, warning that it could lead to violations of international law. There have also been reports that the European Parliament have considered a legal challenge to the Directive (presumably only if adopted) on the basis that it infringes civil liberties.

We also note that agreement of the Directive (as an “A” point) is listed on the provisional agenda for the Justice and Home Affairs Council on 12–13 October, very shortly, it would seem, after the European Parliament has given its reactions to the proposal (its first reading is currently scheduled for 6 September).

Against this background, I would be grateful, firstly, if you would give an assurance that there have been no changes to the proposal since it was last examined by the Lords and Commons Committees (and in particular that document 14203/04 included no changes) and, secondly, if any changes are proposed, whether as a result of the consideration of the Directive by the European Parliament or otherwise, that they will be notified to Parliament promptly to ensure that Parliament is able to carry out its scrutiny in the manner which the Government have agreed.

I am sure it will come as no surprise that the Committee is disappointed that Caroline Flint apparently felt unable to reply to the Committee’s letter of 14 October 2004. We hope that you will reconsider the matter and provide us with a clear statement of the Government’s position in relation to the points made by Statewatch and, more recently, the UNHCR. We do not, of course, expect you to anticipate the response of the European Parliament. That is a matter which can be considered in the normal process of scrutiny.

20 July 2005

Letter from Tony McNulty MP, Minister of State, Home Office, to the Chairman

Thank you for your letter of 20 July to the Home Secretary, raising the Committee’s concerns on the Asylum Procedures Directive, and the list of safe countries of origin due to be established under this proposal.

As you know, the Hague Programme calls for the Asylum Procedures Directive—the final piece of the common minimum standards package called for at Tampere—to be adopted, under unanimity, as soon as possible. At its meeting of 19 November 2004, the Justice and Home Affairs Council agreed to postpone finalisation of the list of safe countries of origin until after adoption of the main body of the Directive. The text of the Directive, with amendments consequential to postponement of the safe country list, was then remitted to the European Parliament for re-consultation. The relevant changes to the text were both minor and technical.

and as such we did not judge it necessary for Doc 14203/04 to be deposited for scrutiny. Were there to be substantive policy changes to the proposal that cleared scrutiny in April 2004, we would notify Parliament in order to fulfil scrutiny requirements.

We expect the European Parliament to deliver its opinion on the Directive in September. As Presidency, we will ensure that the European Parliament’s recommendations are considered carefully within the Council structures. You note that adoption of the Directive is listed on a provisional agenda for the Justice and Home Affairs Council on 12–13 October. This provisional agenda was drawn up at a time when we estimated that the European Parliament’s report would be issued in July. Clearly, the timetable for publication and consideration of the European Parliament’s recommendations is still subject to change. However, we would hope to be able to achieve adoption of the Directive by the end of our Presidency.

Your previous letter of 14 October 2004 raised concerns on the proposed list of safe countries of origin. I apologise sincerely that you did not receive a response to this letter. I hope that this does not undermine your confidence in the importance we attach to the Committee’s concerns.

The Government supported the establishment of a list of safe countries of origin in the context of the Directive. This will be important for those Member States who do not presently operate a safe country list. The final text of the Directive allows the UK to continue to operate our own safe country policy alongside the EU list. Whilst I recognise the Committee’s concerns, we are satisfied that the Directive provides guarantees that applicants can still show a country not to be safe in their particular circumstances. An asylum claim would not be refused simply because an applicant was a national of a listed safe country: if the applicant could show a need for international protection notwithstanding their nationality, they would be granted such protection. The content of the eventual list will be agreed under Qualified Majority Voting in the Council (and consultation with the European Parliament), following adoption of the main body of the Directive. However, any member of the Council will be able to request the suspension of a country from the list if it believes it no longer meets the criteria laid out in the Directive.

23 August 2005

Letter from Tony McNulty MP to the Chairman

My letter of 23 August 2005 advised that we were awaiting the European Parliament opinion on the Asylum Procedures Directive. I am writing to inform you that the opinion has been adopted, and the Council has begun its examination of the Parliament’s report. If there are any substantive changes to the text of the Directive that cleared scrutiny in April 2004, we will notify you.

Once consideration of the European Parliament’s opinion is complete, the Council will move towards final adoption of the Directive. We are aiming to adopt the Directive by the end of the UK Presidency, and will keep you informed of the progress of this dossier.

31 October 2005

Letter from the Chairman to Tony McNulty MP

Thank you for your letters of 23 August and 31 October which were considered by Sub-Committee E (Law and Institutions) at its meeting on 9 November. We are grateful for your clarification of the Government’s position.

The Committee has examined the European Parliament’s opinion and we note that it sets out a substantial number of amendments. A good number of them seek to strengthen the position of the asylum applicant and to ensure the compatibility of the Directive with existing international obligations. Many of the changes proposed accord with the views expressed in the Committee’s earlier Report on the Directive (Minimum Standards in Asylum Procedures, 11th Report, 2000–01, HL Paper 59). In particular we note that amendments have been made:

— Increasing references to relevant international agreements, in particular the Geneva Convention relating to the status of refugees and the Convention on the Rights of the Child.

— Strengthening the right of the asylum applicant to receive information and to have proceedings conducted in a language “he understands” rather than a language he “can reasonably be supposed to understand”.

— Strengthening the judicial supervision of the application process and in particular providing that an applicant should not be expelled before a Court has ruled on the right to remain and that the appeals procedure has been exhausted.
— Giving priority to applications from unaccompanied children and other persons in a particularly vulnerable situation.

— Strengthening rules on the provision of assistance (including free legal representation) to the applicant.

— Setting out a presumption against detention of applicants while applications are being processed and strengthening the safeguards for applicants under detention.

— Entitling an applicant to rebut the presumption of “safety” of a country, even during an accelerated procedure.

— Increasing the role of the European Parliament in the preparation of the list of “safe countries”.

You helpfully explain the next step will be for the Council to consider the Parliament’s opinion. We assume that although the Council has reached a “general approach” it cannot simply close its eyes to the views of the Parliament—to do so would render the Parliament’s right to be consulted meaningless and would lay the Council subject to a challenge by the Parliament in the European Court. We would therefore be grateful to learn how the UK Presidency intends to deal with the amendments which have been raised by the Parliament. We would be pleased to receive a summary of the outcome of the Council’s consideration of the proposed amendments. Should the Council decline to accept any of the amendments described above we would be grateful to know the reasons why and the position taken by the Government in respect of each of them.

10 November 2005

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 10 November 2005, regarding the above draft Directive.

As you know, the Asylum Procedures Directive is an important part of a package of EU legislation to create common minimum standards on asylum. The Directive has been the subject of lengthy and complex negotiations. Last year, Member States reached a compromise which they felt balanced the protection of individuals and their rights with the need to combat abuse of the system.

The European Parliament’s report raised a number of significant concerns, which the Council considered at a meeting chaired by the UK Presidency. Member States felt that several of the recommendations—for example treatment of vulnerable cases—could be pursued in their national implementation of the Directive. Other issues, such as sources of country of origin information, could be explored at EU-level in upcoming work on practical co-operation between national asylum services.

As the Directive is subject to unanimity in Council, any changes to the text itself would have to be agreed by all Member States. Several Member States were quite clear that they could not accept any proposed amendments to the text of the Directive. All were conscious of the need to move towards completion of the minimum standards measures, as called for in the Hague Programme.

As Presidency, UK officials have met with the European Parliament’s rapporteur on this dossier to explain the Council’s position. The rapporteur expressed disappointment that none of the amendments had been taken on board, but accepted that adoption of the Directive would be a step forward. All parties agreed that the Council could use the European Parliament’s report as a point of reference for future work. The need for engagement at the outset of discussions was also underlined. With the advent of co-decision, an open and constructive relationship between the Council and the European Parliament will be increasingly important.

You asked for the Government’s position on a number of specific amendments of interest to the Committee. It is important to stress that the provisions of the Asylum Procedures Directive represent minimum standards to which Member States will be bound. In many cases we, like other Member States, already operate more favourable provisions. The Directive specifically allows for these more favourable provisions to continue, whilst ensuring that binding minimum standards are created in EU legislation.

Mindful of our role as Presidency, I hope the following explanations will be helpful. I address the points in the order in which you raised them:

— Like all Member States, we believe that EU asylum legislation should be built upon existing international obligations. The Directive refers clearly to instruments of international law and, in particular, to the Geneva Convention. Nothing in a minimum standards measure can permit or require a Member State to breach these international obligations.
The Directive already provides that Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs.

We agree that provision of assistance is important, but believe that, for a minimum standards measure, the Directive goes far enough on legal aid.

We believe that detention can be one means of effectively managing abuse of the system, particularly absconding. The Directive is clear that a person cannot be detained purely because they are an asylum applicant.

We agree that individual consideration should be given to each application, including where the applicant is from a listed safe country. The Directive reflects this position, ensuring that every applicant has the right to rebut the presumption of safety of a country in their particular circumstance. Therefore, if a person has a genuine claim, then being on the list does not prevent them from being recognised by Member States as a refugee.

As the eventual EU common list of safe countries of origin will be established as an implementing measure to the Directive itself, the Council may decide on the voting procedure and the involvement of the European Parliament. During negotiations, Member States felt that QMV and consultation would be the appropriate procedure.

The Directive will go, via COREPER, to the Justice and Home Affairs Council on 1–2 December for final adoption. I can confirm that there have been no substantive changes to the text that cleared scrutiny in April 2004.

28 November 2005

Letter from the Chairman to Tony McNulty MP

Thank you for your letter of 28 November which has been considered by Sub-Committee E (Law and Institutions). We are grateful for your explanation as to how the UK Presidency has handled this matter in the final stages of its negotiation. We note the obvious disappointment of the European Parliament but also that all parties have agreed that the European Parliament’s report should be used as a point of reference for future work which, given the proposed timetable for a common EU asylum system, we assume will be starting shortly.

Thank you also for your responses to the particular points of concern listed in my letter of 10 November and also for the confirmation that no substantive changes were made to the text of the Directive since it cleared scrutiny in 2004.

16 December 2005

MUTUAL ADMINISTRATIVE ASSISTANCE FOR THE PROTECTION OF THE COMMUNITY’S FINANCIAL INTERESTS AGAINST FRAUD AND ANY OTHER ILLEGAL ACTIVITIES (12993/04)

Letter from the Chairman to Stephen Timms MP, Financial Secretary, HM Treasury

Thank you for your letter of 28 February.11 This was considered by Sub-Committee E at its meeting on 16 March. The Committee also had before it a copy of your letter to the European Scrutiny Committee. Both letters are helpful in providing clarification of the Government’s position on this proposal. However, as I shall explain below, they do not remove many of the Committee’s concerns.

(A) Need for the Regulation

Thank you for your helpful explanation of the relationship between the proposal and existing mutual arrangements and the proposed Third Money Laundering Directive. We note your conclusion: “Overall the UK cannot see what the proposal for regulation on mutual assistance would add to the provisions for mutual assistance in the Council Decision 2000/642/JHA and the Third Money Laundering Directive”. Is the United Kingdom alone in this view? If a substantial number of other Member States take a similar view, why is the proposal being taken forward?

(b) Subsidiarity

You say that subsidiarity is “not an obstacle”. But have you considered whether the principle has, in fact, been duly observed. As the application of the principle of subsidiarity includes consideration of the intensity of any action at Community level and as you query the need for the present Regulation, would you not agree that the principle of subsidiarity may not have been satisfied in the present instance? Indeed, if the proposed Regulation is not, as you say, needed, is there not a problem of vires under Article 280(4) of the EC Treaty, which only permits the Council to adopt “the necessary measures”?

(c) Vires—Article 15

We note the detailed response supplied to our sister Committee. We have given it careful consideration and would make the following comments.

The first point you make is that the Committee has misquoted the recital. But it appears to us that there may have been some confusion here. In the version of the Regulation you delivered for scrutiny (COM (2004) 509 final) both Article 15 and the corresponding recital para 9 use the word “admissible”. Are you quoting from a revised version of the text? If so, have you considered whether such text should have been submitted for scrutiny?

You next proceed to argue that Article 15 needs to be construed having regard to the purpose of the Regulation and that that interpretation has to be consistent with the final sentence of Article 280(4), namely that the objective must be achieved without affecting the application of substantive criminal law or administration of justice. If there is any ambiguity in Article 15 this would be resolved by the Court adopting an interpretation which met the objectives of the Regulation. But we take the view that responsible legislators should avoid ambiguity. Do you agree?

You refer to three judgments of the Court of Justice. In the first, Case 186/98 Nunes and de Matos, the District Court in Aporto sought clarification of what is now Article 10 of the EC Treaty, the obligation on Member States to take all measures necessary to guarantee the application and effectiveness of Community law. The Court took the opportunity to restate the principle that national authorities must proceed, when dealing with possible infringements of Community law, with the same diligence as that which they bring to bear in implementing corresponding national laws. Consequently, Member States may have to use criminal sanctions to penalise conduct harmful to the financial interests of the Community even where Community legislation only provides for civil sanctions. In short, the principle of equivalence applies subject to the overriding obligation that the sanction must be effective, proportionate and dissuasive. The Court does not comment on the exact nature or extent of the vires in Article 280 of the EC Treaty. It was not asked to do so and indeed it was not necessary for it to do so in order to respond to the Portuguese Court.

The next two cases you cite, Cases C–11/00 Commission v ECB and C-15/00 Commission v EIB, were direct actions brought by the ECB and EIB against the Commission challenging the scope of application of Regulation 1073/1999 (concerning investigations conducted by OLAF). The Court found for the Commission and in so doing, as you say, touched upon the extent of the powers contained in Article 280(4) of the EC Treaty (the legal base of the present proposal). You refer to the fact that Regulation 1073/1999 contains a provision, Article 9, analogous to Article 15 in the present proposal. You say: “In the course of detailed examination of the validity of the Regulation, the ECJ did not question the validity of that Article”. That is true, but we consider it important, first, that the Court was not concerned with the validity of the Regulation but with the extent of its application. Second, the Court entered into no detailed analysis of Article 9 (to which reference is only made in listing the powers which OLAF has and to which the ECB claimed it should not be subject). There is no suggestion in the judgments that the Court was asked to consider the validity of Article 9. Indeed there is no reason why, in the context of the particular litigation, it should have done so. The essential question addressed in both C–11/00 and C–15/00 was the extent of application of the Regulation in question and in particular whether the ECB and EIB were bodies which could be investigated by OLAF.
Your next point concerns Regulation 1/2003 on the implementation of the Community’s competition rules. You say that Article 12 of that Regulation, which provides for the exchange of information and its use in evidence by competition authorities, is “relevant”. But Regulation 1/2003 is made under Article 83 of the EC Treaty and is concerned not with prosecuting Community frauds but with the now decentralised and cooperative enforcement of the Community competition rules by the Commission and national competition authorities. The legal context is quite different and we note that, whatever may be the force of Article 12 of Regulation 1/2003, Article 83 contains no restriction such as that contained in Article 280(4). Indeed, it is arguably significant that in its judgments in the ECB and EIB cases the Court of Justice expressly refers to the fact that the powers within Article 280(4) are restricted (see judgment in C–11/00 at paragraph 98, and C–15/00 at paragraph 133).

Finally, you comment on the Commons Committee’s interpretation of “national administration of justice”. You say: “The implication here is that no EU rules can apply in the UK which require any enforcement action or the creation of penalties”. You believe the Commons Committee’s view to be contrary to Section 2(1) of the European Communities Act 1972. We find this interpretation to be quite surprising. While only the Commons Committee can say what they meant, we do not believe that they were suggesting that EU rules cannot oblige Member States to take enforcement action. What is at issue in the present context is solely the extent of the rules which the Community can make in this particular context. Subject to the principles of direct applicability, equivalence and effectiveness it is for Member States to decide how to implement Community law.

We remain of the view that Article 15 raises a serious vires issue.

(d) Comitology

You will recall that we sought clarification of the Government’s understanding of the scope of Article 21. We note that you agree that Article 21 is unclear and that it would not be appropriate or desirable to delegate responsibility for data protection and confidentiality. We are pleased that you have undertaken to keep the Committee informed on this issue as negotiations progress.

(e) Resources

Finally, the Committee is grateful for the explanations you have given. The Committee intends to keep a close eye on the potential resource implications both at Community and national level, particularly in view of your statement that the Regulation is unnecessary.

The Committee decided to retain the proposal under scrutiny. We look forward to receiving your response to the points made above.

18 March 2005

Letter from Ivan Lewis MP, Economic Secretary, HM Treasury, to the Chairman

Thank you for the helpful further comments on this issue in your letter of 18 March to Stephen Timms. I will respond to your comments using the headings in your letter.

(a) Need for the Regulation

You asked whether the United Kingdom was alone in its view on the value added to existing arrangements for mutual assistance with regard to VAT fraud and money laundering. In discussions to date, the United Kingdom’s views have been shared by a significant number of other Member States, who do not agree with the Commission’s view that this proposal would add value in cases of fraud where there is a significant cross-border element, by co-ordinating activity in response. The reasons for this were set out in my predecessor’s Explanatory Memorandum on the proposal.

(b) Subsidiarity

On the subsidiarity point, I continue to be of the view that a challenge to the vires of using Article 280(4) would ultimately be unsuccessful. Nevertheless your observations about the need to consider the intensity of any action at Community level are useful ammunition on which to draw in contesting the need for this measure and we are indeed doing just that. In accordance with the Protocol on Subsidiarity this issue can ultimately only be resolved in the ECJ.
(c) **Vires—Article 15**

There does indeed seem to have been some confusion on the wording of Recital 9 of the draft. I think this is because there was a delay in issuing the final version of the proposal because of problems with translation. We were assured that the “provisional” version in English would be identical to the eventual “final” version—however there is a slight variation in Recital 9, possibly because of re-translation. I do apologise for this misunderstanding. I am not sure, however, that it materially affects the point we were making.

I suggest that in both the provisional version and in the final version the formulation “as evidence” tracks with the title of Article 15 (“use as evidence”) and with the text of the Article itself, which continues “in the same way as if they had been obtained in the Member State where the proceedings take place.” I suggest that the latter phrase is helpful in confirming that Article 15 does not provide for automatic admissibility, which was I believe your concern. You kindly highlighted our view that Article 15 must be construed having regard to the purpose of the regulation and that that interpretation has to be consistent with the last sentence of Article 280(4), namely that the objective must be achieved without affecting the application of substantive criminal law or the administration of justice. I do not believe that there is any real ambiguity here.

I am grateful to the Committee for their detailed analysis of the **Nunes and de Matos** and **ECB and EIB** cases. Attention was drawn to these cases with the caveat that as far as we were aware there is no ECJ authority on admissibility of evidence as such but that the ECJ has nevertheless considered the incidence on national law of penalties required by EU law without taking issue with any *vires* point. I am happy to see that the Committee takes the same view of the import of **Nunes and de Matos**. I interpret the Committee as taking a similar view on the **ECB and EIB** cases. I do not think that this analysis detracts from our original conclusion, however regretful, that in the event of a legal challenge the ECJ could be expected to uphold the use of Article 280(4) in this instance. I have suggested in part (b) above that the subsidiarity argument is useful negotiating ammunition but the Protocol on Subsidiarity does not give conclusive guidance and ultimately it is for the ECJ alone to decide in the event of a dispute.

(d) **Comitology; and (e) Resources**

I note that you are content for me to keep you updated on these issues, on which there have been no further developments since the previous letter.

**26 May 2005**

**Letter from the Chairman to Ivan Lewis MP**

Thank you for your letter of 26 May which was considered by Sub-Committee E (Law and Institutions) at its meeting on 22 June. We are grateful for the explanations you have given.

We are pleased to note that the United Kingdom is not alone in challenging the need for this Regulation and that you have taken on board the Committee’s concerns that the proposal raises subsidiarity issues. We hope that the Government will continue to press these points during the UK Presidency.

We note that you do not share our concerns on the Article 15—*vires* issue. Even if we have not been able to change your mind on this point, at least our arguments may have helped you to clarify your own position.

Finally, we note that there have been no further developments as regards the Comitology and Resources issues raised by the proposal. We would be grateful if you would keep us informed of developments.

The Committee decided to retain the document under scrutiny.

**28 June 2005**

**MUTUAL RECOGNITION OF JUDICIAL DECISIONS IN CRIMINAL MATTERS (9513/05)**

**Letter from the Chairman to Fiona Mactaggart MP, Parliamentary Under Secretary of State, Home Office**

The Commission’s Communication was considered by Sub-Committee E (Law and Institutions) at its meeting on 2 November. We are grateful for your Explanatory Memorandum setting out the Government’s general reactions to the document and pointing out areas of difficulty and concern.

The Communication, with the accompanying table of measures to be taken, describes a comprehensive and ambitious programme of work for the next five years. A number of points arise. First, we are pleased to see
that the Commission is committed to bringing forward measures which will assist the individual as suspect or
defendant. These should go some way in redressing the criticism that the Union’s policy on criminal law is
slanted in favour of the investigator and prosecutor.

We note that the Communication envisages further EU action at the pre-trial stage. Paragraph 6 envisages
action on surveillance measures, including telephone-tapping. Experience to date emphasises the need to
ensure compatibility with the ECHR and national constitutional safeguards. These are matters to which we
will continue to pay the closest attention.

The Communication makes clear the Commission’s view that reinforcing mutual trust, which underpins
mutual recognition, will necessitate some degree of harmonisation of laws and procedures. We note that our
sister Committee has asked you to identify the areas where harmonisation of criminal procedures would be
useful. The issue arises from your observations in paragraph 9(d) of your Explanatory Memorandum. We
look forward to seeing your response.

Development of a number of the proposals mentioned by the Commission will almost certainly draw attention
to the differences between inquisitorial and adversarial modes of trial. We are concerned that harmonisation
may be difficult to accomplish without substantial compromises being made and/or dilution of the substantive
content of proposals. However, in the light of the recent judgment of the European Court in Pupino, greater
regard may need to be had during negotiations to defining more precisely the scope of EU instrument and the
nature of the obligations they contain. Pupino is an important decision having implications for the
interpretation of criminal domestic law and underlying the need for legal certainty in EU legislation. How does
the Government view these considerations?

You helpfully draw attention to paragraphs 31 and 32 of the Communication (assessing the credibility and
efficiency of a judicial system). We share the Government’s concerns about the Commission’s proposals. We
note that this is the only occasion where the Commission refers to the principles of subsidiarity and
proportionality. This raises a more general issue.

You say in your Explanatory Memorandum that no issues of subsidiarity arise with this Communication. Is
this really the case? Many of the subjects mentioned in the Communication are not new. There are texts or at
least “road maps” identifying the content. Some preliminary assessment can therefore be made of the
subsidiarity implications. We believe that it would be profitable for the Member States in the Justice and Home
Affairs Council to address the application of the principle of subsidiarity at this early stage in the definition
of EU policy and criminal law and procedure and not leave it to be dealt with as and when individual proposals
are brought forward. As you will be aware, the Committee has no hesitation in raising subsidiarity points at
Green Paper stage and in principle we see no reason why Commission Communications outlining policies and
timetables should not be subject to similar critical analysis. We would therefore invite you to reconsider your
statement that no issues of subsidiarity arise.

The Committee decided to retain the Communication under scrutiny.

3 November 2005

Letter from Andy Burnham MP, Parliamentary Under Secretary of State,
Home Office, to the Chairman

I am writing in response to your letter of 3 November regarding the Commission Communication on the
Mutual Recognition of judicial decisions in criminal matters and the strengthening of mutual trust between
Member States. This Communication has, of course, been overtaken by the Hague Action Plan, which was
finalised after this Communication was presented, and which therefore provides a more accurate view of the
work that the EU intends to take forward in this area.

You outlined the Committee’s views regarding harmonisation measures in the field of criminal procedure and
criminal law. You refer to the request by the European Scrutiny Committee for further information in relation
to the Government’s views on any area where harmonisation would be considered useful. You also stated the
Committee’s concerns that harmonisation may be difficult to accomplish without substantial compromises
and/or dilution of the content of proposals.

The Government opposes full-scale harmonisation of criminal procedure but we do consider that some
minimum standards in criminal procedure may be useful in increasing mutual trust which underpins the
application of the mutual recognition principle. We do not believe that it is possible for the UK alone to
identify areas across the EU where the application of the principle of mutual recognition may be being
undermined by a lack of minimum standards in procedural law. We are in part dependant on the Commission
to undertake research on this issue on a cross-EU basis and provide suitable legislative measures on the basis of that research. We agree that any measures should be necessary and proportionate and will analyse each proposal on a case by case basis. Any such proposals can only be justified where they are necessary to enhance judicial co-operation and are no more than is needed for that purpose.

Recent negotiations on the Framework Decision on procedural safeguards have shown that proposals to set minimum standards that are acceptable to all Member States require complex and often lengthy negotiations. Given that unanimity is required for these measures and that proposals must respect the diverse legal and procedural systems in individual Member States, the end proposal will always be a compromise, but one that should add value to Member States existing legal systems and that increases clarity and mutual trust in the standards of justice Member States of the EU, which in turn will enhance effective judicial cooperation in the EU.

You referred to the recent European Court of Justice preliminary ruling in the Pupino case, in which the Italian court was required to interpret Italian legislation on the standing of victims in criminal proceedings so far as possible so as to comply with the framework decision. This case appeared significant because the requirement to interpret national legislation in line with EU legislation had been developed in the context of the first pillar. The Pupino judgement may make little difference in practice within the UK, as the UK has not accepted the jurisdiction of the ECJ and so there could not be a reference from a UK court. But the issue of principle is that the judgment of the Court on the interpretation of a Framework Decision will establish its meaning for all Member States, which would then be expected to ensure their legislation was in line with the ECJ interpretation, irrespective of whether the Member States have accepted the jurisdiction of the ECJ for preliminary references in this area. As you say, it underlines the need for clarity in EU legislation.

You mentioned the issue of subsidiarity in relation to the Communication, and put forward the Committee’s view that a preliminary assessment of subsidiarity implications could be made prior to negotiations beginning on specific proposals. The Government assesses the issue of subsidiarity for every proposal but we cannot judge whether proposals fully comply with the subsidiarity test before we have seen details of specific measures. The Government is, however, willing to raise subsidiarity concerns at an early stage, in responses to Green Papers or Commission Communications that lay out more detailed arguments behind policy proposals. An example is the Government’s response to the Green Paper on the mutual recognition, approximation and enforcement of criminal sanctions, sent to you on 25 October 2004, where we clearly highlighted our concerns with regard to the proposals being put forward by the Commission. But we do need some indication of the detail before we are able to give this issue consideration, and the content of the current Communication is not enough to give a good idea of the policies the Commission are likely to pursue.

30 November 2005

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 30 November which has been considered by Sub-Committee E (Law and Institutions). We are grateful for clarification of the Government’s position. We are disappointed that the Government appear to be largely reactive on the issue of harmonisation of criminal procedure although we are grateful for your confirmation that the Government oppose “full scale harmonisation”.

You refer to the Framework Decision on procedural rights and we are encouraged by your statement that the proposal setting minimum standards should add value to Member States’ existing legal systems and increase clarity and mutual trust in the standards of justice in Member States. Whether the proposed Framework Decision will achieve that is a matter which, as you are aware, we are pursuing in separate correspondence. That correspondence also provides an opportunity for us to pursue further the Government’s approach to the Pupino judgment.

Finally, there is the issue of subsidiarity. You will recall that my earlier letter referred to the Committee’s disappointment at the approach taken in your Explanatory Memorandum. We note what you say in your recent letter. However, we would expect future Explanatory Memorandums to contain more fully researched analyses and appraisals of potential subsidiarity issues. Your reference to the Green Paper on criminal sanctions indicates that a subsidiarity appraisal is feasible at an early stage in the development of proposals and, as I mentioned in my earlier letter, many of the subjects mentioned in the Communication are not new and there exist texts or at least “road maps” identifying their content. It would be helpful if you would draw this to the attention of your officials.

The Committee decided to clear the Communication from scrutiny.

16 December 2005
MUTUAL RECOGNITION OF NON-CUSTODIAL PRE-TRIAL SUPERVISION MEASURES (12243/04)

Letter from the Chairman to Andy Burnham MP, Parliamentary Under Secretary of State, Home Office

Thank you for providing copies of your and the Scottish Executive’s responses to the Commission’s Green Paper. These were considered by Sub-Committee E (Law and Institutions) at its meeting on 8 June. We are grateful for the information contained in those responses.

As you may recall, the Committee would urge greater priority be given to a legislative proposal on bail and we note that in the five year Road Map recently adopted by the Commission that a measure, or measures, will be brought forward next year. As I said in my letter of 16 December 2004 it is the Committee’s intention to examine in detail any proposals that may be brought forward by the Commission as a follow-up to the Green Paper.

The Committee decided to clear the document from scrutiny and will be grateful to be kept informed of developments and in particular any progress which is made during the forthcoming United Kingdom Presidency.

13 June 2005

PATENTABILITY OF COMPUTER-IMPLEMENTED INVENTIONS (6580/02)

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

I am writing to inform you that the above Directive was rejected by the European Parliament at Second Reading on 6 July. The legislative process has therefore been terminated.

The Government had supported the initial proposal as a measure aimed at clarifying patent law across the EU for inventions relating to software. The measure was intended to maintain a balance: permitting the patenting of certain types of software-related inventions important to many high tech industries, whilst preventing a drift towards widening the scope of patentability—an approach adopted by the US. Our views had been informed by a consultation in 2000–01.

Following fierce lobbying by anti-Directive activists, it became clear that the European Parliament was unlikely to agree with the Common Position adopted—with some reluctance by some Member States—at the Competitiveness Council in March 2005. MEPs had over 170 amendments to consider, but chose to reject the Directive in its entirety, rather than run the risk of the vote resulting in a very fragmented, and possibly, unworkable text. This decision is itself a testament to the effectiveness of the legislative procedure: it is better not to regulate in this way than to have bad legislation—a sentiment that industry associations have agreed with.

Although the Government regrets the loss of this opportunity to clarify the law, the debate itself has proved extremely useful. It has aired concerns and indicated to patent granting bodies that they should not move towards the more liberal “patent all” approach adopted by the US. It has also raised awareness amongst smaller businesses in particular of the role intellectual property can play in helping them innovate.

There is no further action for the Council on this proposal, but the Commission has given an undertaking to work with the European Parliament to decide on a course of action. The Commission have suggested that further consideration of this issue should be on the basis of harmonisation of patent law as a whole through the Community Patent. This dossier has however been stalled over the last 18 months over the sensitive issue of language.

Document 10786/00 on which the Government submitted an EM dated 25 September 2000 and the Government’s unnumbered EM of 8 May 2003 has previously been considered by the Committee.

15 July 2005

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letter of 15 July describing the outcome of the negotiations in this matter. We note that the issue of computer-implemented inventions may receive further consideration in the context of the Community Patent. As you will be aware, the Community Patent is a matter in which the Committee has long-standing interest. We would therefore be grateful if you would keep us informed of developments.

27 October 2005

PROCEDURAL RIGHTS DURING CRIMINAL PROCEEDINGS (10880/05)

Letter from the Chairman to Fiona Mactaggart MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee E considered this proposal at its meeting on 2 November 2005. As you know the Committee conducted an inquiry into the original draft of this proposal and subsequently produced a report identifying key areas of concern. We note that this latest draft takes some steps towards addressing those concerns; however, there are a number of matters on which we would appreciate further information.

1. Legal Base

The Report highlighted the issue of the adequacy of the proposed legal base and the effect that the Commission’s expansive approach may have over time on criminal procedure rules. It emphasised that while subsidiarity may act as a check on “creeping competence”, it should not replace the need for a clear definition of the limits of the Union’s competence in criminal matters. This is something which we consider has not yet been adequately addressed by the Government. We acknowledge that mutual recognition has an important role in improving judicial cooperation. However, taken to its logical conclusion the argument that to facilitate mutual recognition there must be a general compatibility in the rules of criminal procedure would mean that potentially all criminal proceedings can be harmonised to some degree under these provisions. The Government have accepted the need for a close examination of the legal base of new Framework Decisions seeking to promote further approximation or harmonisation of criminal procedure. This suggests that the broader interpretation outlined above is neither intended nor accepted by the Government. What is the Government’s position?

2. Subsidiarity

We consider that this proposal raises a serious issue of subsidiarity insofar as it would apply to purely internal matters. You say that “the principle of subsidiarity is relevant to some of the proposed provisions”. We are aware that the European Scrutiny Committee has also expressed its concerns and it would be helpful if you would explain, by reference to the text of the new proposal, how and to what extent the Government consider that this proposal satisfies the subsidiarity principle. In particular, the Committee would like to know why action at Union level is thought to be necessary when all the rights in the proposal are already guaranteed under the ECHR. This becomes particularly important given the deletion of the recording provisions. We would also be grateful if you would indicate how many Member States to date have expressed concerns regarding the compatibility of this proposal with the subsidiarity principle.

3. Definitions (Article 1)

We are pleased to see that an attempt has been made to improve the clarity of the definitions in the proposal. While we welcome references to the jurisprudence of the ECHR, we noted in our Report that this nonetheless raises a further concern: the scope of EU competence in criminal matters may not cover all areas considered “criminal” by the ECHR. You also refer to the Pupino decision (Case 105/03) in this context and it would be helpful if they would identify its implications for the provisions of the present Framework Decision.

4. Legal Advice (Articles 2–5)

The Committee welcomes the change to Article 2 to clarify that legal advice should be given during preliminary investigations; it may be helpful, for the further clarity of the provision, to refer specifically to the suspected person’s right to legal advice before answering any questions. We do not understand why the Government has proposed to remove the words “as soon as possible” and would be grateful if you would explain this.

The amendment allowing persons other than lawyers to provide legal advice is also welcomed by the Committee. We note that you are currently “considering if this is satisfactory having regard to national policy and practice”. Are you in a position to provide the Committee with your conclusions?

We share the concern of several of the Member States regarding the introduction of an exception to this rule “when the interests of justice so require” and welcome efforts to clarify the scope and purpose of this exception. What is the Government’s position on this?
Our Report listed further recommendations, to which you replied that there was no consensus in the Working Group in support of them but that “the Government will keep the proposals in mind as the negotiation proceeds”. What further steps will the Government take to advance these proposals?

5. **TRANSLATION (ARTICLES 6–8)**

We are disappointed that there are no provisions on the accreditation and supervision of translators in the new draft. In our Report we suggested that Commission funds could be made available to assist with the costs and the Government responded that they would “seek to take [this] up with the Commission”. What was the Commission’s response?

The Committee called in its report for an estimate of the increase in costs which would stem from the provisions on interpretation and translation. We have not yet received this estimate and it would be helpful if the Government would provide a full Regulatory Impact Assessment in due course, and certainly well before any agreement is reached on this proposal.

6. **RECORDING (ARTICLE 9)**

It is most regrettable that the provisions on the recording of proceedings have been deleted. While the Committee appreciates the costs involved, we are sure you will agree that the aim of increasing confidence and mutual trust in the criminal proceedings of other Member States would be undermined without such a safeguard. What are the reasons given by the other Member States for opposing the inclusion of this right? Are they solely related to costs?

7. **SPECIFIC ATTENTION (ARTICLES 10–11)**

The Committee notes that in your response to our Report you anticipated a “lively debate” on the specific attention provisions. What is the current position of the negotiations on these rights?

8. **CONTACT DURING DEPRIVATION OF LIBERTY (ARTICLES 12–13)**

We welcome the introduction of a specific right for minors to have a parent or guardian notified of their detention. However, we have some concerns regarding the introduction of an exception to the right of detainees to have someone informed without delay. In particular, we note the concerns of Germany and the Czech Republic regarding the compatibility of the exception with international law obligations. You say that the Government consider the exception to be “consistent with the approach of the Strasbourg authorities to these matters”. We would be grateful if you would explain which international obligations are in play here and how you consider them to be satisfied.

9. **LETTER OF RIGHTS (ARTICLE 14)**

We made a number of suggestions in our Report in relation to the Letter of Rights and are disappointed to see that this Article still falls far short of what is required to ensure that the letter is effective. What is the Government’s position on the content and translation of the Letter of Rights? Do you agree with our recommendation that a standard EU-wide formulation agreed by the Member States should be adopted in respect of Part A? Have you given any consideration to the contents of Part B?

10. **MONITORING AND EVALUATION (ARTICLES 15–16)**

We are concerned by recent suggestions that the monitoring provisions may be deleted and do not accept that they are not necessary to enhance judicial cooperation in this context. What is your position on these provisions? We consider their retention to be important.

We have decided to retain this document under scrutiny and look forward to receiving your response.

*3 November 2005*
Letter from Fiona Mactaggart MP to the Chairman

I am writing in response to your letter of 3 November 2005 raising further questions on this draft Framework Decision. May I first draw your attention to the enclosed progress report issued by the Presidency on 11 November which gives a concise analysis of the current state of negotiations.

LEGAL BASE AND SUBSIDIARITY

With regard to the concerns you raise on the legal base of the proposal and the limits of the Union’s competence, the UK’s position is that the European Union may set out common minimum standards in the area of criminal procedural law but only if that is needed for judicial cooperation. The Government has made clear that the proposed measures must be required to enhance judicial cooperation and respect the diverse and distinctive legal traditions of the Member States.

As you know, a number of Member States have entered a formal reservation concerning the legal base for the proposal. EU Justice Ministers will consider the progress report referred to above, including the issue of legal base, at the Justice and Home Affairs Council on 1–2 December.

IMPLICATIONS OF THE PUPINO JUDGMENT

In the recent Pupino judgment, the European Court of Justice in a preliminary ruling decided that the Italian court was required to interpret Italian legislation on the standing of victims in criminal proceedings so far as possible so as to comply with the framework decision. This case appeared significant because the requirement to interpret national legislation in line with EU legislation had been developed in the context of the first pillar.

The Pupino judgment may make little difference in practice within the UK, as the UK has not accepted the jurisdiction of the ECJ and so there could not be a reference from a UK court. But the issue of principle is that the judgment of the Court on the interpretation of a Framework Decision will establish its meaning for all Member States, which would then be expected to ensure their legislation was in line with the ECJ interpretation, irrespective of whether the Member States have accepted the jurisdiction of the ECJ for preliminary references in this area.

PROVISION OF LEGAL ADVICE (ARTICLES 2–5)

The suggested deletion of “as soon as possible” in Article 2 seeks to ensure that MS can delay access to legal advice where necessary in order to maintain an effective response to serious organised cross border crime and in particular the threat posed by international terrorism. We appreciate that this kind of limitation of the exercise of such rights is contentious, but it is in line with the ECHR, and it is the Government’s firm opinion that some provision to allow Member States to apply exceptions or conditions is needed. In any case, the proposal is in accordance with what is already allowed in our domestic legislation: PACE and the Terrorism Act 2000 allow us to delay a suspect’s rights to legal advice in specific circumstances.

The current version of the Framework Decision does not contain reference to an exception “when the interests of justice so require” in these articles. This exception was first proposed by the Dutch Presidency in November 2004 after concerns were raised by certain Member States that some degree of limitation of the right to legal advice in Article 2 ought to exist, but it proved controversial with Member States who favoured more specific and focused language.

We believe that the current wording of Article 4.1, second indent, which relates to those who are “authorised” to give legal advice, is now satisfactory from the UK viewpoint.

TRANSLATION

Article 7 is still under consideration in the Working Group. In the light of discussion at the Group’s October meeting it now reads: “Member States shall ensure that a person subject to criminal proceedings who does not understand the language of the proceedings is provided with written translations free of charge and in a language which he understands of all documents necessary […] to enable the person subject to criminal proceedings to have knowledge of the case against him and defend himself. Where appropriate an oral translation or an oral or written summary may suffice.”

13 See Kamasinski v Austria 1 December 1989, in A Series no 168 paragraph 74. See cover note, point (b) on page 2.
Our assessment is that this latest wording would still require our Legal Services Commission to fund interpreters and translators that it does not currently fund. The amount is very difficult to quantify, but it would probably be substantial.

The Working Group has shown no enthusiasm for including within the Framework Decision specific provisions on accreditation and supervision of translators, as proposed by the European Union Committee. Several member states have argued that quality control of translation and interpretation is already provided for in Article 8(1).

RECORDING

The Government’s view is that the recording of police interviews undertaken with the assistance of an interpreter is a useful and proportionate protection for suspects. The United Kingdom advanced this argument on several occasions before the commencement of our Presidency but with no support. Indeed, in negotiations the vast majority of Member States favoured the deletion of that requirement on the grounds that it would constitute an excessive burden on resources.

SPECIFIC ATTENTION

The emerging consensus in the negotiations suggests that the provision should be restricted to minors only. Provisions for persons subject to criminal proceedings to be provided with medical and psychiatric assistance (formerly Art 11bis) is now to be included in Article 10bis.

CONTACT DURING DEPRIVATION OF LIBERTY

There is no specific right under the ECHR to have third persons informed when there is a deprivation of liberty, though this is without prejudice to the right to a fair trial under Article 6 ECHR. The Government considers that these articles are in accordance with the ECHR.

FINAL ARTICLES (LETTER OF RIGHTS AND EVALUATION)

Those provisions have not yet been examined in detail within the Working Group and will be discussed at the next WG on 22 November.

Most Member States have serious reservations about the proposal for a separate Letter of EU Rights to be made available to suspects held in custody, and doubt this is necessary or adds value. It could cause a lot of confusion and cost. The UK agrees with that view.

The same caution applies to the evaluation provisions, in so far as the Government believes that that kind of monitoring would be unnecessary and would incur bureaucratic costs for all Member States. There is widespread opposition to the proposal.

24 November 2005

Letter from the Chairman to Fiona Mactaggart MP

Thank you for your letter of 24 November 2005 which was considered by Sub-Committee E (Law and Institutions) under its written scrutiny procedure.

The purpose of this proposal is to establish “minimum standards so as to clarify and further articulate the scope and application of the rights protected by Article 6” of the ECHR. We accept that in light of the diversity of practice across the EU, the end proposal will often be a compromise; however, we consider that it should nonetheless add value to existing legal rules and increase clarity and mutual trust in the standards of justice in other Member States. Harmonisation at the level of the lowest common denominator brings little, or even nothing, in the way of visible benefits to the citizen. We are concerned that there are areas where this Framework Decision could have made a significant difference to existing levels of protection—the recording provisions, a comprehensive letter of rights and the monitoring provisions—but they are falling victim to the negotiation process.
LEGAL BASE AND SUBSIDIARITY

We note that legal base was on the agenda for the Justice and Home Affairs meeting on 1–2 December 2005. We would welcome a summary of the Council’s discussions and any conclusions reached.

DEFINITIONS (ARTICLE 1)

Although the UK has not accepted the jurisdiction of the ECJ to rule on the interpretation of Framework Decisions, you correctly point out that the UK will nonetheless be required to comply with rulings given by that court. In light of *Pupino*, the first derogation, “to protect the effectiveness of investigations”, could be interpreted very widely. It would seem capable of being used in almost all cases. Is that the intention? If not, what efforts should be made to ensure that exceptions are precisely defined and restrictively applied?

We do not agree that it is necessary to delete “as soon as possible”, given that delay is exceptionally permitted by Article 2(2).

We note that it is generally considered that the right to legal advice should not apply to police questioning. What is the Government’s view? We believe that this right should apply from the earliest possible stage and would be grateful for an explanation of why those undergoing police questioning should not have a right to legal advice.

TRANSLATION (ARTICLES 6–8)

We are disappointed that provisions on accreditation are not deemed necessary by the majority of Member States. We continue to believe that there should be proper supervision and accreditation of interpreters and translators and would welcome your assurances that the Government will put the appropriate measures in place in the UK when implementing this Framework Decision.

In Article 7(1), the addition of a sentence to the effect that a translated summary of documents may suffice “where appropriate” causes us some concern. Do the Government consider this to be in compliance with their obligations under Article 6 of the ECHR?

RECORDING (ARTICLE 9)

The Committee reiterates its view that the recording provisions are a most important element of this Framework Decision. Here is a point where value could be added and the citizen’s confidence in the investigative procedures of other Member States increased. Is it really the case that the Government can do nothing to ensure their inclusion? We believe that this should be a sticking point for the UK.

SPECIFIC ATTENTION (ARTICLE 10)

We do not agree that Article 10, specific attention rights, should be limited to children, despite the inclusion of a revised Article 10bis. As the original draft of this proposal recognised, those who are mentally impaired have similar needs to minors as regards notification of a parent or guardian and special measures during the proceedings to enable them to participate effectively. Article 10bis is no substitute. We would be grateful of your assurance that the scope and content of Article 10 will be reconsidered to do justice to the disabled.

We also do not consider an exception, particularly one in the same terms as that contained in Article 2, to be appropriate in respect of minors. Do you agree that any exceptions to the rights of minors should be limited? If so, what changes would you propose?
CONTACT DURING DEPRIVATION OF LIBERTY (ARTICLES 12–13)

We note your view that these provisions do not breach the ECHR. However, it appears that some Member States remain concerned about the compatibility of the provisions with international law. What are the outstanding concerns here? Article 36 of the Vienna Convention on Consular Relations of 1963 provides that where a non-national is detained, the authorities of the detaining state must inform the consular authorities of the non-national’s state “without delay”. Are derogations from this provision permitted?

LETTER OF RIGHTS (ARTICLE 14) AND MONITORING AND EVALUATION (ARTICLES 15–16)

As we have previously made clear, we consider these provisions to be extremely important to ensure that rights granted are effective. The substantive rights contained in this proposal cannot in themselves increase citizens’ trust in the criminal justice systems of other Member States. For this to be achieved, citizens must be aware of what their rights are through an easily understood, uniform Letter of Rights, and they must be confident that the necessary independent monitoring and supervision is in place. What is the current thinking of the Working Group? We trust that the UK will pursue this point vigorously in that forum.

The Committee has decided to retain this proposal under scrutiny.

16 December 2005

PROCEEDS FROM CRIME AND THE FINANCING OF TERRORISM (12467/05)

Letter from the Chairman to Paul Goggins MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee E examined the proposal at its meeting of 9 November 2005.

The Committee welcomes measures which seek to combat terrorism and agrees that it is important for the Community to participate in international agreements in fields in which it has competence. However, we also consider that it is important that the allocation of competence between the Member States and the Community is clear. To this end it would be helpful if you would explain what the division of competence will be in respect of Convention 198. Will a formal “declaration of competence” be made by the Community?

We have decided to retain the proposal under scrutiny and look forward to receiving your response.

10 November 2005

Letter from Paul Goggins MP to the Chairman

Thank you for your letter of 10 November concerning the allocation of competence between the Member States and the Community in respect of Convention 198, and whether the Community will make a formal “declaration of competence”.

As you will know, the Community has adopted internal legislation in the area of money laundering. Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering was adopted on 10 June 1991 on the basis of what are now Articles 47 and 95 of the EC Treaty (the same Articles as are cited as the substantive legal bases for the proposal for a Council Decision authorising the Community to sign Convention 198). Under the normal Community rules, the Community has exclusive external competence to sign this Convention to the extent that the Convention may affect its internal legislation.

The Convention does not require the Community to make a formal declaration of competence. However, the Explanatory Report accompanying the Convention states at paragraph 307 “The European Community would be in a position to provide, for the sole purpose of transparency, necessary information about the division of competence between the Community and its Member States in the area covered by the present Convention inasmuch as it does not lead to additional monitoring obligations placed on the Community.”

Finally, on a related point, the Commission have noted in COM (2005) 426 Document that “...certain general and institutional clauses of this convention ... do not allow the Community to exercise fully its external competence on the same basis as the other parties, even though the Community will be subject to all the obligations set out in the Convention.”.

I hope this information is of assistance.

15 December 2005
PROHIBITIONS ARISING FROM CONVICTIONS FOR SEXUAL OFFENCES COMMITTED AGAINST CHILDREN (14207/04)

Letter from Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

I am writing in response to your letter of 27 January14 in which you outlined the concerns of Sub-Committee E (Law and Institutions) regarding the Belgian initiative.

The Committee requested information on how we will approach the fact that some countries, including Scotland, do not record prohibitions from working with children on criminal records. Article 3 of the current proposal requires Member States to ensure that prohibitions are recorded on the criminal record. The Government supports this provision in principle. In order for this proposal to be effective, it is necessary for Member States to have information on prohibitions easily accessible and it is therefore sensible that it should be recorded on the criminal record. The Scottish Executive is examining the relevant provisions in the draft Framework Decision to determine what the exact implications for their procedures might be.

Regarding the extension of the scope of the proposal to include violent and drug offences, the Government recognises that it may be difficult to secure such an approach in the EU but considers that there may be some value in at least exploring the possibilities with other Member States. Children should not only be protected from sexual abuse but also from violence and drug related abuse and we would like to explore whether mutual recognition has to be dependant on previous approximation of criminal acts and penalties.

The Committee’s third point was whether the recognition of a prohibition in the enforcing State would automatically cease where the prohibition in the issuing State has been pardoned, amnestied, reviewed, erased or the person has been rehabilitated. The Government believes that this should be the case and will seek clarification of the language in the text on this point.

The Committee also suggested that the scope of the proposal was unclear. I believe that it would apply only to residents in the enforcing State but I agree that this is unclear and I will seek clarification during negotiations.

The Home Office is in the process of circulating the proposal to non-Governmental Organisations and law enforcement agencies. We look forward to receiving their comments in May, and will update the Committee on these comments in due course. The Scottish Executive and the Northern Ireland Office will be conducting separate consultation exercises to a similar timetable.

1 March 2005

Letter from the Chairman to Caroline Flint MP

Sub-Committee E (Law and Institutions) examined the proposal at its meeting on 16 March. We welcome your efforts to seek clarification of the language of the text regarding the effect of changes in the circumstances of the disqualified individual and the scope of application of the Framework Decision. We note that you are seeking to limit the application of the Framework Decision to persons resident in the enforcing State.

We note that the other two questions raised in our letter of 27 January (on the recording of disqualifications and the extension of the scope of the proposal to cover violent and drug-related crime) remain open. We await with great interest the results of the consultations which are currently going on in the UK on these matters, in particular in relation to the impact the proposal may have on the Scottish legal system.

The Committee decided to retain the proposal under scrutiny.

17 March 2005

Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office

In your previous correspondence about this Framework Decision you have indicated a wish to be informed of progress with our consultation with interested organisations.

I am delighted to enclose a summary of the responses we have received and I hope you find this interesting. I believe that most respondents have been broadly supportive of our approach to this Framework Decision. They have also raised a number of interesting points to which we will be giving further consideration.

5 October 2005

INTRODUCTION

1. This is a summary of the responses received to the consultation in England and Wales (which was led by the Home Office) and Northern Ireland (which was led by the Northern Ireland Office). The Scottish Executive conducted a separate consultation exercise in Scotland.

2. Organisations were asked for their views on five specific questions and many respondents also submitted comments on other aspects of the Belgian initiative. In this document we have summarised the responses to the five specific questions and provided a summary of the other main points. The consultation letter is at Annex A to this document.

RESPONDENTS

3. A total of 20 responses were received (seven of which were in response to the consultation in Northern Ireland). In addition, officials from the Home Office met with His Honour Judge David Pearl (President of the Care Standards Tribunal) and the Criminal Justice Council (chaired by the Rt Hon Lord Justice Judge) to discuss the Belgian proposal. The opinions expressed at those meetings have been included in this summary.

4. The organisations that responded to the consultation in writing can be identified as:
   - Criminal justice: 7 respondents
   - Child protection: 3 respondents
   - Civil liberties: 1 respondent
   - Unions and Professional Bodies: 4 respondents
   - Government (including Local Government): 3 respondents
   - Academic institutions: 2 respondents

SUMMARY OF RESPONSES

Do you think it is appropriate that prohibitions arising from sexual offences are mutually recognised and enforced across the EU?

5. All respondents answered in the affirmative but several identified practical and legal difficulties that could make agreement or implementation difficult. These concerns have been identified in the summary of responses to the other four specific questions and also the summary of other comments received.

Do you think that the reasons for non-recognition or non-enforcement are sufficient?

6. Not all respondents addressed this question. The following points were made in response:
   - It was suggested that the reference to “the penalty” in Article 7(a) should be a reference to “the prohibition”.
   - Several respondents expressed support for permitting non-recognition where the prohibition has become time-barred under the law of the enforcing state.
   - However, several respondents expressed the concern that this provision may result in offenders choosing to move to the state with the shortest period of prohibition.
   - One respondent suggested that Article 7 should distinguish circumstances in which an enforcing state must refuse to recognise and enforce a prohibition. The suggestion was that prohibitions could not be recognised where, in the enforcing state:
     - a fundamental right of national law would be breached;
     - the offender was, at the time of conviction, below the age of criminal responsibility;
     - the prohibition has become time-barred; and
the offender would have received a pardon, amnesty etc if the prohibition had been received in the enforcing state.

The one circumstance where the enforcing state would have discretion over whether or not to recognise a prohibition would be where it had a short amount of time left to run.

— It was suggested that one other reason for non-recognition could be a decision at the European Court that the conviction was obtained as a result of an unfair trial.

— On Article 7(b), it was suggested that Article 7 is unclear as to how the body responsible for recognising prohibitions would be made aware if the conviction was handed down in default of appearance.

Do you think that Article 9, the process whereby the recognition and enforcement of a prohibition can be appealed, is sufficient?

7. Not all respondents addressed this question. The following points were made in response:

— Several respondents agreed that any appeals procedure should be non-suspensive.

— One respondent was concerned that an appeals process could result in the same prohibition being recognised in some Member States but not in others.

— There was a concern that Article 9(2) was not clear enough that the prohibition could not be challenged in the enforcing state.

— There were suggestions for which court would hear appeals in England and Wales. Suggestions included the Administrative Court, the Crown Court or the Care Standards Tribunal.

What do you think of the suggestion that this Framework Directive could be extended to cover prohibitions received for violent and/or drugs offences against children as well as sexual offences against children?

8. A majority of respondents expressed a view on this. 13 were in favour of the suggestion, five had reservations and four respondents did not comment:

— Reservations were based upon practical and legal difficulties and included a concern that timely agreement could be jeopardised by trying to extend the scope of the proposal.

— Several respondents noted that there has been no approximation of violent offences against children and no equivalent of Framework Decision 2004/68/JHA from which to draw a definition of the offences that would be brought within scope. This means that dual criminality could not be assured.

— Several respondents were concerned that, without extending the scope of the proposal, Member States will not be able to recognise prohibitions received by child sex offenders who killed their victims and only received a conviction for murder.

— One respondent suggested that sexual offences committed against adults should be brought within scope of the initiative.

You may be aware that there are administrative systems (ie not made in court) to bar individuals who are considered unsuitable to work with children from such work. The Government may seek to explore the options for including such other categories of prohibited persons within this initiative. What do you think of this suggestion?

9. Most respondents also commented on this suggestion. 13 respondents were in broad support, four had reservations and five did not comment.

— Reservations were based upon very similar practical and legal difficulties as expressed in response to the question above on other offences. Many respondents argued that a harmonisation or approximation of administrative systems would be necessary before mutual recognition.

— Some of the respondents expressed a concern that administrative systems lack the safeguards of judicial processes and that such systems merit the same recognition and enforcement as those imposed in a court.

— It was suggested by one respondent that, in addition to administrative systems operated by the State, systems such as professional prohibitions from working could be mutually recognised and enforced through this initiative.
OTHER ISSUES AND COMMENTS RAISED BY RESPONDENTS

10. Many respondents made other more general comments on the proposal. These included:

— Several respondents commented on the suitability or necessity of using Framework Decision 2004/68/JHA as a basis for this initiative. Many respondents noted that the Framework Decision only approximates offences relating to child pornography, child prostitution and “engaging in sexual activity with a child where (i) use is made of coercion, force or threats”.

— In addition, different Member States may transpose Framework Decision 2004/68/JHA in different ways and it may be possible that acts which are illegal and for which prohibitions can be in one Member State may be entirely legal acts in another.

— Similarly, the initiative is unclear as to how it applies to juveniles who have been prohibited from working with children; some states will impose such prohibitions but others will not.

— Several respondents expressed a concern that the procedure provides that prohibitions will be recognised once an individual has, by applying for employment, necessitated a criminal record check. The concern was that prohibitions therefore only seem to be recognised and enforced after the first time the offender has applied to work with children.

— One respondent commented that it is unclear as to how information on a prohibition would be shared if the individual was self-employed.

— Several respondents suggested that the initiative should be clearer on what “enforcement” of the prohibition will mean/could mean in practice. It was suggested that if there are sanctions for failing to comply with a prohibition then this will have to be made clear to the individual and this could be included in the text of the initiative.

— Several respondents expressed concerns with the accuracy of data and the ability of foreign governments to understand information from a different legal context.

— One respondent suggested that each Member State be required to regularly audit their information sharing mechanisms. One respondent suggested that the initiative include an auditing procedure, to be run by the Commission, to ensure the initiative is working as intended.

— Several respondents suggested that “professional activities related to the supervision of children” was too narrow and that voluntary activities with children should be brought within scope of this initiative.

— One respondent suggested that “supervision” needed to be defined.

— One respondent suggested that the scope should be extended to include any post where children are employed, voluntary work, work in an NGO or public body related to children’s welfare and work in positions with access to children’s data.

— Several respondents noted that civil preventative orders, such as the sexual offences preventative order (SOA 2003) can, in effect, prohibit an offender from working with children even where a disqualification order (CJCSA 2000) has not been made.

— Some respondents noted that the initiative is unclear as to how information will be shared/accessed on non-EU nationals who have nevertheless received a prohibition from working with children in a Member State.

CONCLUSION

11. This is only a summary of the responses we received. Many respondents submitted very detailed comments for which we are very grateful. Further consideration is being given to all of the issues raised in the consultation and we will use the information and opinions to inform the UK’s negotiating position.

Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 5 October enclosing a summary of the responses you received during your recent consultation exercise. We note the degree of support for the proposal and for its possible extension to cover offences of violence and/or drugs offences as well as disqualifications issued by administrative bodies. The Committee were also interested to see the detailed criticisms offered by consultees on the text as well as points directed to the possible implementation of the Framework Decision. Have the consultation exercises in Scotland and in Northern Ireland produced similar responses?
We note that your letter does not set out the present state of negotiations or indicate what priority is being given to this proposal during the UK Presidency. It would be helpful if you could let us know the position.

Finally, as you will be aware, there are a number of questions outstanding from our earlier correspondence. The Committee looks forward to hearing from you and has decided to retain the proposal under scrutiny.

27 October 2005

Letter from Paul Goggins MP to the Chairman

Thank you for your letter of 27 October. I am sorry if I was unclear but the summary I attached was a summary of the responses received to the consultation in England and Wales and Northern Ireland. As for Scotland, I now attach a summary of the responses received by the Scottish Executive. I believe that the comments are broadly similar to those expressed in the consultations in England and Wales and Northern Ireland.

Since the Working Party on Cooperation in Criminal Matters first considered the Belgian proposal in May 2005, officials in the UK have worked with their counterparts in Belgium and the Commission to produce a questionnaire, to be answered by Member States, about how prohibitions are made. Almost all Member States responded and this will form the basis of discussions at the meeting of the Working Party later this month.

We are encouraged by the responses to the questionnaire and consider that, whilst there is variation in how prohibitions are made and recorded as well as their effect and scope, there is sufficient common ground for mutual recognition. We will be exploring this further with our EU partners at the next meeting.

We decided that negotiations on the European Evidence Warrant (EEW) should take precedence over this initiative and therefore I am afraid that it is likely that there will only be one meeting of the Working Group to discuss the Belgian initiative. I have asked my officials to work with their counterparts in Austria to encourage the next Presidency to keep the momentum with the Belgian Initiative.

30 November 2005

Annex

Summary of Responses in Scotland to Consultation on Belgian Initiative on Mutual Recognition of prohibitions arising from convictions for sexual offences committed against children

The Scottish Executive consulted informally in the summer of 2005 on a range of exchange of information issues within the European Union in relation to previous convictions, including the Belgian initiative. Information packages were sent out to 52 organisations. However, only eight responses were received, of which only five made substantive comments on the Belgian initiative. Of those five, three were from police organisations The responses from SCRO and ACPOS were substantially the same.

Summary of Responses

Scottish Criminal Record Office (SCRO)

Proposal fails to identify those persons who may be unsuitable for working with children and vulnerable adults but who may not be on the Disqualified from Working with Children List (DWCL). Would like to emphasis the inherent danger of reliance on the DWCL to the detriment of other means of vetting.

Other intelligence sources exist and should be considered when such decisions are made and co-ordinated on a European wide basis.

A system which would include an enhanced vetting check via the Central Authority worthy of serious consideration.

Other convictions and other relevant information should be considered in relation to those seeking employment with an element of child care or the care of vulnerable adults. Therefore, all disqualifications in relation to working with children and vulnerable adults should be considered whether as a result of a criminal conviction or an administrative process.

Grounds for non recognition do not appear to pose any problems and appeal procedures appear to be adequate.
Law Society of Scotland

Taking into account the principle of freedom of movement, measures should be in place to ensure that children throughout the EU are entitled to equal protection. Law Society therefore supports the initiative to recognise and enforce disqualifications arising from convictions on an EU wide basis.

Consideration should be given to extending range of offences to those listed in Schedule 1 to the Protection of Children (Scotland) Act 2003. Appreciated that such offences may not translate directly to analogous offences in other Member States—however a list of similar offences could be established with reference being made to a dictionary of relevant terms for each Member State.

Article 7—questions whether 7(c) would offend against the principle of ne bis in idem.

Question what the purpose of the appeal procedure is if it is a non-suspensive legal remedy and therefore attaches no powers. If the appeal procedure is designed to provide a form of judicial review in respect of the decision of the competent authority to reject a proposed prohibition, then consideration could be given to framing this more clearly in Article 9.

Have concerns about the extension of the principle of mutual recognition in cases in which the disqualification has arisen as a result of an administrative procedure. In relation to admin procedures, determinations as to inclusion on the list may not always be made on the basis of a judicial determination.

GTC Scotland

Schedule 1 of the Protection of Children (Scotland) Act 2003 would seem to provide a comprehensive list which would relate to offences across the EU.

The DWCL is an administrative determination provided by Ministers. However, there is a remedy in place for appeal/removal in the Court of Session. Provided such checks and balances are in place mutual recognition of similar administrative processes should be an option.

Association of Scottish Police Superintendents

In general believe that the proposals raise fundamental questions relating to issues such as definition, scope and information sharing which will have major ramifications across the EU.

Disappointed at limited range of offences included. Think that any sexual contact with, or violence against, a child under the age of 16 should be included within the scope. The Association believe that the provisions of the DWCL should be replicated in the legislation.

In the case of sexual offences against children this raises the issue about what is the appropriate age of consent. As the proposed legislation refers to children being under 18 there may be a long term need to reconsider the way that Scotland deals with young people between 16 and 18 both as victims and accused persons.

Disagree with article 7(a). Notwithstanding the Association’s belief that prohibitions should not be time limited as the potential danger from such offenders may last far longer than a court imposed ban, any decision with regard to prohibition made by an issuing State should hold in an enforcing State, irrespective of that State’s laws on time limitation.

Support the inclusion of those who may be disqualified as a result of administrative procedures. Association’s view is that the system in Scotland has encouraged a more holistic approach to child protection and should be held up as best practice.

Association of Chief Police Officers in Scotland (ACPOS)

Proposal fails to identify those persons who may be unsuitable for working with children and vulnerable adults but who may not be on the Disqualified from Working with Children List (DWCL).

Other intelligence sources exist and should be considered when such decisions are made and co-ordinated on a European wide basis.

A system which would include an enhanced vetting check via the Central Authority worthy of serious consideration.

Other convictions and other relevant information should be considered in relation to those seeking employment with an element of child care or the care of vulnerable adults.
Scottish Out of School Care Network
Welcome any moves to make the system more safe through the exchange of information amongst EU nations. Would wish to ensure that UK implementation does not slow down the process or introduce greater risk. Would be concerned that this might be the result of introducing an additional UK tier into the process—it should be possible to ensure that a Scottish agency can exchange information with, other relevant agencies in other EU countries.

Scottish Court Service
Commented that there would be resource implications for the SCS and for judicial salaries arising out of the appeals process.

Scottish Police Federation (only general comments made)
Support general principle that it is important for information on criminal convictions and related disqualifications to circulate more efficiently within the EU.
Each country should be entitled to use the information consistent with their respective law as if the information had originated in that country.

Letter from the Chairman to Paul Goggins MP
Thank you for your letter of 30 November 2005 which was considered by Sub-Committee E (Law and Institutions) under its written scrutiny procedure. Given that the consultation exercises have now been completed, we would be grateful for your response to the matters first raised by the Committee in its letter of 27 January 2005. It may be useful if we restate our concerns.

Inclusion of Disqualifications in the Criminal Record
Your predecessor advised us that the Scottish Executive were considering Article 3 and its implications in Scotland. Have they now completed this exercise? What is their conclusion?
We note from the addendum to the initiative, prepared by the Belgian Government, that Article 3 intends to oblige Member States to record information on convictions and prohibitions both where the conviction has been handed down in that Member State and where the conviction has been notified to it under the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters. As it is central to the system proposed under this Framework Decision that the Member State of origin keep a comprehensive record of convictions and prohibitions, is there a case for the point being made more clearly in the text of the Decision?

The Inclusion of Violent and Drug-related Crime and Administrative Bans
The consultation appears to show widespread support for the inclusion of violent and drug-related crimes as well as bans resulting from administrative procedures. We note, however, that concerns were raised regarding the lack of safeguards in administrative systems compared with judicial systems and the lack of an approximated definition of violent and drug-related offences. Are the Government still in favour of extending the scope of the Framework Decision? If it is extended then the matter of safeguards will have to be carefully examined. Will this be discussed by the Working Group?

The Effect of a Change in Circumstances
Your predecessor agreed to seek clarification of whether enforcement of a prohibition in the enforcing Member State should cease where the disqualification has been removed (eg by amnesty, or review) in the issuing Member State. What is the understanding of other Member States on this matter?

The Scope of the Initiative
In our letter dated 27 January 2005 we asked whether the initiative would apply to residents in the enforcing State only. Your predecessor believed that it would but undertook to seek clarification. It may be helpful if we explain our understanding of the relevant provisions.
Article 4 obliges the State in which the conviction has been handed down to mention the disqualification when passing criminal record information to another Member State. The obligation to pass on criminal record information arises from “applicable international rules”, principally, as we understand it, from the 1959 Convention. This provides two mechanisms whereby criminal record information is passed to another Member State: (i) in the case where the judicial authorities of one Member State request it from another Member State (Article 13); and (ii) in the case where an individual is convicted in a State which is not his State of origin. In such a case, the convicting State must inform the State of origin of the conviction (Article 22). Do you agree that Article 4 does not create a new obligation for exchange of information on criminal records?

Article 5 of the Framework Decision begins with “Where application is made in the framework of this Framework Decision for the criminal records of a Member State . . .” (emphasis added). This is misleading because it is Article 5 itself, and no other Article, which institutes a mechanism for requesting criminal record information under this Framework Decision. The effect of Article 5 is to require the criminal records of the State of origin to be consulted in all cases where national criminal records are consulted. However, the phrasing of the Article is confusing because at first glance it appears merely to be specifying to whom an application should be made. As Article 5 constitutes one of the principal obligations under this Framework Decision should it not be clearer? Further, the Article does not specify which body must fulfil the obligation: is it the central authority of the Member State or is it the body which originally made the application for the criminal records?

A further restriction on the scope of this initiative is the definition of “enforcing State” as the Member State on whose territory the convicted person resides. The obligation to advise of a prohibition and to consult the criminal record in the State of origin arises in respect of transfers of information between Member States (Articles 4 and 5). However, the obligation on the competent authorities of a Member State to recognise and enforce the prohibition arises only in respect of the competent authorities of the “enforcing State” (Article 6). This means that where, for example, Belgian authorities have requested criminal record information in respect of a non-Belgian individual resident in Luxembourg but seeking employment in a Belgian primary school, they are not obliged to recognise and enforce any prohibition which is notified to them. Is this intended? Such problems could arise in border areas where individuals may work in a Member State other than the one in which they are resident. Is it therefore sufficient to define “enforcing State” by reference to residence?

You said in your recent letter that there will only be one meeting of the Working Group to discuss this initiative. We would be grateful to hear from you once that meeting has taken place to advise us of general progress made on this initiative. We also look forward to receiving your responses to the matters raised in this letter.

The Committee decided to retain this initiative under scrutiny.

16 December 2005

ROME II: LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS (16231/04)

Letter from the Chairman to Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Thank you for furnishing the latest Presidency text of this proposal. The document was considered by Sub-Committee E (Law and Institutions) at its meeting on 23 February. The Committee was particularly grateful for the very full and helpful description of the main policy issues, together with the Government’s position, set out in the annex to your Explanatory Memorandum. Dealing with the issues in the order in your annex, our comments are as follows.

(i) The Issue of Vires and the Scope of the Regulation

Having regard to the points made in our Report (The Rome II Regulation, 8th Report 2003–04) it will come as no surprise that the Committee shares your concern that the scope of the Regulation should be limited so that it properly complies with the internal market requirement in Article 65 of the EC Treaty and only covers cases which have a significant internal market dimension. We agree that of the three options presently on the table Article 2 seems the more preferable. You say that officials are working on another version of this option. We trust it will be possible to find a formula which will ensure that the Regulation only applies to cases having a substantial cross-border element.
(ii) **The Need for Special Rules**

The Committee is pleased to hear that there is a wide measure of agreement that no special rule is needed in relation to environmental torts (Article 7). But it remains a matter of concern that there may still be special rules in the fields of product liability (Article 4) and unfair competition (Article 5). As regards the latter we think it extremely important that if there is to be a special rule it should make it quite clear what is encompassed by the term “unfair competition”, including its relationship with passing off and intellectual property. We note that it has been suggested that Article 5 be extended to include “acts restricting free competition” and possibly to include an express reference to the Community competition rules (Articles 81 and 82 of the EC Treaty). We assume that there will be coordination between those responsible for Rome II and those responsible for Community competition policy (DG Competition). You will no doubt be aware that the latter are intending to bring forward a Green Paper dealing with civil actions to enforce Community competition law. This is a matter to which we may wish to return.

(iii) **The Special Rule on Product Liability (Article 4)**

Thank you for explaining the difference options and for indicating quite clearly which is the Government’s preferred choice. You say that you believe option 2 will provide adequate protection for businesses whose products have been marketed in countries for which they were not intended. We would be grateful for confirmation that you are consulting with CBI and other business interests on this Article.

(iv) **The Special Rule on Defamation and Related Claims (Article 6)**

We note that you describe the discussions as “continuing, but still inconclusive”. Article 6, as you will recall, was one on which the Committee received strong representations when conducting its inquiry. We recommended a “country of origin” rule. Of the options now on the table we agree that option 2 is probably the best. You say that the Government may give it their provisional support. We would be interested to learn the views of the British media and trust that you are continuing to consult them.

(v) **The Rules Covering Non-Contractual Obligations Other than Tort and Delict (Articles 9 and 9A, B and C)**

The Government share the Committee’s view that it would be better if the Regulation were restricted to only tort and delict but you say that other Member States are not prepared to accept such a limitation particularly where in their rules of civil liability they draw no distinction between torts and other causes of action. Presumably those countries would have no difficulty in there being different rules in the Regulation between torts and other causes of action and for characterisation of the question to be determined by the Court of Justice.

We are pleased to note that you are working in close consultation with experts on these issues and that their view is that Articles 9A and 9B are broadly in line with the current English law. We would be grateful to learn the position in relation to Article 9C (pre-contractual dealings) when you have had the opportunity to discuss this with experts and stakeholders.

(vi) **Party Autonomy**

This is not an issue which we explored during our inquiry. We share the Government’s view that the provision for party autonomy is in principle welcome. We agree that there are issues which require further consideration, especially the possibility of excluding claims for unfair competition and the infringement of intellectual property rights. These are areas where there are possibly conflicting public and private interests. You do not say what the reactions of experts and stakeholders have been to this Article. We would be interested to learn their views.

Further, we note that Article 3A provides that “The choice shall not prejudice the rights of third parties”. How will this operate in practice, for example where there may be rights of contribution? It would be helpful to have clarification of this provision.
(vii) **Issues Relating to Damages (Articles 11c, 22 and 24)**

As regards Article 11, we agree that it is necessary to take a fresh look at indent (c) ("existence, the nature and the assessment of damages or the redress sought") in the light of the decision in the Court of Appeal in *Harding v Wealands*. As regards Article 24 it will not surprise you to learn that the Committee is pleased to see that this Article has been deleted from the text. There has, however, been a consequent amendment to Article 22, to which you draw our attention. We would be interested to learn whether other Member States would view the elements of damages awarded under English law as being "excessive, non-compensatory damages" within the meaning of the amendment to Article 22.

(viii) **Relationship with Other Provisions of Community Law (Article 23)**

As you will know from the evidence we received relating to the E-commerce Directive the relationship between Rome II and other Community legislation is a matter of considerable concern to UK business. The proposed Services Directive has increased that concern. We note that the Government consider the relationship between the Services Directive and "Rome II" requires more work. We would be grateful if you would let us know your conclusions when you have finished your investigation, which we trust will include consultation with representatives of UK business and industry.

The Committee decided to retain the proposal under scrutiny and would be pleased to be kept informed of developments.

28 February 2005

**Letter from Baroness Ashton of Upholland to the Chairman**

Thank you for your letter of 28 February detailing a number of helpful comments from Sub-Committee E (Law and Institutions) on the draft Regulation “Rome II”. I am sorry for the delay in replying to your letter. As you know, negotiations on Rome II are still ongoing. The Council Working Group last met in November last year and the Luxembourg Presidency does not envisage that the Group will meet again until the European Parliament completes its first reading of the text. This is not likely to take place until early June. It is therefore unlikely that a common position will be achieved during the UK Presidency. The Parliament’s Rapporteur, Diana Wallis MEP, has now produced her revised report on Rome II and this will be considered by the Parliament’s JURI Committee over the next few weeks.

The Select Committee has provided helpful comments on a number of issues including the scope of the regulation, the need for special rules and the special rule on defamation in Article 6. We will of course consider the Committee’s comments carefully in the course of the ongoing negotiations.

We are continuing to work with stakeholders, in particular representatives from the press, in order to find an acceptable way forward on Article 6. We have also recently written to a wide range of stakeholders, including the Law Society, the CBI, leading law firms and a number of academics, in order to provide them with the latest text of the draft regulation and an opportunity to comment on the Government’s position on each article. We have already received many helpful comments and I will update the Committee further on the results of this correspondence in due course.

In connection with the proposed provision on party autonomy (Article 3A), you have asked for further explanation about one particular aspect of it, namely the rule that: “the choice [of law agreed by the parties] shall not prejudice the rights of third parties.” An equivalent rule was contained in the Commission’s corresponding provision on this subject in its original proposal (Article 10(1)). In its Explanatory Memorandum, the Commission dealt briefly with this matter, merely giving as a “typical example” of a situation where it would be relevant “the insurer’s obligation to reimburse damages payable by the insured”.

On this basis the law relating to that obligation would not be determined in accordance with any law agreed as between the insured and the victim of the tort under Article 3A.

You have asked about this rule’s application in cases where there is a right of contribution. It appears that in principle such a right should not be classified as tortious. It is dependant, not upon any relationship with the victim of the tort, but rather upon an obligation between two parties, neither of whom has committed a tort against the other (Dicey & Morris, *Conflicts of Laws*, 13th edition, at page 1533). Depending on the facts of the case, such a right may be restitutionary in nature and on this basis the law applicable to it is determinable in accordance with Article 9A (unjust enrichment). If the law applicable as a result of Article 9A is English law, then the matter will be determined in accordance with the Civil Liability (Contribution) Act 1978. However, the right to contribution may be based on a contract, express or implied, in which case that right will be determined by the law applicable to that contract, and not under the Rome II Regulation. For both
these situations Article 3A(1) makes it clear that the law applicable to contribution proceedings will not be determined by any choice of law agreement made under that provision.
I will of course keep the Committee informed of continuing developments regarding Rome II, particularly the results of correspondence with stakeholders.

14 April 2005

Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 14 April, which was considered by Sub-Committee E (Law and Institutions) at its meeting on 8 June. The Committee is encouraged by the fact that the Government find its comments helpful. As you know we have taken a particular interest in this proposal and will continue to do so, especially as it has implications for other matters being proposed or likely to be proposed by the Commission. Let me explain.

One of the matters of particular concern to the Committee is the scope of the Regulation. You will recall that the Commission’s proposal was that the Regulation should have universal application. We have argued that the Regulation should only apply to cases having a significant internal market dimension. I need not rehearse the argument as you are aware of the *vires* and legal policy issues concerned. There is much common ground here between the Committee and the Government. You say in your letter that it is unlikely that a common position will be achieved during the UK Presidency. But if past experience is anything to go by it is likely that you will come under considerable pressure in the next few months to reach such agreement. However, I am sure you will agree that the costs of any such agreement should not include abandonment of the UK’s position on the scope of the Regulation. We have to think forward to the potential implications that might have for the revision of Rome I (contractual obligations) and for any proposals the Commission may bring forward in the future, for example, in relation to wills and succession. In the latter context we are pleased to note the comments you make in your Explanatory Memorandum (paragraph 29) to the Commission’s recent Green Paper.

The Committee decided to retain the proposal under scrutiny.

13 June 2005

Letter from Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 13 June regarding the draft regulation “Rome II”.

As you know, the Government shares your concerns about the proposed scope of this draft instrument in the light of the requirement in Article 65 of the EC Treaty that measures adopted thereunder must be “necessary for the proper functioning of the internal market”. We are aware of the important and undesirable precedent for future instruments that would be established if this requirement were to be circumvented here.

In this context you have expressed concern about the possible pressure on the UK during our Presidency to reach a common position in the Council on Rome II and the possible consequence which this could have for our position on this treaty base issue. I hope I can reassure you on this. Our Intention not to seek a common position on this dossier has recently been announced to our European partners in the Working Group in Brussels and, whilst some disappointment about this was expressed by the Commission, the other Member States accepted it without comment. They were, I believe, reassured by our clear commitment to make progress on this dossier at a technical level. In the light of this I do not expect that we will come under pressure during our Presidency to abandon our position on the treaty base issue.

Our intention is that the Working Group should limit its focus to consideration of the amendments recently proposed by the European Parliament (I enclose a copy of these). You will notice that the Parliament has, in this respect, accepted the unlimited scope of application originally proposed by the Commission. It has therefore proposed no amendment on this issue, and accordingly we will not encourage the Working Group to discuss it under our Presidency. This should further reinforce the likelihood that the current position on the treaty base issue will remain unchanged during our Presidency.

You will notice that the European Parliament has proposed a significant number of amendments. It may be helpful if I highlight some of the most significant of these:

- The freedom of commercial operators in principle to enter into choice of court agreements before the occurrence of the tort (Amendment 25).
- Special rules on traffic accidents (Amendment 26).
- The deletion of the special rule on product liability (Amendment 27).
- The deletion of the special rule on unfair competition (Amendment 29).
— A “country of origin” rule for published or broadcast publications (Amendment 57).
— A special rule for industrial action (Amendment 31).
— The deletion of the special rule on environmental torts (Amendment 33).
— Procedural rules (Amendments 42 and 43).

Under our Presidency we aim to ensure that all these matters, together with the rest of the European Parliament’s opinion, is carefully considered in the Working Group.

12 August 2005

Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 12 August which was considered by Sub-Committee E (Law and Institutions) at its meeting on 26 October. We are pleased to learn that the Government have not succumbed to any pressure to reach a common position in the Council on Rome II and that the Working Group will be conducting a detailed examination of the amendments proposed by the European Parliament. As you indicate, some of those amendments are significant and while we welcome some (for example, the deletion of certain special rules) others, at first glance, give rise to concern (for example, the proposal to apply choice of law rules to evidence and procedure). We believe that the Government’s approach, of subjecting these amendments to careful and critical examination in the Working Group, is the best way forward in the present circumstances. We would find it helpful if at the conclusion of the Working Group’s consideration of the amendments you could let us have a note summarising the results of that work and an explanation of the Government’s views on the most significant and controversial amendments.

27 October 2005

RULES OF PROCEDURE OF THE COURT OF FIRST INSTANCE (5937/05)

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

The proposed amendments to the CFI’s Rules of Procedure were considered by Sub-Committee E (Law and Institutions) at its meetings on 16 and 23 March. We note that the Government support the proposed changes, which you describe as being not controversial and necessary for the efficient working of the Court.

New Articles 94–97 would provide rules for the Court to grant legal aid. Under Article 96(3) a lawyer would be designated to represent the person concerned. If the person has not indicated his choice of lawyer “or if his choice is unacceptable” then the Court would designate the lawyer having regard to names put forward by the competent authority of the Member State concerned. We would be grateful if you would clarify the sort of circumstances where it is envisaged that the applicant’s choice of lawyer would be “unacceptable”. Can you also confirm that Article 96 would have to be construed and applied in a manner consistent with the ECHR and the EU Charter of Fundamental Rights?

The Committee decided to retain the draft amendments under scrutiny.

24 March 2005

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

I write further to your letter to Rt Hon Denis MacShane on 24 March 2005 concerning the proposed amendments to the Court of First Instance’s Rules of Procedure concerning legal aid, which were considered by Sub-Committee E (Law and Institutions). In particular, you wanted to know in which circumstances an applicant’s choice of lawyer might be deemed “unacceptable”.

Officials attended the Working Group which considered these proposals on 23 May and as requested sought clarification as to the circumstances in which a lawyer would be deemed “unacceptable” and confirmation that the Court’s power to award legal aid and to designate the legal aid applicant’s lawyer would be construed and applied in a manner consistent with the ECHR and the EU Charter of Fundamental rights.

The Court noted that the power to designate a legal aid applicant’s lawyer is not new and exists in more or less the same form in the current Rules of Procedure of the CFI (Art 95(2)). These provisions are set out in the annex to this letter (not printed). The Court explained that thus far, litigants had always indicated their choice of lawyer on legal aid applications; the starting point for the court was always the litigant’s choice of
lawyer and the court had not, to date, had to exercise its discretion to appoint someone else. The Court was therefore unable to clarify the circumstances in which it was envisaged that the applicant’s choice of lawyer would be unacceptable but if such circumstances arose, as draft Article 96(3) provides, it would have regard to the suggestions of the competent authority (ie the Law Society) as to an appropriate lawyer.

The Court also confirmed that Article 96 of the proposal would be construed and applied in a manner consistent with fundamental rights.

14 June 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 14 June which was considered by Sub-Committee E (Law and Institutions) at its meeting on 29 June. It is regrettable that not even the representatives of the Court can identify the criteria relevant to determining when an applicant’s choice of lawyer would be “unacceptable”. We take some comfort in the fact that the issue appears not to have arisen to date and that the Court has confirmed that Article 96 would be construed and applied in a manner consistent with safeguarding fundamental rights.

The Committee decided to clear the proposal from scrutiny.

5 July 2005

RULES OF PROCEDURE OF THE EUROPEAN COURT OF JUSTICE (10120/05)

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

On 8 June, the President of the European Court of Justice submitted for the Council’s approval a request for amendments to the Rules of Procedure of the Court of Justice. These proposed amendments should have been sent to your Committee to be scrutinised. Unfortunately, they were not. With the Council document outlining the proposed changes going unnoticed through FCO and Cabinet Office sifting, the proposed amendments were discussed at the Court of Justice Working Group on 11 July, and agreed by a silence procedure expiring on 26 August. The amendments were subsequently approved without reserve by Coreper on 21 September, and at the GAERC on 3 October.

I very much regret the procedural failure which meant that the proposed amendments could not be sent to your Committee for scrutiny when they should have been. I would like to assure you that, in future, we will look more closely for formal communications from the Court to the Council so as to ensure that such a failure does not happen again.

I attach a retrospective EM (not printed) on the amendments, and the formal Council communication to which they refer (ref 10120/05) which was deposited in Parliament on 30 September. The amendments themselves are not controversial. The Court had found it necessary, in the light of experience, to propose them, in particular those determining composition of formations of the Court. Most of the amendments are of a technical nature, or relate to matters of formal drafting. The remainder merely clarify or simplify current procedures. They will make the workings of the Court more efficient and we welcome them.

14 October 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Sub-Committee E (Law and Institutions) examined the proposal at its meeting on 9 November 2005.

We agree with you that the changes are uncontroversial and are important to ensure the effective functioning of the Court. We make two observations:

— The document purports to make a change to Article “44(5)”; however in the rules published on the Court’s website, such an article appears not exists. We assume that the numbering of the paragraphs will be tidied up now that the new rules have been adopted.

— The effectiveness of the rules on “substitute” judges would seem to be limited if the terms of office of the substitutes themselves are due for expiry. Should the Article make it clear that the substitutes should be the next two judges on the list whose terms of office are not due for expiry that year?
It is regrettable that the draft amendments were not submitted for scrutiny prior to their adoption by the GAERC on 3 October 2005. However we note what you say in your letter of 14 October 2005 and are pleased to see that you will be taking steps to ensure that such an oversight does not happen again.

The Committee has decided to clear this document from scrutiny.

10 November 2005

SERVICE OF JUDICIAL AND EXTRA JUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS (11131/05)

Letter from the Chairman to Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Sub-Committee E (Law and Institutions) considered the above proposal at its meeting on 19 October.

The Committee agrees with the Government that the proposal is generally to be welcomed and we share the Government’s concern regarding the detail of the provisions. However, we note that you have given little indication of the Government’s position on the specific revisions proposed. Rather, you speculate on what consensus may be reached during the UK Presidency. Accordingly we would be grateful if you would indicate which provisions of the proposal are acceptable to the UK with or without amendment. In particular we would be interested to know the Government’s view in relation to the matter of costs, and what you mean when you say that the Government “will want to ensure that the final provision allows sufficient flexibility to take account of the differences in the systems of the Member States”. We would also appreciate further information on the Government’s view of the changes proposed for Article 9 and what implications they would have in Member States which do not recognise a double date system.

The Committee has decided to hold this document under scrutiny pending receipt of the information requested.

20 October 2005

Letter from Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 20 October in which you asked for information on which of the provisions of the proposal are acceptable to the UK, in particular in relation to the matter of costs and the implications of the double date provision in Article 9. As I am sure you appreciate it would not have been appropriate for me to give more specific details of the UK position during our Presidency but I am now free to do so.

I can confirm that the Government supports this proposal. It believes that in principle the Commission’s suggested changes are sensible and if adopted will improve the current Regulation. There are areas where the Commission’s text requires clarification, notably to whom a document for which service has been refused under Article 8 should be sent, particularly as Article 15a extends this right to refuse to other methods of service which will not go through the receiving agency such as service by post. We shall pursue this point during the negotiations.

With regard to the specific points you raised, on costs the Government believes that the Regulation should not affect the ability of Member States to make a charge for serving documents if that is their practice and they should be able to decide what the fee should be depending on national factors. However, it recognises that one of the disadvantages of the current system is that where fees are charged currently parties often have no way of knowing in advance what the fee is likely to be and in some instances the final charge has been very high. The Government believes that the Commission’s proposal for Article 11(2) strikes the right balance between respecting each Member State’s right to set a charge for service while ensuring that the charge set will be known to parties in advance and will not be an extortionate amount. It will want to ensure that any changes to this Article during negotiations continue to respect that balance.

The “double date” system is very important in a minority of Member States where a claimant has to serve necessary documents, and have a date for that service, before he or she can initiate court proceedings. The Commission has stated that it is not the intention of Article 9 to force all Member States to use double dating. Rather it allows Member States to use it if they wish and simplifies the procedure by no longer requiring the majority of Member States to have to derogate from this provision. The Government believes this is a sensible amendment. It will oppose any changes to this Article during negotiations if they lead to the double date provision affecting those Member States that do not use it.

20 January 2006
SHIP SOURCE POLLUTION (12537/04)

Letter from Caroline Flint MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I am writing in response to your letter of 16 December 2004, in which you raised a number of points about the Framework Decision. I apologise sincerely for the delay in responding to your letter, this was caused by inter-departmental consultation.

You asked about previous use of the interpretation of UNCLOS proposed in Article 4(7). The earlier instance where ships flagged in EU Member States were not treated as foreign ships for the purposes of UNCLOS, was in the UK’s Offshore Marine Conservation (Natural Habitat &c) Regulations (currently in draft form and being worked up) which have the effect of extending the application of the EC Habitats Directive out to 200 nautical miles from the UK’s UNCLOS baselines. The underlying rationale is that, in the application of European Community law, each Member State should treat the ships of each other EU Member State in exactly the same way as it would treat ships flying its own flag.

However, subsequent negotiations have removed this element from Article 4(7) of the Framework Decision. The new text, which is being deposited with Parliament, reads:

“Regarding custodial penalties, this Article shall apply without prejudice to international law and in particular Article 230 of UNCLOS.”

This amended version of the text removes the issue from the Framework Decision.

Turning more particularly to the progress of negotiations, the Council on 21 December reached a general approach on the Framework Decision on the basis of a compromise package which addressed the outstanding issues. This compromise stated that the Commission would look at the operation of Article 4(7) in five years time on the basis of information supplied by the Member States, submit a report and make appropriate proposals in that report. This report could also look at the economic impact of Article 4(7).

This was accompanied by a Declaration that the Commission would look at having the MARPOL Convention reviewed and report on this in 2006. We believe that this represents an acceptable compromise and accordingly supported the general approach at that time.

Final agreement to this measure is now on hold, pending developments on the Directive. This is due to be considered in plenary session by the European Parliament on 22 February 2005, which has proposed amendments to the Common Position. It is unlikely that their amendments will be accepted by the Council and under the co-decision procedure operating in first pillar measures; the likelihood is that conciliation will be required. I will ensure you are updated on the progress of the negotiations on the Directive.

14 February 2005

Letter from the Chairman to Caroline Flint MP

Sub-Committee E (Law and Institutions) examined the proposal at its meeting on 23 March. The Committee notes that the wording of Article 4(7) has been amended significantly and considers that the compromise reached regarding the text of the Framework Decision is acceptable.

We note that a compromise was reached between the Council and the European Parliament on the text of the ship-source pollution Directive, which complements this instrument and understand that the two proposals will be adopted on the same date.

In view of these developments, the Committee decided to clear the documents from scrutiny.

24 March 2005

STATUTE FOR MEMBERS OF THE EUROPEAN PARLIAMENT

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

I thought that you would appreciate an update on where we stand on agreeing a Statute for Members of the European Parliament in the light of recent proposals from the Luxembourg Presidency. The proposed revisions to the Statute are an improvement on the proposals made by the Irish Presidency which were cleared by Parliament last year. I attach the letter from the President of the Council to the President of the European Parliament setting out the detail of the Luxembourg, Presidency’s proposals (not printed).

Because of the recent pace of progress of negotiations, it is likely that the Council may be asked to take a decision on the Luxembourg Presidency’s proposals before it has been through the normal Parliamentary scrutiny procedure. The timetable for the likely agreement of a Statute is as follows. On 1 June, Coreper will agree the letter setting out the key elements the Council wants included in the text. This letter will go to the 13 June GAERC, probably as a false “B” point and, once agreed, will be sent to the European Parliament. The EP’s Legal Affairs Committee will then debate and adopt the draft Statute, taking into account the elements the Council has outlined. A deal will be contingent on both institutions agreeing those elements. If they do, the road would be clear for an EP plenary vote in late June or early July, to adopt the statute. The Council could then approve the statute at the earliest possible Council.

I understand that with your reappointment only recently confirmed and the Whitsun recess now upon us it may not be possible for scrutiny to be cleared. The Luxembourgers’ timetable is ambitious and it may be that the proposals do not move forward at the expected pace. But I wanted to warn you in case this is indeed what happens.

I would like to set out how the package of proposals offered by the Luxembourg Presidency differ from both the Irish Presidency (which were cleared by Parliament in January 2004—see Foreign and Commonwealth Explanatory Memoranda of 28 March 2003 on document PE 324.184 and of 26 February 2004 on Council Document 5574/04 setting out a draft European Parliament Resolution for an MEPs’ Statute) and from Westminster MPs’ allowances, pensions and pay.

As you will recall, there is currently no Statute governing the terms and conditions of Members of the European Parliament (MEPs). Instead, MEPs are eligible for the same salaries, pensions and other benefits as their national counterparts, resulting in MEPs receiving vastly differing packages. All receive expenses and allowances, funded from the European Parliament’s budget. The Treaty of Amsterdam, as amended by the Treaty of Nice, provides a legal basis for a Statute in Article 190(5) TEC. The Statute is for the European Parliament to adopt, and the Council to approve.

The European Parliament previously voted on 4 June 2003 in favour of a Statute which was unacceptable to the Council. The Irish Presidency tried to reach a deal on the Statute on January. The UK supported its proposal but Germany considered the deal too costly and blocked it in the Council. The Luxembourg Presidency’s proposal is the same as the deal put forward by the Irish Presidency—which the UK and European Parliament both supported and which cleared scrutiny—but with the following changes:

— **Salary:** it provides a uniform salary for all MEPs of €7,000 per month (a downward revision from €9,000 last year) paid for out of the EC budget.

— **Tax:** it allows Member States to impose national rates of taxation (over and above the Community tax) to ensure that MEPs are taxed on the same basis as their constituents, thus ensuring they don’t benefit from a lower taxation rate than those they represent.

— **Pension:** as with the Luxembourg proposal, it raises the pension age from 60 to 63. But pensions are to be paid by the European Parliament, not MEPs, which is a change from last year. However, the overall level of the package (salary plus pension) will be less than the one we accepted the last time a potential deal was on the table.

— **Expenses:** there would be an internal EP regulation on real costs and expenses to secure reimbursement of travel expenses based on actual cost incurred. Five out of the six *frais* (allowances) will now be based on real costs. The outstanding *frais* would remain a lump sum for general administrative expenses.

From the date on which the Statute enters into force there would be a transitional period of two full terms of office during which each Member State could opt to maintain the current national system of allowances for all MEPs (“grandfathering”). This is better than the text we agreed last year, which would have allowed existing MEPs to keep their current terms and conditions for as long as they remained in the Parliament. We favour as short a transition period as possible.

The salary for MEPs will be set at €7,000 per month, equivalent to £4,809 at the current exchange rate. (As you know, Westminster MPs’ basic salary for the year from 1 April 2005 is £59,095—or £4,925 per month.) This is a welcome improvement on the previous proposal, which would have set MEPs’ salaries at 50 per cent of that of an ECJ judge, higher than we would have liked. On this basis, MEPs’ salaries would have come to more than €9,000 per month. It is also a flat salary: all MEPs will be paid at the basic level, irrespective of what position they hold. The Statute would index MEPs’ salaries to Commission salaries, thereby allowing them to be up-rated annually in line with the Commission’s cost-of-living indicators. This method, which we and the European Scrutiny Committee have previously agreed (Committee’s decision of 9 April 2003), is a sensible approach. The new salary level will mean UK MEPs taking a pay cut.
As with last year’s proposals, the pension age is raised from 60 to 63. But in a change from last year, the European Parliament would pay MEPs’ pension contributions, not the MEPs themselves (under the Irish proposals, MEPs would have paid one third of their pensions, with the remaining two-thirds being paid by Parliament). However, the drop in salary, plus the fact that a lower salary naturally means a lower pension, means that MEPs will actually be substantially worse off financially than they would have been under the Irish proposals. In Westminster, membership of the Parliamentary Contributory Pension Fund (PCPF), a funded scheme, is optional. (The provisions of the UK MEPs’ scheme are currently a mirror image of those of the PCPF.) MPs pay either 10 per cent (for a 1/40th accrual rate) or 6 per cent (1/50th). The employer contribution is paid by the Exchequer at a rate determined by the Government Actuary. The current contribution is 24 per cent. In Sweden and Denmark national parliaments pay 100 per cent of their national parliamentarians’ pension contributions.

Under the new proposals, the European Parliament will meet two-thirds of the cost of social security (medical and accident insurance) contributions. MEPs would bear the remaining third.

The draft Statute incorporates the compromise on taxation which was agreed under the last Belgian Presidency, namely that MEPs would be subject to Community tax with the option for Member States to impose a national top-up tax. This ensures that MEPs will be taxed on the same basis as their constituents, meaning they won’t benefit from a lower rate of taxation than those they represent.

We welcome the provision under the internal European Parliament Regulation on real costs and expenses for only one of the six frais—that being for general administrative expenses (office equipment etc)—to be paid in lump-sum form. The other five frais, including travel, would be based on actual costs incurred. This is a very welcome and extremely significant amendment, as it will help to halt any abuse of expense claims by MEPs. There are currently some MEPs who, because they can travel in their home countries for free, can receive through the travel expenses every year nearly £30,000 tax-free in addition to their salary. This will stop under the new expenses regime, as travel will be reimbursed on production of receipts only. As you know, backbench MPs here have all office IT and staff covered by the House and an annual budget of up to £80,460 to employ staff in their constituencies. They are also afforded free travel to and from the House and on Parliamentary business in the UK and/or a motor mileage allowance of 40p per mile for the first 10,000 miles and 25p for every mile thereafter.

The Luxembourg Presidency’s proposals on a Members’ Statute therefore offer a number of small, positive changes on that agreed by Parliament, HMG and the European Parliament last year. I believe that the current deal is a good one and is to be supported. The longer the European Parliament operates without a Statute, the longer it is open to claims of a lack of transparency.

I regret that, on this occasion, the Council may be asked to take a decision before the proposal has been through the normal parliamentary scrutiny procedure. I would be happy to discuss this matter further with you if necessary. I will also update you of any changes to the proposals ahead of the GAERC on 13 June.

1 June 2005

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 1 June which was considered by Sub-Committee E (Law and Institutions) at its meeting on 22 June. While it is regrettable that your Department did not feel able to keep the Committee more fully informed of developments these past 18 months you are, of course, right in saying that it would have been difficult for us to conduct scrutiny in these past few weeks. That said, we are pleased to note that an agreement is in sight and that satisfactory arrangements have been reached both as regards tax and expenses, the latter, you will recall, being of particular importance to the Committee.

I understand that part of the agreement in the Council on the Statute is that the European Parliament should revise those provisions of the Protocol on Privileges and Immunities of the European Communities of 1965 which concerned MEPs. You will recall that the issue of privileges and immunities is one of particular concern to both Scrutiny Committees. Accordingly I would invite you to keep us closely informed of developments in this matter.

28 June 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

I wrote to you on 1 June to bring you up to date on where we stood on agreeing a Statute for Members of the European Parliament in light of recent proposals from the Luxembourg Presidency. I promised to update you with any further details. As the timeline was so tight, I warned you that the Council may be asked to take a decision on the proposal before it had been through the normal Parliamentary scrutiny procedure.
In my last letter to you I set out the expected terms of the Luxembourg Presidency’s deal, namely:

— a common salary of £7,000, paid by the EU, ending the pay disparities between Members, who currently receive the same salaries as members of their national parliaments;

— income tax paid to the EU budget, with Member States retaining the option to apply a top-up to the level of national rates;

— a common pension scheme, with contributions paid by the European Parliament; and

— travel expenses refunded on the basis of actual cost incurred, rather than on the present flat-rate basis.

These proposals were sent to the European Parliament for consideration, and were voted upon on 23 June. The EP adopted the proposed Statute with a large majority: 403 votes for, 89 against and 92 abstentions. It also rejected the Italian unilateral statement on comparability between national parliamentarians and MEPs. There will now probably have to be some further Council discussions on that point but the Presidency still hope to bring this to a Council “A” point very quickly.

The Statute will come into force after the 2009 European elections. After that, there will be a transition period of two full terms of office during which each Member State may continue to apply rules different from the provisions of the Statute.

12 July 2005

SUCCESSION AND WILLS (7027/05)

Letter from the Chairman to Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs.

The Green Paper was considered by Sub-Committee E (Law and Institutions) at its meeting on 8 June. We note that the Green Paper poses a large number of questions and raises some important policy and practical issues. The Committee’s preliminary reactions are as follows.

As is clear from the Green Paper, there are wide divergencies in the law and practice of wills and succession, testate and intestate, in the Member States (there are indeed within the United Kingdom). We note that the Commission accepts that substantial harmonisation would be “inconceivable” and purports to limit its action to private international law. But, as you acknowledge in your Explanatory Memorandum, some harmonisation cannot be ruled out.

The Committee agrees with the Government that any proposed EU legislation should be “built on a firm evidence base and bring about clear benefits for citizens by addressing specific problems”. It is noteworthy that the Commission does not identify any real problems. Do the Government agree with the Commission’s assessment as to the potential number of estates which may be involved (50,000 per year)? Has the Commission given you or do you have any other information relating to the types and numbers of problems that actually arise in practice?

There are, as you may know, several international instruments relating to wills and succession (these are referred to briefly in the Working Paper annexed to the Green Paper). It is significant that only one Convention, the 1961 Convention on the conflict of laws relating to the form of testamentary dispositions, has had any substantial measure of acceptance (being in force in 43 countries including 16 EU Member States—the United Kingdom implemented the Convention in the Wills Act 1963). The 1972 Basel Convention on the establishment of a scheme of registration of wills is in force and has been ratified by 11 States (10 EU States plus Turkey). The 1973 Washington Convention providing a uniform law in the form of an international will is in force in 11 countries, including six Member States. Otherwise international conventions in this field seem to have received minimal support. We note that the UK prepared the way to ratify the 1972 and 1973 Conventions in the Administration of Justice Act 1982 but no further steps have been taken. We believe it is useful to consider what lessons can be learned from the history of international action in this area. The 1961 Convention seems to be widely accepted. Is it necessary to have another set of international rules? On the other hand the absence, for example, of a positive response from Member States to the Hague Conventions on the international administration of estates and on the law applicable to succession may show the difficulty of finding common workable rules in this area. Why should the Commission be any more successful? As the Commission acknowledges, there are substantial differences in the approach and detail of Member States’ laws on succession.
One important issue concerns the scope of application of any EU instrument relating to wills and succession. We agree with the Government that any suggestion that an EU instrument should have universal application should be looked at most critically. This is an issue which is relevant to a number of other proposals at European level, such as Rome II on which I am writing to you separately.

Finally, we would offer a response to Question 39 of the Green Paper. The Committee agrees with the Commission that producing a corpus of Community rules on succession and wills would be “a particularly vast and complex project”. While in theory it might be possible to produce a single, complete instrument we doubt the necessity, feasibility or desirability of such an instrument. Any action at Community level should be limited and addressed to dealing with identified problems having a significant impact on the internal market. The principle of subsidiarity must be fully respected. The Commission should identify the Union objective to be achieved and give its reasons for concluding that, in respect of the specific legislative proposal, the objective can be better achieved at Union, rather than national, level. The Commission’s case for action should identify relevant qualitative and quantitative indicators for evaluating that objective. It should also describe, and take account of lessons learned from, previous similar international exercises.

The Committee decided to retain the proposal under scrutiny and looks forward to receiving your comments on the above.

13 June 2005

Letter from Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 13 June. I am very grateful to you and the Committee for setting out your preliminary reactions to the Commission’s green paper “succession and wills”. The paper has raised a large number of important issues and the Committee’s comments will help us prepare our reply. In fact, I hope it will be possible to obtain an extension from the Commission so that we can give the Committee an opportunity to comment on the draft reply before it is sent. This will, however, depend on the degree of flexibility that the Commission is able to allow.

At present, we are still considering the questions in the paper and gathering comments from stakeholders to inform our reply. This process will continue over the summer. In relation to your specific points I have the following comments.

I welcome your support for our evidence-based approach. The government shares your concern that the principle of subsidiarity is respected, and that any Commission proposals should be clearly aimed at meeting justified objectives.

There is a good deal of work to do to establish an evidence base, as there are no readily available relevant statistics and the only information we have from the Commission is in the working paper. We will therefore be gathering evidence and putting the evidence gathered to the proof. This will be an ongoing process, but we hope that our consultation with stakeholders will enable us to make an informed assessment of the need for measures at a European level.

That said, I agree that the basis of the Commission’s assertion that there could be 50,000 “transnational estates” every year is not clear. There, however, is some evidence that cross-border property ownership is increasing. The Office for National Statistics’ Economic Trends estimates that ownership of a second home in Europe by UK citizens increased by 45 per cent between 1999–2000 and 2003–04, with approximately 150,000 English households owning a second home in a European country (including non-EU Europe) in 2003–04. Migration is also increasing. The International Passenger Survey (IPS) estimates that in the five years 1996 to 2000, almost 90,000 EU nationals migrated to the UK compared to about 70,000 in the previous five-year period, while over 70,000 UK nationals migrated to other EU Member States in 1996 to 2000, compared to just over 60,000 in 1991 to 1995. That this is having an impact in the field of wills and succession seemed to be confirmed by a show of hands at a joint Law Society and Society of Trust and Estate Practitioners conference about the green paper on 1 July, when the vast majority of the 200 or so solicitors and other professionals present indicated that they advised clients regularly about cross-border succession issues. The conference was one of the first UK Presidency events.

The early replies to our enquiries of stakeholders indicate that problems arise mostly from the differences in national conflict of law rules, and where the courts of one jurisdiction have to apply the law of another. There are also issues around “renvoi”.

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I note your comments about existing international instruments. Although they are now some distance in the past, we shall certainly take their history into account in preparing our reply. However, the limited impact of previous international conventions does not preclude success in the future and it might be that the time is ripe for a fresh attempt from a European perspective. If a need can be demonstrated, then this further attempt may well be worthwhile.

On the proposed scope of application of the regulation, I welcome your support and look forward to hearing from you.

18 July 2005

Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 18 July which has been considered by Sub-Committee E (Law and Institutions). We are pleased to note that you find our comments helpful and that on many points there is agreement between the Government and the Committee.

We note that you are consulting stakeholders on the proposal before offering a response to the Commission. We would be pleased to see the outcome of that exercise, particularly as it relates to the question of need for action at Union level. The statistics you give are helpful but do not detract from the fact that, as we suggested in our draft response to Question 39 of the Green Paper, any action at Community level should be limited and addressed to dealing with identified problems having a significant impact on the internal market.

The Committee looks forward to receiving a summary of the results of your consultation exercise and a copy of the Government’s response to the Green Paper. In the meantime the Green Paper is retained under scrutiny.

13 October 2005

TAKING INTO ACCOUNT OF CONVICTIONS IN MEMBER STATES IN NEW CRIMINAL PROCEEDINGS (7645/05)

Letter from the Chairman to Andy Burnham MP, Parliamentary Under Secretary of State, Home Office

The proposed Framework Decision was considered by Sub-Committee E (Law and Institutions) at its meeting on 22 June. The Committee decided to retain the proposal under scrutiny. We would be grateful for the following information.

The document provides little explanation or justification for the proposed Framework Decision. We note that the Decision would replace Article 56 of the 1970 Convention on International Validity of Criminal Judgments. At first glance that Article would appear to be far more compatible with the principle of subsidiarity than the proposed Framework Decision. Given the existence of the 1970 Convention and the absence of any explanation for a need for more prescriptive legislation paragraph 14 of your Explanatory Memorandum is far from convincing.

We note that the proposal is drawn sufficiently wide to include road traffic offences even if these may not be classified as “criminal” in some jurisdictions. It would be helpful if you could explain to the Committee how the Framework Decision would apply in the context of road traffic offences. Would, for example, a foreign conviction for speeding attract a number of penalty points or in some other way count towards disqualification here of the driver concerned? If not, why not?

Finally, there is a need to clarify the scope of Article 4. As you say in your Explanatory Memorandum it is not certain to what extent this provision would include spent convictions. The Committee agrees that it would be most unsatisfactory if the failure of Article 4 to encompass spent convictions resulted in UK nationals receiving unfair treatment in a foreign court.

28 June 2005

Letter from Andy Burnham MP to the Chairman

Thank you for your letter of 28 June about the proposed Framework Decision on taking into account convictions in the course of new criminal proceedings in the European Union. I am writing to you in order to provide you with further information on the Government’s consideration of the proposal, in particular on the specific issues highlighted by the Committee.

The Government would emphasise that negotiations will not commence until January 2006 at the earliest. We will take full advantage of the months before negotiations to consult fully with other Government Departments, Non Governmental Organisations and other relevant parties to ensure that we formulate fully informed policy lines.
The Government can broadly support this proposal, which will complement the improvements being made at the EU level to the criminal record exchange mechanisms. We are aware that Article 56 of the European Convention on the International Validity of Criminal Judgements sets out in general terms that State Parties should legislate in order that they can take into account previous convictions during criminal proceedings. It is important to note however that only nine EU Member States have ratified the Convention. A major reason for this is that the Convention has been superseded in a number of areas by mutual recognition measures at the EU level, such as the mutual recognition of financial penalties.

The Government considers this proposal to be consistent with the principle of subsidiarity, as only action at an EU level would be effective in this area. This proposal seeks to address the need for a common and clearly defined EU rule whereby previous overseas convictions will be taken into account during new criminal proceedings.

The Government is considering the implications of the proposal in relation to road traffic offences. Article 5 of the proposal would require the United Kingdom to take into account convictions passed due to “conduct infringing road traffic regulations . . .”. We are considering what the impact of the proposal would be for a UK driver who had received a driving conviction from an overseas court and is then facing new criminal proceedings in the UK for road traffic infringements, particularly with regard to the implications for our domestic laws and policies on penalty points. We will be seeking the views of a number of organisations on this through our consultation process. I will ensure that the Committee is kept informed of developments.

The Government also notes the Committee’s views on the issue of spent convictions. We have been considering this issue further and I accept that UK rules on spent convictions are a matter of national law which is not replicated in other member states to the same extent or on the same basis as in this country. However, whilst we do not believe it is practicable to seek to harmonise these rules entirely, we do not consider that spent convictions would in practice unduly prejudice UK nationals. In our view, this is a matter which needs further consideration. We note that the Government do not believe that spent convictions would in practice unduly prejudice UK nationals. In our view, this is a matter which needs further consideration.

Finally, there is the question of spent convictions. We note that the Government do not believe that spent convictions would in practice unduly prejudice UK nationals. In our view, this is a matter which needs further consideration.

26 September 2005

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 26 September which was considered by Sub-Committee E (Law and Institutions) at its meeting on 19 October. We note that it is unlikely that negotiations on the Framework Decision will commence until next year and are pleased to see that in the meantime the Government intend to consult fully with interested parties.

You will recall that we raised three matters in our earlier letter. The first concerned subsidiarity. We questioned whether a case had been made out for more prescriptive legislation than the 1970 Convention. In reply, you draw attention to the fact that not all Member States have ratified the Convention and that in a number of respects it has been overtaken by measures at EU level. You say that only action at an EU level would be effective in this area and that the proposal would address the “need for a common and clearly defined EU rule”. Our questioning is aimed at identifying the need for such a rule. In order to respect the principle of subsidiarity, it is necessary to identify the Union objective to be achieved and to give reasons for concluding that, in respect of this specific legislative proposal, the objective can be better achieved at Union, rather than national, level. As you are aware, the case for action should identify relevant qualitative and quantitative indicators for evaluating that objective. It should also describe, and take account of lessons learned from, previous similar international exercises. We would therefore be grateful if you could more clearly define and justify the need for the action being proposed in the Framework Decision.

As regards the application of the Framework Decision to road traffic offences, we note that you are giving this matter some consideration and that you will be seeking the views of interested parties during your consultation exercise. We look forward to receiving a detailed response to our questions in due course.

Finally, there is the question of spent convictions. We note that the Government do not believe that spent convictions would in practice unduly prejudice UK nationals. In our view, this is a matter which needs further consideration. We would be grateful for your assurance that this is a matter which you will be putting to consultees, especially those outside Government.
The Committee decided to retain the proposal under scrutiny. We look forward to receiving your response to the above points and, in due course, a summary of the results of your consultation exercise.

20 October 2005

Letter from Andy Burnham MP to the Chairman

Thank you for your letter of 20 October in relation to this proposal. I write to provide some further details on the specific issues raised in your letter.

You asked me to define and justify the need for action in the areas covered by the proposed Framework Decision. This proposal is one of a package of measures aimed at improving the quality of information exchanged on criminal records—an issue which was prioritised in the European Council Declaration on Combating Terrorism of 25 and 26 March 2004—and to ensure that once exchanged, criminal record information can be used effectively. Related measures include the Council Decision on the exchange of information extracted from the criminal record, and the forthcoming proposal on the electronic exchange of information on convictions and disqualifications. The overall aim is to ensure that criminals cannot evade justice by moving to different countries and that there are no safe havens within the EU. In the words of Commissioner Frattini these measures will ensure “that criminals are brought to justice regardless in which Member State, they committed their crimes or fled to afterwards”. The Council Decision which improves the physical systems for exchanging criminal record information (COM(2004)664 final), goes “hand in hand” with this new proposal.

The White Paper on exchanges of information on convictions and the effect of such convictions in the European Union (COM(2005) 10 final) stated—on the basis of research conducted among member states—that at present the scope for attaching consequences to foreign convictions is covered by national law and is often limited. It confirmed that only a few member states have ratified the Council of Europe Convention on the International Validity of Criminal Judgements (1970). This proposal on taking account of convictions seeks to ensure that having exchanged information on criminal records, Member States are able to make full use of this information.

Action in this field to enhance the application of the principle of mutual recognition is consistent with the objective of creating an area of freedom, security and justice. This proposal is consistent with priority areas set out in the Hague Programme, namely:

- The fight against organised crime; and
- Civil and criminal justice: effective access to justice for all and the enforcement of judgements.

I outlined in previous correspondence that the Government considers current legislation at international level for taking account of previous convictions to be inadequate. In many parts the 1970 Convention has been superseded by other EU level mutual recognition measures. The Government believes it is important that within the EU, Member States should take into account previous convictions from courts in other jurisdictions, and (while we recognise that this is already possible within the UK) that action at EU level is needed to achieve it in all member states.

However the Government is aware of the need to examine the provisions of this measure closely to ensure that they are proportionate, and our consideration will be informed by the Committee’s comments and by responses to our consultation paper on the measure. I can confirm that the consultation paper did invite comments on the particular issues mentioned in your letter, namely road traffic offences and spent convictions. The deadline for responses to our initial consultation is 17 November. I will ensure that a summary of responses is sent to the Committee shortly after this date. We will also be holding a stakeholder meeting in late November with relevant colleagues from a number of Departments, including officials from the Scottish Executive and Northern Ireland Office. This is important as we are aware that there may be differing implications for Scotland and Northern Ireland.

15 November 2005

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 15 November which was considered by Sub-Committee E (Law and Institutions) at its meeting on 30 November. The Committee is grateful for your further and fuller explanation of the need for the Framework Decision. We note the emphasis you give to the fact that the Framework Decision is one of a package of measures to which the European Council, both in its 2004 Declaration and, more recently, the Hague Programme, accords priority. We are particularly grateful for your assurance that the Government will
examine the provisions of the Framework Decision to ensure that they are proportionate and that you will be paying due regard to the comments of the Committee and the views of consultees.

As regards the other two matters raised in the earlier correspondence, the application of the Framework Decision to road traffic offences and the issue of spent convictions, we are pleased to see that you have sought the views of interested parties on these matters. We look forward to receiving a summary of the responses to the Government’s consultation exercise. We would also be interested to learn the outcome of your meeting with officials from the Scottish Executive and Northern Ireland Office. It is important that the Government are aware of the potential implications of the Framework Decision in all the jurisdictions of the United Kingdom.

The Committee decided to retain the proposal under scrutiny.

Letter from Andy Burnham MP to the Chairman

In your previous correspondence about this Framework Decision you have indicated a wish to be informed of progress with our consultations with interested organisations as well as the outcome of discussions with colleagues in Scotland and Northern Ireland.

I enclose summaries of the responses (not printed) we have received and I hope you find these interesting. I believe that most respondents have been broadly supportive of the general principles underlying this proposal for a Framework Decision. They have, however, raised concerns about how the proposal, as currently drafted, would work in practice as well as a number of interesting points to which we will be giving further consideration.

16 December 2005

TERRORIST RECRUITMENT: ADDRESSING THE FACTORS CONTRIBUTING TO VIOLENT RADICALISATION (12773/05)

Letter from the Chairman to Rt Hon Charles Clarke MP, Secretary of State, Home Office

Sub-Committee E (Law and Institutions) considered the above proposal at its meeting on 16 November.

The Committee recognises that terrorism is a global concern and welcomes efforts to tackle it at an international level. The Communication from the Commission provides a number of useful suggestions to improve cooperation across the European Union and between the Union and third states. However we agree that any proposal must only deal with matters within the Union’s competence and we share your concern that some of the measures suggested may potentially be outwith that competence. We intend to examine carefully any future proposals arising from this Communication to ensure that the Union’s remit is not exceeded.

The Committee has decided to clear this document from scrutiny.

17 November 2005

THIRD MONEY LAUNDERING DIRECTIVE (11134/04)

Letter from Stephen Timms MP, Financial Secretary, HM Treasury to the Chairman

Thank you for your letter dated 8 December16 in response to my request for scrutiny clearance. I am writing primarily to respond to the points you raise but I also thought it would be helpful to include an update on the negotiations and the progress of the Directive through the European Parliament.

You raised three main points: the timing of the proposal, the comitology provisions over definitions and lawyers and tipping off. I would like to respond to each of these in turn.

Timing of the Proposal

You are concerned that a proposal for a Third Money Laundering Directive was tabled so soon after the Second Money Laundering Directive.

The fact that the timing of the proposal for a Third Directive came so soon after the Second Directive has been a concern to many of the regulated sector in the UK and to MEPs discussing this Directive. Therefore the UK opposed a proposal for a Third Directive so soon after implementation of the Second Directive when the idea

was first mooted. However, the European Commission and the majority of Member States were in favour of early action for the following reasons.

First, member states considered that a Third Directive was essential to ensure consistent European implementation of international Financial Action Task Force recommendations, updated in 2003. While UK legislation was already compliant with most of the FATF recommendations through the Proceeds of Crime Act and terrorism legislation (indeed, the UK was a key actor in the revision of the FATF recommendations), not all EU countries had similar advanced Anti Money Laundering and Counter Terrorist Financing legislation. For example the FATF recommendations recommend that terrorist financing be included in the scope of money laundering legislation: This is already the case in the UK but the Third Directive now requires all Member States to update their legislation accordingly. Another example is that the Third Directive requires all Member States to include trusts and company service providers into the regulated sector. This has also already been done in the UK through our Money Laundering Regulations 2003.

Secondly, the majority of Member States and the Commission considered that updating the legislation would improve cross-European standards and establish a co-ordinated EU approach to tackling the international problem of money laundering. The Government believes that this should benefit the UK in terms of competitiveness (allowing a level playing field in regulations), and in providing consistent international regulatory standards and therefore preventing criminals from moving their money to the weaker jurisdictions with weaker anti money laundering/counter terrorist financing controls.

Finally, it was felt that new European legislation would provide an opportunity to target the most vulnerable sectors and take account of new risks. For example the Directive prohibits credit institutions from entering into or continuing a correspondent banking relationship with a shell bank. Shell banks, which have no physical presence in any country, are usually unregulated and have frequently been used as vehicles for fraud, money laundering and terrorist financing. The UK is in favour of global, not just EU, controls to prevent financial crime via shell banks. It is already UK industry practice, not to enter into a correspondent relationship with shell banks.

It was for these reasons that the majority of Member States supported the Commission in putting this proposal forward. It then fell under the Dutch Presidency to set the timings of the negotiations and they treated this as priority for their presidency, which led to the tight negotiating timetable. It should be noted that at all stages the UK pressed for more time for consultation and a proper assessment of the costs and benefits of new legislation to take place before negotiating on this proposal. While we were unsuccessful in this request, we have continually engaged all parts of the regulated sector to ensure that the UK’s negotiating position was fully informed by industry views.

As I outlined in my letter to you of 29 November 2004, the UK believes that despite the less than ideal timing, there are genuine benefits for the UK to support the Directive. In particular, the Directive will bring all EU countries up to the global standard for anti money laundering/counter terrorist financing controls, which the UK already largely meets. This will make EU anti money laundering/counter terrorist financing defences more effective, and ensure a level playing field for UK industry. In addition the UK has secured some vital changes to the text through negotiations, most importantly enshrining the risk based approach to all customer due diligence requirements and allowing a longer implementation time. For these reasons the Government felt able to sign up to the general approach to the Directive. If the UK had not played an active part in negotiations, such improvements to the text would not have been achieved.

**Comitology and Definitions**

I turn now to your concern regarding the comitology provisions and in particular on definitions such as politically exposed persons. As I set out in my last letter, the UK successfully negotiated for a clarification of the comitology procedure to be included in a recital to the text. As you point out this is not in the text itself, which would be preferable. The European Parliament is currently considering the issue. The terms of process that we have successfully included in the recital are broad but they are clear in the intention that this process will be transparent, will need to consider the costs and benefits of the implementing measures and will need to be consulted upon. You can be assured that the UK will continue to make representations on this point and will also be an active member of the comitology committee that will decide on these implementing measures.

I note that your Committee has concerns over the Commission’s power to clarify certain definitions, in particular the definition of a Politically Exposed Person (PEP). I would like to set out what the aim of the comitology committee will be in looking at this definition.
It is important that regulated institutions have risk management systems that enable them to address the risks posed by politically exposed persons who have access to, and potentially control over, public funds, which they might be in a position to misappropriate, or may be able to grant favours illegally in exchange for bribes. This is why both the internationally agreed FATF standards and the Third Directive seek to include it in their provisions. All Member States and the Commission however, realise the difficulty in identifying PEPs from what can be, a potentially broad category. That is why the Third Directive states that PEPs will be identified and verified on a risk sensitive basis. The definition of PEPs is one of the areas being discussed by the European Parliament. The final definition reached will be in the main text of the Directive.

The Commission, through its comitology provisions therefore aims to provide further information on who should be thought of as a PEP to help Member States and institutions in identifying such people. This will also help to ensure a consistent approach across Member States. The UK spoke to a few key stakeholders on whether this would be useful and many agreed that clarification of the type of categories through the comitology procedure would be helpful.

**The Position of Lawyers**

As you state, article 25 of the draft directive does not allow Member States to exempt lawyers and other specified professionals from the prohibition of disclosure (or “tipping off”) obligation generally. This is a change from the position under the second Money Laundering Directive, which gave Member States discretion as to whether the relevant professionals were to be covered by the obligation to inform the authorities of any fact indicating money laundering. The new approach in article 25 flows from recommendation 16 of the FATF 40 recommendations, which underlie the whole of the draft directive and are supported by the Government.

I note your concern that legal professionals may be placed in a difficult position by article 25 and have consulted Home Office and Department of Constitutional Affairs colleagues on the matter. We are, however, not convinced that the article will have the result your committee fears.

Article 25.1 provides that the professional “shall not disclose to the customer concerned nor to other third persons that information has been transmitted in accordance with articles 19 and 20 or that a money laundering or terrorist financing investigation is being or may be carried out.” The scope of article 25 is, therefore, dependent on the scope of articles 19 and 20. If there is no obligation to file a report under those articles then, in the absence of knowledge by the professional that an investigation is being or may be carried out, article 25 cannot bite.

Article 19 largely follows article 6.1 of the second directive. Article 20.2, which follows article 6.3 of the second directive, confers a discretion on Member States to exempt relevant professionals from the obligation in article 19 to inform the FIU of their suspicions of money laundering in relation to information received in specified circumstances. In particular, the exemption may apply to ascertaining the legal position of the client or defending the client in judicial proceedings. In these circumstances, which follow the traditional application of legal professional privilege, article 25 will not be engaged, because there will be no obligation to file a report to which it can attach.

Even where article 25 does apply, article 25.4 of the draft directive states that relevant professionals may seek to dissuade a client from engaging in illegal activity. This provision is clearly derived from the explanatory note to recommendation 14 of FATF 40, which provides that seeking to dissuade a person from illegal activity is not tipping off.

The intention of the articles is supported by recitals. Recital 17, for example, specifies that “it would not be appropriate under the Directive to put lawyers ascertaining the legal position of, or advising, a client in respect of these activities under an obligation to report suspicions of money laundering or of terrorist financing.” Recital 18 makes the same point in relation to other professions. Recital 27 states that article 25 cannot interfere with professional secrecy legislation.

The extent of legal professional privilege as far possible offences under Section 328 of the Proceeds of Crime Act is concerned was recently the subject of a judgement by the Court of Appeal in the case of Bowman v Fells, which the Government is currently considering.

We believe that taking these articles and recitals together a reasonable balance has been struck between the requirements of the enforcement authorities and the protection of individuals.

Although the individual client’s right to legal professional privilege is not an absolute right—as with so many other human rights a balance must be struck between competing interests—the supremacy of fundamental human rights is clearly recognised in recital 43 of the draft directive. It states that “this directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights.
of the European Union. Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention on Human Rights”.

For these reasons, the Government does not agree the directive should be characterised as an assault on the fundamental nature of the lawyer client relationship.

**REGULATORY IMPACT ASSESSMENT**

You are also awaiting an updated Regulatory Impact Assessment on the Third Money Laundering Directive. My officials are still working with the Cabinet Office on getting a quantitative assessment of the impacts for all sectors affected. I hope to forward this to you shortly.

**UPDATE ON NEGOTIATIONS ON THE THIRD DIRECTIVE**

As I said in my letter of 6 December the UK signed up to the General Approach to the Third Money Laundering Directive on the 7 December 2004. The draft Directive has now passed to the European Parliament; the lead committee discussing the Directive is the Civil Liberties, Justice and Home Affairs committee (LIBE) and the rapporteur has delivered his report, which in the majority supports the Council text. We are awaiting the rest of the committee’s views; and the Council and the Parliament are now discussing whether a first reading deal can be reached. If this is possible then political agreement may be reached in June.

I am grateful to the Committee for giving us this opportunity to set out our understanding of these provisions and hope that I have satisfactorily answered the Committee’s concerns.

21 March 2005

**Letter from the Chairman to Stephen Timms MP**

Thank you for your letter of 21 March, which Sub-Committee E (Law and Institutions) examined in April. While we acknowledge that you have addressed the points raised in our letter of 8 December in detail, we did not find your arguments convincing.

On the timing of the proposal, we note that the Government appear to share the Committee’s concerns but had to give way to pressure from the Commission and other Member States. As negotiations have progressed substantially, the Committee does not have any other choice at this stage but to reiterate its view that it would have been preferable to have assessed fully the implications of the implementation of the second Directive—most notably regarding the legal profession—prior to beginning negotiations on the third Directive.

On the comitology point, you note that the comitology committee will clarify “technical aspects” of definitions such as politically exposed persons. In view of the very broad definitions in the text of the Directive, however, such “clarification” may in effect amount to an interpretation of the legislation, or even to the establishment of new, more detailed definitions. The fact that this can be done in this sensitive area without Parliamentary oversight is a matter of concern.

But the most pressing concern remains related to the position of lawyers. We note your comments on the new tipping off provision (Article 25). Under Article 8(2) of the second money laundering Directive, lawyers may be exempt from the tipping off duty by Member States. In the UK lawyers have been largely exempt by virtue of section 333(2) and (3) of the Proceeds of Crime Act 2002 (POCA). The third Directive would change this, and only exempt lawyers when seeking to dissuade their clients from engaging in criminal activity. This is a significant change, which would require amendments to domestic legislation.

Care must be taken that the third Directive does not challenge the protection of legal privilege and the lawyer-client relationship. These issues have caused great concern both to the legal profession and to courts in the UK. In the recent Court of Appeal judgment *Bowman v Fels*, the Court stressed the importance of legal privilege as a fundamental right, by quoting extensively the leading House of Lords cases *Three Rivers* and *Morgan Grenfell*. The Court of Appeal ruled that section 328 of POCA “is not intended to cover or affect the ordinary conduct of litigation by legal professionals” (para 83).

The second money laundering Directive does not include a provision similar to section 328 POCA, which appears to constitute an example of “goldplating”. This was recognised by the Court of Appeal in *Bowman v Fels*, noting that “fundamental human rights or obligations owed to a court by implication of law cannot be swept away these days without clear evidence of a Parliamentary intention to that effect, even if Parliament is in some respects to be taken to have gone outside the strict requirements of a directive in addition to fulfilling them to the letter” (para 108).
We believe that the protection afforded to the lawyer-client relationship by courts not only demonstrates the need for a careful and restrictive interpretation of the duties imposed on lawyers by the second money laundering Directive, but also seems to argue against attempts to make further inroads to the lawyer-client relationship by extending the tipping off duty to lawyers. You note that the Government are considering *Bowman v Fels*. We would welcome your comments on these points in the light of that consideration.

The Committee decided to retain the documents under scrutiny pending your comments on these points and the submission of a full Regulatory Impact Assessment.

7 April 2005

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

Thank you for your letter on the 7 April to Stephen Timms on the Third Money Laundering Directive. As duty Minister, I am writing to respond to the points raised in that letter but also to update you on the progress of the negotiations on the Directive and to inform you that we intend to sign up to Political Agreement on the 7 June.

**The Position of Lawyers**

Let me first address your most pressing concern on the Third Money Laundering Directive. We have consulted with our colleagues at the Home Office who lead on this matter and they advise me that while we recognise your concern regarding the impact on lawyers of Article 25 of the draft Directive, we are not persuaded your committee’s fears will be realised for the reasons set out in Stephen Timms’ letter of 21 March.

We are agreed that when implementing the Third Directive, the principle of legal professional privilege must be upheld: that care must be taken in the interpretation of obligations imposed on lawyers regarding the “tipping off” provisions; and we trust that you agree (at least in principle) as most do, that if lawyers are to be part of the reporting regime, they should also be subject to criminal sanctions should they deliberately subvert that regime by tipping off the subject of a disclosure.

In light of our common ground, we urge your committee to approach the Directive as a comprehensive document. It is important that the Directive should be considered in context rather than as solitary articles interpreted in isolation.

Article 25 in conjunction with article 20(2) unambiguously states that an obligation to notify under article 25 need not arise where the specified professionals obtain the information “…in the course of their ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings”. Thus the obligations under the tipping off provision in article 25 are rarely likely to apply, which effectively leaves lawyers largely exempt.

When the third Directive is considered as a comprehensive document we believe it is consistent with the important principle of legal professional privilege as considered by the Court of Appeal in *Bowman v Fels* recently. As a result of this decision lawyers engaged in legitimate litigation work do not now need to seek consent from NCIS for the purpose of sections 327–329 of the Proceeds of Crime Act 2002 (POCA), which set out the money laundering offences under the Act. Nor is it necessary for lawyers to report suspicions that have come to them through privileged circumstances (Section 330 (6)(b) POCA).

The Government’s position post-*Bowman v Fels* is still under consideration. At present The Home Office can confirm there are no immediate plans for legislative changes regarding the issues raised in the judgement.

We reiterate that nothing in this Directive will be implemented in a manner inconsistent with ECHR and thus will serve to protect such fundamental principles as legal professional privilege on how this is done.

In conclusion the Government believes the Directive delivers FATF’s objective—of restricting deliberate disclosures that enable money launderers involved with lawyers, to take steps to cover their tracks—in a specific and targeted way, while affording the protection needed to the UK’s fundamental legal principles.

In any event, seeking to remove Article 25, even if we wanted to, is simply not a viable option. With QMV, we would not get enough support from other Member States with what would be regarded as a wrecking amendment which was inconsistent with the relevant FATF recommendation.

We can give your committee the added assurance that the Government will seek to implement Article 25 in a sensible way in the UK and we will of course consult the legal profession on the development of the new provisions.
FINAL REGULATORY IMPACT ASSESSMENT:

We will send to you in a few days a final regulatory impact assessment (RIA) on the Third Money Laundering Directive. We have been working with the regulated sector to describe the main impacts of the Directive and provide a range of estimates for the costs of these impacts. The RIA will also describe the benefits and estimates possible savings that fall out of the Directive.

We would have hoped to get this updated RIA to you sooner. Gaining quantitative costings from the regulated sector unfortunately has proved extremely difficult and this contributed to the delay. I apologise for this delay.

We would argue, however, that our negotiations have been informed by the constant consultation with the regulated sector. Indeed, it is through joined up representation that we secured further improvements to the Directive through the European Parliament stages.

Although the RIA we will send you shortly will provide a broad range of the costs, in developing a further RIA for our implementation of the Directive (through updating our domestic legislation) we will consult again with the regulated sector and look to provide more detail of the costings for each policy option.

PROGRESS OF THE NEGOTIATIONS ON THE THIRD MONEY LAUNDERING DIRECTIVE

As Stephen Timms informed your committee on 21 March, the text of the Third Directive has been under consideration by the European Parliament. They have now proposed and voted upon a number of amendments to the Directive. The vast majority of these are supportive of the Council text as agreed at the General Approach but there are some changes to the text agreed to by the Council. The majority of these changes were helpful to the UK in improving the text further. For example we are pleased to see that there has been an extension of the implementation time to 24 months (a year longer than the Commission’s original proposal) this is something the UK pushed for. Annex A to this letter outlines the other main changes.

OUR INTENTION TO SIGN UP TO POLITICAL AGREEMENT ON THE THIRD DIRECTIVE:

Stephen Timms’ letters to you have already stated the benefits that we believe this Directive affords the UK. In particular, the Directive will target new risks and vulnerabilities and bring all EU countries up to the global standard for anti money laundering/counter terrorist financing controls. A standard which the UK already largely meets. This will make EU anti money laundering/counter terrorist financing defences more effective (by preventing criminals from moving their money to the jurisdictions with weaker anti money laundering/counter terrorist financing controls), and ensure a level playing field for UK industry.

The Government’s negotiating objectives for the Third Directive were to:

— Ensure that a risk based approach is enshrined into the customer due diligence requirements.
— Ensure that key new definitions are clear and workable as possible.
— Ensure that Comitology provisions are proportionate.
— Ensure the supervision requirements are proportionate.
— Ensure implementation time is sufficient.

We believe that we have now fully met these objectives with some important improvements in the text for the UK (for example clearer definitions, a recital ensuring that the comitology provisions are proportionate, enshrining the risk based approach in all of the customer due diligence requirements).

Given the above, we propose to sign up to Political Agreement on 7 June. I understand that you may not be able to clear scrutiny before political agreement because of the short time given to assess these points and in light of that we have formally noted a parliamentary scrutiny reserve at this part of the process. We would, however, urge you to support our intention to sign up to a Directive which benefits the UK and in which we have secured a number of important improvements to the text. The UK will need to officially vote on the Directive when it comes for formal adoption (likely to be either in July or October) and we would welcome your clearance of scrutiny before we come to vote.

3 June 2005

Annex A to letter from EST to Lord Grenfell

Main changes to the text since the General Approach was agreed in December 2004.

— Definition of politically exposed person tightened in the part on family member to “immediate family members and persons known to be close associates of such persons”.

— Definition of family member tightened in the part on family member to “immediate family members and persons known to be close associates of such persons”.

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— Definition of family member tightened in the part on family member to “immediate family members and persons known to be close associates of such persons”. 
— New recital to the obligation to identify and verify the beneficial owner. Clarifying that an obligation to identify the beneficial owner does not arise from the fact alone that there is a trust relationship in the comprehensibly supervised wholesale financial markets (e.g., bond markets). A number of our financial markets and trust representative stakeholders requested this.

— Definition of business relationship tightened to “business, professional or commercial relationship which is connected with the professional activities of the institutions and persons subject to this Directive and which is expected at the time when the contract is established, to have an element of duration”.

— Derogation to allow an opening of a bank account when not yet fulfilled customer due diligence requirements if (and only if) adequate safeguards in place to ensure transactions cannot be made until full compliance with customer due diligence requirements.

— Change in casino identification threshold to purchasing or exchanging gambling chips worth 2,000 Euros (up from 1,000 Euros).

— A new recital adding certain credit agreements as examples of less risky transactions.

— New recital to defining the role of agency and contract relationships.

— The review of the Directive to take place two years (down from three) after implementation time and to include a specific review of the Directive’s effect on lawyers and other professionals.

Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman

I am writing as a follow up to the Paymaster General’s letter dated 3 June, to forward you our full Regulatory Impact Assessment (RIA) (not printed) and to update you of our signing up to political agreement on the Third Money Laundering Directive.

The Regulatory Impact Assessment

The RIA is an updated version of the RIA that your committees received on 29 November 2004. Since then we have been working with the regulated sector to describe the main impacts of the Directive and provide a range of estimates for the costs of these impacts. The RIA also describes the benefits and estimates possible savings that fall out of the Directive.

I would like to note that these are estimates of potential costs as the Directive allows us flexibility in implementation of certain provisions. We will need to develop a further RIA for our implementation of the Directive and we will fully consult again with the regulated sector to help us provide more detailed costings for each policy option.

I believe, however, that this RIA provides an adequate estimate of the impact on the Third Money Laundering Directive, that it supports our intention to sign up to political agreement and serves as a sound basis to inform our implementation of the Directive.

Signing up to Political Agreement on the Third Directive

Further to Dawn Primarolo’s letter dated 3 June, I can confirm that the Government signed up to political agreement on the Third Money Laundering Directive at ECOFIN on 7 June. Signing up to political agreement means that it would be against the national interest not to vote for adoption of the Directive later this year. As this is the case, although we had informed other member states and the presidency that we had not cleared parliamentary scrutiny, political agreement unfortunately meant an effective override of the scrutiny reserve.

We took the view, however, that it was important for the UK to signal our support for this Directive at political agreement, and that to not sign up at this stage could be seen as the UK perversely blocking a Directive that we are widely known to support now that we have achieved our key negotiating objectives. Furthermore, as we are taking up the Presidency of the European Union in less than a month it is our aim to support consensus in Council in all cases except where we have substantial concerns.

15 June 2005

Letter from the Chairman to Ivan Lewis MP

Thank you for your letters of 3 and 15 June responding to the concerns raised by the Committee and providing a full and helpful Regulatory Impact Assessment (RIA). These were examined by Sub-Committee E (Law and Institutions) at its meeting on 22 June. In the light of the information given by the Government the Committee
decided to clear the document from scrutiny. We are particularly grateful for the assurances given regarding the implementation of the Directive and compliance with the ECHR.

28 June 2005

UK PRESIDENCY: ACHIEVEMENTS

Letter from Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

I am writing to report back to you on the achievements of the UK Presidency of the Council of the EU in those areas of the Justice and Home Affairs (JHA) agenda in which this Department leads.

Throughout the Presidency, our objective has been:
— to raise the profile of civil justice business within the European JHA agenda; and
— to demonstrate the important role of this business in enabling citizens to live, work, study, buy and sell and do business across European borders with the same security and ease of access to justice as at home.

We have at the same time been alert to the need to ensure that action at European level is confined to those measures which can add value to what can properly be achieved at national level—ie, confined to cross-border issues.

We have energetically taken forward the agenda of civil business inherited from Luxembourg, with a total of 31 working group days dedicated to civil business—more, we believe, than any previous Presidency. We held two Presidency events and shared with the Home Office responsibility for the JHA Councils in Luxembourg and Brussels and the JHA Informal in Newcastle.

In Newcastle, we had a half-day in plenary session on civil matters, during which we tackled the long-running argument on the extent of the EU’s power in terms of civil judicial co-operation (essentially, whether EU measures were to relate purely to cross-border cases or could cover purely domestic ones). The Committee is aware of the difficulties this issue has caused. We have always disputed the legal base for applying these measures to domestic cases and we successfully put the argument finally to rest. European measures are for cross-border cases only.

The resolution of this argument contributed directly (1) to our achieving political agreement at the December JHA Council on a European Order for Payment (making it easier to obtain judgments on uncontested claims by providing a uniform EU wide procedure and ensuring that these judgments will be automatically recognised throughout the EU) and (2) at the same Council banking the significant progress made during our Presidency towards the creation of a European small claims procedure (making it easier for consumers to resolve small claims arising in other EU countries using a simpler, faster and cheaper procedure).

We held a conference on contract law, which was the first coming together of the two networks established by the European Commission to oversee the academic work it had commissioned on a common frame of reference for European contract law (the network of Member States’ experts and the stakeholders’ network) with political representatives at the national and European levels and the Commission.

The exercise of establishing a common frame of reference is intended to help improve the quality of the acquis: if there is a common understanding of the underlying values, the thought is that the body of Community law can be better drafted and more effectively and evenly implemented.

We underlined to the conference that the foundation of our civil law ambitions was the understanding that progress must be built on mutual recognition and judicial co-operation. We could see no need for, nor any discernible demand for, a common code of European contract law, optional or otherwise. The clear message from the conference to the Commission was that future work on the common frame of reference should be directed towards the improvement of the consumer acquis.

We and the Scottish Executive jointly hosted a civil law conference in Edinburgh, to which I point as the positive focus of the influence we sought to bring to European work in the civil law field. At that conference, we had high quality presentations and debate on a series of themes: family mediation and ADR, e-Justice, the work of the Civil Judicial Network, stream-lined court processes and the future—how we can work together to make practical solutions. We had the honour too to host the presentation by the Commission and the Council of Europe of the inaugural award of the Crystal Scales of Justice for innovative practice contributing to the development of civil law. The award was won by an excellent scheme run by the courts in the jurisdiction of the Court of Appeal of Rovaniemi in Finland. The ceremony suitably marked the occasion of the European Day of Civil Justice.
The conference provided ample food for thought concerning the appropriate future direction for civil judicial co-operation in Europe beyond the Hague Programme. We want to see that pursued in a suitable way. One possibility might be a seminar on the subject, perhaps arranged by the Commission, though plans for such an event have not yet been made.

I set out in the enclosed annex the stages reached in the several dossiers which were ongoing at the outset of our Presidency or begun during our Presidency.

I am pleased that we have been able to progress Council business efficiently and to work closely with the Commission, the European Parliament and the Council Secretariat.

13 January 2006

Annex

PROGRESS ON CIVIL JUSTICE DOJISSERS DURING THE UK PRESIDENCY

European Payment Order

— Text agreed at December Council, followed by EP vote in favour. Only recitals and standard forms remain to be completed by Austria.

European Small Claims Procedure

— Reaffirmed support among Ministers at the JHA Informal for the dossier on the basis of the principle of proportionality, and on the basis that it will apply to cross-border cases. Definition of cross-border remains to be settled for this dossier.

— December Council agreed in principle on six key issues: written procedure, time limits for each stage of the procedure, use of communications technology for hearings, no need to be represented by a lawyer, costs should be proportionate, and there should be a review clause.

— Second reading of the proposal completed in the Council Working Group on 7 December.

— Second revised Presidency text produced with Austria ahead of the transition.

— The European Parliament expects to present a draft report at the end of January.

Directive on Certain Aspects of Mediation

— Common understanding on the text reached at the December Council on all issues except for those of cross-border and subsidiarity.

— The opinion of the European Parliament is awaited.

Rome II

— The Working Group completed its consideration of all the amendments proposed by the European Parliament. There was a detailed debate on the topic of defamation which was not confined to the specific amendments proposed by the Parliament. This was a valuable discussion that to a great extent exposed both the preferred positions of Member States and also other positions which they might accept in the event that their preferred positions were not adopted. In particular it threw up a new proposal from Germany that appeared to have a great initial support among Member States. No final decisions were taken in the Group on this topic or on other contentious issues.

General Questions

— A successful six months began with final sign-off of the Committee’s opinion on international parental child abduction and the Schengen system. The SIS/SIRENE Committee has now in turn asked the Commission to work on specifications for additions to the system which would help to prevent parental abduction of children. The General Questions group will continue to take an interest in the progress of this work.
— Progress made on the civil justice financial perspectives for 2007–13, with two debates in the working group. These revealed common concerns amongst many Member States about Commission transparency and accountability in setting of objectives and selection of civil justice projects for funding. A fresh text reflecting many of these concerns should issue very shortly.

— UNCITRAL negotiations on international carriage of goods in Vienna at end November/beginning December went well. A Community/US/Japanese/Norwegian paper on jurisdiction obtained general support from the plenary and should protect the London courts’ position on exclusive jurisdiction agreements, including the ability to support these by issuing injunctions against suing elsewhere.

— The anticipated European Court of Justice judgement on the Lugano reference has still not appeared, and will now (when it emerges) be for discussion during the Austrian Presidency.

— Unfortunately there was no progress on Gibraltar, and the civil law dossiers blocked by this obstacle remain blocked.

**Fundamental Rights Agency**

Under the UK Presidency the dossier has progressed to cover several major areas of concern for the UK. In particular:

— The legal base of the proposed Council Regulation and Decision to establish the Fundamental Rights Agency, including the legal base for a Council Decision establishing the programme “Fundamental Rights and Citizenship” as part of the Framework Programme on Fundamental Rights and Justice 2007–13. The overall majority of Member States is in favour of article 308 TEC as the main legal base, while some accept the use of article 284 TEC as a complementary legal base.

— The reference to the Charter of Fundamental Rights in the Framework Programme on Fundamental Rights and Justice 2007–13 will be reviewed by the Commission to explain it is intended as a reference to existing rights.

— The majority of Member States is in line with the UK position to limit any third country remit to candidate countries (some Member States suggesting to revisit this issue in five years).

— There is overall consensus that the Agency should avoid duplicating other human rights bodies, especially the Council of Europe.

— The subject of the Agency’s management structure has only been partly covered and the group is waiting for a written version of the counter-proposal by France (to which several Member States are in favour). This issue is closely linked with that of the independence of the Agency. From the discussions held so far, it is possible to conclude that the overall majority of Member States, in line with the UK, is concerned about the excessive influence of the Commission in the management structure of the Agency (particularly in the Management Board, Executive Board and the power to veto co-operation agreements between the Agency and other human rights bodies). However, it is not clear whether the UK could create consensus around the idea of an Agency strongly influenced by the Council.

— The advisory role of the Agency under article 7 TEU has also been tackled with many Member States opposing the inclusion of this reference. However, it is possible that the Agency can be called as “independent person” on the basis of article 7 TEU even in the absence of a specific reference to this in its Regulation.

— The Commission proposes to merge the Network of Independent Experts (NIE) with the Agency. This would be in line with the UK position as long as the work of the NIE (internal monitoring of Member States’ compliance with human rights on behalf of the European Parliament) is not absorbed in the Agency’s tasks.

**Proposal to Amend Service Regulation**

— We were able to hold only one working group during our Presidency but we completed a full read through of the proposal and called on Member States to provide written comments on the basis of which we redrafted the text. This will now be discussed during the Austrian Presidency.
Home Affairs (Sub-Committee F)

2004 EU ORGANISED CRIME REPORT

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 21 January enclosing a copy of this Report, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 2 March.

We were interested to see the Report, which provides a useful overview of the organised crime situation across the EU in what is now a clear and well presented format, although we would have welcomed a section on organised crime outside the EU and the EU’s links with law enforcement bodies in the rest of the world.

We note your criticism that these Reports are too descriptive and retrospective and that from January 2006 they will be replaced with yearly threat assessments. We shall follow this development with interest, although it is fair to point out that the “Recommendations” section of the Report is forward looking. We thought that it contained some interesting proposals, such as the development of a measure of the harm caused by organised crime and its economic effects; and the preparation of a risk assessment of the use of corruption by organised crime groups. We hope that there is some mechanism for considering these recommendations and following up action taken in response to them.

2 March 2005

ADVANCE PASSENGER INFORMATION (API)/PASSENGER NAME RECORDS (PNR) (9698/05)

Letter from the Chairman to Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Sub-Committee F (Home Affairs) of the Select Committee on the European Union considered this draft Council Decision at a meeting on 13 July.

As you will know, the Committee has taken a close interest in API and PNR requirements, in relation to both the Advance Passenger Information Directive and the PNR agreement with the United States, which we scrutinised last year. We retain reservations about these developments, but accept that the proposed Agreement with Canada is much more satisfactory than the equivalent Agreement with the United States, and that the Canadian “commitments” represent, as the Article 29 Committee has found, a satisfactory balance between the requirements of security and the need for adequate data protection safeguards.

There are aspects of the Agreement that we would like to have studied in greater depth if we had had an opportunity to examine it at an earlier stage, such as the list of data elements and the purposes of and arrangements for retention of the data. The Opinion of the European Data Protection Supervisor identifies a number of points of this kind. We note that he also takes the view that in its present form the Agreement amends the Data Protection Directive and therefore requires the assent of the European Parliament, which has not been sought (it has only been consulted). It would have been desirable to resolve this matter before the Agreement was concluded.

It is a very unsatisfactory feature of these agreements that we get to see the proposal only when the negotiations with the third country have been completed, so that we are in effect presented with a fait accompli. However, in the light of the broadly favourable opinions of the Article 29 Committee and the European Data Protection Supervisor and in view of the urgency, now that the period of derogation has expired, to adopt the Decision at a Council meeting on 19 July before the summer break, we have cleared the document from scrutiny.

There is one other procedural aspect that causes us concern. As we understand it, in addition to the Council Decision, an “adequacy decision”—an instrument agreed under comitology—is required. When we considered the Agreement with the United States we protested strongly that the Government had not deposited that Decision for scrutiny. We have made it clear on numerous occasions that we consider it important that significant comitology decisions should be subject to scrutiny. We were very disappointed therefore to find that the adequacy decision relating to this agreement had also not been deposited, despite the assurances that Geoffrey Fилин gave me last year. In a letter of 5 March he said: “in the light of this case the Cabinet Office have written to all Departments reminding them of the commitments that the Government has
made on the scrutiny of comitology proposals. Officials in this Department are considering what mechanisms might be put in place to ensure that comitology proposals that meet the criteria for scrutiny are not overlooked”. We note that the European Data Protection Supervisor took a similar view, in relation to his responsibilities, that the adequacy decision should have been included as an integral element of the proposals submitted for his opinion.

I know that you have spoken to Patrick Wright and apologised for this oversight and we appreciate the personal interest you have taken in the matter. But I would be grateful to know what action was taken following my correspondence with Geoffrey Filkin and for further assurance about the arrangements put in place to ensure that significant comitology decisions are identified and submitted for scrutiny. I have to say that we would take a serious view of any recurrence.

13 July 2005

Letter from Baroness Ashton of Upholland to the Chairman

Dear Mr. Chairman,

Thank you for your letter of 13 July 2005.

May I say immediately that I am extremely grateful to you and the members of your Committee for clearing this Council Decision from scrutiny. I think we agree that whatever other reservations or differences remain about the Decision, on essentials (the data protection framework) the Decision is soundly based.

That said, you have raised a number of other issues in your letter which are of considerable importance. I agree that the timetables of the European legislative process often mean that the time between a draft document being issued and being adopted is too short for the Scrutiny Committees to carry out their task. It appears that the European Data Protection Supervisor is sometimes put in a similar position.

However, the main concern expressed in your letter is that the adequacy decision—the Commission Decision on the adequate protection of personal data—was not deposited for scrutiny at a stage which would have allowed you to comment on it prior to adoption, despite the assurances offered on that point by Geoffrey Filkin last year.

I have asked my officials for a full account of what happened, which is as follows. The Canadian PNR Agreement, negotiated between Commission officials and the Canadian Authorities, was considered last year by the Article 29 Committee (which consists of representatives of the National Regulatory Authorities). It was this Committee which significantly revised the original Commission proposals, and whose last opinion on the proposals was adopted on 19 January 2005.

The revised Commission Decision then sent to the Article 31 Committee, which met on 2 May 2005. The Decision was unanimously accepted without amendment at that meeting, and was strongly supported by the UK. As you know, the UK Government is represented on this Committee only.

I accept that the revised Commission Decision should have been deposited for scrutiny prior to the Article 31 Meeting on 2 May, and I apologise to you and to members of the Committee for the fact that this did not happen.

While what follows does not affect the point you are making, I would like you to know that the 2 May meeting was called at short notice, having been postponed several times. The draft Commission Decision was received in my Department on 19 April. The period between 19 April and 2 May, beside being short, was also part of the pre-election period, so these were not ideal conditions for meeting the terms of our agreement with you, albeit I accept that we did not take the steps to do so.

In relation to your question as to the action taken following your correspondence with Geoff Filkin, I understand that there was significant restructuring and reorganisation of the Information Rights Division in July last year, which handles the European Data Protection Work. This meant that the knowledge and understanding following the correspondence last year was temporarily lost. Measures have now been taken to ensure that there is a permanent record of the requirement to deposit significant comitology decisions with your Committee, prior to the point they are adopted.

It is a requirement to which we will be paying particular attention in relation to the current third pillar data protection and data sharing initiatives. These Initiatives have been given priority on the Commission agenda following 7 July, so I have asked my officials to discuss your expectations with Tony Rawsthorne, as a way of making completely certain that we have a clear operational understanding with you and your Committee.

I hope you will find that this is a positive conclusion to what has been, from all points of view, an unsatisfactory course of events. Once again, I apologise for what happened.

18 July 2005
Letter from the Chairman to Baroness Ashton of Upholland

Thank you for your letter of 18 July about the handling of this dossier, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 12 October (its first since the summer recess).

We are grateful for your explanation of how it came about that the adequacy decision was not deposited for scrutiny and for your assurance that you will be paying particular attention to the scrutiny aspects of current Third Pillar data protection and data sharing initiatives. I understand that our officials have had a useful meeting to discuss the handling of these dossiers; and that they will continue to keep in close touch, which I am sure will be helpful.

12 October 2005

CIVIL PROTECTION MECHANISM (8430/05, 8436/05)

Letter from the Chairman to Rt Hon John Hutton MP, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, Cabinet Office

Sub-Committee F (Home Affairs) of the European Union Select Committee considered these proposals at a meeting on 26 October 2005.

On a preliminary point, you say in your Explanatory Memoranda that an earlier, related proposal on preparedness and consequence management (1380/04 COM 2004 701 final) was submitted by the Home Office in 2004 and “sifted in the Chairman’s sift of 11 January to the Lords Sub-Committee F where it is awaiting clearance”. This document was indeed sifted to the Sub-Committee together with two other related documents. But it is not awaiting clearance. The Sub-Committee considered it on 2 February, following which I wrote at length to Caroline Flint at the Home Office. I enclose a copy of my letter (not printed) for ease of reference. We have never had a reply to it.

As regards the current proposals, we generally agree with the Government’s line. The Community Civil Protection Mechanism and the Monitoring Information Centre seem to have made a valuable contribution to co-ordinating the response of Member States to civil emergencies, and most of the Commission’s proposals for improving its operation seem sensible. Like you, however, we are doubtful that the case has been made for Member States to keep some emergency “modules” on permanent standby for deployment to European interventions. First, there seems a danger that this would represent a move from the co-ordination of Member States’ activities to the establishment of an EU civil protection capability; and, secondly, if these modules were dedicated solely to European interventions, they would not be available for deployment elsewhere which could be wasteful of resources. We are also not persuaded that the improvements proposed by the Commission justify the very substantial increase in funding which it recommends.

We note that our sister Committee in the Commons has also asked for comments on the use of Article 308 of the Treaty as a legal base for the Regulation and we will be interested to see your response on that point. I would be grateful for your comments on these points and for a response, even at this late date, either from you or the Home Office, to my letter of 2 February. In the meantime we will keep the documents under scrutiny.

26 October 2005

Letter from Jim Murphy MP, Parliamentary Secretary, Cabinet Office to the Chairman

I am replying to your letter of 26 October seeking further information on Explanatory Memoranda submitted by Rt Hon John Hutton MP, then Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. The Explanatory Memoranda were the Commission Communication: Improving the Community Civil Protection Mechanism [8430/05 COM (2005)137]; the Proposal for a Council Regulation establishing a rapid response and preparedness instrument for major emergencies [8436/05 COM (2005)1131]; and the Proposal for a Regulation establishing the European Union Solidarity Fund.

You also asked about a reply to your letter of 2 February 2005 to Caroline Flint on the related Proposal on Preparedness and Consequence Management [1380/04 COM (2004)701]. I understand that Hazel Blears wrote to you on 14 November to apologise that you had not yet had a reply and gave her assurance that one would follow shortly.

On the two Commission documents on Civil Protection, there have been initial discussions within the relevant European Council Working Party chaired by the UK on the Commission’s proposals to take the views of member states’ delegations and to explore some of the issues raised. We had been told by the Commission to
expect the issue in autumn 2005 of a draft Decision on Improving Civil Protection. Unfortunately, internal discussion in the Commission has delayed publication. It is unclear when the Commission will publish its proposals but it increasingly looks likely to be early next year. In the meantime, the Council has published Conclusions on 1 December 2005 that encourage the Commission and the Member States to take work forward on improving civil protection. A copy of the Conclusions which sets out the priorities is attached (not printed).

There have been discussions on the Commission’s concept of modules in an ad hoc working group of member states under the aegis of the Commission. There has been general agreement that a module could range from a team of experts such as a search and rescue team to assets that might be needed to handle a particular event, such as high capacity pumps for flooding. Among ideas to emerge is the possibility of groups of member states working together with individual member states offering all or part of a module, for example, with some member states offering assets or personnel whilst another facilitates the transportation.

There has not been any substantial support for modules of member states’ civil protection assets to be kept on permanent standby for EU use in emergencies. With few exceptions, member states have taken the view that keeping national resources on permanent standby for European deployment would not represent value for money, that it would restrict their availability for national use and that it would be wasteful. There is some support for groups of member states working together to co-ordinate their efforts with elements or modules being offered by member states according to their individual capabilities.

The House of Commons Scrutiny Committee asked about the justification for the use of Article 308 of the Treaty of the European Community as the legal base. As the Committee noted there are three tests for the use of Article 308 namely, if it is necessary, in the operation the common market, to attain an objective of the Treaty and the Treaty has not provided the necessary power elsewhere. Civil protection satisfies two of the tests because it is listed as a Community objective in Article 3(u) of the Treaty and there is no other appropriate Article.

We believe that this proposal satisfies the third test in that it does concern and serve to assist the operation of the common market. The objectives of civil protection are to prepare for and to respond to major emergencies affecting people, the environment or property in countries participating in the civil protection mechanism. The key benefits of civil protection are the support it offers for business continuity and for ensuring that an emergency does not have the effect of bringing services to a standstill. Rapid civil protection response can help ensure that people are not prevented from doing their jobs or going about their daily life; that disruption is minimised; and that normal services are resumed thus mitigating potential economic damage by early intervention. The vast majority of civil protection requests for assistance are from Member States or accession countries. A few involve interventions in third countries where the Commission’s role is limited to selecting member states’ experts for intervention and coordinating the response at EU level. Civil protection is not involved in preparation for emergencies in third countries and the deployable assets used in response are owned by Member States. We believe, therefore, that the Commission proposals are consistent with the operation of the common market and the use of Article 308 is justified. This approach is consistent with other related civil protection legislation previously agreed.

On the European Union Solidarity Fund you ask about expenditure and about press reports that the Commission is considering setting aside €1 billion for use in a flu pandemic. On expenditure, I am advised that specific EU Solidarity Fund monies are not budgeted until mobilised and funding per annum is not allocated in advance. Instead monies are mobilised as needed within an agreed total funding envelope of €1 billion a year, drawn from member states. “Unused funds” are never drawn by the Commission from Member States. The wide variation in EU Solidarity Fund expenditure over the years is a function of the number and scale of major disasters that have occurred. The Commission’s proposals for a new Solidarity Fund have still to be considered within the Council structures.

On a possible flu pandemic the Government is working closely with Member States and the Commission to enhance preparedness and ensure an effective response. The Commission has published a Communication on 29 November on Influenza Pandemic Preparedness [Document 15127/05 COM92005 607 final]. In that document the Commission suggests that the new Solidarity Fund might be used to meet the costs of medical assistance. The European Scrutiny Committees should expect to receive an Explanatory Memorandum shortly from the Department of Health on the Commission’s Communication on Influenza Pandemic. The possibility of using the Solidarity Fund for health emergencies will depend on the outcome of discussions within the Council structures.

14 December 2005
**Letter from the Chairman to Jim Murphy MP**

Thank you for your letter of 14 December in reply to my letter to Rt Hon John Hutton MP of 26 October, and for your full consideration of the legal base of these instruments. The connection between civil protection and the operation of the common market might be thought by some to be a little tenuous, but we are prepared to accept it for the present. We therefore clear these two documents from scrutiny.

You state in your letter: “I understand that Hazel Blears wrote to you on 14 November to apologise that you had not yet had a reply [to the letter of 2 February] and gave her assurance that one would follow shortly.” No reply has yet reached me, and I attach a copy of a letter I have written to Hazel Blears (not printed).

19 January 2006

**COMBATING EURO COUNTERFEITING (14811/04)**

**Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office**

Sub-Committee F (Home Affairs) of the European Union Select Committee considered this draft Council Decision at a meeting on 6 April.

We are grateful for your apology for the oversight in not depositing the draft Decision when it was first presented last November. I realise that these things happen, but there have been several such oversights by the Home Office in recent months, which I hope represent only a temporary falling away from the Department’s previous high standards of scrutiny work.

We welcome the substance of the proposal. Indeed, as you may recall, in our report two years ago on Europol’s role in fighting crime we endorsed what was then a Danish proposal to establish Europol as the European contact point for the suppression of counterfeit Euro currency. However, like you, we regard Article 30(1)(c) as an inappropriate legal base for this measure—Article 34(2)(c) seems entirely appropriate on its own—and we trust that the Government will be successful in securing its deletion. In the meantime we will hold the document under scrutiny.

6 April 2005

**Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office to the Chairman**

I write to you in response to your letter to Caroline Flint of 6 April 2005 regarding the draft Council Decision on protecting the Euro against counterfeiting by designating Europol as the central office for combating Euro counterfeiting, 14811/04.

In your letter you concluded that, whilst you welcomed the substance of the proposal, you felt that there was a point of legal importance. In particular you agreed with the Government that Article 30(1)(c) of the Treaty on European Union appeared an inappropriate legal base. You suggested that Article 34(2)(c) of the Treaty on European Union may be entirely appropriate alone. You asked to be informed of the Government’s negotiations on this point.

I can confirm to you that in light of the UK’s concerns the draft Council Decision has now been amended. The draft Decision now cites Articles 30(1)(b) and 34(2)(c) of the Treaty on European Union in the base recital. Article 30(1)(b) provides for common action in the field of police co-operation to include:

> “the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious transactions, in particular through Europol, subject to the appropriate provisions on the protection of personal data”.

We believe this to be a more appropriate legal base for this draft Council Decision, which will establish Europol as the central office for combating euro counterfeiting and thereby provide for Europol to co-ordinate the exchange of information on Euro counterfeits within the meaning of Article 12 of the International Convention for the Suppression of Counterfeiting Currency of 1929 (“Geneva Convention”).

We do not believe that Article 34(2)(c) alone would prove sufficient legal base for the draft Decision as Article 34(2) sets out the type of measures (common positions, framework decisions, decisions and conventions) that may be used under the third pillar. It is Articles 29–31 of the TEU which set out the types of action that may be taken under the third pillar. It is the view of the Government that a decision should therefore cite both the relevant provision in Article 29 to 31 and the relevant provision in Article 34(2) as its legal base. A copy of the amended draft Council Decision is attached for your information (not printed).

24 May 2005
Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 24 May about the draft Council Decision on protecting the Euro against counterfeiting, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 15 June.

We were pleased to hear that the Council Decision has been amended to cite Article 30(1)(b) of the Treaty on European Union as one of the legal bases. This is clearly much more appropriate than Article 30(1)(c). This is a very satisfactory outcome and we have cleared the document from scrutiny.

15 June 2005

COMMON AGENDA FOR INTEGRATION (12120/05)

Letter from the Chairman to Tony McNulty MP, Minister of State for Immigration, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered the Commission’s Communication on A Common Agenda for Integration at its meeting on 9 November.

The Committee took note of the Commission’s suggested actions which are meant to give effect to the Common Basic Principles, adopted by the Justice and Home Affairs Council in November 2004, and to provide the framework for the integration of third-country nationals in the European Union, as called for in the Hague Programme. The Committee questioned the value of a common integration policy based on an extensive list of actions that are not binding and which therefore do not ensure that they are acted on by both Member States and the EU. Notwithstanding its reservations about this exercise, the Committee has decided to clear this document from scrutiny.

10 November 2005

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 10 November about the Communication from the Commission on a Common Agenda for Integration (Document 12120/05). I am pleased that, despite the Committee having some reservations, the document has now cleared scrutiny.

As you know, there are other related dossiers that might have an impact on how this Communication is taken forward and we will of course keep you updated on the progress of negotiations.

5 December 2005

COOPERATION BETWEEN THE REPUBLIC OF CROATIA AND THE EUROPEAN POLICE OFFICE (3710–175)

Letter from the Chairman to Rt Hon Hazel Blears MP, Minister of State for Policing, Security and Community Safety, Home Office

Sub-Committee F (Home Affairs) of the European Union Select Committee considered this draft Agreement at a meeting on 25 May.

We were grateful for the Government’s helpful Explanatory Memorandum and, like the Government, we support the conclusion of an agreement between Europol and Croatia. We welcome the fact that the Joint Supervisory Body considers that from a data protection perspective no obstacle exists to the conclusion of the Agreement. We also welcome your support for the JSB’s proposed amendment to Article 19 (we accept that the case against its proposed amendment to Article 7(5) is more persuasive). Before clearing the document from scrutiny we would be grateful for confirmation that that amendment has been adopted.

Secondly we note the rigorous data protection conditions that Article 9 of the Agreement imposes on Croatia and, in particular, the provision—to which you draw attention—that no personal data shall be supplied where an adequate level of data protection is no longer guaranteed. We would, however, be glad to know what mechanism there will be for checking that adequate data protection arrangements are in place in Croatia for handling personal data supplied by Europol.

In the meantime we will hold the document under scrutiny.

26 May 2005
Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I write to you in response to your letter to Hazel Blears of 26 May 2005 regarding the outcome of the consideration by the European Union Committee's Sub-Committee F (Home Affairs) of the draft Co-operation Agreement between the Republic of Croatia and Europol, 3710–175.

In your letter you stated that whilst the Committee supported the conclusion of an agreement between Europol and Croatia, you sought:

— clarification as to the mechanism for checking that adequate data protection arrangements are in place in Croatia for handling personal data supplied by Europol; and

— confirmation that Article 19 of the draft Agreement has been amended in line with the Joint Supervisory Body's recommendation.

Pending the Government's response you decided to keep the document under scrutiny.

Article 9 of the draft Agreement imposes a series of restrictions on the use of personal data transmitted by Europol under the agreement. In particular, as you have noted, Article 9(5) specifies that no personal data shall be supplied where an adequate level of data protection in Croatia is no longer guaranteed.

The obligations on Europol governing the communication of data to third States are set out in Article 18 of the Europol Convention. In particular Europol can only transmit data where an adequate level of data protection is ensured in the receiving State.

By the Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third States and third bodies, Europol may transmit personal data to a third State on either the basis of an agreement (as is proposed here) made in accordance with the specified procedure, or exceptionally where the Director considers the transmission of personal data to be absolutely necessary. For the purposes of either approach Europol must take account of the law and the administrative practice of the third State in the field of data protection. To conclude such agreements as this the unanimous approval of the Council is required. Such approval may be given only after the opinion of the Joint Supervisory Body has been obtained, via the Management Board. In this case, the Joint Supervisory Body’s opinion has already been obtained and the JSB have found that from a data protection perspective there are no obstacles to the conclusion of the agreement.

Once the agreement is finalised it will, in line with all other such Europol agreements, be subject to annual review by virtue of administrative procedures agreed by the Europol Management Board. This evaluation will be based on a number of operational considerations and, whilst the adequacy of the Croatian data protection regime is not explicitly stated, this will be considered in assessing the extent to which Europol and Croatia have fulfilled their respective obligations. Further Europol, as is common practice in the law enforcement community, will monitor its co-operation partners on an ongoing basis as information is exchanged.

It should be noted that Article 5(2) of the draft Agreement provides for high level meetings between Europol and the Croatian authorities at least once a year and as necessary at which issues relating to the Agreement and the co-operation in general will be discussed. We would expect that the adequacy or not of the data protection measures would be considered if appropriate. Should any of these arrangements establish that the data protection regime in Croatia is no longer adequate, Europol would cease supplying personal data to Croatia.

The Government’s Explanatory Memorandum, dated 6 April 2005, explained that the draft Agreement between Croatia and Europol was frozen at the Europol Management Board on 22 March 2005 as a result of political objections arising from Croatia’s non-cooperation with the International Criminal Tribunal for former Yugoslavia. Once these political issues have been resolved we expect Europol to table for discussion at the Management Board an amended draft for final agreement. We anticipate that this will incorporate all of the JSB’s recommendations, including those to Article 19.

11 July 2005

Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 11 July about the Draft Agreement between Europol and Croatia, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 20 July.

We are grateful for your explanation of how the Agreement, including the data protection arrangements, will be kept under review. We also note the point emphasised by the Joint Supervisory Body—to which we too attach importance—that the actual exchange of data may only begin when Croatia has ratified the Convention for the protection of individuals with regard to automatic processing of personal data and the Convention has entered into force.
We are pleased to note that you expect that, when the Agreement is unfrozen, all the JSB Recommendations will be incorporated in a revised draft.

We look forward to seeing that draft and have cleared the current version from scrutiny on the understanding that the revised draft will be deposited in due course.

20 July 2005

DAPHNE PROGRAMME, 2000–03 (5140/05)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F (Home Affairs) of the European Union Select Committee considered this Report—and your helpful Explanatory Memorandum—at a meeting on 2 March.

It is clear from the Commission’s careful evaluation that the Daphne Programme has supported a large number of useful projects, which have generally been successful in spreading good practice, establishing networks and producing a wide range of material, and we welcome the work that the Programme has funded.

We have cleared the document from scrutiny but we have some concern whether the Programme complies with the principle of subsidiarity. We found it difficult to discern to what extent there was a genuinely transnational element in the projects funded: the Report says very little on this aspect. It does not appear from the projects summarised in the Annex that projects addressing trafficking in women, for example, such as the Poppy Project, which have a clear transnational element, have been funded under the Programme. You say in the Explanatory Memorandum that the Government would like to see the best practice developed by the Programme “focusing increasingly on practical and service delivery both to victims and in managing perpetrators, precisely how depending on the local, regional and national context of each Member State”. But such a focus would seem to risk moving further away from cross-border projects. We would welcome your comments on the question of subsidiarity.

Otherwise, we support the adjustments you favour in both the evaluation of projects and the administrative arrangements. You refer to Daphne II, and we would be interested to know how matters now stand with this programme and whether the improvements you advocate have been incorporated in it.

2 March 2005

Letter from Rt Hon Baroness Scotland of Asthal QC, Minister of State, Home Office to the Chairman

Thank you for your letter of 2 March to Caroline Flint MP, regarding the Daphne Programme 2000–03 Final Report from the Commission. I am replying as the Minister responsible for domestic violence issues and I apologise for the delay in writing to you.

In your letter you raise some concern regarding the principle of subsidiarity and whether the Daphne Programme complies with this. We do acknowledge your concerns and we also recognise that projects funded under the Daphne Programme will have different levels of subsidiarity, and fall into three main categories:

— **Guiding Principles**—these exist where there are projects with similar approaches but they are mainly dependent on delivery in a local context, such as awareness raising and campaigns. These have an important role in promoting an active learning environment for other Members;

— **Service level Principles**—these are projects delivered within a local, regional or national context, which have the same core element, such as outreach services aimed at individuals. This is where good practice and experience can be directly adapted across Member States; and

— **Inter-State Principles**—these projects will be dependent on international co-operation with members and will provide cross border initiatives, such as human trafficking. Genuine transnational elements will need to be identified and linked to enable the work to be put into practice.

It is also crucial for projects funded under the programme to acknowledge the different stages that Member States may be in the development of their policies and strategies to enable adaptation, particularly for those who are new Members.
We recognise that the focus on the transnational aspect of the programme requires further development, and I can tell you that this mechanism has been promoted under the objectives of the Daphne II programme. Under the new programme the proposals which meet the eligibility and selection criteria will be subject to further evaluation, which will look to ensure that projects also contribute to developments at European level and provide added value for the European Community. This process will specifically look to ensure that the following elements are present within all proposals:

— Activities involving the participation of organisations in several Member States;
— Activities conducted jointly in several Member States; and
— Activities which could be applied in other Member States, if adapted to their conditions and culture.

Where possible we would encourage those Member States who are seeking to apply under the programme to look further into developing these links.

The Daphne II Programme is now in its second year, the first call for proposals under the programme were made in June last year. The initial findings from the 2004 call highlighted that there was a need to clarify and define the application process. So to support Member States in developing strategic proposals the Commission developed a helpful step-by-step toolkit, to act as a compliment to the Daphne Helpdesk, set up in November 2004.

In light of the findings from the first call in 2004, calls for specific proposals for 2005 were made in both March and April this year with a follow-up and monitoring action attached to those projects which are selected.

I hope that the points set out above clarify your concerns on the principle of subsidiarity.

7 July 2005

Letter from the Chairman to Rt Hon Baroness Scotland of Asthal QC

Thank you for your letter of 7 July about the Daphne Programme, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 20 July. I am grateful for your apology for the delay in replying.

We are grateful for—if not totally convinced by—your explanation of how the Daphne Programme complies with the principle of subsidiarity. We were puzzled by the notion of “different levels of subsidiarity”. To our mind either a measure complies with the principle of subsidiarity or it does not. However, we are reassured by your explanation that there is a stronger transnational focus in the Daphne II Programme. The elements that you say will be examined in the evaluation process seem appropriate for this purpose and will, we hope, ensure that transnational elements are an integral part of projects that are approved under the Programme.

20 July 2005

DEVELOPING A STRATEGIC CONCEPT ON TACKLING ORGANISED CRIME (9997/05)

Letter from the Chairman to Paul Goggins MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered this Commission Communication at its meeting on 9 November.

We are interested in this proposed strategy, and in particular in the list of 69 wide-ranging measures which might support the strategy. We are glad to see included a proposal for the strengthening of Eurojust and Europol.

Some of these proposals would, if taken further, involve significant changes to English and Scottish substantive and procedural criminal law. The Government’s present position is that it does not accept the need for wide-ranging harmonisation of law, but will wait to see the Commission’s proposals. We believe that it would be premature to reach any conclusions as to the need for or desirability of further harmonisation without looking in detail at individual proposals as they are received.

We would accordingly be grateful to be informed of any further developments in the strategy itself or in measures intended to take it forward. Meanwhile we will keep this document under scrutiny.

10 November 2005
EU DRUGS ACTION PLAN, 2005–08 (6464/05)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F (Home Affairs) of the European Union Select Committee considered this Communication at a meeting on 6 April.

Despite your assertion that the Drugs Action Plan respects the principles of subsidiarity and proportionality, we have some concern—primarily on subsidiarity grounds—about the amount of activity proposed, much of it process-driven, in an area where most action needs to be taken at national or local level. But we recognise that the Action Plan seeks to implement the various aims of the Drugs Strategy 2005–13, which has already been agreed.

Given the approach adopted in the Action Plan, we would be interested to know what monitoring mechanisms will be available to assess the extent to which Member States have implemented the actions proposed, particularly in relation to treatment programmes. A particular problem arises, we understand, with residential places for drugs and alcohol misusers, for which there is a great need but sometimes a lack of take-up because of their high cost.

Finally, we welcome the aim of increasing training for law enforcement agencies, where CEPOL clearly has an important part to play.

We have cleared the draft Action Plan from scrutiny, but would welcome your comments on these points, perhaps in conjunction with a report on any changes agreed in negotiation of the Action Plan when the final version is available.

7 April 2005

Letter from Paul Goggins, Parliamentary Under-Secretary of State, Home Office to the Chairman

I have today sent through an Explanatory Memorandum on the final version of the EU Drugs Action Plan (2005–2008). The document is a non-legislative text that was previously cleared from scrutiny, as a draft version, by the European Union Committee.

In clearing the first draft of the Action Plan you wrote to my former colleague, Caroline Flint, asking that she respond to a number of the Committee’s observations about the document. We are keen to ensure that the Government meets its scrutiny commitments on all dossiers and so I want to take this opportunity to address the concerns you raised.

You were concerned—mainly on subsidiarity grounds—about the amount of activity proposed in what is an area where most action needs to be taken at national or local level. You said the Committee understands that a particular problem arises at local level and there is a great need for residential treatment places but a lack of take-up because of the high cost of such places. In the light of these concerns, you asked about the monitoring mechanisms that will be available.

I believe the Action Plan is intended as a statement of what can be done at a European level through cooperation with Member States. The Action Plan is a guide to encourage and demonstrate action, not to dictate it. By specifying whether actions fall to Member States or to the EU collectively and its agencies, it helps to reinforce the subsidiarity principle. It is intended as a work in progress document to which items can be added or removed, if and when necessary or desirable.

Concerning your second point, the Government is increasing its investment in drug treatment from £253 million in 2004–05 to £478 million by 2007–08, a boost in funding of every Drug Action Team by around 55 per cent. In support of this extra funding the National Treatment Agency has also put in place a strategy to expand residential drug treatment services to deal with future increases in demand. Although residential rehabilitation is an integral part of the treatment process for many individuals, it is clearly not appropriate for everyone. The UK position, for example, is that we need to ensure the availability of a range of drug interventions to address the needs of all problematic drug users, such as in-patient detoxification services, GP prescribing services, specialist community prescribing services and counselling services. Other Member States will have different approaches and it is right that the Action Plan avoids being overly specific about the particular approaches they should take.

The Action Plan incorporates an annual progress review, to be conducted by the Commission, the first of which will take place at the end of 2006. And there will be an evaluation at the end of the Action Plan period. The details of how these will be conducted have yet to be worked out, but clearly they will need to reflect the kind of issues that you raise.
The latest version of the document does not carry any major changes from the version that your Committee previously cleared and you will note from the EM that the two most significant are UK-led initiatives that will work to more effectively combat supply. The UK is content with the document as it stands. The Luxembourg Presidency has signalled its intention to seek adoption of the text before the end of their Presidency. The UK is now the only Member State with a reserve on the dossier. The Presidency had indicated that they would seek adoption at the JHA Council on the 2–3 June and then at the General Affairs Council on 13 June. We have managed to get their agreement to hold this until the Fisheries Council on 24 June in order to give as much time as possible for the scrutiny of the document.

Undated, received 10 June 2005

Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 10 June on the EU Drugs Action Plan 2005–08 and for the Explanatory Memorandum written on the same date, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 15 June.

We were grateful for the information you provided about additional funding for drug treatment programmes, which is welcome. We noted your view that the Drugs Action Plan reinforces rather than infringes the subsidiarity principle. I cannot say that we are wholly convinced by this argument—if competence for drugs policy lies primarily with the Member States, it is not clear why there is a need for such an elaborate programme which is not confined to action at EU level but specifies actions by Member States. However, we do not propose to continue the debate in relation to this particular instrument.

We have cleared the Action Plan from scrutiny, and I am grateful for the efforts that the Government have made to persuade the Luxembourg Presidency to defer its adoption until we had had an opportunity to consider it.

15 June 2005

EU RESPONSE TO THE LONDON BOMBINGS

Letter from the Chairman to Rt Hon Charles Clarke MP, Home Secretary, Home Office

We were interested to see the Declaration on the EU response to the London bombings agreed by the Justice and Home Affairs Council at its extraordinary meeting on 13 July.

We welcome this display of solidarity on the part of the Member States in the face of the London bombings and note the acceleration that the Council is looking for in the implementation of the EU Action Plan on combating terrorism and other existing commitments.

We are, however, somewhat concerned by the implications of the use of the wording “the Council will agree” in relation to a number of legislative measures that are currently on the table. The four measures referred to in the first indent of paragraph 4 of the Declaration, for example, have all been deposited for scrutiny, and I hope that the wording used in the Declaration does not imply that the scrutiny process will be bypassed. Our intention will be to complete the scrutiny process in the normal way as expeditiously as possible, and, while we appreciate the urgency that the Council attaches to some of these measures, we hope that they will not be rushed through without proper consideration and that we will not be asked to clear them at short notice because of these self imposed deadlines.

I would point out that Sub-Committee F considered the draft Framework Decision on the retention of telecommunications data over a year ago. We regarded it as a deeply flawed proposal and I wrote to Caroline Flint on 21 July 2004\(^1\) raising a number of fundamental questions on the draft and asking for a Regulatory Impact Assessment to be prepared. I have never received a reply to that letter. Yet I see that the Council has committed itself to agreeing an instrument on data retention in October, which will give us very little opportunity for scrutiny of what is generally agreed to be a very controversial measure. On the draft Framework Decision on the Exchange of information and intelligence between law enforcement authorities we are also currently in correspondence with your Department. In a letter of 28 June\(^2\) Paul Goggins responded to points we had raised on an earlier draft and explained that officials were seeking the views of the Information Commissioner. We would certainly want to see these before reaching a final view of the proposal.

20 July 2005

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2. See page 520.
EUROPEAN POLICE COLLEGE (CEPOL) (13506/04), (7140/05)

**Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office**

Thank you for your letter of 22 February\(^3\) and for the further information you provided about CEPOL, which Sub-Committee F (Home Affairs) of the EU Select Committee examined on 9 March.

We note from your letter that the UK arrangements with CEPOL are not sufficient as they do not cover cases where CEPOL staff act outside the UK; and that the question of the compatibility of the domestic provisions with Article 3 of the CEPOL Decision also remains open.

The issue is further complicated by the fact that the JHA Council apparently decided on 24 February to apply the EU Staff Regulations to CEPOL staff and to finance it from the Community budget. Does this mean that the draft Decision under scrutiny has actually been adopted? If so, this would constitute an override of the parliamentary scrutiny reserve, which as you know we regard very seriously.

We would also like to know how the application of the EU Staff Regulations can be reconciled with the domestic arrangements on privileges and immunities for CEPOL staff.

We will continue to retain the proposal under scrutiny, although we hope that the technical issues that have arisen about the establishment of CEPOL at Bramshill have not interfered with CEPOL’s work, which we regard as very important.

**9 March 2005**

**Letter from Caroline Flint MP to the Chairman**

Thank you for your letter of 9 March outlining issues raised by the Committee regarding the Commission proposal to establish CEPOL as a body of the European Union.

As you will be aware, a revised version of the proposal has now been issued (document 7140/05 ENFOPOL 22) and the document has been deposited in Parliament. I look forward to receiving a report on it from the Committee in due course.

In the meantime, it should be made clear that we have a number of concerns relating to the revised Commission proposal that we would require to be addressed before a Council Decision on establishing CEPOL could be accepted.

As you state in your letter of 9 March, in referring to document 13506/04 ENFOPOL 137, the issue of the application of the 1965 Protocol on the Privileges and Immunities of the European Communities under UK law remains open.

As you are aware, a Headquarters agreement already exists between the UK Government and CEPOL, which we believe confers sufficient privileges and immunities on CEPOL staff. Application of the 1965 Protocol would require additional privileges and immunities to be conferred. In addition, we currently have no power to give effect to Article 3 of the draft Decision by secondary legislation. The revised Commission proposal does not resolve these issues and we will be working with other Member States and the Commission to ensure that we achieve an acceptable position on this matter.

Regarding your specific point on “how the application of the EU Staff Regulations can be reconciled with the domestic arrangements on privileges and immunities”, I would be grateful if the Committee could provide further clarification as to which provisions of the EU Staff Regulations it believes to be incompatible with our domestic arrangements.

In your letter, you ask whether the draft Decision under Scrutiny (document 13506/04 ENFOPOL 137) had been adopted as a result of the JHA Council meeting on the 24 February. I can assure you that the draft Decision has not been adopted, and that the Council merely recommended that a revised version of the proposal be produced centring around applying the EU Staff Regulations to CEPOL staff and financing CEPOL from the Community budget. This revised version of the Commission Proposal has now been issued and an Explanatory Memorandum to the document will be submitted in due course. I would, of course, welcome the comments of the Select Committee on the new document.

**11 April 2005**

Letter from Rt Hon Hazel Blears MP, Minister of State, Home Office to the Chairman

I am writing to explain that, on 2 and 3 June, a general approach was reached at the JHA Council of Ministers on CEPOL.

The Home Secretary agreed in the JHA Council in February to the application of EC staff regulations to CEPOL staff. There was then discussion at working group level as to whether, legally, this entailed the application of the 1965 privileges and immunities protocol to CEPOL staff and, more generally, whether that protocol should apply to CEPOL and its staff, given that this was expressly provided for by article 3 of the decision. Our policy preference was to delete article 3 and make it clear that the application of the staff regulations did not entail application of the 1965 protocol privileges and immunities to CEPOL staff. It became clear at the June Council, however, that if we had insisted on this position, then no agreement would have been reached on the CEPOL decision.

We therefore decided to agree to the decision on the basis that the 1965 protocol will apply to CEPOL staff covered by the staff regulations. We did not accept, however, that this should be taken to be an automatic consequence of applying the staff regulations to CEPOL staff. Article 3 of the CEPOL decision will, therefore, be retained in so far as it applies the 1965 protocol to CEPOL staff.

The UK has either supported or pressed for the other changes to CEPOL which this decision will now introduce and the other 24 member states were ready to accept the decision as it was drafted, with the application of the 1965 protocol to CEPOL staff. We therefore had to consider the balance between accepting the decision—including the application of the protocol—and the negative effect of preventing CEPOL from moving to full operation and recruitment of staff. We also had to consider the potential negative effect for the UK presidency of there not being a decision on this.

It is also worth putting this into the context of the numbers involved in relation to CEPOL. The organisation will only employ between 20 and 30 staff at most. Given that the major concern in relation to the privileges and immunities granted to CEPOL related to taxation of pensions, it is worth pointing out that hardly any of these staff are likely to be eligible for immunity from taxation on their pension as the benefit will only apply to permanent staff.

However, notwithstanding these points, the UK has issued a unilateral declaration that the application of the 1965 protocol to CEPOL staff is categorically not a precedent for its application to the staff of any other EU body. We have also joined with other member states in a Council declaration that calls for a debate, which the UK will initiate under our presidency, around the granting of immunities and privileges in the EU.

Although the dossier has not been adopted by the Council, I am aware that it is preferable for the dossier to have cleared Parliamentary scrutiny prior to a general approach being reached. As ever, both I and my department take our scrutiny commitment to Parliament extremely seriously. This is, I believe, demonstrated by our past performance and service provided to both European scrutiny committees.

7 June 2005

Letter from the Chairman to Rt Hon Hazel Blears MP

Sub-Committee F (Home Affairs) of the European Union Select Committee considered the revised Draft Council Decision establishing the European Police College at a meeting on 8 June, together with Caroline Flint’s letter of 11 April responding to points we made on the earlier draft. We subsequently received your letter of 7 June informing us that a general approach to the Proposal had been agreed at the JHA Council on 2 and 3 June, and we considered this on 15 June.

We are grateful for your explanation of why it was decided to endorse the general approach despite the Decision not having cleared scrutiny. Although, as you acknowledge, we are strongly averse to a general approach being adopted in advance of completion of the scrutiny process, we accept that it was justified on this occasion. We ourselves have been concerned throughout the lengthy discussions of the draft Decision that they should not hold up CEPOL’s important work.

We understand why it was decided to accept the application of the 1965 Protocol on Privileges and Immunities to CEPOL staff, but we remain puzzled about the explanations that we have been given about the UK’s position. As we understand it, the Government would have preferred, as a matter of substance, for the Protocol not to apply to CEPOL. But in her letter of 11 April Caroline Flint said there was currently no power to give effect to Article 3 of the Draft Decision by secondary legislation. Previously we had understood that this would be resolved by the passage of the International Organisations Bill, which was indeed enacted in the last session. We would be grateful if you could clarify this aspect of the matter.
As far as the substance of the Decision is concerned, we were glad to see the amendments made to the provisions relating to national units/contact points, which meet the concerns that were expressed previously about subsidiarity. However, like the Government, we are disappointed that the scope of CEPOL's activities has now been limited to senior police officers rather than extending to law enforcement officers generally. And we hope that there will be an opportunity to review this before too long.

Finally, two more general points. Although CEPOL's remit extends only to the territory of the Member States, we hope that it will be outward-looking in developing training approaches. As we noted in our report After Madrid: the EU's response to terrorism, given the international nature of organised crime it is essential that EU law enforcement agencies cooperate effectively with other international agencies, especially Interpol. It is important that CEPOL establishes strong links with relevant bodies outside the EU.

Secondly, we note from a report in Europe Information for 11 June that CEPOL has complained that its reliance on seconded staff means that no one working in its Secretariat apart from the Administrative-Director has a term of service in excess of one year. While we recognise that it would not be appropriate for CEPOL, as a network of training institutions, to have a large permanent staff, it is also unsatisfactory that it should have to depend almost exclusively on short-term secondments.

We have cleared the draft Decision from scrutiny but would be grateful for your comments on the points raised above.

15 June 2005

Letter from Rt Hon Hazel Blears MP to the Chairman

Thank-you for your letter of 15 June. As you know, the UK's position has been consistently to support the establishment of CEPOL as a European body and to confirm the location of its headquarters in the UK. I am very grateful indeed for your ongoing support on this as well as for our efforts to reinforce the role of CEPOL and its work against cross-border crime and terrorism.

The detail surrounding the 1965 protocol on privileges and immunities is complex. At present, I can confirm that the decision to accept the application of the 1965 protocol should most definitely not be taken as a precedent. The UK will continue in its efforts to lead debate on the granting of immunities and privileges generally and the CEPOL decision may need to be revisited in the light of that general debate. Regardless of this, our priority for CEPOL is practical action on police training.

In response to your question regarding the power to grant the privileges and immunities contained in the 1965 protocol on CEPOL, it is correct that the International Organisations Act 2005 provides the necessary vires. Section 5 of that Act applies to, amongst other EU bodies, any body set up under title VI of the Treaty of European Union. Section 5(2) of the Act provides for the Queen, by Order in Council, to confer on title VI bodies and on specified classes of persons, the privileges and immunities which, in the opinion of Her Majesty in Council, are appropriate. I hope that this clarifies the point that you raised in relation to Caroline Flint's letter of 11 April.

I understand the Committee's disappointment that CEPOL's activities are currently limited to senior police officers. David Garbutt, Director of the Scottish Police College, is currently chair of the governing board of CEPOL during the UK Presidency. He is, with the governing board, responsible for producing a two year report that will help shape the future of CEPOL. He shares some of your concerns on this subject and is working on how to widen the involvement of officers in CEPOL's work programme beyond just the senior ranks.

David is also very keen to build stronger links with international organisations, such as Interpol. He has already begun discussing opportunities for greater international co-operation with Peter Ratzel, the new head of Europol. In addition, he has recently been invited to join the European Chief Police Officers Task Force. You mentioned your report, After Madrid: the EU's response to terrorism. This has, in fact, already informed the new CEPOL work programme for 2006. The Scottish Police College has pioneered a counter terrorism course in co-operation with the FBI, the Canadian police and the Police Service of Northern Ireland (PSNI) which has now completed one full cycle, is being adapted to meet European needs and is being added to the CEPOL programme.

Finally, I fully support your comment on the balance between permanent members of staff and officers on short term secondment. Now that CEPOL has achieved status as an EU body we will support CEPOL's efforts to recruit crucial permanent staff in order to foster continuity.

9 August 2005
**Letter from the Chairman to Rt Hon Hazel Blears MP**

Thank you for your letter of 9 August, which was considered by Sub-Committee F (Home Affairs) of the European Union Select Committee at a meeting on 12 October.

We are grateful for your explanation of the effect of the International Organisations Act 2005 in relation to applying the 1965 Protocol on Privileges and Immunities to CEPOL staff, which confirms our understanding of the matter.

We are also grateful for your positive response to the other points we raised. We are pleased to hear of the action that Mr Garbutt is taking, which we hope he will continue to pursue vigorously.

12 October 2005

**EUROPOL ANNUAL REPORT 2004**

**Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office to the Chairman**

I enclose for your information the Europol Annual Report (not printed) for the calendar year 2004.

The report describes the main activities of the organisation and reviews its performance against its priority objectives for the year. I would like to take this opportunity to highlight some of the key issues raised by the report, outline the Government’s view on the progress made by Europol in 2004 and identify priorities for the year ahead.

The Government is once again a little disappointed with the absence of output and performance indicators in the Annual Report and we would wish to see more specific and quantitative reporting of Europol’s performance in meeting key priorities. We have made these points at the Europol Management Board (EMB) and received some support but no general agreement on this approach could be reached. We will continue to press for further changes and reform through the UK Presidency of the EU.

**The Role of Europol and Current Activities**

Europol’s primary role is to support Member States’ own operations. Since commencing its full activities in 1999, Europol’s progress has been well supported and strongly influenced by the UK through our Europol National Unit based at the National Criminal Intelligence Service. The Government continues to firmly believe that Europol has an important role to play in the fight against serious, organised cross-border crime in the European Union.

The Report highlights the role Europol plays in key priority crime areas by providing operational support to Member States’ operations, sharing specialist knowledge, technical expertise and delivering training. The Report also highlights progress made in Improving Information exchange and intelligence analysis, strengthening Europol’s role in the field of combating Euro counterfeiting and negotiating co-operation agreements with third states and other organisations. The Government recognises and welcomes the achievements made during 2004.

**Key Challenges for 2006**

It is important that Europol builds upon its progress in 2004. Key priorities Europol has identified for the forthcoming year, 2006, include:

- Further implementation of the Europol Information System;
- Transformation of the EU Organised Crime Report into an Organised Crime Threat Assessment;
- Development of relations with other EU institutions such as Eurojust, the Border Management Agency and the EU Joint Situation Centre (Sitcen); and with other International organisations—such as Interpol and the World Customs Organisation.

The Government welcomes the positive and clear commitment Europol has shown to these priorities. Delivery on these priorities will assist Europol in becoming a more efficient, more effective organisation and better able to support Member States in the fight against serious and organised crime.
OTHER EUROPOL EVENTS

— Appointment of the new Europol Director: The new Europol Director, Max-Peter Ratzel, assumed his post on 16 April 2005. We supported Ratzel’s selection for the post as he was identified by the Selection Committee appointed by the EMB to be the best candidate for the job. We are very much looking forward to working closely with Ratzel.

— Ratification of the three protocols to the Europol Convention: Once all Member States have ratified the protocols this will allow Europol to operate more effectively within the Convention and thereby do better what it was set up to do, which is to support Member States’ operations. The UK has ratified all three protocols. Not all Member States have yet done the same, although we expect more Member States to do so in the coming months.

— Completion of the changes to Europol’s organisational structure. These changes will establish a structure consisting of both specialised officers with responsibility for particular crime areas and a pool of analysts and experts to support Member States’ operations. This will allow Europol to more effectively meet the diverse needs of Member States from providing strategic overviews and products to supporting Member States operations.

I hope that you will find this letter helpful.

12 August 2005

EUROPOL/CANADA CO-OPERATION AGREEMENT (3710-160r3)

Letter from the Chairman to Paul Goggins MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F (Home Affairs) of the European Union Select Committee considered the draft Canada/Europol Co-operation Agreement and the Joint Supervisory Body’s opinion on it at a meeting on 12 October. We strongly support effective cooperation between Europol and third countries and welcome this initiative. We have cleared the document from scrutiny. We were disappointed, however, that Europol had chosen not to use the model agreement developed with the JSB and would be interested to know the reason for this. Otherwise, like you, we strongly support the observations of the JSB on the need for it to be informed of any “other agencies” that may be notified as competent authorities; on the desirability of Europol using the consultation procedure provided for in the agreement to discuss with the Canadian authorities the codes used in the exchange of information and to develop a table of comparison between the codes used by the two parties; and on the need for it to be assured that Canadian liaison officers located in the Europol buildings cannot have direct access to data held by Europol.

12 October 2005

Letter from Paul Goggins MP to the Chairman

I write to you in response to your letter of 12 October 2005 regarding the outcome of the consideration by the European Union Committee’s Sub-Committee F (Home Affairs) of the draft Co-operation Agreement between the Government of Canada and Europol, 3710-160r3.

I welcome your recognition of the importance of effective co-operation between Europol and third countries; and I appreciate your supportive comments in respect of this agreement. The agreement itself should be signed later this month.

However, you draw attention to the differences between this agreement and the model agreement which was devised to assist Europol in the negotiating of third country agreements. I believe that it is desirable that such draft agreements as this are broadly in conformity with the model. This will assist in the speed and efficiency of negotiations. It will also ensure an adequate balance between the needs of law enforcement and the inclusion of necessary safeguards. However, the use of the model agreement is not mandatory.

In this instance the model agreement was used as a starting point, but during negotiations with and at the request of the Canadian authorities the draft agreement deviated in a number of respects from the model. However I would like to assure you that whilst the final agreement does not follow the model, it does contain the necessary legal requirements and strikes the right balance between the needs of law enforcement and the inclusion of appropriate safeguards.

11 November 2005
EXCHANGE OF INFORMATION AND INTELLIGENCE BETWEEN LAW ENFORCEMENT AUTHORITIES OF EU MEMBER STATES (6888/05, 13563/05)

Letter from the Chairman to Rt Hon Hazel Blears MP, Minister of State for Policing, Security and Community Safety, Home Office

Sub-Committee F (Home Affairs) of the Select Committee on the European Union considered this draft Framework Decision at a meeting on 25 May.

It is a far-reaching proposal, which is, of course, of particular interest to us in view of our recent report After Madrid: The EU’s Response to Terrorism, and we have considered its provisions in the light of that inquiry. We were grateful for the detailed Explanatory Memorandum that the Government submitted before the Election and for the helpful Annex showing the changes made to the previous version.

We note that the draft Framework Decision will be subject to a good deal of further negotiation in the Working Group. Nevertheless, there are a number of aspects of the proposal that cause us concern, especially as the Luxembourg Presidency seems to have extended its scope considerably compared with the original Swedish proposal and removed important safeguards, in relation to: the purposes for which information may be exchanged, the persons in relation to whom it may be exchanged, and the removal of the saving in the Schengen Implementing Convention for national law. We would be interested to know to what extent the Presidency consulted the United Kingdom on these changes, given that the forthcoming United Kingdom Presidency will inherit the dossier, and is hoping to conclude it by the end of the year.

As we made clear in our report, in general we regard the more effective sharing of information between law enforcement agencies as crucial to the counter-terrorism effort. But it is essential that such exchange of information should be subject to adequate safeguards, and in this connection we commended the Commission’s principle of “equivalent access” in so far as information exchange between Member States should be subject to the same restrictions as would apply nationally. Consequently we are concerned about the proposal to repeal Article 39 of the Schengen Implementing Convention, which provides that the exchange of information must be subject to a condition of compatibility with the national law of the states concerned. Repeal of this provision does not conform with the principle of equivalence, and we can see no justification for giving authorities of another Member State more privileged access to information than the Member State’s own authorities.

In its covering paper the Luxembourg Presidency draws a distinction between police co-operation and judicial co-operation and proposes to exclude judicial authorities from the definition of competent law enforcement authority in Article 2(a). But it is not entirely clear to us if judicial authorities would be covered by the Decision and, if so, on what terms. We would be grateful for clarification of the scope of the Decision in this respect.

We are extremely concerned at the extent to which the limitations on the exchange of information in the original proposal have been watered down. In particular, we are strongly opposed to the abolition of the restriction on the scope of the Decision to offences punishable by at least 12 months’ imprisonment. The justification given for this change is that Article 39 of the Schengen Implementing Convention contains no such limitation and that there is therefore no reason to apply a more restrictive approach under the Framework Decision. This appears to ignore the fact that the very title of the Framework Decision refers to “serious offences including terrorist acts”. Indeed the proposal was originally brought forward and justified as a counter-terrorism measure.

We are also concerned that the limitation on the exchange of information to certain categories of person has been removed. This is another necessary safeguard on the exchange of information.

More generally, we regard the data protection provisions in the draft as totally inadequate. We share the Government’s view about the obscurity of the phrase “the established rules and standards of data protection” in Article 9(1) and the term “the equivalent standards of data protection” in Article 9(2). The provisions in Article 9(3) relating to the purposes for which information may be exchanged are also very vague and unlikely to pass the test of purpose limitation. Article 9(4) provides that the receiving authority will be bound by any condition imposed on the use of information and intelligence by the sending authority, but there appears to be no mechanism for ensuring that this obligation is observed.

We are glad to see that the Government is in touch with the Information Commissioner on the data protection element of the proposal, and we would be grateful if you could inform us of his views when you have received them. The inadequacy of the data protection provisions strengthens the case that we advanced in our report for a general data protection regime for the Third Pillar.
We would be grateful for your comments on these points and for information on the current state of play of the negotiations. In the meantime we shall keep the document under scrutiny.

26 May 2005

Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office to the Chairman

You wrote to Hazel Blears on 26 May asking a number of questions raised by Sub-Committee F (Home Affairs) on the draft Framework Decision, which was the subject of the further Home Office Explanatory Memorandum of 1 April 2005.

The Framework Decision was further discussed in Brussels on 31 May, and a further revision of the Council document, CRIMORG 20 REV 2, was issued on 17 June. This has been deposited with the scrutiny Committees and is the subject of my Explanatory Memorandum of today’s date. I enclose a copy of the Explanatory Memorandum (not printed) for ease of reference.

Consultation with the United Kingdom

In your letter of 26 May, you explain that the Committee has concerns about a number of the changes in document CRIMORG 20 + ADD 1 compared with the previous version and asks if the United Kingdom, as upcoming Presidency, was consulted on these by the Luxembourg Presidency. You can be assured that the Luxembourg Presidency has indeed kept us informed of its handling of the Framework Decision. But understandably it has made its own independent assessment of the weights to be attached to the various views expressed by the Member States, and the Commission, in the discussions in Brussels.

Following the circulation of document CRIMORG 20 + ADD 1, the Luxembourg Presidency jointly discussed with my officials future handling of the Framework Decision, taking into account the importance of finalising it by the end of this year in conformity with the action plan on counter-terrorism approved by the European Council. My officials explained that in our judgement it was essential to incorporate adequate data protection and other important safeguards.

You will see from the Explanatory Memorandum on document CRIMORG 20 REV 2 that the draft Framework Decision now includes a number of material, further changes. There is still further progress to be made, but I am hopeful that the document provides a basis for moving forward during the United Kingdom Presidency with the realistic prospect of reaching a satisfactory conclusion by the end of this year.

Compatibility with National Law

The Committee notes the proposed repeal by the Framework Decision of Article 39 of the Schengen Implementation Convention, where there is an overlap, and expresses concern that this would remove the requirement that exchange of information and intelligence must be compatible with national law. But paragraph 6 of document CRIMORG 20 explains that “abolition of this ‘safety valve’ and the concomitant establishment of a general obligation to exchange investigative information between police authorities require that some limitations and grounds for refusal be provided for”. The Explanatory Memorandum on document CRIMORG 20 REV 2 explains that some progress has been made on incorporating compensatory safeguards. But these will be discussed further during the United Kingdom’s Presidency.

Judicial Authorities

The Committee asks if judicial authorities are outside the definition in Article 2(a) of “competent law enforcement authority”. Certainly, the sentence which appeared in the original version of the definition, explicitly referring to judicial authorities, has now been deleted. But the definition also refers to “other” authorities, as well as police and Customs authorities. The intention is that the definition should include other authorities with law enforcement functions, specifically powers to investigate offences and criminal activities and take coercive measures.

In the United Kingdom, there are a number of such authorities, other than police and Customs authorities, and a number of them additionally have prosecuting responsibilities. A notable example is the Serious Fraud Office. Whilst such authorities would be within the scope of the definition, this would only be the case insofar as they would be exchanging information and intelligence at the pre-evidential stage of enquiries.
Article 1 of the Framework Decision provides that it is without prejudice to mutual legal assistance and mutual recognition arrangements. It is also worth emphasising that, conversely, it is not intended that the draft European Evidence Warrant, still under discussion in Brussels, should become a law enforcement cooperation measure. Although Article 2(c) of the European Evidence Warrant, as presently drafted, provides that issuing authorities may include police authorities, this would only be insofar as police authorities were acting “in their capacity of preliminary investigation authorities in criminal proceedings”.

**ALL CRIMES**

The Committee is concerned about the widening of the Framework Decision to relate to all criminal conduct, not just serious offences including terrorist acts. You will see from the Explanatory Memorandum that the title of the Framework Decision has now been modified to reflect this broader scope.

As the Committee notes, Article 39 of the Schengen Convention already applies to all offences. But it is a skeletal provision. A purpose of the draft Framework Decision is to provide, through more comprehensive provisions, clearer obligations and rules with a view to simplifying and speeding-up co-operation. In the negotiations on the Framework Decision, it was generally considered that if Article 39 is to be enhanced, then operational practitioners would find it helpful if the improved arrangements could be applied across a full range of offences, not just serious offences. The Explanatory Memorandum explains that the Government supports this approach, but on the basis that scarce law enforcement resources will not unnecessarily be diverted into exchanges of information and intelligence in relation to matters which, in comparable domestic circumstances, would be given low priority. There is also the need for adequate data protection and other safeguards.

**CATEGORIES OF PERSON**

I note and share the Committee’s concern about deletion of what was Article 6. The incorporation into the Framework Decision of adequate safeguards will be an important UK Presidency objective.

**DATA PROTECTION**

I agree with the Committee that the data protection provisions in document CRIMORG 20 + ADD 1 are not satisfactory. The modified provisions in document CRIMORG 20 REV 2 are an improvement, see the Explanatory Memorandum. We are examining these carefully. There is already a data protection regime for Article 39 of the Schengen Convention in Articles 126–130 of the Convention. We are considering how what is now proposed in Article 9 of the Framework Decision compares with the existing Schengen provisions. We also understand that the Commission will soon be bringing forward its proposals for an over-arching data protection instrument for the Third Pillar. These might also appropriately be taken into account.

**FURTHER VIEWS OF THE INFORMATION COMMISSIONER**

My officials are seeking further views from the Information Commissioner. As soon as these are received I will forward them to you.

28 June 2005

**Letter from Paul Goggins MP to the Chairman**

In my letter of 28 June 2005 on the draft Framework Decision, I promised to send you the further views of the Information Commissioner. These have just been received and are enclosed.

The Government is considering these views among other matters. We intend, during the United Kingdom Presidency, to present in the Council a document further modifying the Framework Decision with a view to resolving Member States’ outstanding concerns. We have particularly in mind the expectation in the counter-terrorism action plan approved by the European Council that this Framework Decision should be adopted by the end of the year.

We hope to issue the document within the next few days. We will of course deposit this for scrutiny and submit an Explanatory Memorandum in the usual way. The new document and Explanatory Memorandum will provide an up-date on the present state of negotiations.

25 October 2005
1. As Information Commissioner I was pleased to have been given an opportunity in 2004 to submit my views to the European Scrutiny Committee on what was then the current version of the Draft Framework Decision. I now welcome the opportunity to update my comments in the light of the latest draft (6888/2/05 Rev2).

2. We are encouraged by the importance that the Government attaches to ensuring that the Framework Decision includes adequate data protection and civil liberties safeguards. We also welcome the extent to which the most recent draft improves, in this respect, on the version that we previously commented on. In particular I draw attention to the inclusion in the recital of a reference to Recommendation No R (87)15 of the Council of Europe, confirmation in paragraph 1 bis of Article 1 that the use of more favourable provisions is without prejudice to minimum data protection standards and the addition of paragraph 5 to Article 1 underlining the obligation to respect fundamental rights.

3. The widening of the Framework Decision to apply to all offences rather than primarily to “serious offences including terrorist acts” is noted. As the Government points out Articles 39 and 46 of the Schengen Convention, which currently provide the principal EU framework for exchanges of information and intelligence, are to be repealed to the extent to which the Framework Decision covers the same matters. However, some clarification is required. Does the widening of the Framework Decision mean that these articles of the Schengen Convention will be repealed in their entirety? If not what will be the distinction between the two instruments?

4. Furthermore the data protection implications of this overlap are unclear. Will some information exchanges take place under the Schengen Convention with the data protection provisions of Articles 126 to 130 of that Convention applying and others take place under the Framework Decision with different and arguably lesser controls applying? If all exchanges take place under the Framework Decision will the protection provided by Articles 126 to 130 of the Schengen Convention be lost? Whilst it might be appropriate to review the relevant provisions of the Schengen Convention the possibility that they might simply be abandoned does not sit well with the stated importance attached to data protection safeguards.

5. Alternatively is the intention of Article 9(1) that the data protection controls in the Schengen Convention will continue to apply? If so should this not be stated explicitly in the Framework Decision? Also there appears to be some conflict between the provisions of Article 129 of the Schengen Convention relating to additional provisions when personal data are transmitted under Article 46 of that Convention and the provisions of Articles 9(3) and 9(4) of the Framework Decision.

6. Articles 9(3) and 11 appear to give extremely wide leeway as to how and by whom information and intelligence passed from one Member State to another can be used. This is cause for concern particularly as the Framework Decision now applies to all offences meaning that the range of law enforcement authorities potentially involved in the UK, if not in all Members States, is very wide. It also needs to be borne in mind that there now appears to be no restriction on the categories of persons on whom data can be exchanged. As an example, information on a witness rather than a suspect might be requested from SOCA in the UK by the Spanish Police on the basis that it is needed for a terrorist investigation. There then appears to be little, if anything, to prevent the Spanish Police using the information or passing it on to other authorities in Spain perhaps to pursue someone who was a witness rather than a suspect for lesser matters such as motoring offences or trading standards infringements. To prevent this SOCA would need to go out of their way to impose conditions under Article 9(4). This possibility sits uneasily with Principle 5.5iii of Recommendation No R (87)15 of the Council of Europe which states that, “The data communicated to . . . foreign authorities should not be used for purposes other than those specified in the request for communication”. This also means that there is a risk that information could be used and disseminated in the receiving Member State in a way that might not be possible or desirable in the originating member state whether for data protection reasons or otherwise.

7. The above issues underline the need, that we expressed in our previous submission, for an overarching data protection framework for the Third Pillar. The increasing number of information sharing initiatives and the different but overlapping data protection regimes that apply create a pattern that is confusing, fails to meet the principles of good regulation and risks undermining the effectiveness of what are widely agreed to be important data protection safeguards. Attention is drawn to the report of Sub Committee F (Home Affairs) of the House of Lords European Union Committee, “After Madrid: the EU’s response to terrorism” published on 8 March 2005. The Sub Committee recommend that “Enhanced information exchange in the EU, and the trend towards greater profiling of individuals, necessitate the establishment of a common EU framework of Data Protection for the Third Pillar” (paragraph 42). We hope that the Government will not only support the
current initiative of the European Commission to develop such a framework but also work with the Commission to ensure that this framework provides appropriate and effective protection for the rights of individuals.

8. At a more detailed level we offer the following additional comments:

   Article 4(1): There is a question as to what is meant by “held by or accessible without the use of coercive means”. Does this exclude information that has already been obtained by a law enforcement authority using coercive powers? An example might be telecommunications data that has been obtained by the police from a telecommunications provider using their powers under the Regulation of Investigatory Powers Act (RIPA). The coercive demand for this information might have been authorised on the basis that the information was necessary for a murder investigation. Is it then to be made available to law enforcement authorities in other Member States for use in a lesser crime investigation when its original obtaining would not necessarily have been authorised for this purpose? If so there is a potential conflict with data protection requirements and possibly with other legal obligations. We understand that the Government recognises the validity of this point but we remain to be convinced that the current wording of the Framework Decision makes it sufficiently clear either that information currently held but originally obtained by coercive means is excluded from the Framework Decision or that under Article 11 it can justifiably be withheld. We are particularly concerned to ensure that proper account is taken of the position in the UK whereby some coercive powers, including those under RIPA, can be exercised without the need for judicial authority.

   Article 9(2): Exchanges of information and intelligence need to comply not only with the national data protection provisions of the receiving state but also those of the originating state. It is not, for example, acceptable for a UK police force to pass information to a tax authority in Spain if, for data protection reasons, it could not pass the same information to the same type of authority in the UK.

   Article 11(1): See comment on Article 4(1) above. It should be possible to refuse to provide information if to do so would be disproportionate not only with regard to the purposes for which it has been requested, but also with regard to the circumstances by which it was obtained.

9. At their Conference in April 2005 the European Data Protection Authorities issued an Opinion on the then draft of the Framework Decision (10215/04). A copy of this Opinion is attached (not printed). It covers similar ground to the observations made in this submission and our previous submission but I nevertheless hope that it will be of interest to the Committee.

10. We should be pleased to provide further information or clarification of our concerns to the Scrutiny Committee if they would find this helpful.

Letter from Paul Goggins MP to the Chairman

You will have received the Government’s Explanatory Memorandum of 9 November 2005 on the above draft Framework Decision. I hope you will have found this useful. It is still the intention of the UK Presidency to put the draft Framework Decision to the JHA Council at the end of this week in order to reach an agreement on the general approach. I thought therefore that you might find an update on the negotiations of assistance.

Discussions in Brussels have focused on fine-tuning the text in readiness for Council. Further discussions, as the Explanatory Memorandum suggested, have been held on the data protection provisions (contained in Article 9 of the draft Framework Decision) and this letter sets out the outcome of those discussions.

The Explanatory Memorandum informed you of the substantive amendments which had been made previously to the data protection provisions. The further discussions have enabled a more thorough consideration of the text. In particular they have been constructive and useful in confirming the adequacy of the proposed data protection regime. A number of small changes have been made to the text including the deletion of the Declaration annexed to the Decision which was not part of the text. These changes, whilst welcome, do not alter the substance of the text, and the text therefore remains largely as that to which you have been sighted in CRIMORG 114.

As you know the Information Commissioner has provided detailed views. The Government has taken these into account and believes that Article 9 satisfies the essence of his points. In answer to a few detailed points we take the view that it is implicit in Article 9 that “the established rules on data protection” are the national rules applying in the Member States. We also believe that it is implicit that paragraph 1a of Article 1 and paragraph 3 of Article 13 are without prejudice to the minimum standards of data protection in Article 9.
As you will be aware the Framework Decision will replace Articles 39 and 46 of the Schengen Convention in as far as they concern the sharing of information and intelligence. A data protection regime already exists for these articles in Articles 126–130 of the Convention; discussions in Brussels have confirmed that the data protection regime contained within Article 9 of the draft Framework Decision will ensure an equivalent adequate data protection regime will apply when the Framework Decision comes into effect.

I hope you will find this additional information of assistance.

29 November 2005

Letter from the Chairman to Paul Goggins MP

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered the draft Framework Decision regarding the Exchange of Information between law enforcement authorities of the Member States (13563/05) at its meeting on 30 November.

As you know, the Committee considered an earlier draft of this document (6888/05) on 25 May, and the following day I wrote to Hazel Blears expressing concerns about a number of aspects of the proposal. Of particular concern was the fact that the scope of the Framework Decision had been greatly widened, but that the safeguards had been weakened. We are disappointed that none of these concerns have been addressed. On the contrary, there are aspects of the new draft that are even more worrying.

Let me reiterate that we fully support the principle behind this proposal. A central recommendation of our report After Madrid: the EU’s Response to Terrorism was that “more effective sharing of information between law enforcement agencies is crucial to the counter-terrorism effort”. A proposal restricted to this aim, and accompanied by adequate safeguards, would have our whole-hearted support.

According to the ninth recital, “the present text of the proposal . . . achieves the appropriate balance between a fast and efficient law enforcement co-operation and agreed principles and rules on data protection, fundamental freedoms, human rights and individual liberties”. We cannot agree.

The scope still includes all criminal offences, potentially even trivial ones. The restriction to serious offences, which in the previous draft was at least retained in the title, has now been removed even from that. In your letter of 28 June you said that the Government supported the extension of the proposal to the full range of offences, but “on the basis that scarce law enforcement resources will not be diverted into exchanges of information and intelligence in relation to matters which, in comparable domestic circumstances, would be given low priority”. The explanatory memorandum states that achieving this has been one of the aims of the UK Presidency, but we can see no provision which would prevent the diversion of scarce resources to just such matters. In our view, article 11(1)(c) would certainly not achieve this.

A related concern is the continued absence of any provision limiting the proposal to information relating to persons suspected of serious offences (as in article 6 of an earlier draft). You said that you shared this concern. It does not appear to us that anything has been done to alleviate your concern, and ours.

Our other major reservation relates to the data protection provisions. You kindly sent with your letter of 25 October the views of the Information Commissioner. Although these relate to an earlier draft, we believe they are still very pertinent. We continue to regard the drafting of article 9(1) as unacceptably vague. If however there is a meaning to be attached to the expression “established rules and standards on data protection”, we wonder why article 9(2) now subjects information to the “national data protection provisions of the receiving Member State”. But if national law is to apply then, like the Commissioner, we believe that the information should be subject to the laws of the sending as well as of the receiving state, otherwise there remains the possibility of law enforcement authorities of another Member State having more privileged access to information than one’s own authorities.

The Commissioner was also unhappy about article 9(3). Despite the amendments to the draft he was examining, we believe his points still have great force. There is still no adequate restriction on the purposes for which information may be used, nor any way of enforcing such restrictions.

The memorandum states that you expect the general approach of this draft to be ready for agreement at the Justice and Home Affairs Council being held 1–2 December, but that details remain to be finalised under the Austrian Presidency. You will see that our concerns go wider than just matters of detail. We are keeping the document under scrutiny, and would welcome your comments on the points we raise.

30 November 2005
Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 29 November updating me on the negotiations on this draft. Unfortunately it crossed with my letter to you of 30 November, and I did not see it before the draft was considered at the JHA Council, and the general approach agreed, thus overriding scrutiny of the document.

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union nevertheless considered the Framework Decision again in the light of your letter at a meeting on 14 December. Although it is too late now for you to take our views into account, we remain unhappy about article 9. In particular, we still do not understand how “the established rules on data protection” can be the national rules applying in the Member States, given that there are almost as many national rules as there are Member States. If this were right, there would surely be no need for paragraph 2 to refer to “the national data protection provisions of the receiving Member State”.

You say that you have taken the views of the Information Commissioner into account, and believe that article 9 satisfies the essence of his points. I shall be writing to the Commissioner to ask him if he has anything to add on this.

15 December 2005

Letter from Paul Goggins MP to the Chairman

Thank you for your letter of 30 November regarding the outcome of the consideration of the draft Framework Decision on simplifying the exchange of information and intelligence between the law enforcement authorities of the Member States of the European Union by Sub-Committee F (Home Affairs) of the Lords’ European Union Committee.

In your letter you explained that whilst the European Union Committee supported the principle behind the proposal, you continue to have reservations as to the scope of the proposal and the adequacy of the safeguards (especially the data protection provisions) contained within the proposal.

Scope of the Proposal

(i) All criminal offences

The Committee is concerned that the scope still includes all criminal offences.

As I stated in my letter of 28 June last the Government supports the wider scope of the proposal such that it will encompass information exchanges for all criminal offences and not just serious offences and terrorism. You will be aware that Article 39 of the Schengen Convention provides the current principal EU framework for the exchange of information and intelligence between law enforcement authorities. The Framework Decision seeks to provide, through more comprehensive provisions, clearer obligations and rules with a view to simplifying and speeding up the exchange of information. Article 39 applies to all offences and a consensus emerged during the negotiations that, for the Framework Decision to deliver an improvement for operational practitioners on Article 39, there was a need for the Framework Decision to apply to all criminal offences.

I do believe that the wider scope needs to be balanced by provisions which will ensure that law enforcement resources are not diverted into exchanges of a low priority. I believe that Article 11(1)(c) and Article 11(2) of CRIMORG 114 went a long way to ensuring this. The text on which a general approach was reached at the JHA Council in December went further such that Article 11(2) provides that:

“Where the request pertains to an offence punishable by a term of imprisonment of one year or less under the law of the requested Member State, the competent law enforcement authority may refuse to provide the requested information and intelligence . . .”

In order to reconcile this new limitation, a new recital has also been inserted to provide that Article 11(2) should be

“. . . implemented with a view to promoting exchange of information as widely as possible, in particular in relation to offences linked directly or indirectly to organised crime and terrorism, and in a way which does not detract from the required level of co-operation between Member States under existing arrangements . . .”

I welcome these two amendments and believe that they will ensure the appropriate balance.
(ii) **Categories of person**

The Committee is concerned at the continued absence of any provision limiting the proposal to information relating to persons suspected of serious offences.

As you highlighted the original Swedish proposal contained a provision, Article 6, which limited the proposal to the exchange of information or intelligence which may relate to persons who:

(a) are suspected to have committed or taken part in an offence;

(b) according to intelligence or evidence, may commit or take part in an offence; or

(c) do not fall under (a) or (b) but where there are factual reasons to believe that an exchange of information or intelligence as part of an investigation could assist in the detection, prevention or investigation of a crime.

Furthermore Article 6 provided that information or intelligence may be exchanged under this proposal where this would facilitate the identification of a person falling under categories (a)–(c).

It was, as you are aware, one of our objectives that given the deletion of this Article adequate safeguards were incorporated into the Framework Decision. I am satisfied that the Framework Decision now contains these safeguards. In particular I would highlight the provisions within Article 5, and specifically paragraph 1 which limits the requesting information and intelligence to the purpose of the detection, prevention or investigation of an offence. Furthermore the request is required to set out the factual reasons and the purpose for which the information is sought and the connection between the purpose and the person who is the subject of the information and intelligence. Should we consider a request to be disproportionate or irrelevant to the purpose we would not provide the information.

**DATA PROTECTION PROVISIONS**

The Committee has also expressed reservations on the data protection provisions.

My letter of 29 November explained that there had been further discussions in Brussels on the data protection provisions. These discussions were useful in confirming the adequacy of the data protection regime. The Government has taken the detailed views of the Information Commissioner into account and we believe that the text of Article 9, as considered at the JHA Council in December, satisfies the essence of his points.

In answer to your specific comments, on Article 9(1) we take the view that it is implicit that “the established rules on data protection” (the reference to “standards” has been deleted as superfluous) are the national rules applying in the Member States. The specific application of these rules is expanded upon in the subsequent paragraphs.

On Article 9(2) I do not believe that it would be possible to completely co-ordinate both the data protection provisions of the receiving and communicating Member State in every respect. However, I would emphasise that:

--- Article 9(2) has been amended to make clear that information or intelligence exchanged under this Framework Decision shall be subject to the same data protection provisions in the receiving Member State as if that data had been gathered in that State;

--- Article 9(3) has been extended to make explicit that, where a Member State wishes to use data received for another purpose, unless it is to prevent an immediate and serious threat to public security, the prior authorisation of the communicating state is required and this authorisation can only be given in as far as the national legislation of the communicating Member State permits.

I believe these clarifications do all that is practical to address your concern as to the possibility of law enforcement authorities in another Member State having a more privileged access to information than one’s own authorities. I also believe that these amendments will address your concerns as to the purpose limitation. You will be aware that Article 9(4) provides for the providing competent authority to impose conditions upon the use of information or intelligence by the receiving competent law enforcement authority. In light of discussions in Brussels, Article 9(4) now includes a provision to require the receiving Member State to provide, on request from the communicating Member State, information as to use and further processing of transmitted information.
Next Steps

At the JHA Council of 1–2 December 2005 an agreement on a general approach to this draft Framework Decision was reached. This agreement pertains to the text of the draft instrument and not to the annexes. The annexes will be further considered before the Framework Decision is adopted by the Council later this year.

I hope you will find this letter helpful.

11 January 2006

EXCHANGE OF INFORMATION UNDER THE PRINCIPLE OF AVAILABILITY (13413/05)

Letter from the Chairman to Paul Goggins MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered this draft Framework Decision at its meeting on 30 November.

As you may remember from our report *After Madrid: the EU’s Response to Terrorism*, the Committee favoured a mechanism to enhance the exchange of information on the principle of availability, but felt it essential that this should be subject to suitable safeguards. While we therefore welcome an instrument of this type, we believe that the current draft is defective in that there is no way of ensuring that the information provided is used solely for the purposes intended. We appreciate that article 7 is aimed at achieving this, but think it is entirely inadequate for that purpose.

We understand the advantages in terms of speed and cost in being able to access information from a database online, but it seems that there will be no way for the holder of that information to know what information has been sought, and by which law enforcement agency. There will be no means of checking that the information is indeed used only “for the prevention, detection or investigation of the criminal offence for which the information is provided”. This information, much of it personal and sensitive, may be used for wholly different purposes without the holder of the information, or the person to whom it relates, being any the wiser. We believe that it is important to, devise some mechanism for ensuring that the purpose limitation is observed.

Article 17, dealing with the right of access of the data subject to information concerning him, applies the relevant provisions of the Framework Decision on data protection. Since this is still in draft, there is no way of knowing whether its provisions will be adequate for that purpose. We would have preferred to see provisions specifically drafted for this purpose.

We are therefore keeping the Framework Decision under scrutiny, and would welcome your comments on these points.

The Sub-Committee has also been looking at the Prüm Convention, signed in May by seven of the Member States. This is not a document under scrutiny, but we believe that the Framework Decision could be greatly improved by incorporating some of the provisions of Chapter 7 of the Convention. These include a strict purpose limitation (article 35), requirements to ensure the accuracy and relevance of data (article 37), measures governing the security of personal data (article 38), and a provision on the rights of access of data subjects, their right to have inaccurate data corrected, and their right to seek damages for violation of data protection rights (article 40). Most significant of all is article 39, which requires searches to be carried out by specially authorised officials, and provides a mechanism for tracing requests for information, a mechanism for recording and tracing searches, and a supervisory role for national data protection authorities.

The Presidency note to COREPER of 2 September 2005 (11910/05) states that “specific elements of the Prüm Treaty may serve as a useful basis for work at EU-level”. We agree, and wonder why, if such useful provisions are included in a Convention between seven Member States, similar provisions cannot be included in the Framework Decision.

We note that the Convention is open to accession by other Member States, and we would be interested to know whether the Government has any plans for the United Kingdom to accede to the Convention.

30 November 2005

Letter from Paul Goggins MP to the Chairman

Thank you for your letter of 30 November regarding the outcome of the consideration of the draft Framework Decision on the exchange of information under the principle of availability by Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union.
In your letter you explained that whilst the European Union Committee favoured a mechanism to enhance the exchange of information pursuant to the principle of availability and therefore welcomed an instrument of this kind, you felt it essential that this should be subject to suitable safeguards. In particular you expressed concern that the current draft is defective in that it does not make adequate provision for ensuring that information provided is used solely for the purposes intended. Furthermore you queried the reliance of this proposal on the draft Framework Decision on the protection of personal data in order to make provision for a data subject’s right of access to information concerning him. You also noted that negotiations could usefully be informed by provisions contained within the Prüm Treaty, and asked whether the Government had any plans to accede to that Treaty.

1. PURPOSE LIMITATION

I agree that it is important that a mechanism to enhance the exchange of information under the principle of availability should be subject to appropriate safeguards. One of these safeguards is a limitation as to the purposes for which data exchanged under this Framework Decision can be processed. Article 7 of the current draft provides these parameters. My officials are still considering the adequacy of Article 7, but I can appreciate your wish to see a mechanism to ensure that the purpose limitation is observed. This would require both an ability to log the information accessed and exchanged and a mechanism to verify the purposes to which it is put.

It is intended that the processing of personal data under this Framework Decision should be in accordance with the provisions of the Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (the DPFD), which is also currently under negotiation in Brussels. Recital 19 of the draft Framework Decision on the exchange of information under the principle of availability states that a record of all information obtained under this Framework Decision should be kept according to the conditions set out in the DPFD. I note that the current draft of the DPFD includes provisions which require the logging and documentation of each automated and non-automated transmission of data (Article 10); and provides that a competent authority whose data was transmitted can obtain information about the processing from the obtaining authority and the results achieved (Article 18). These provisions are complemented by Article 8 and Article 16 of the draft Framework Decision on the exchange of information under the principle of availability. We shall keep the adequacy of these arrangements in view as negotiations progress.

2. RIGHT OF ACCESS OF THE DATA SUBJECT

As you are aware Article 17 of this current draft Framework Decision provides that the conditions foreseen in the DPFD shall determine the right of access of a data subject to the information demands concerning him and the responses. Negotiation of the DPFD is also in its initial stages. I can appreciate your concern at the reliance on a separate instrument which is still under negotiation. I expect that negotiations and discussions on the two instruments will inform each other and we shall be considering these arrangements further as negotiations develop.

3. PRÜM TREATY

The Government is currently considering whether the UK should accede to the Prüm Treaty. I anticipate that negotiation of this Framework Decision and of the DPFD will be informed by the Prüm Treaty and work underway by signatory countries to implement that Treaty. I note that provisions with similar objectives to those which you highlight in Chapter 7 of the Treaty can already be found in the DPFD.

I shall keep you informed as to how the negotiations of this Framework Decision progress.

I hope you will find this letter helpful.

9 January 2006

FRAMEWORK PROGRAMME ON SOLIDARITY AND THE MANAGEMENT OF MIGRATION FLOWS 2007–13 (8690/05)

Letter from the Chairman to Tony McNulty MP, Minister of State for Immigration, Home Office

Sub-Committee F (Home Affairs) of the European Union Select Committee considered the Commission’s proposals for a framework programme on solidarity and the management of migration flows for the period 2007–13 at a meeting on 29 June.
We considered that the Commission had made a good case for the Refugee, External Borders and Return Funds, since these are areas, where, particularly in relation to borders, costs fall disproportionately on certain Member States, predominantly some of the new Member States, and there is a strong justification for a burden-sharing arrangement.

Although the activities envisaged for support by the Integration Fund are all entirely worthwhile, we are not convinced that there is a case for funding them at EU level, in view of the principle of subsidiarity. Your Explanatory Memorandum did not examine the subsidiarity issue in any depth and we did not find the arguments advanced for EU action by the Commission—the economic effects of a lack of integration policies and the need to improve the performance of some Member States—persuasive. This is an area which, given the substantial social and cultural differences between the Member States—and their different organisational arrangements, seems particularly unsuitable for EU action. There is also a much less clear mandate from the European Council for the Integration Fund than for the other funds.

We would welcome an explanation of why the Government believe that the Integration Fund can be justified by reference to the principle of subsidiarity. We note that the Commission is preparing a Communication on new ideas for future co-operation between Member States at EU level in the field of integration of third country nationals. If the proposal for an Integration Fund is not dropped altogether, perhaps it should be detached from the Framework Programme and considered alongside this forthcoming Communication.

Secondly, we would welcome any more information you can provide on the financing of these funds. You say that the United Kingdom supports the principle of increased funding for the EU justice and home affairs policies as long as the increase is compatible with an overall budget package of 1 per cent of EU gross national income. But if the budget is restricted to 1 per cent, as the UK and some other Member States are arguing, is it likely that JHA expenditure could be protected? In response to our recent report on Future Financing of the European Union the Government said, in relation to increased spending in the JHA area, that “cooperation and coordination between national bodies can be more useful than cumbersome new structures at the EU level and that common rules and sharing of best practice is likely to be more fruitful in many instances than significant EC expenditure”. This suggests a rather less enthusiastic view of the proposed greatly increased JHA expenditure, and we would be grateful for clarification of the Government’s position.

In the meantime we will continue to hold the document under scrutiny.

5 July 2005

Letter from Tony McNulty MP to the Chairman

I am writing in response to your letter of 5 July 2005 about the outcome of the consideration by the European Union Committee’s Sub-Committee F (Home Affairs) of the Commission communication establishing a framework programme on solidarity and the management of migration flows for the period 2007–13.

In your letter you sought clarification of:

— why the Government believes the integration fund is justified by reference to the principle of subsidiarity;
— whether the integration fund could be detached from the framework programme and considered alongside the forthcoming Commission communication on integration;
— And whether JHA expenditure can be protected in an overall budget package of one per cent gross national income.

Subsidiarity

We accept that Member States have the biggest responsibility for designing and implementing effective integration policies. But we believe that the EU also plays an important role. Successful integration of legally resident third country nationals brings broader social cohesion and economic benefits which can have an impact across the EU, particularly when third country nationals move between Member States. It is a key part of the holistic approach to managed migration which the EU is aiming for.

Despite substantial social and cultural differences between Member States, the EU has already shown it can add value by setting common basic principles; facilitating exchanging of information and best practice; and funding small-scale integration projects. The Integration fund will build on and extend these activities. This is particularly relevant for Member States with less well-developed integration programmes.

Some Member States have questioned the fund’s legal base. We are seeking views, and as Presidency will then consider further handling of the fund.
As Presidency we are handling the integration fund together with the other funds, with which it has many provisions in common. Once the Commission issues its communication on Integration in September we will consider how best to ensure that there is consistency between the fund and the communication.

JHA Expenditure

There is broad consensus within the EU that JHA expenditure should be increased though no final agreement yet on how much it should be increased by. We do not believe this is incompatible with an overall budget package of one percent gross national income.

Finally, while sharing of best practice may be more fruitful in many instances of the JHA agenda, there are areas where this does not apply, including the principles of burden sharing and solidarity, which underlie the Commission’s funding proposals.

21 July 2005

Letter from the Chairman to Tony McNulty MP

Thank you for your letter of 21 July about the Framework Programme on solidarity and the management of migration flows, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 26 October.

We note that you are satisfied that the integration fund is justified on subsidiarity grounds. You say that successful integration of legally resident third country nationals brings benefits which can have an impact across the EU, particularly when third country nationals move between Member States. We were surprised that you should use that example when the United Kingdom has not opted into the Long-term Residents Directive. In the light of your comments we hope that the Government will reconsider its position on the Directive.

We are not totally convinced on the subsidiarity point, but we have cleared the document from scrutiny. We would, however, be grateful to be kept informed of any significant developments that arise in the negotiation of the Programme and in particular the outcome of consideration of the integration fund’s legal base.

26 October 2005

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 26 October. I am pleased that you have cleared the above document from scrutiny. The UK opted into Return, Refugee and Integration Funds on 25 October 2005.

Our decision not to opt into the Long Term Residents Directive remains unchanged, as we continue to believe it is important to retain our ability to decide which third country nationals we admit into the UK for legal migration measures. But in the light of the directive’s provisions for mobility of third country nationals within the Schengen area, it is clear that there is a role for the EU in the development and implementation of integration policy and measures. Failure to integrate immigrant populations properly in an era of greater mobility into, and between EU Member States, could contribute to radicalisation and disenfranchisement of individuals and groups, which in turn could pose a threat to other Member States.

Member States will have a detailed discussion about the legal base for the Fund at SCIFA in December. We will keep you informed of progress as the negotiations develop.

11 November 2005

HAGUE PROGRAMME: PARTNERSHIP FOR EUROPEAN RENEWAL IN THE FIELD OF FREEDOM, SECURITY AND JUSTICE (8922/05)

Letter from the Chairman to Rt Hon Charles Clarke MP, Home Secretary, Home Office

Sub-Committees E (Law and Institutions) and F (Home Affairs) of the European Union Select Committee considered the Commission’s Action Plan at meetings on 29 June.

As you know from our recent inquiry, we attach great importance to the Hague Programme since it sets the agenda for work in the justice and home affairs field for the next five years; and the Action Plan is a crucial document in implementing the Programme. We were therefore disappointed not to have an opportunity to scrutinise the Action Plan before it was adopted. The Commission’s Communication is dated
10 May, but the Explanatory Memorandum was not signed off until 7 June, by which time the Action Plan had already been approved by the Justice and Home Affairs Council the previous week. This was despite the fact that in your letter of 7 June covering the Government’s response to our report you specifically referred to the fact that the Action Plan would be available for scrutiny.

We also note from your Explanatory Memorandum that the Government were in favour of the Action Plan remaining the Commission’s document and not being “adopted” by the Council and the European Council. We would be interested to know how it came about that this aspiration was frustrated. In the debate on the Hague Programme on 20 June, Baroness Scotland described it as “a non-binding frame of reference based on the Hague Programme”, but the wording of the Council—and European Council—conclusions indicates that it has been formally approved.

As the Action Plan has been adopted, we have formally cleared it from scrutiny, but there are several other aspects of it on which we would be grateful for your comments. First, we note that it “reflects the ambitions expressed in the Constitution”. Now that it seems unlikely that the Constitution will be ratified in its present form, we would be interested to know what the implications are for the Action Plan. In the debate Baroness Scotland said that most of the proposals can be taken forward under existing legislation, but it would be helpful to know which will have to be dropped.

Secondly, the Commission has proposed a series of major new expenditure programmes with a total expenditure of £9 billion over the period 2007–13. Baroness Scotland said that the Government regarded them as a priority, but could they not be vulnerable to reductions in future expenditure, particularly if the Government’s views on the Financial Perspective prevail?

Thirdly, some comments on the substance of the Commission’s proposals. We welcome the emphasis on the need for a global response to terrorism, which chimes with the views we expressed in our report After Madrid: the EU’s response to terrorism. We note that the Commission favours an immigration policy “covering admission procedures and criteria”, which seems to pre-empt the outcome of its current consultation on economic migration. There were also several items in the Action Plan that we did not recognise, and we would be grateful for any clarification you can provide of the proposals on Eurojust and the programme on “prevention and fight against crime” in particular.

Finally, in her speech Baroness Scotland gave a helpful indication of the Government’s priorities for the UK Presidency in this field, and we look forward to receiving further details of the Presidency programme.

5 July 2005

Letter from Rt Hon Charles Clarke MP to the Chairman

The Hague Programme, adopted in November 2004, required the Commission to bring forward an Action Plan for its implementation through specific measures. The Commission produced this action plan within a Commission Communication on 10 May. This Commission Communication was deposited for scrutiny and an Explanatory Memorandum was submitted on 7th June. I regret that the Explanatory Memorandum was not formally submitted before the Action Plan was discussed and agreed at the Justice and Home Affairs Council on 3 June. Its adoption was noted by the European Council on 16 June 2005.

The Government is satisfied that the Action Plan is generally in line with the Hague Programme and will be a useful tool for implementing it. The Action Plan was agreed as a flexible frame of reference for work in the Justice and Home Affairs field over the next five years and will be updated at the end of 2006. In addition to the Action Plan itself, the Commission is also required to produce an annual Scoreboard to monitor progress on implementing the Plan, which we welcome.

The Action Plan is closely based on the list of measures set out in the annex of the Commission Communication but is clearer than the Commission’s original draft. We have secured some helpful amendments to the Plan to make it more consistent with the Hague Programme. For example, the reference to “Evaluation of the quality of justice” (section 4.1 of the Commission’s Action Plan) has now been deleted and replaced with language in The Hague Programme, referring to the evaluation of the implementation of EU policies. We also secured more helpful wording on anti-corruption measures which now recognises the need to first examine whether codes of conduct on ethics are necessary.

The Action Plan makes clear that it will be adopted in strict compliance with the legal bases laid down in the Treaties. Where there are measures dependant on the Constitutional Treaty, they could only be brought forward when and if the Treaty enters into force. The Government made a statement to the House on 20 June about the Constitutional Treaty.
I attach, for you information, the Action Plan implementing the Hague Programme as agreed at the Justice and Home Affairs Council on 3 June (Document 9778/2/05 REV 2 JAI 207) (not printed).

11 July 2005

Letter from the Chairman to Rt Hon Charles Clarke MP

Thank you for your letter of 11 July enclosing a copy of the Council and Commission Action Plan implementing the Hague Programme, which was adopted by the Justice and Home Affairs Council on 3 June. Sub-Committee F (Home Affairs) of the European Union Select Committee considered this at a meeting on 20 July. I had in fact already written to you on 5 July following consideration by the Sub-Committee of the Commission’s Action Plan, on which the version that was finally adopted was based.

As you will see, we had expressed concern about the fact that the Action Plan was adopted before the Explanatory Memorandum was submitted for scrutiny. We are grateful for your apology for that and hope that arrangements are in place to prevent similar occurrences in the future.

Your letter answers some of the points that I raised in my letter—the reason why the Action Plan was adopted despite what was said in the Explanatory Memorandum, and the implications for the Hague Programme of the interruption to the process of ratification of the Constitutional Treaty. We would, however, be grateful for answers to the other points we raised and a list of any significant changes from the Commission’s Action Plan other than those which you mention.

20 July 2005

Letter from Rt Hon Baroness Scotland of Asthal QC, Minister of State, Home Office to the Chairman

I am writing in response to your letters of 5 July and 20 July. I am glad that the Home Secretary’s letter of 11 July addressed many of the issues raised in your first letter and will attempt to deal with the outstanding points.

The Government believes that there is a strong case for increased expenditure in the Justice and Home Affairs area. Even with such an increase it would make up only a very small proportion of the overall EU budget. We are satisfied that this could be met within a responsible and disciplined budget fit for the 21st century. In the absence of an overall budget ceiling for JHA the Government is committed to making progress on the policy of these programmes during the UK Presidency, with a focus on ensuring that funding programmes bring benefits to citizens and support activities that add value at EU level.

The Government also welcomes the emphasis on the need for a global response to terrorism, which is particularly pertinent in the light of recent events. Responsibility for the protection of citizens lies primarily with individual Member States but since the introduction in March 2004 of the Action Plan to Combat Terrorism, the EU has demonstrated that it can: help to identify good practice and vulnerabilities; raise understanding of key issues; promote common standards; and encourage capacity building in priority third countries. EU Member States face similar threats from international terrorism and are affected by each others’ vulnerabilities. Terrorist networks operate internationally, with attacks often organised in one country but directed at another. Working together in the EU, in focused groups and bilaterally, is essential if we are to reduce the threat from international terrorism and our vulnerability to it.

Your letter refers to the Commission favouring an immigration policy “covering admission procedures and criteria”, which you believe pre-empt the outcome of its current consultation on economic migration. The final revision of the Hague Programme Action Plan (9778/2/05 REV2) refers to the “Presentation of a Policy Plan on legal migration, including admission procedures” in 2005. The Commission are due to make this presentation towards the end of the year, in the light of their consultation on economic migration. It is too early for us to know what their recommendations will be, but the Green Paper makes it clear from the outset that the Commission’s intention is to focus on the most appropriate form of Community rules for admitting economic migrants. We strongly agree with the Commission’s acknowledgement in the Green Paper that it is for individual Member States to determine the number of economic migrants they choose to accept into their country. We also agree with the Commission that, within very specific and selective criteria, there is an argument for managed migration into the EU. More substantive discussion of the Commission’s Policy Plan will take place under the Austrian Presidency. As always the Government retains the right to choose whether to participate in immigration and asylum measures. If a proposed measure is not in the UK’s interest, or conflicts with our frontiers controls, we will not opt in.

You asked for clarification on the proposals on Eurojust and the programme on “prevention and fight against crime”. The proposal on Eurojust refers to Article III-273 in the Constitutional Treaty, which laid out a legal base for Eurojust to initiate investigations, co-ordinate investigations and prosecutions, and propose the
initiation, but not actually initiate prosecutions. The language in the Hague Action Plan was based on the assumption that the Constitutional Treaty would be ratified during 2006. As this now appears unlikely, and as we do not believe that these proposals can be taken forward under the current treaties, this measure will not be taken forward until the Constitutional Treaty is ratified.

The programme on the “prevention and fight against crime” is a funding programme that forms part of the Framework Programme “Security and Safeguarding Liberties”, one of the three Framework Programmes proposed by the Commission for JHA expenditure under the next Financial Perspective. The programme aims to ensure an effective operational co-operation in the fights against organised crime and general crime, to support the provision of intelligence on a European scale and to strengthen the prevention of crime, in order to promote secure societies based on the rule of law. This Framework programme was deposited for scrutiny on 7 June 2005.

I have attached for your information a document (not printed) that briefly sets out the UK Presidency priorities in the field of Justice and Home Affairs. I have also included a draft table (not printed) comparing the initial Commission proposal and the final agreed Hague Action Plan. Changes in structure and format make a perfect comparison impossible but I hope that the Committee nonetheless finds both papers helpful.

_19 August 2005_

**Letter from the Chairman to Rt Hon Baroness Scotland of Asthal QC**

Thank you for your helpful letter of 19 August replying to my letters of 5 and 20 July about implementation of the Hague Programme. Sub-Committee F (Home Affairs) of the European Union Select Committee considered your letter at a meeting on 26 October.

We are grateful for the responses to the points we raised and for the additional information you provided on the UK Presidency priorities and the comparison of the initial Commission proposal and the final Action Plan on the Hague Programme.

_26 October 2005_

**ILLEGAL IMMIGRATION: MONITORING AND EVALUATION MECHANISM OF THE THIRD COUNTRIES (11614/05)**

**Letter from the Chairman to Tony McNulty MP, Minister of State for Immigration, Home Office**

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered the Commission’s Communication on the monitoring and evaluation mechanism of the third countries in the field of the fight against illegal immigration at its meeting on 9 November.

The Committee took note of the Commission’s analysis of the level of cooperation with the eight countries identified as geographical priorities. It considered that the success of such cooperation should not be measured on the basis of the countries’ willingness to sign readmission agreements. The Committee has recommended in the past that agreements with third countries should not focus exclusively on readmission.

The Committee noted that a technical mission on illegal immigration was conducted in Libya in November-December 2004, the findings of which do not appear to have informed the Commission’s analysis of the EU’s current relations with that country. The report of the technical mission (Document 7753/05) highlights lack of protection for refugees, appalling conditions in some detention centres, and a general lack of human rights safeguards in the treatment of irregular migrants. In the light of these findings, we are concerned about EU-Libya cooperation to prevent irregular migration. We further considered that similar concerns arise with respect to the recently concluded UK-Libya Memorandum of Understanding which is intended to facilitate the return of foreign nationals to Libya. The Committee would like to know whether, in negotiating such an agreement with Libya, the Government has given any consideration to the findings of the technical mission, which included an UK expert from the Immigration and Nationality Directorate’s Intelligence Section (INDIS). We would be grateful to receive a copy of the Memorandum.

The Committee has decided to keep this Communication under scrutiny pending receipt of the information and document requested.

_10 November 2005_
Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 10 November, in which the Committee has raised a number of points regarding this Communication and the negotiation by the UK of a bilateral Memorandum of Understanding with Libya on returns.

The Committee considers that the success of co-operation cannot be considered just in terms of willingness to sign readmission agreements. I agree that it is important to have a balanced agenda of co-operation with third countries in the area of migration and one that reflects the current capacity of partner countries to co-operate. The aim of the mechanism is to monitor the migratory situation in the third country, including its administrative and institutional capacity to manage asylum and illegal immigration and the actions being undertaken. At the same time, it is important that effective returns arrangements are part of that agenda. Hence, co-operation in readmission/return of own nationals and of third country nationals is one of the sections in the Commission’s analysis.

The Committee considers that the outcome of the technical mission to Libya in November/December 2004 has not informed the Commission’s analysis, and that report highlighted lack of protection for refugees, appalling conditions in detention centres and general lack of human rights safeguards in the treatment of irregular migrants. This is the Commission’s first pilot report in the area of monitoring and evaluation and its aim is to cover principal developments until 20 December 2004. The report therefore recalls the Commission’s technical mission to Libya from 27 November to 6 December 2004, which included a UK expert. The terms of reference of the mission were to get an in depth understanding of migration related issues in Libya and to identify concrete measures for possible EU-Libyan co-operation particularly on illegal immigration.

The analysis, contained in the report of the mission (document 7753/05, dated 4 April 2005) has informed the decision of the Council to engage Libya on migration issues, the mandate for which was given in June 2005. This engagement is clearly conditional upon Libya’s adherence to human rights and obligations relating to international protection. Discussions between the EU and Libya have taken place during the UK Presidency of the EU on migration co-operation, with a view to agreeing an action plan on migration. It is intended that the action plan will cover a range of capacity building initiatives, including detention management and training in human rights and refugee protection.

The Committee raises the same concerns in relation to the negotiation of the bilateral Memorandum of Understanding (MoU) to facilitate returns to Libya and has asked whether the Government considered the findings of the technical mission in relation to its bilateral negotiations.

The aim of the bilateral MoU concerning the provision of assurances in respect of persons subject to deportation is to enable the Government to satisfy itself that in effecting the return of particular individuals to Libya, the UK is acting in conformity with its international obligations. A similar document was signed with Jordan earlier this year, and we are seeking to negotiate similar agreements with a number of other countries. The UK’s approach to the negotiation of these arrangements predates the EU’s technical mission in November–December 2004, although naturally information from bilateral and multi-lateral engagement, with for example Libya, provides the context within which such a negotiation takes place. I am enclosing a copy of the MoU, with an accompanying letter, as requested by the Committee.

I would also like to take this opportunity to provide to the Committee a copy (not printed) of the Council’s Conclusions on migration and external relations, that were adopted formally by the General Affairs and External Relations Council on 21 November. The Conclusions contain the Council’s response to the Communication on monitoring and evaluation. They also respond to the Commission’s Communication on migration and development that issued in September (document 11614/05).

7 December 2005

Letter from Anthony Layden, HM Ambassador, British Embassy, Tripoli to Ambassador Abdulati Ibrahim al-Obidi, Acting Secretary for European Affairs, Secretariat for Foreign Liaison and International Co-operation

Today we have signed a Memorandum of Understanding (MOU) on behalf of our two Governments regulating the provision of undertakings in respect of persons prior to deportation. Signature of the MOU reflects the British Government’s strong wish to strengthen co-operation with the Great Socialist People’s Libyan Arab Jamahiriya to counter the threat of international terrorism. The content of the MOU also reflects the British Government’s intention to respect its international and domestic human rights obligations and responsibilities and Libyan law and sovereignty.
The MOU and this letter set out the joint understanding of our two governments on the death penalty. The MOU specifies that in cases where the deported person may face the death penalty in the receiving state, the receiving state will, if its laws allow, provide a specific assurance that the death penalty will not be carried out. In any case, where there are outstanding charges or charges are subsequently brought, against the deported person in respect of an offence allegedly committed before his deportation, the authorities of the receiving state will utilise all the powers available to them under their system for the administration of justice to ensure that, if the death penalty is imposed, the sentence will not be carried out.

During our discussions on the MOU we explained the British Government’s policy on the death penalty. This letter re-affirms that position. The British Government is opposed to the use of the death penalty in all circumstances. We would not return a person to the Great Socialist People’s Libyan Arab Jamahiriya if that person faced significant risk of the death penalty on return. If a person returned to the Great Socialist People’s Libyan Arab Jamahiriya is, at any time after his return, subsequently sentenced to death, the British Government would consider asking the Great Socialist People’s Libyan Arab Jamahiriya to commute the sentence.

In our discussions, both governments have recognised the vital importance of appointing independent bodies capable of monitoring the execution of the undertakings given under the MOU, including any specific assurances given in particular cases. Our discussions continue on the identity and specific terms of reference of these bodies.

The MOU requires the two Governments to consult closely on the circumstances and identity of those who might be subject to its provisions. The British Government attaches considerable importance to maximum transparency and timely consultation. The MOU also provides for the two governments to seek assurances specific to individual cases, in addition to the issue of the death penalty described in this letter. The British Government considers this provision an important means of meeting the counter-terrorism and human rights objectives that underpin the MOU.

**Memorandum of Understanding Between The General People’s Committee for Foreign Liaison and International Co-operation of The Great Socialist People’s Libyan Arab Jamahiriya and The Foreign and Commonwealth Office of The United Kingdom of Great Britain and Northern Ireland Concerning the Provision of Assurances in Respect of Persons Subject to Deportation**

**Application and Scope**

A request for assurances under this Memorandum may be made by the sending state in respect of any citizen of the receiving state, any stateless person who was habitually resident in the receiving state, or any third-country national whom the receiving state is prepared to admit.

Such requests will be submitted in writing either by the British Embassy in Tripoli to the General People’s Committee for Foreign Liaison and International Co-operation or by the People’s Bureau of the Great Socialist People’s Libyan Arab Jamahiriya in London to the Foreign and Commonwealth Office. The state to which the request is made will acknowledge receipt of the request within five working days.

A final response to such a request will be given promptly in writing by the Foreign Secretary in the case of a request made to the United Kingdom, or by the Secretary of the General People’s Committee for Foreign Liaison and International Co-operation in the case of a request made to Libya.

To assist a decision on whether to request assurances under this Memorandum, the receiving state will inform the sending state of any penalties outstanding against a person to be deported, and of any outstanding convictions or criminal charges pending against him and the penalties which could be imposed.

Requests under this Memorandum may include requests to the receiving state for further specific assurances. It will be for the receiving state to decide whether to give such further assurances.

The United Kingdom and the Great Socialist People’s Libyan Arab Jamahiriya will comply with their human rights obligations under international law regarding a person in respect of whom assurances are given under this Memorandum. The assurances set out in the following paragraphs (numbered 1–9) will apply to such a person, together with any further specific assurances provided by the receiving state.
An independent body (“the monitoring body”) will be nominated by both sides to monitor the implementation of the assurances given under this Memorandum, including any specific assurances, by the receiving state. The responsibilities of the monitoring body will include monitoring the return of, and any detention, trial or imprisonment of, the person. The monitoring body will report to both sides.

ASSURANCES

1. Where, before his deportation, a person has been tried and convicted of an offence in the receiving state in absentia, he will be entitled to a re-trial for that offence on his return.

2. In cases where the person may face the death penalty in the receiving state, the receiving state will, if its laws allow, provide a specific assurance that the death penalty will not be carried out. In any case, where there are outstanding charges, or where charges are subsequently brought, against the person in respect of an offence allegedly committed before his deportation, the authorities of the receiving state will utilise all the powers available to them under their system for the administration of justice to ensure that, if the death penalty is imposed, the sentence will not be carried out.

3. If arrested, detained or imprisoned following his deportation, the deported person will be afforded adequate accommodation, nourishment, and medical treatment, and will be treated in a humane and proper manner, in accordance with internationally accepted standards.

4. If the deported person is arrested or detained, he will be informed promptly by the authorities of the receiving state of the reasons for his arrest or detention, and of any charge against him. The person will be entitled to consult a lawyer promptly.

5. If the deported person is arrested or detained, he will be brought promptly before a civilian judge or other civilian official authorised by law to exercise judicial power in order that the lawfulness of his detention may be decided.

6. The deported person will have unimpeded access to the monitoring body unless they are arrested, detained or imprisoned. If the person is arrested, detained or imprisoned, he will be entitled to contact promptly a representative of the monitoring body and to meet a representative of the monitoring body within one week of his arrest, detention or imprisonment. Thereafter he will be entitled to regular visits from a representative of the monitoring body in co-ordination with the competent legal authorities. Such visits will include the opportunity for private interviews with the person and, during any period before trial, will be permitted at least once every three weeks. If the representative of the monitoring body considers a medical examination of the person is necessary, he will be entitled to arrange for one or to ask the authorities of the receiving state to do so.

7. The deported person will be allowed to follow his religious observance following his return, including while under arrest, or while detained or imprisoned.

8. If the deported person is charged with an offence he will receive a fair and public hearing without undue delay by a competent, independent and impartial civilian court established by law. The person will be allowed adequate time and facilities to prepare his defence, and will be permitted to examine or have examined the witnesses against him and to call and have examined witnesses on his behalf. He will be allowed to defend himself in person or through legal assistance of his own choosing, or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

9. Any judgement against the deported person will be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

WITHDRAWAL

Either participant may withdraw from this Memorandum by giving six months notice in writing to the diplomatic mission of the other.

Where one or other participant withdraws from the Memorandum any assurances given under it in respect of a person will continue to apply in accordance with its provisions.
This Memorandum of Understanding represents the understandings reached upon the matters referred to therein between the Great Socialist People’s Libyan Arab Jamahiriya and the United Kingdom of Great Britain and Northern Ireland.

Signed in duplicate at Tripoli on 18 October 2005 in the English and Arabic languages, both texts having equal validity.

18 October 2005

**IMMIGRATION: LINKS BETWEEN LEGAL AND ILLEGAL (10244/04)**

**Letter from Caroline Flint MP, Parliamentary Under Secretary of State, Home Office to the Chairman**

Thank you for your letter of 21 October 2004 on the above communication.

You asked for information on the timetable for completion of the next and further stages of the programme of work designed to assess the scale and nature of illegal immigration in the United Kingdom and to see the results so far.

As I mentioned in my letter of September, the first stage of the review, which seeks to identify methods used by researchers and government agencies in other countries to estimate the size of illegal populations, and then to assess the relative viability of using these methods in the UK, is complete. I enclose a copy of the research report (not printed) that contributed to that review, which was published on 16 November.

I would like to reassure you that the next stage, a detailed evaluation and validation of these methods, is still continuing as a matter of priority. This stage is nearing completion and the latter should be substantially complete by the end of December.

The work required has proved to be very challenging because, by definition, illegal migrants fall outside of official statistics and are therefore a difficult population on which to obtain data. In view of this, we decided that it was important that the work was subject to independent scrutiny by professional colleagues, including those in the Government Statistical Service. This has added to the length of time needed.

Should the production of an estimate be viable, we will look to extend the methodology so that it can monitor changes in the size of the illegal population over time. We expect this further stage to be completed in the first few months of 2005.

We will provide you with further information, when we are in a position to do so.

17 November 2004

**Letter from the Chairman to Caroline Flint MP**

Thank you for your letter of 17 November, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 1 December.

We were very interested to see the report on sizing the illegally resident population in the United Kingdom, which is a useful step towards developing a methodology that could be applied here; and we are grateful for your assurance that the next stage is continuing as a matter of priority. We look forward to hearing about the outcome of this stage early in the New Year.

9 December 2004

**Letter from Tony McNulty MP, Minister of State, Home Office to the Chairman**

Further to Caroline Flint’s letter of 17 November 2004 and your reply of 9 December 2004, I am writing with an update on the review of methods to estimate illegal resident populations in other countries.

I can inform you that the Home Office published on 30 June, the outcome of the assessment of the applicability to the UK of the methods used by researchers and government agencies in other countries to estimate the size of the illegal population. The methods had been identified in the report by the Migration Research Unit (MRU) of University College London on “Sizing the Illegally Resident Population in the UK”.

A copy of the RDS On-line report 29/05—Sizing the unauthorised (illegal) migrant population in the United Kingdom in 2001 is enclosed (not printed).

As in other countries, the number of “unauthorised” or “illegal” migrants—including failed asylum seekers—in the UK is unknown. The MRU report published last year reviewed the methods used in other countries and assessed their viability for use in the UK. That report suggested that a method which could be applied in the UK is the “residual method” used in the United States. The new report details how that method has been applied in the UK. The method deducts an estimate of the foreign-born population here legally in April 2001 from the total foreign-born population recorded in the Census that month. Using this method, the total unauthorised migrant population in the UK in April 2001 has a central estimate of 430,000 (0.7 per cent of UK population). This compares to seven million in the USA (January 2000), 2.5 per cent of US population.

It must be emphasised that, whilst this method is one that can be used with data available for the UK, over-reliance must not be placed on this result in the absence of the means to produce other estimates using different methods.

7 July 2005

Letter from the Chairman to Tony McNulty MP

Thank you for your letter of 7 July enclosing a copy of the Home Office report *Sizing the unauthorised (illegal) migrant population in the United Kingdom in 2001*, which was considered by Sub-Committee F (Home Affairs) of the European Union Select Committee at a meeting on 20 July.

We were glad to see that the report had finally appeared and very interested in its findings. Allowing for all the qualifications that need to be made to estimates in this very difficult area, we hope that it will allay some of the wilder speculations about the scale of illegal immigration in the United Kingdom. It should provide an excellent basis for further work in this area.

20 July 2005

INTERPOL: TRANSFER OF DATA (15342/04)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 7 February,5 which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 9 March.

We were grateful for your responses to the points we raised, although somewhat surprised that you regard the Common Position as legally binding, which means that it could become justiciable in due course in the ECJ. We also note that no specific sanctions are envisaged in the term “appropriate action” in the event of a failure to comply with the Common Position.

9 March 2005

MEASURES TO ENSURE GREATER SECURITY IN EXPLOSIVES, DETONATORS, BOMB-MAKING EQUIPMENT AND FIREARMS (11929/05)

Letter from the Chairman to Rt Hon Hazel Blears MP, Minister of State for Policing, Security and Community Safety, Home Office

This Communication was considered by Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union at its meeting on 16 November. The Committee decided to clear the document from scrutiny.

The Committee noted however that in paragraph 4.1 of the Communication the Commission says that it is considering modifying the Fertiliser Regulation to introduce more stringent requirements for the sale of ammonium nitrate. The Committee doubted the usefulness of this measure. It is within the knowledge of some members of the Committee that, however stringent the requirements for the sale and transport of ammonium nitrate, once the fertiliser is delivered to farms it is usually stored under conditions where there would be little difficulty in its being removed by anyone who wished to use it in the manufacture of explosives. We hope that this point will be borne in mind if the Commission does put forward amendments to the Fertiliser Regulation. We would be glad to be kept informed of any developments.

18 November 2005

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

Your letter to Hazel Blears MP about the storage of fertilisers on farms has been forwarded to me as Defra is responsible for negotiating amendments to EU Fertiliser Regulation 2003/2003.

I fully agree with your observation that more needs to be done to ensure the security of fertilisers once they are delivered to farms. Indeed, whilst we are happy to consider proposals for Community-wide restrictions put forward by the Commission through the Fertilisers Experts Working Group, I believe that more urgent action is required here in the UK.

At the Governments’ request, the fertiliser industry, through the Agricultural Industries Confederation, is in the final stages of setting up a Fertiliser Industry Assurance Scheme (FIAS) covering all aspects of fertiliser production and distribution up to delivery to the end user. The scheme is scheduled for launch at the beginning of January 2006. A separate On-Farm module, linked to existing food assurance schemes is being developed by the farming unions in collaboration with Assured Food Standards.

Draft standards for the On-Farm Module are being drawn up by a Fertiliser Technical Advisory Committee (TAC) incorporating the joint Government/Industry 10 point guide to safe fertiliser storage. This leaflet has already been sent to all farms in the UK over 0.5 hectares. The On-Farm Module standards have yet to be finalised but I understand they are likely to include a requirement for farmers to store fertilisers safely and be able to demonstrate that they have not been tampered with or removed and that any suspicious activities involving fertilisers are reported immediately to the police.

FIAS members will take steps to ensure that all end-user customers taking delivery of AN-based fertilisers are aware of the Security of Fertiliser Storage On Farms leaflet. A member of the FIAS Steering Group will attend meetings of the On-Farm Module TAC and vice versa to ensure effective liaison between the two Schemes.

The Government will be monitoring the impact and effectiveness of both schemes over the next 18 months so that we can assess whether there is a need to give them statutory backing.

15 December 2005

NATIONAL IDENTITY CARDS (14351/05)

Letter from Rt Hon Charles Clarke MP, Home Secretary, Home Office to the Chairman

I am writing to tell you about the work which we are leading, as Presidency, on agreeing some common minimum security standards for the identity cards which most Member States issue to their citizens.

The EU has recognised the importance of raising the standards of Member States’ national identity cards which are—quite rightly—seen as the weak link compared with other identity and travel documents. To this end work was initiated by the Hague Programme in November 2003 in these terms: “the European Council requests the Council and Commission to prepare the development of minimum standards for national identity cards.” This wording means that Member States are to work intergovernmentally; there is no question of a proposal for a legal instrument, as there is no Treaty base for the Commission to propose action on national Identity Cards. Nor, of course, is there any requirement for Member States who do not have identity cards to introduce them.

The extraordinary JHA Council of 13 July 2005 repeated the Hague Programme mandate and added a requirement for standards on the security of issuing processes to be agreed by the end of the year.

I will be happy to keep you informed as this work progresses during the remainder of our Presidency.

31 October 2005

Letter from the Chairman to Rt Hon Charles Clarke MP

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered this document at its meeting on 30 November.

You wrote to Jimmy Hood and to me on 31 October explaining that the UK Presidency was working on agreeing common minimum security standards for identity cards, and that you would keep us informed as the work progressed. I have not in fact heard further from you about this work, and these draft Conclusions did not reach us through your officials. We very much regret this, and believe that a document of this significance should have been brought to our attention as soon as it was available, to enable us to consider it in good time.
Your officials, when contacted, told us that a Resolution was to be presented to the JHA Council on 1–2 December for adoption as an “A” point. We understand that it is these draft Conclusions which are intended to be agreed by the governments of the Member States.

It is not the substance of these provisions which particularly concerns us. If and when the Identity Cards Bill is passed and enters into force, these provisions, or some very similar, are likely to become part of our law. But we are greatly concerned about this manner of proceeding. This may be an intergovernmental initiative, but it is one which results from the Hague Programme and from a JHA Council in July. The Conclusions themselves may have no direct legal consequences, and may not be legally binding on this country, but we find it hard to see how as a matter of practical politics the UK, after putting them forward as a Presidency initiative, and having “decided to accept” them, could subsequently not be bound by them.

We would be grateful to be informed of any developments, and any further steps which it is intended to take.

30 November 2005

Letter from Rt Hon Charles Clarke MP to the Chairman

Thank you for your letter of 30 November 2005, in which you say that, although your Committee does not in principle oppose the substance of the provisions, they believe that the document should have been brought to your attention as soon as it was available to enable them to consider it in good time.

Whilst I appreciate your wish to be involved in work on this issue, I must stress that there is no requirement for non legally-binding documents, like the draft which was submitted to the December JHA Council, to be deposited for scrutiny. These Conclusions are conclusions of the representatives of the member States acting on an inter-governmental basis—they are not EU Council conclusions. And, as recognised in the third recital to the conclusions, no legally binding standards or timetables are being imposed. This is a non-legally binding inter-governmental initiative. You will also note from the fourth recital that the document specifically refers to its not affecting the right of each Member State to decide whether or not to issue ID cards. My letter of 31 October was simply to inform you about work which would be of interest to you whilst it was still ongoing.

I am confident that agreement on these standards—which all Member States now regard as important—represents significant progress in enhancing document security, and in fulfilling the remit of both the Hague Programme and the July JHA Council.

8 December 2005

POLICE AND CUSTOMS CO-OPERATION (9903/04)

Letter from Caroline Flint MP, Parliamentary Under Secretary of State, Home Office to the Chairman

Thank you for your letter of 2 February 2005.6

You stated your disappointment at learning that there are no measures under consideration at present to implement the proposal in the Communication that Europol should have access to the CIS and FIDE databases. Also that you hoped the United Kingdom would press for such a proposal to be brought forward, perhaps as an initiative of the United Kingdom Presidency.

Following my interim reply to you of 23 February 2005 we have now consulted further with colleagues and can provide a comprehensive answer to your questions.

In principle the government still supports extending access to CIS and FIDE to Europol. The government considers that Europol has a role to play in working with customs administrations to combat relevant criminal activity. However, we do not believe that now is the correct time to implement this proposal. At the present time there would be little tangible benefit to Europol having access to the CIS and FIDE databases. Additionally we believe that there would not be unanimous support for an initiative amongst Member States at this time.

The CIS currently holds very little data. It is not predicted that this will increase significantly in the near future. Also, the CIS is not yet being fully used by all Member States: although 21 Member States have ratified the CIS Convention, each Member State must subsequently present a CIS implementation plan to the Commission and only a small number of Member States have done this to date. It will take some time, possibly years, before all Member States are using CIS fully and until that time the information held on the database will, at best, be an incomplete picture.

The FIDE is still in its development stage and it is likely to be at least two years before it is available for Member States use. Until it is operational there will be no benefit to Europol to have access to it. We could start negotiations now in preparation for Europol to have access to CIS and FIDE, but there are further complications with this. Both instruments were negotiated in the Customs Co-operation Working Group (CCWG) and previous discussions concluded that Member States were not prepared to agree to give Europol access unless there was reciprocity and Member States could be provided with direct access to information held by Europol. At the time Europol was not able to agree to direct access and it is not expected that this position will have changed significantly. Europol have only recently concluded on how to develop its own Europol Information System (EIS). The EIS would appear to be a key factor in achieving reciprocity.

There are no plans to take this proposal forward in the CCWG or elsewhere as an initiative of the UK Presidency. It is very unlikely that there would be unanimous support for such an initiative from other Member States at this time. Also, given the procedures involved and the absence of agreement on reciprocity with Europol, it would be unlikely that we would achieve agreement to the protocol during our Presidency. At best we would hope merely to start discussions.

We consider that the better option currently is to allow CIS, FIDE, and EIS to complete their development plans and to review the position when all are being actively used. Additionally there are actions being undertaken to rationalise the exchange of law enforcement information between all relevant IT systems. For example the Article 36 Committee has undertaken work to consider better alignment between all EU law enforcement IT systems. To attempt to conclude linking of Customs and Europol without taking account of these wider initiatives risks fragmented and inconclusive activity.

16 March 2005

Letter from the Chairman to Caroline Flint MP

Thank you for your letter of 16 March and for the information you provided about the CIS and FIDE databases, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 6 April.

The Committee felt that your letter disclosed a very sorry state of affairs. The CIS Convention was signed as long ago as 1995 but not implemented until 2003, and even now you say that it holds very little data. Although we can understand, in the light of your explanation, why giving Europol access to the CIS and FIDE is not a priority, I would have thought that there was everything to be said for an initiative to ensure more effective implementation of the CIS, which sounds as if it is serving no useful purpose at present. Such an initiative would seem to fit in well with the UK’s generally pragmatic approach to enhancing police and customs co-operation.

We do not propose to take this further at present, but we may wish to return to the subject at a later date.

6 April 2005

PROTECTION OF PERSONAL DATA PROCESSED IN THE FRAMEWORK OF POLICE AND JUDICIAL CO-OPERATION IN CRIMINAL MATTERS (13019/05)

Letter from the Chairman to Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined the proposal for a Council Framework Decision on the protection of personal data in the framework of police and judicial co-operation at a meeting on 14 December.

The Committee welcomes this proposal which will go some way towards addressing the fragmentation of data protection provisions in Third Pillar instruments. The Committee examined in detail the issue of data protection in its report After Madrid: the EU’s response to terrorism (5th Report of Session 2004–05, HL 53), which supports the establishment of a common EU framework of data protection for the Third Pillar. We note that the standards proposed in the Framework Decision generally reflect those of the Data Protection Directive while addressing specific issues that arise in the Third Pillar. The Committee is in principle content with this approach although it will be examining this document in further detail as negotiations progress. The Committee would be grateful to be provided with regular updates and revised texts when these become available. We would also like to receive the views of the Information Commissioner, who we understand will be consulted. In the meantime, there are a few issues in relation to this first draft on which it would be helpful if you could clarify the Government’s position:
— **Legitimacy of processing and accuracy of data**: The text places a duty upon the controller to ensure that, amongst others, the principles of lawfulness of processing and accuracy of data are complied with (Article 4(1) and (2)). Given that in the case of direct automated access the data controller will no longer be able to verify in each case the legitimacy of a transmission and the accuracy of the data concerned, how will this strict obligation to constantly ensure and verify the quality of data to which direct automated access is granted be ensured? Who will control whether the new measures under Articles 23–26 to ensure security and confidentiality of data which is directly accessible are complied with?

— **Personal data of non-suspects**: We welcome the requirement in Article 4(3) that a clear distinction must be made between personal data of various categories of persons such as suspects, convicted persons, witnesses, victims, informants, contacts etc. Could you explain whether specific safeguards under this instrument would apply to data subjects who are not suspects? Could you also explain why “a person who does not fall within any of the categories referred to [in Article 4(3)]” should be a data subject under this instrument, and who this residual category might encompass?

— **Right of information**: The text makes a distinction between data collected with the subject’s knowledge (Article 19) and data which is collected without such knowledge (Article 20), and allows the controller to refuse or restrict the provision of information to which the data subject is entitled (regarding the data which are being held on him or herself) in both cases. However, in the former case this refusal or restriction is accompanied by a specific safeguard (obligation upon the controller to inform the data subject of the right to appeal such refusal or restriction) which is not provided for in the latter case. Do you find it is acceptable that data subjects, who have no knowledge that data on them are being processed, should be left completely in the dark and without any way for this situation to be remedied? Would it not be advisable to require the supervisory authority to monitor whether the conditions for restricting the right to information in such cases have been complied with?

The text also departs from the Directive by requiring that relevant information on data not obtained from the data subject, or obtained without his or her knowledge, must be given to the data subject “within a reasonable time after the data are first disclosed” (Article 20(1)). The corresponding requirement in the Directive is “no later than the time when the data are first disclosed.” Could you explain why the requirement under the Framework Decision is less stringent than under the Directive?

— **Liability and sanctions including criminal sanctions**: The requirement that Member States provide for criminal sanctions (Article 27) is novel in data protection legislation, and it would be helpful to if you could give us an indication of what sanctions might be appropriate.

You will be aware that, in its report on EU Responses to Terrorism, the Committee expressed the view that (para 78) “it would be regrettable if the First Pillar precedent, where decisions on the adequacy of the data protection system in a third country are taken not via the standard EU legislative process, but by a ‘comitology committee’, were transferred into the Third Pillar.” We note that this is exactly what is envisaged in the proposed Framework Decision. We would be grateful to have the Government’s view on this issue. We would also welcome efforts to strengthen data protection for such transfers by linking the concept of “adequacy” to European data protection standards and making explicit the requirement that data transferred to other public bodies, private parties and foreign authorities should not be used for purposes other than those for which prior consent was given.

In the same report, the Committee had also suggested that, in the framework of a new EU Third Pillar data protection regime, the current separate arrangements for supervision should be reviewed, and that consideration should be given to bringing together the various supervisory authorities set up under the different Third Pillar instruments. The Government agreed that there might be benefits in this. We would be interested to know what the current position is, and whether the Government is committed to putting this suggestion forward in the negotiations.

The Committee further notes that this instrument will replace Article 23 of the Convention on Mutual Assistance in Criminal Matters, and relevant provisions in the Schengen Convention which govern the processing of data in the framework of the SIS. However, it does not extend to personal data processed by Europol and Eurojust, nor will it govern the operation of CIS. Could you explain why Europol and Eurojust in particular are not subject to the general data protection regime? It seems to us that this may prejudice a consistent data protection regime for the Third Pillar.
With regard to implementation, we understand that the Government thinks it very unlikely that the deadline of 31 December 2006 required by Article 35 will be met. We would welcome an indication of what the deadline is likely to be and would gratefully receive a detailed timetable for adoption of this proposal.

The Committee has decided to keep the document under scrutiny pending receipt of the documents and information requested and updates on the progress of negotiations.

15 December 2005

REGIONAL PROTECTION PROGRAMMES (11989/05)

Letter from the Chairman to Tony McNulty MP, Minister of State for Immigration, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered the Commission’s Communication on Regional Protection Programmes at its meeting on 9 November. The Committee recognises that Regional Protection Programmes (RPPs) have the potential to make a positive impact on the situation of refugees and host countries as long as they are protection-oriented, well-resourced, based on proper analysis of protection needs in the countries concerned, and consistent with relevant humanitarian and development policies in the region. We noted that these proposals are closely related to the issues considered in our report on Handling EU asylum claims: new approaches examined (11th Report of Session 2003–04, HL Paper 74). In the report we recommend, at paragraph 144, that greater resources be invested to strengthen the processing systems in country of first asylum and to promote resettlement programmes, without prejudging the capacity of EU Member States to consider fully asylum claims that are submitted in their territory. We note that one of the pilot programmes will be in the Western Newly Independent States (NIS—Ukraine, Moldova, and Belarus). The Committee would like to know whether the Government considers a common approach to this transit region suitable given that the countries concerned have widely different regimes. We would further be grateful to know how the establishment of this pilot would affect the handling of asylum applications received by EU Member States from a person who has transited these countries. We would want to be reassured that the establishment of a pilot programme in these countries does not become a reason for refusal of an asylum application under EC “safe third country” provisions.

The Committee will further examine the proposals in the light of further details about implementation of the pilot programmes which the Commission is due to present to the Council before the end of 2005. In the meantime, we would be grateful if the Government could provide information on the following:

— whether it will offer to resettle refugees under the two pilot programmes which the Commission has proposed and, more generally, support EU-wide resettlement efforts;
— what “rapid and measurable results” the NIS pilot is expected to produce;
— whether a dialogue has been initiated with the Tanzanian authorities on the proposed second pilot and, if so, what are the terms of the dialogue;
— whether UNHCR, which has been present in Tanzania for decades and has extensive operations there, has been consulted on the development of an RPP in Tanzania;
— whether DfID has been consulted on the proposals to ensure consistency with development policies in the regions concerned;
— whether it considers 2007 to be a realistic timeframe for evaluation of the success of these two pilots, considering that many projects undertaken within the framework of RPPs are likely to yield results only in the long-term, and how it believes these initiatives will be sustained in the future.

The Committee has decided to keep the document under scrutiny pending further details from the Commission on the proposals and information from the Government on the issues raised above.

10 November 2005

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 10 November in which you ask for further information on the European Commission’s Communication on Regional Protection Programmes (RPPs, Document 11989/05). Member States await more detailed information from the Commission on the content of the two proposed pilot programmes, one for the NIS region and the other focusing on sub-Saharan Africa (in particular the Great Lakes and East Africa).
You asked whether I feel that a regional approach for the NIS is suitable because of the widely differing regimes and levels of engagement with the EU of the countries in this region. I do, as such a regional approach will be situation specific and tailored to the needs and considerations of any individual third country involved.

You raise concerns as to whether the establishment of RPPs would become a reason for refusing an asylum application on the basis that the country is a safe third country. We, along with the Commission are clear that this new concept should not be about this. Rather, this is a new approach within the EU about looking at providing support to countries that are close to regions of new and protracted refugee situations and hosting large refugee populations to build their capacity.

Turning to the specific points about which you request further information, I will try to answer these fully but it may be that the forthcoming detailed information from the Commission will add further clarity to the answers I can give at this stage. On resettlement, until the Commission comes forward with it’s detailed proposals for the likely contents of the two pilots, it is not known if resettlement will form a part of either of them. If it does, we will consider participating in such an exercise if it fulfils the objectives and criteria of the UK’s resettlement programme. More broadly, the UK supports efforts to broaden the base of resettlement within the EU and increase the numbers of refugees resettled there.

On the NIS pilot and the rapid and measurable results that are expected to be delivered by it, I would expect this pilot to build on and complement already existing capacity initiative being undertaken in this region. It should also aim to strengthen co-operation between the EU and the NIS countries involved. Such new work can be measurable if it is benchmarked against the work being carried out under existing initiatives focusing on the region, for example the Soderkoping process.

With regard to dialogue with Tanzania, the Commission has advised that a dialogue had begun with Tanzania. The Commission is also seeking to engage all third countries involved with the RPP concept at governmental level to learn their priorities in this area.

The UNHCR has been involved with the development of the concept, including coming forward with proposals for the geographical locations of the pilots. I would hope that the pilot in Tanzania will build on the work already being undertaken by the UNHCR there, such as the Strengthening Protection Capacity Project.

The Department for International Development has been consulted on all aspects of the Commission’s proposals and have helped form the UK’s approach in taking forward regional protection.

On the question of whether 2007 is a realistic timeframe for evaluating the pilot programmes, I would agree with you that some of the projects that form these pilots may only deliver their benefits in a longer timeframe. We need to keep up the momentum that has been growing up behind this approach and that by delaying evaluation of the pilots such momentum could be lost. An early evaluation will also help in determining the shape of future RPPs. As to how these initiatives can be sustained in the future, I would like to see suitable funding identified take this concept forward. A possibility for this is the successor to AENEAS, the shape of which is currently being discussed between Member States and the Commission.

If you need any further information on these points or anything else on this subject please do not hesitate to contact me. Hopefully this will all become clearer once the Commission comes forward with more detailed proposals for the contents of the two pilot programmes, which I will ask my officials to keep you informed of.

30 November 2005

Letter from the Chairman to Tony McNulty MP

Thank you for your letter of 30 November, which Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered on 14 December.

We are grateful for your replies to our concerns, and to some of the specific points raised in my letter. There are however some points on which we would be grateful for further details. The first of these is whether the Government will offer to resettle refugees under the two pilot programmes. We appreciate that nothing you say can commit you in advance of receiving the Commission proposals, but it would be useful to know at this stage, on the assumption that resettlement does form part of those proposals, what criteria you would apply in deciding whether or not to participate in such resettlement.

In relation to current resettlement programmes, it would be useful to know how many people have been resettled by the Home Office since the gateway programme was first announced in 2002 (including details of where they have come from and where they have gone to); what the current targets are; and whether you will be reviewing them in the light of the regional protection programmes.
We note that you say the success of the pilot scheme—whether it does in fact produce “rapid and measurable results”—can be judged against the results of current initiatives. We would be grateful if you could let us know in due course what results are achieved, and whether you regard them as significant.

Thank you for undertaking that your officials will keep us informed of the Commission’s detailed proposals once these are available. Meanwhile the Committee will continue to keep the document under scrutiny.

15 December 2005

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 15 December. I welcome the opportunity to underline once again the government’s support for resettlement, and attempt to respond to your queries below.

You ask whether the UK will resettle refugees under the two pilot regional protection programmes, assuming the Commission’s proposals for the pilots include a resettlement element. It is not possible for me to be definitive on this point at this stage. We look forward to clarity from the Commission on the components of the pilots, and discussions with UNHCR regarding the resettlement element, if there is one.

Any UK participation in resettlement as part of a regional protection programme will take place through our national resettlement scheme, the Gateway Protection Programme. The Gateway programme is designed to benefit refugees most in need of resettlement and has clear eligibility requirements (these are available on the Internet: http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instruction/apis/quota_refugee_resettlement.html).

If resettlement forms part of the two pilots, we will decide whether to participate, taking into consideration the resettlement needs of the individuals involved, the aims of the Gateway programme, and the individuals’ eligibility under that programme. Part of this consideration will concern timing—our plans for resettlement over the next year are currently firming up. We are conducting an interview mission in Zambia in January for the next group to arrive in the UK under the Gateway programme.

You also asked about the numbers resettled to the UK so far under the Gateway Protection Programme. These are (the final three entries are bold as they have not yet arrived):

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Number of individuals</th>
<th>Country of refuge</th>
<th>Date arrived</th>
<th>UK location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liberians</td>
<td>61</td>
<td>Guinea</td>
<td>March–May 2004</td>
<td>Sheffield</td>
</tr>
<tr>
<td>DRC/Sierra Leone</td>
<td>5</td>
<td>Ghana</td>
<td>March 2004</td>
<td>Sheffield</td>
</tr>
<tr>
<td>Liberians</td>
<td>3</td>
<td>Sierra Leone</td>
<td>March 2004</td>
<td>Sheffield</td>
</tr>
<tr>
<td>Liberians</td>
<td>54</td>
<td>Sierra Leone</td>
<td>October–December 2004</td>
<td>Bolton</td>
</tr>
<tr>
<td>DRC</td>
<td>27</td>
<td>Uganda</td>
<td>October–December 2004</td>
<td>Bolton</td>
</tr>
<tr>
<td>Burmese</td>
<td>51</td>
<td>Thailand</td>
<td>May 2005</td>
<td>Sheffield</td>
</tr>
<tr>
<td>Sudanese</td>
<td>61</td>
<td>Uganda</td>
<td>Jan–Feb 2006</td>
<td>Bolton</td>
</tr>
<tr>
<td>DRC</td>
<td>70-80</td>
<td>Zambia</td>
<td>Feb–April 2006</td>
<td>Hull</td>
</tr>
<tr>
<td>DRC</td>
<td>50</td>
<td>Zambia</td>
<td>Feb–April 2006</td>
<td>Rochdale</td>
</tr>
</tbody>
</table>

The Gateway programme aims to resettle up to 500 refugees per year. As you can see from the above, we have not yet been able to reach this upper limit yet. However we are making good progress with regard to engaging local authorities and streamlining our process, and we hope to meet and exceed our target in the next few years.

11 January 2006
RESPONSE TO TERRORISM (8205/05)

Letter from the Chairman to Rt Hon Hazel Blears MP, Minister of State for Policing, Security and Community Safety, Home Office

Sub-Committee F (Home Affairs) of the Select Committee on the European Union considered this Communication at a meeting on 13 July.

Taken with the two other Framework Programmes in the Justice and Home Affairs (JHA) area that the Commission has presented for the period 2007–13, this Programme is clearly an important step change in the development of EU JHA policies. As the Commission itself acknowledges, the Framework Programmes represent a significant shift from a primarily legislative approach to a much more operational focus, supported by substantial financial resources. This makes it all the more important to ensure that there is a satisfactory legal base for them and that the principle of subsidiarity is fully respected.

We were therefore disappointed at the equivocal nature of your Explanatory Memorandum’s discussion of these important issues. On the use of Article 308 TEC as the legal base for the “Prevention, preparedness and consequence management of terrorism” you simply say that as Presidency the UK will want to work to ensure that Member States are satisfied with the legal base. We would be grateful to know whether the Government itself is satisfied with this legal base and in particular what objective of the Community it is intended to attain (having regard to the fact that most of its content relates to matters covered by Title VI, TEU). The other programme also seems to cover matters that go wider than those covered by Articles 30 (operational co-operation) and 34 (general co-ordination) TEU.

Again on subsidiarity you do not say whether the Government is satisfied that the proposals comply with the principle of subsidiarity but only talk about scrutinising specific activities on a case by case basis once the programme is in place, and looking for greater clarity on how the activity would be carried out in such a way that respects the principle of subsidiarity. We would welcome a clear statement of the Government’s position.

In my letter of 2 February7 to Caroline Flint on the three Communications that preceded the current proposals relating to the “Prevention, preparedness etc” programme I emphasised that it was important that issues of subsidiarity were considered at the earliest possible stage. This was in response to a comment in the Explanatory Memorandum that “as this is not a legislative proposal no issues of subsidiarity arise”. This latest proposal, which is of course a legislative one, illustrates only too well why these matters need to be addressed at the earliest possible stage. Leaving consideration of subsidiarity until specific activities are undertaken is far too late.

We are surprised not to have received any response to my letter of 2 February, which raised a number of questions to which it would have been helpful to have had answers before considering the present proposals. I regret to say that this is not the first example in recent months of a failure by the Home Office to give items of scrutiny proper consideration, which seems to indicate a declining commitment by your Department to this important work.

In our report After Madrid: the EU’s response to terrorism we expressed concern about the proliferation of EU committees dealing with aspects of terrorism. It looks as if the “Preparedness” programme will add a further layer of bureaucracy in this area, and we would be interested to know if the Counter-terrorism Co-ordinator has expressed a view on the proposals.

We look forward to receiving your comments, including on my letter of 2 February. In the meantime we will continue to hold the document under scrutiny.

13 July 2005

Letter from Rt Hon Hazel Blears MP to the Chairman

Many thanks for your letter concerning the above funding framework. I apologise that you have yet to receive a response to your letter to Caroline Flint MP and I give my assurance that you will have this shortly. I would like to reassure you that I take seriously the commitment to proper Parliamentary scrutiny of EU business, particularly in this important area.

You raise the issue of Article 308 TEC as the legal base for the “prevention, preparedness and consequence management of terrorism”. Article 308 has already been used to make provision for civil protection in the event of emergencies caused by natural, technological, radiological or environmental accidents, civil protection being listed as a Community activity in Article 3(1)(u) of the EC Treaty. We consider that using Article 308 to establish the “consequence management” part of the proposed funding programme, which is concerned with limiting the mid-term consequences of terrorist attacks, can be justified as a civil protection

measure. We do acknowledge, however, that there are potential issues with the prevention of terrorism elements. We will raise this during discussions and negotiations and will report back to the Committee.

Secondly, you raise the issue of subsidiarity. We maintain that activity to prepare for and manage the consequence of a terrorist attack is one that has legitimacy at a Community level. Such attacks can have cross border implications. The funding programme can also bring together best practices and captures the capabilities available within the EU, while also seeking to facilitate better and more secure communication between Member States. The work carried out so far under the Civil Infrastructure Programme is a good example as it seeks to ensure that all Member States are encouraged to consider carefully their own arrangements while respecting national security issues. International terrorism demands an international response and we will continue to closely scrutinise each work programme to ensure the specific activities respect the principle of subsidiarity.

To respond to your point on bureaucracy we do not think that this funding programme will add another layer of bureaucracy in this area. We believe the proposal that this funding programme is managed through Commission comitology and not Council working groups or other Council committees is an effective way of distributing funding to specific activities. The Counter-terrorism Co-ordinator has not commented on the proposals.

14 November 2005

Letter from the Chairman to Rt Hon Hazel Blears MP

Sub-Committee F (Home Affairs) of the European Union Select Committee considered this Green Paper at a meeting on 18 January.

You say in the Explanatory Memorandum that this Green Paper has its origins in a previous Commission Communication, document 13979/04. The Sub-Committee took the opportunity to consider again this paper and other related papers which it considered on 2 February 2005. They were Communications from the Commission to the Council and the European Parliament on:

— Prevention, preparedness and response to terrorist attacks (Document 13978/04).
— Critical Infrastructure Protection in the fight against terrorism (Document 13979/04).
— Preparedness and consequence management in the fight against terrorism (Document 13980/04).

There seems to be some confusion as to whether or not we are still holding these documents under scrutiny; for the avoidance of doubt, may I make it clear that we regard them as being cleared from scrutiny. However I wrote to Caroline Flint on 2 February 2005 raising a number of important questions. Over five months later I had not received a reply. When I wrote to you on 13 July about a further related document (to which I will shortly refer), I reminded you that a reply was outstanding. On 26 October I copied to you a letter to John Hutton voicing concern that a reply was still outstanding. On 14 November you wrote to me in reply to my letter of 13 July—four months earlier—not to give me the information I had sought in February, but to assure me that a reply would follow “shortly”. Now, two months further on, and so nearly a year after my original letter, I have yet to receive a reply.

I have to say that, even making allowances for the workload imposed on officials by the UK Presidency, we find the handling of this dossier deeply unsatisfactory. In your letter of 14 November you wrote: “I would like to reassure you that I take seriously the commitment to proper Parliamentary scrutiny of EU business, particularly in this important area.” I look forward to receiving evidence of this.

The document the subject of my letter of 13 July, and of your reply of 14 November, was the Commission Communication establishing a framework programme on security and safeguarding liberties, and proposing two Council Decisions on Prevention, preparedness and consequence management of terrorism, and Prevention of and fight against crime (document 8205/05 + Add 1). I am grateful for your reply to my questions.

The first of those issues was the legal base. You state, and I accept, that article 308 TEC can be justified as a legal base for that part of the draft dealing with “consequence management of terrorism”. You seem however to share our doubts about the adequacy of article 308 for the other purposes. I note that you intend to report back to the Committee about this.

I do not find your reply on subsidiarity convincing. No one doubts that terrorist attacks have cross-border implications, and that international terrorism demands an international response. That is not in issue. The question is whether what is proposed to be done at EU level adds anything to what the Member States might do bilaterally or multilaterally without involving the EU. As to this, you yourself expressed doubts in paragraph 16 of your Explanatory Memorandum of 7 June: “We would also welcome greater clarity in the
instrument on how the activity would be carried out in such a way that respects the principles of subsidiarity”. We too would welcome greater clarity on these issues.

Pending receipt of the answer to my letter of 2 February 2005, and the report you have promised on the legal base, we will keep this document under scrutiny.

I turn now to the Green Paper on the European Programme for Critical Infrastructure Protection. This is an important topic, and I am grateful for your full Explanatory Memorandum. This too, as the Commission acknowledges, is a topic with major subsidiarity implications. Like the JHA Council, we believe that Member States have ultimate responsibility for the protection of their critical infrastructure. Unlike the Council, we doubt whether action at EU level will add value in supporting and complementing Member States’ activities.

You state in paragraph 6 that you “consider it particularly important to clarify the added value that the Commission can bring to the area of European critical infrastructure protection”. We fully share your doubts, and note that they seem to be shared by other Member States. We hope therefore that you will indeed proceed very cautiously.

Paragraph 3.2 asks whether the EPCIP should deal with all hazards, or terrorism only, or all hazards with the emphasis on terrorism. It seems from paragraph 3 of the Memorandum that although the JHA Council agreed that terrorism was the priority, an all hazards approach should be adopted to the protection of critical infrastructures. It would be useful to know the thinking behind this.

Annex 2 to the Green Paper has a very long “indicative list” of critical infrastructure sectors. Tucked away in the middle we find the armed forces. We share the concern of the Commons Scrutiny Committee about this, and seek your categorical assurance that the Government will not agree to the activities of our armed forces being in any way controlled under a common EPCIP framework.

We will keep the Green Paper under scrutiny pending receipt of your replies to these questions.

11 January 2006

RETENTION OF TELECOMMUNICATIONS DATA (12660/05, 12671/05)

Letter from Rt Hon Hazel Blears MP, Minister of State for Policing, Security and Community Safety, Home Office to the Chairman

I am writing to update you on the progress of negotiations on the draft Framework Decision and on the new draft Directive in the area of retention of telecommunications data. The proposal responded to the call in the 25 March 2004 European Council Declaration on Combating Terrorism for an instrument on the retention of telecommunications data. The deadline set in the Declaration was for agreement by June 2005. That deadline has been missed because of the complex nature of this topic and the resulting lengthy negotiations. The Conclusions of the July Special Justice and Home Affairs Council therefore called for a measure to be agreed by the end of October 2005.

The Government strongly supports the retention of telecommunications data as we believe that this is a vital tool for the prevention, investigation and prosecution of serious crime and terrorist offences. Given the deadlines set out by the European Council and the Council of Ministers, the UK Presidency of the European Union has taken forward work on this Framework Decision as a priority.

However, the European Parliament and the Commission do not believe that there is a legal base for this measure under the Third Pillar (Treaty on European Union [TEU]). The Commission have recently published a draft First Pillar (Treaty establishing the European Community [TEC]) Directive. The draft Framework Decision and the draft Directive will both be discussed at the Justice and Home Affairs Council in October. The Council may choose to pursue the Directive in which case the Framework Decision will be discarded and negotiations will commence on the Directive under the co-decision process. Alternatively they may reject the Directive and pursue the Framework Decision.

I hope this letter is helpful in setting out the background to the current negotiations in this area. An Explanatory Memorandum is also being submitted that covers the latest version of the draft Framework Decision and the Commission’s draft Directive. A Regulatory Impact Assessment is also attached in relation to both the draft Framework Decision and the draft Directive.

15 October 2005

Letter from the Chairman to Rt Hon Hazel Blears MP

Thank you for your recent letter enclosing an Explanatory Memorandum on these two competing proposals and a Regulatory Impact Assessment. These were considered by Sub-Committee F (Home Affairs) of the European Union Select Committee at a meeting on 26 October.

We are grateful for the Regulatory Impact Assessment, which as you know we asked for as long ago as July last year. Having considered the alternative proposals, we are strongly of the view that, as far as the substance is concerned, the Commission’s draft Directive is to be preferred to the Framework Decision. The overall objective of the two instruments, which we support, is of course the same, but in our view the draft Directive is much more satisfactory in prescribing a clear limit on the period for which data may be returned, without the possibility of derogation; limiting the purposes for which data may be retained to the prevention and investigation of serious crime, as we recommended in July last year; and providing for the reimbursement of additional costs to service providers. Moreover, it seems unlikely that it would be possible to make progress on the Framework Decision in the face of strong opposition to it from the Commission, the Parliament and, we understand, some Member States.

However we would welcome your views on whether you are satisfied that Article 95 TEC is acceptable as a legal base for the draft Directive and whether you have considered the implications for the possible future use of Article 95 in harmonising aspects of national public policy, in particular in relation to the criminal law and sanctions. We would also be grateful for your views on the implications of accepting Community competence in this area for the UK’s freedom to negotiate and conclude arrangements with third States, since the Community has exclusive external competence in areas where it has established “internal rules”. Finally we note that Article 10 of the Directive would require Member States to reimburse business for additional costs in complying with the new retention obligations. Although, as I have indicated, as a matter of policy we welcome the fact that the full costs would not fall on the service providers—and it may be that, under the voluntary scheme in the UK, service providers are currently reimbursed—Article 10 is an unusual provision for a Single Market measure, which normally passes the burden of the removal of obstacles onto the firms concerned. Are you satisfied that this is not setting an unwelcome precedent for future internal market measures?

In my letter of 21 July 2004 I said that there was no indication in the Explanatory Memorandum that the Information Commissioner had been consulted and asked to know what his views were. There is still no reference in the recent Explanatory Memorandum to the Information Commissioner’s views, and I repeat our request to be informed of them.

We would also be grateful to be kept informed of the progress of negotiations and in the meantime will keep the documents under scrutiny.

26 October 2005

Letter from Rt Hon Charles Clarke MP, Home Secretary, Home Office to the Chairman

I am writing to update you on the progress of negotiations on this proposal which would introduce minimum standards for the retention of telecommunications data. The Justice and Home Affairs Council on 1–2 December 2005 considered this proposal and the Council was able to reach a general approach to this text, on the basis of a qualified majority. A copy of the text resulting from this meeting is attached for your consideration (not printed).

The draft of the Directive agreed by the Council would require all EU telecommunication service providers to retain the data now listed in Article 4 of the Directive on telephone calls and on Internet access, Internet telephony, and Internet email. Unsuccessful call data—where a call is connected but not answered—is included within the scope of the Directive but is now only required to be retained where it is already stored by providers. A new recital was included to clarify retention obligations including that they be carried out in a way to avoid data being retained more than once and may be limited to the providers’ own services or the network providers’ Article 10 has now been deleted and the Directive leaves it to the Member States to deal with the issue of costs.

The Directive provides that data be retained for the purpose of investigating, detecting and prosecuting of serious crime, as defined by each Member State in its national law. The comitology arrangements in the Commission’s draft Directive have been deleted and replaced with a review clause (Article 12). The evaluation will consider whether the list of data to be retained and the periods for its retention remain accurate given any

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technological progress and issues arising from the implementation of this measure. Member States believed that this form of review would be more effective in meeting Member States concerns and needs than a comitology committee.

In response to concerns from some Member States and the European Parliament, the text now includes an article (Article 11bis) that requires Member States to ensure that access to or transfer of data without permission is punishable by effective, proportionate and dissuasive administrative or criminal sanctions. The Government is content with this Article. The revised Directive also includes an article setting out data protection principles, in line with the European Community’s Data Protection Directive.

Some Member States retained concerns about the legal base for this proposal and continued to argue that the measure should be based on Article 31 of the Treaty on European Union rather than Article 95 of the Treaty establishing the European Community. However, the majority took the view that this measure was focused on approximating the obligations on providers and was therefore an internal market measure. The Government supported this position, in line with the Committee’s views in your letter of 26 October.

We do not consider that this Directive sets a precedent for the use of Article 95 of the EC Treaty to harmonise the legislation of member States in the area of police and judicial co-operation. The justification for using Article 95 in this case is that the Directive is concerned with harmonising the law in Member States applying to the electronic communication sector for internal market purposes. General police and judicial co-operation measures will continue to be a matter for member States, either acting individually or collectively under the third pillar. This applies equally in the international context, so that, for example, agreements with third countries on the exchange of data for law enforcement purposes will continue to fall outside Community competence.

The Information Commissioner, Richard Thomas, has had the opportunity of briefing from officials and law enforcement on the objective of the instruments for retention of communications data and on the practical value which retained communications data has to law enforcement and national security investigators. He has indicated to officials that he understands there is a balance to be made between data protection obligations to erase communications data to protect individual’s privacy and retaining communications data to protect the public’s safety. He has taken the benefit of that briefing into his discussions with his European counterparts to help inform where that balance should appropriately and proportionately be drawn. I shall want to ensure the Commissioner continues to be consulted about taking forward and developing mechanisms for retention of communications data, for safeguarding that data and ensuring any such data is disclosed only necessarily and proportionately.

The European Parliament will consider the Council’s position at its plenary session from 12–14 December. If the European Parliament supports the position of the Council, the Council will formally adopt the Directive at a later Council.

I would like to reassure the Committee that the Government takes its obligations to Parliament very seriously. However, in this case, the Government believes that is was right to support the position that the Council is taking on this measure. The retention of telecommunications data is an extremely important asset for law enforcement in the fight against serious crime, including terrorism. We believe that this measure should be agreed and implemented as quickly as possible in order to assist law enforcement in bringing criminals to justice. The proposal as currently drafted is acceptable to the UK.

8 December 2005

Letter from the Chairman to Rt Hon Charles Clarke MP

Thank you for your letter of 8 December explaining what took place in the negotiations on this draft, and enclosing a copy of the text which was agreed at the Justice and Home Affairs Council on 1–2 December. Your letter was considered by Sub-Committee F (Home Affairs) of the European Union Select Committee at a meeting on 14 December 2005.

You explain that the draft Directive has been sent for consideration by the European Parliament. We understand that it has now been adopted by the Council. We note the reasons you give for needing to agree the Directive before the completion of the Parliamentary scrutiny procedure. We nevertheless regret that the Committee should have had no opportunity to consider the latest text in draft, given the importance of the subject and the substantial changes which have been made since the previous draft was considered by the Committee on 26 October.

As long ago as 21 July 2004 I wrote asking for the views of the Information Commissioner. I repeated this request in my letter of 26 October. We have not received his views. You explain that he has been briefed by your officials, and has indicated to them that he understands that there is a balance to be made between
protection of private privacy and protection of public safety. That, I think, is something on which we can all agree. The question is where that balance should be struck, and it is on this we should have liked to have the Commissioner’s views. I shall be writing to him to ask whether even at this stage there are any points which he would like to make.

15 December 2005

SCHENGEN ACQUIS

Letter to the Chairman from Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

I am writing to inform you that, following the successful evaluation of the United Kingdom’s police and judicial authorities, the Council Decision of the European Union on the putting into effect of parts of the Schengen Acquis by the United Kingdom of Great Britain and Northern Ireland was adopted on 22 December 2004. The UK has now commenced the judicial cooperation, drugs cooperation, obligations on carriers and measures to combat trafficking of human beings and police cooperation parts of the Schengen Acquis. The legislative basis for participation in these provisions was included in the Crime (International Co-operation) Act 2003. The UK will now formally be able to benefit from enhanced police and judicial co-operation powers with Schengen partners. These include Mutual Legal Assistance and cross-border surveillance by police officers across the channel.

The Council Decision also provides that formal communications and transmission of decisions between Gibraltar authorities are to be carried out in accordance with the Agreed Arrangements relating to Gibraltar Authorities in the context of EU and EC Instruments and related Treaties (“Postboxing Arrangements”). These have been in effect since April of 2000 and have been previously circulated to all Member States. All such formal communications between competent authorities in other Member States and Gibraltar are passed through UK Government of Gibraltar Liaison Unit in the Foreign and Commonwealth Office. The arrangements themselves have been annexed to the Council Decision for clarity and I also attach the UK-Spanish declaration (Annex A) made at the time of adoption (not printed).

Unfortunately due to an oversight by my officials, for which they have apologised, this Council Decision was not deposited in Parliament during negotiation and an opportunity to scrutinise it in detail was not provided. I take my responsibility to Parliament with respect to the scrutiny of EU measures very seriously and would like to add my apologies for this mistake. My Department has made great improvements in recent years in handling scrutiny and I have asked that they renew arrangements to ensure that this does not occur again.

The substance of this Council Decision has been extensively discussed during the passage of the Crime (International Co-operation) Act 2003 and during the passage of the original Council Decision concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen Acquis I hope that this does not cause you any difficulties in your important role scrutinising EU proposals.

27 January 2005

Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 27 January about this Decision, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 2 March.

We are grateful to you for explaining the oversight that led to the Decision not being deposited for scrutiny and reassured that arrangements are in hand to ensure that it does not happen again.

It is not entirely clear to us why it has taken over a year since the Crime (International Co-operation) Bill was enacted for the Decision to be adopted, but we warmly welcome the United Kingdom’s participation in elements of Schengen, limited though it is to police and judicial co-operation.

2 March 2005
Letter from the Chairman to Fiona MacTaggart MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered the proposal for a Council Decision on the improvement of police cooperation between Member States of the European Union at a meeting on 16 November.

The Committee noted that the Government is seeking to clarify some Articles of the draft Decision and wants to give further consideration to key provisions before committing to the proposals. We agree with the Government that some of the provisions in this draft Decision overlap with other proposals which are currently under negotiation in the Council, such as the proposed Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities (Document 6888/05 held under scrutiny by the Committee), and the proposed Council Decision on data protection in matters covering police and judicial cooperation (Document 13019/05 which the Committee will examine shortly). We would like to be informed about the outcome of the Government’s further consideration of the draft Decision in the light of the clarifications received and negotiations on the instruments which relate to this proposal.

While the Committee is aware that the main aim of the proposal is to improve operational cooperation between Member States’ law enforcement authorities, it would be interested to know how this proposal fits with Europol’s role in combating cross-border crime. The Committee highlighted Europol’s role as the main focus for cross-border police co-operation in its report on Europol’s role in Fighting Crime (5th Report of Session 2002–03, HL 43). Despite Europol’s crucial role in supporting cross-border cooperation between national law enforcement authorities, the Committee noted that the proposal does not make any reference to Europol at all.

The Committee decided to keep the document under scrutiny, pending receipt of the information requested and progress reports on negotiations.

18 November 2005

Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter of 18 November 2005 on the above-mentioned draft Council Decision. You explain that the Select Committee considered the Council Decision in its meeting on 16 November and asked for further information both about the general progress of the Council Decision in the negotiations in Brussels and about the role of Europol in relation to the eventual operation of the Council Decision.

In the discussions in Brussels, the United Kingdom, as Presidency, has put Article 3 of the Council Decision, on information exchange, to one side pending the outcome of the separate discussions on the draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The Presidency has similarly put to one side the associated Articles 7 and 10, on data protection and a committee procedure.

The remainder of the Council Decision has been considered as comprising two quite distinct sets of provisions. On the one hand, there are provisions in Article 11 which would amend Articles 40 and 41 of the Schengen Convention on cross-border surveillance and hot pursuit, and, on the other hand, there are the provisions in Articles 1, 2, 4, 5, 6, 8 and 9 which deal with cross-border structural coordination and operational cooperation and related matters.

So far, although the discussions have been comprehensive, they have been broadly exploratory. The delegations have sought to obtain further explanations from the Commission about the intended purposes of the provisions, and, in the case of Article 11, to gauge how much support there might be for going further than the Commission has proposed, for example for extending urgent cross-border surveillance to non-suspects. This particular proposal was mentioned in my Explanatory Memorandum of 4 August 2005, and I am taking the opportunity of this reply to emphasize that it was not made by the Commission itself, but by other delegations who attach operational importance to it. The Government is supportive from an operational viewpoint, but the policy implications of this and indeed other Schengen-related proposals are still under consideration in the Council structures.

The exploratory nature of the discussions, and the related consideration in the Council of questions on a number of policy aspects of the Council Decision, have been on the basis of Council documents and room documents individually addressing only particular Articles. Accordingly, a fresh text recording progress made
on the entire scheme of the Council Decision has not yet been produced. Such a document would of course
be deposited for scrutiny in the usual way.

There will be further discussions on the Council Decision in Brussels shortly, before the end of the United
Kingdom Presidency. In the event that it will remain the case that a fresh composite document is not available,
then I will write to the Parliamentary scrutiny committees with a detailed overview of the negotiations to date.
I would expect that overview to include the latest available text of the provisions.

On the Select Committee’s point about associating Europol with the Council Decision, the discussions so far
in Brussels have suggested that Europol’s support is implicit in the Council Decision and does not need to be
made explicit. But you can be assured that the Government is keeping the matter in view. One possibility
would involve modifying Article 6, which is about establishing permanent cooperation structures, to require
those permanent structures to work closely with national central authorities including the Europol national
units.

I hope that you find this letter helpful.

6 December 2005

Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 6 December 2005 in which you provide further information about the general
progress in the negotiations of this proposal. Sub-Committee F (Home Affairs) of the House of Lords Select
Committee on the European Union considered your response at its meeting on 11 January.

The Committee found your progress report on negotiations very helpful. However, the fact that the intended
purpose of the provisions is not clear to delegations is a matter of some concern; we would not want to support
a legislative proposal the purpose of which appears to be in doubt. The Committee would like to be informed
of any further explanations of this given by the Commission.

We would also like to be informed about the outcome of the proposal to extend cross-border surveillance to
non-suspects. This appears to us to have major implications and to change radically the nature of this and
other police cooperation instruments.

The Framework Decision on simplifying the exchange of information and intelligence between law
enforcement authorities has now been agreed (Document 13563/05, the subject of a scrutiny override). Are
you now content that there is no overlap with Article 3? Are you satisfied that the definition of detailed rules
for the exchange of information between Member States should be left to a “comitology” committee, as
envisaged by Article 10 of the proposal?

You further explain that there is an implicit recognition of Europol’s role in the Council Decision. The
Committee would prefer such role to be made explicit in the proposal and welcomes the Government
assurance that it is keeping this matter under review.

We look forward to receiving a fresh report and the latest available text of the provisions which reflect the
further discussions that have taken place since your letter of 6 December. In the meantime, we will continue
to keep this document under scrutiny.

12 January 2006

Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

In my letter of 6 December 2005, I undertook to write to you again with a detailed overview of the negotiations
during the United Kingdom Presidency on the above-mentioned draft Council Decision.

As I anticipated in my letter, a fresh composite Council document, amending document 11407/05 ENFOPOL
95, has not yet been produced by the Council Secretariat. I therefore attach at Annex A (not printed) both the
original text of July 2005 and the amendments which have been proposed so far in various Council documents
and room documents.

These documents have not been the kind which would normally be deposited for scrutiny. They have
individually addressed only particular Articles, and have reflected the largely exploratory nature of the
discussions in Brussels.
The right hand side of the Annex is therefore the Home Office’s, not the Council’s, summary of the amendments to the Council Decision which have been proposed and broadly supported in the negotiations during the United Kingdom Presidency.

I would expect the Council’s composite version, when it appears, to be similar, though the precise detail and format will now be a matter for the Austrian Presidency. The document will of course be formally deposited for scrutiny in the usual way.

Meanwhile, I provide below the Government’s commentary on the amended text in Annex A.

**Articles 3, 7 and 10 (Information exchange, Data protection and Committee)**

In the discussions in Brussels, the United Kingdom Presidency put Article 3 of the Council Decision, on information exchange, to one side pending the outcome of the separate discussions on the draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The Presidency similarly put to one side the associated Articles 7 and 10, on data protection and a committee procedure. Arguably, Articles 3, 7 and 10 will be rendered redundant by the draft Framework Decision. They may therefore be deleted, but further discussion will be necessary before any final decisions are taken.

**Article 11 (Amendments to the Schengen Convention)**

This Article is, in effect, separate from the scheme of the rest of the Council Decision. It is, more or less, a stand-alone Article. The amendment at the beginning of Article 2, on definitions, makes clear that Article 11 is excepted.

The United Kingdom Presidency, with the full support of other delegations including the Commission, focussed on Article 11 as it is of particular operational and policy importance. The Article proposes amendments to Articles 40 and 41 of the Schengen Convention. These Articles deal with cross-border surveillance and hot pursuit. The United Kingdom does not participate in the hot pursuit provisions in Article 41. But, taking into account that the Commission’s proposal would remove the proviso that hot pursuit may only be across land borders, the possibility arises that the United Kingdom will need to revisit the question of its participation in Article 41 in due course. The Government is keeping this matter closely in view.

In order to assist in appreciating the nature of the proposed amendments to Articles 40 and 41, I attach at Annex B (not printed) the existing text of those Articles as well as the text incorporating the proposed amendments shown on the right hand side of Annex A under Article 11. Annex B shows that, on the basis of discussions so far, Articles 40 and 41 would be amended as follows.

(i) **Article 40 (Cross-border surveillance)**

**Paragraph 1**

The description of the criminal offence in relation to which cross-border surveillance may be undertaken is up-dated so as no longer to refer to extraditable offences, but instead to offences punishable, under the law of the Member State initiating the surveillance, by a custodial sentence or a detention order for a maximum period of at least 12 months. The Government supports this. But a number of delegations attach importance to introducing a dual criminality requirement. The Government sees this as a step backwards insofar as it would introduce an operational impediment to existing cross-border cooperation.

The paragraph also makes explicit that cross-border surveillance may be by land, sea, waterway or air. This is already implicit, and the Government can therefore support the proposal.

**Paragraph 2**

Whereas paragraph 1 deals with pre-planned surveillance, paragraph 2 deals with cross-border surveillance in cases of urgency. The Commission’s original proposal was to use the same definition of offences as is proposed for paragraph 1. This would consequentially involve deletion of the list of offences in paragraph 7. The Government supports this. The existing list is wide, but is less comprehensive than in the existing paragraph 1 and is therefore an impediment to cross-border cooperation in fast-moving situations.

In addition, a number of delegations have further proposed that paragraph 2 be brought even further into line with existing paragraph 1. This was amended in October 2003 to include non-suspects in circumstances where the surveillance might assist in tracing or identifying the suspect, see the left hand side of Annex B. Delegations have proposed that paragraph 2 should similarly apply to non-suspects. The Government also supports this further proposal. In particular, our law enforcement authorities attach operational importance to it. It would
require primary legislation, specifically to section 76A(2)(a) of the Regulation of Investigatory Powers Act 2000. But a number of other delegations take the view that surveillance of non-suspects in cases of urgency must be subject to judicial oversight. This will require further discussion in Brussels.

Paragraph 3

Subparagraph (f) which at present prohibits challenging and arresting the person under surveillance would be deleted and be incorporated into subparagraph (d), dealing with carrying and using service weapons. Paragraph (d) would be amended to provide that use of less serious means of force, including challenges and apprehending the person, would be permissible, but only in cases of legitimate self-defence. The Government is not convinced that such a provision would be appropriate in an Article dealing with surveillance. It would require primary legislation, specifically to section 76A(4) of the Regulation of Investigatory Powers Act 2000.

Paragraphs 4 and 5

The proposed amendments would provide for designation by all the participating Schengen States of their competent officers and authorities. The new paragraphs would replace the existing paragraphs which refer only to officers and authorities of the original Schengen States. The Government supports these tidying-up amendments.

Paragraph 6

The Government also supports this amendment which more clearly provides that Article 40 is without prejudice to more extensive provisions in other international arrangements. These would include multilateral as well as bilateral arrangements.

Paragraph 7

This paragraph, which lists offences for the purposes of paragraph 2, would be deleted as a consequential of the first amendment described above for that paragraph.

(ii) Article 41 (Hot pursuit)

Paragraph 1

As for Article 40, see above, the description of the criminal offence in relation to which hot pursuit may be undertaken is up-dated so as no longer to refer to extraditable offences, but instead to offences punishable, under the law of the Member State carrying out the hot pursuit, by a custodial sentence or a detention order fora maximum period of at least 12 months. Again, a number of delegations attach importance to introducing a dual criminality requirement. The Government sees merit in aligning the definition of offences with the definitions in Article 40, paragraphs 1 and 2, but the United Kingdom does not participate in Article 41 and therefore has no relevant operational experience to contribute to the negotiations.

Paragraph 4

This paragraph, which lists offences, would be deleted as a consequential of the proposed definition of offences in paragraph 1.

Paragraph 5

Subparagraph (b) at present provides that hot pursuit may be solely over land borders. The Commission’s original proposal was to delete that paragraph, but the Commission is content with a new proposal broadly supported by other delegations that subparagraph (b) should provide explicitly that pursuit may be by land, sea, waterway or air. The Commission is also content with the consequential amendment to subparagraph (d) which substitutes “means of transport” for “vehicles”, in line with the wording relating to hot pursuit in Article 20(4)(d) of the Naples II Convention on mutual assistance and cooperation between customs administrations. The Naples II Convention does not restrict hot pursuit to pursuit across land borders.

The Commission further supports the consequential amendment introduced by new subparagraph (i) on pursuit taking place on the sea. Subparagraph (i) is identical to existing Article 20(4)(b) of the Naples II Convention.
The Government sees no reason to disagree with the widening of the scope of the hot pursuit provisions, in particular so that hot pursuit may be across international borders in waterways as well as across land borders. But the Government will wish to give further consideration to whether the amendments proposed have operational relevance in the case of the United Kingdom. The United Kingdom has not so far considered it necessary or appropriate to opt in to the hot pursuit provisions in the Naples II Convention.

Paragraph 7

These are tidying-up amendments similar to those proposed for paragraph 4 of Article 40, see above.

Paragraph 8

This applies solely to the Benelux Member States.

Paragraph 10

This amendment is similar to what is proposed for paragraph 6 of Article 40, see above.

Article 11a (Special Task Force)

This Article was not in the Commission’s original proposal, see the left hand side of Annex A. It is a proposal by Belgium supported by a number of other delegations. The United Kingdom Presidency agreed that it could be considered alongside the Commission’s proposed Council Decision on cross-border cooperation, document 11407/05 ENFOPOL 95 of 20 July 2005, in particular because of the possible overlap with the subject matter in Article 1, paragraph (d) on emergencies, calamities and serious accidents.

Article 11a, as currently elaborated by Belgium, is broadly permissive. It provides that in crisis situations such as hostage-taking and hijacking, a Member State may invite assistance from specialised task forces of other Member States, on the basis that such task forces would act in a support capacity in resolving the crisis situation and be under the responsibility of the Member State requesting the assistance. There would be an expectation that criminal and civil liabilities of the foreign officers would be on the lines of the provisions on civil and criminal liabilities in Articles 42 and 43 of the Schengen Convention.

The Government does not envisage that it would ever need to seek such assistance, and the proposed Article imposes no obligation to do so.

In the course of the negotiations on the draft Council Decision, it has become clear that there is probably no legal basis for inclusion in it of provisions along the lines of Article 11a. In particular, Article 11a almost certainly cannot be incorporated into the existing Schengen Convention as an additional Article on cross-border police cooperation. Nor is it likely that Article 11a can be regarded as a Schengen-building provision. Accordingly, if Article 11a is to remain under negotiation in the Council, it may have to be reintroduced as a stand-alone instrument, separate from the draft Council Decision.

Articles 1, 2, 4, 5, 6, 8 and 9 (Other Articles)

During the United Kingdom Presidency there were also detailed discussions on the remaining Articles in the draft Council Decision. These are also summarised in Annex A and are described below.

(i) Article 1 (Subject-matter)

This Article explains that the purpose of the draft Council Decision is to promote strategic and operational cooperation between EU law enforcement authorities, in particular at the internal borders, and to increase the level of security of EU citizens. The Article provides examples of the kinds of cooperation envisaged. Paragraph 1(a), on information exchange, has been amended to refer to the technical and practical implementation of EU provisions on information exchange. This takes into account in particular that detailed rules on information exchange have been elaborated in the draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. Paragraph 2 has been amended to make clear that it relates to the aims, as distinct from the outcomes, of the cooperation. Paragraph 2(d) has been redrafted to make clear that the planning and executing of cross-border responses to emergencies, calamities and serious accidents would only be “as appropriate”.
(ii) Article 2 (Definitions)

The Commission’s original definitions, see the left hand side of Annex A, were withdrawn and replaced by those on the right hand side. This was in response to concerns of a number of delegations that the definitions were arguably not workable. In particular, the Commission has now put beyond doubt that the definitions do not apply to the proposed amendments to the Schengen Convention in Article 11. This is helpful as the original drafting raised questions concerning the relationship between the 50 kilometres rule in Article 2, paragraph (b) and the five hours rule for cross-border surveillance in Schengen Article 40(2), see Annex B. A number of delegations, particularly from geographically small Member States, were also concerned to ensure that “border region” could as appropriate be defined to include the whole territory of the Member State. Paragraph (b) now allows for this possibility. Paragraph (c) leaves for further discussion whether judicial authorities should be brought within the scope of the draft Council Decision. A number of delegations have explained that certain judicial authorities have law enforcement functions.

The Government is broadly content with the definitions as now proposed. In particular, “border region” is now open to flexible interpretation, which is likely to be helpful, for example in deciding on the nature of the “permanent cooperation structures” in Article 6.

(iii) Article 4 (Strategic coordination)

The proposed amendments retain the principal elements of the original draft, but in the second sentence the word “shall” has been replaced by “may”, and the word “shall” in the opening sentence of paragraph 2 also disappears. These changes reflect concerns among delegations that the obligations imposed by the original draft were not appropriate.

The Government shares these concerns. For example, paragraph 1(a) as originally drafted arguably places an obligation on Member States to engage in joint planning of surveillance operations. But it might instead be more appropriate to provide that in the event of a joint surveillance operation, undertaken on the basis of mutual consent, there should be obligations to ensure conformity with rules under which the joint operation should be carried out. The Government will keep this Article closely in view.

(iv) Article 5 (Operational cooperation)

Similar concerns arise in relation to this Article, where “shall” in the first sentence of the original draft has now also been replaced by “may”. Paragraph (b) on joint investigation teams has been deleted on the grounds that there is already adequate provision for these in the Framework Decision on joint investigation teams, referred to on the left hand side of Annex A. Paragraph (c) has also been amended: it was not considered appropriate to assign police tasks to liaison officers.

(v) Article 6 (Coordination structures)

The Commission explained during the negotiations that “permanent cooperation structures” was originally conceived as meaning “joint police stations”. The inclusion of “joint police stations or other permanent cooperation structures” in the amended text on the right hand side of Annex A suggests that flexible interpretation would be possible. The Government will give this further consideration, taking into account that the first sentence of paragraph 1 now qualifies “shall” by “where appropriate”.

(vi) Article 8 (Evaluation of implementation)

The substance of paragraphs 1 and 2 have been retained in the new paragraph 2.

(vii) Article 9 (Bi- and multilateral agreements on cooperation between the authorities covered by this Decision)

The title of this Article has been amended to make clear that “agreements” includes both bilateral agreements and multilateral agreements.

Articles 12 and 13 (Final provisions and Date of effect)

These Articles are standard provisions and were not discussed during the United Kingdom Presidency.

Recitals

These were not discussed during the United Kingdom Presidency. They have not been reproduced in Annex A, but appear in the original Council Document 11407/05 ENFOPOL 95 deposited with the scrutiny committees on 22 July 2005.

I hope that you find this letter helpful. Although a composite new text has not yet been produced by the Secretariat, all delegations including the Commission have made clear that they have appreciated the determination of the United Kingdom Presidency to make substantial progress on this Council Decision
across the full range of the Articles. This has enabled delegations to make a thorough analysis of the text and identify the areas where questions remain to be resolved. The Government understands that the Austrian Presidency will give high priority to the Council Decision. I would hope that the progress made during the United Kingdom Presidency will contribute significantly to bringing the negotiations to an early conclusion. I will continue to keep the scrutiny committees fully informed of further developments.

11 January 2006

Letter from Paul Goggins MP to the Chairman

Thank you for your letter of 12 January 2006 on the above-mentioned draft Council Decision. You explained that the Select Committee indicated in its meeting on 11 January that it wished to be kept informed of further explanations by the Commission regarding the purposes of the Council Decision. The Committee also again said that Europol should be within the scope of the provisions in the Council Decision and that Europol’s role should be made explicit. I will continue to keep the Committee fully informed of the progress of the negotiations in Brussels, and you can be assured that the point about Europol will continue to be kept closely in view.

The Committee also asked for further information about extension of cross-border surveillance to non-suspects. The extension proposed during the United Kingdom Presidency would apply in relation to urgent surveillance, which would thereby be brought into line with the existing regime for pre-planned surveillance. You will see from my further letter of 11 January, which crossed with your latest letter, that a number of delegations recommended this and that the Government supports the proposal, taking into account that our law enforcement authorities attach operational importance to it. Primary legislation would be needed. But the proposal does not have the support of all delegations. The Government understands that the Austrian Presidency will be tabling fresh text which would maintain the present arrangement that non-suspects are within the scope of the pre-planned surveillance provisions, but are not within the scope of the provisions on urgent surveillance. I note the Committee’s concerns in this matter and will keep you fully informed of further developments.

On the Committee’s questions about Articles 3 and 10 of the draft Council Decision, on information exchange and a comitology committee, you will see from my letter of 11 January that delegations may take the view that these are rendered redundant by the forthcoming Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The Government understands that the Austrian Presidency will be proposing deletion of these two Articles, as well as deletion of Article 12 which refers to an associated Decision, relating to information exchange, of the former Schengen Executive Committee. In the event of these deletions, the question of overlap between the Council Decision and the Framework Decision would not arise. The Government would welcome the deletions. Again, I will keep you informed of developments.

I hope that you find this letter helpful.

19 January 2006

SCHENGEN INFORMATION SYSTEM (9942/05, 9943/05, 9944/05)

Letter from the Chairman to Rt Hon Hazel Blears MP, Minister of State for Policing, Security and Community Safety, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined these proposals for a second generation Schengen Information System (SIS II) at a meeting on 26 October.

We fully support the extension of the SIS to enable the new Member States to access it, which is clearly essential. However, we note that a number of important new features are envisaged, including in particular provision for new alerts and for wider access to the data, including by third countries, which have significant implications for the protection of personal data. We will want to examine these aspects with particular care as the negotiations proceed. In the meantime, we would be grateful to know if the Government have consulted the Information Commissioner on these proposals and, if so, what his views are. We would also welcome further information (when you are able to provide it) on:

— what the role and powers of the European Data Protection Supervisor, who is to replace the Joint Supervisory Authority, will be;
— what the implications are for these proposals of the Commission’s recent proposals for a draft framework decision on data protection in the Third Pillar, and how this instrument will affect negotiations on these proposals; and

— which authorities would have access to immigration data for the purpose of implementing the Dublin Regulation and the Asylum Directives and what is the reason for allowing wider access to such data.

You may be interested to see the attached (not printed) submission that we have received from Professor Steve Peers, on behalf of Statewatch, which provides a detailed analysis of the implications of the proposals especially with respect to data protection issues.

We note that it is proposed that the Commission should manage the system. At first sight that seems sensible. You may recall that when this issue came up last year we had strong reservations about the idea that its management might be the responsibility of a separate agency set up for the purpose.

We also note that it is envisaged that the operation of the system will be overseen by a comitology committee. Like you we would be opposed to any key areas being left to the comitology process rather than being contained in the primary instruments.

We would be grateful for any further information you can provide at this stage on these aspects of the proposals and for regular updates on the progress of negotiations. In the meantime the Committee has decided to keep the proposals under scrutiny.

26 October 2005

Letter from the Chairman to Rt Hon Charles Clarke MP, Secretary of State for Home Affairs, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered the proposal for a Regulation regarding access to SIS II by Member States’ vehicle registration authorities at its meeting on 16 November.

The Committee noted that, while this proposal does no more than allow access to SIS II by vehicle registration authorities on same conditions as they are currently allowed access to SIS I, the legal basis on which it rests has been questioned by both the European Data Protection Supervisor (EDPS) and the Schengen Joint Supervisory Authority (JSA) in their recent opinions on the three proposed instruments for the new SIS II. Given the new elements in SIS II, which increases its impact on the lives of individuals, the EDPS and JSA conclude that the legal basis should be reconsidered as this proposal has little, if anything, to do with transport policy and is intended mainly to fight crime. They further suggest that access for these authorities could be regulated by the proposed Council Decision covering the police and judicial co-operation aspects of SIS II (Document 9942/05 which the Committee is keeping under scrutiny). We would be grateful for your comments on the EDPS and JSA opinions on this matter.

The Committee has decided to keep this document under scrutiny pending receipt of the information requested.

18 November 2005

Letter from Rt Hon Hazel Blears MP to the Chairman

Thank you for letter and support on the development of the second generation Schengen Information System (SIS II). Thank you also for forwarding the submission from Statewatch which is a useful contribution to the debate on data protection. We have just sought the view of the Information Commissioner and are awaiting his response, which subject to his agreement I will be happy to forward.

I will provide further information on the issues you ask for although currently we are still in the Council completing a first reading of the proposals. From the outset I must stress that the data protection regime is complex as it needs to cover the first and third pillar instruments, and is a combination of specific law as laid out in the text and general law in terms of existing data protection provisions. You may be interested to see the views of the European Data Protection Supervisor and the Schengen Joint Supervisory Authority (JSA), both as a minimum ask for greater clarity on the data protection regime. Taking your points in turn:
The role and powers of the European Data Protection Supervisor and the replacement for the JSA

The role of the European Data Protection Supervisor (EDPS) is set out in Article 31 of the draft Regulation and Article 53 of the proposed Decision. The EDPS’s primary role is to monitor the data processing of personal data by the Commission, this being the Commission’s monitoring of the SIS II logs. Under the terms of Article 12 all processing operations within SIS II must be logged, to show the date and time of the operation, the data processed and the identification of the competent authority. The EDPS is also to co-operate with national supervisory authorities and to convene a meeting once a year. In addition the EDPS can arbitrate in any disagreement between Member States on the correction of data for example if a person is misidentified or an action cannot be undertaken.

Under the Commission’s proposals, the role of the JSA will be replaced to an extent by the EDPS. The EDPS will supervise the Commission in their role on monitoring the SIS II logs, co-ordinate the national authorities and mediate following any disagreement between Member States on the correction of data. Both the EDPS and the JSA have several comments on this arrangement and the initial exchange of views from Member States was relatively high level and inconclusive, however the role of the Commission in personal data processing and the role of the EDPS in third pillar matters have caused some concerns which will need to be examined thoroughly.

What the implications are for these proposals of the Commission’s recent proposals for a draft framework decision on data protection in the Third Pillar, and how this instrument will affect negotiations on these proposals?

The Presidency is conscious of the Commission’s recent proposals but given uncertainty on the timetable for adoption the current discussion is on clarifying the data protection regime for the third pillar instrument. We will continue to keep in touch with the progress on data protection proposal but will not rely on it for the development of our data protection regime. In practice it may also be the case that delegations would prefer there to be more detailed and specific rules concerning data protection surrounding the SIS II in the legal instruments than could be inferred from a separate and horizontal draft Framework Decision.

Which authorities would have access to immigration data for the purposes of implementing the Dublin Regulation and the Asylum Directives and what is the reason for allowing further access to such data?

As drafted, the SIS II Regulation allows only the asylum authorities of the Member States that take part in the border-related elements of the Schengen Acquis to access immigration data for asylum purposes. The UK therefore, has been excluded from accessing SIS II for asylum purposes.

The reason for asylum authority access is set out in the Explanatory Memorandum that accompanies the Regulation. This notes that the Commission foresees that SIS II will be used for the implementation of the asylum acquis “related to public order and security or determination of the responsibility of the Member State for an asylum application”. For Dublin II purposes, access to SIS II data could help to establish the Member State is responsible for examination of an asylum claim by virtue of Article 10 of Dublin II (illegal presence). This is a criterion within the Dublin II Regulation where issues of proof can be difficult to resolve therefore evidence in the form of a database record could prove useful.

The Regulation also proposes to provide asylum authorities with access to SIS II for the purpose of facilitating the Procedures and Qualification Directives. SIS II may be able to provide useful information on whether a Member State had notified the individual presenting as an asylum seeker as a threat to public order or internal security. This information could influence how Member States deal with an asylum seeker under these Directives. The Government is currently considering whether from a legal point of view it can concur with the Commission’s original view that the UK should not be included in the legal instrument and that UK authorities should not have access for these asylum related purposes.

I am happy to provide you with regular updates. It is the intention of Presidency to have completed a first read through of the texts by December and produce a revised text which sets out Member States position. I am happy to provide an update and a revised text as this point.

29 November 2005

Letter from the Chairman to Rt Hon Hazel Blears MP

Thank you for your letter of 29 November in which you provide further information on some aspects of the proposals. Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered your response at its meeting on 11 January and read with interest the Opinions of the European Data Protection Supervisor (EDPS) and the Joint Supervisory Authority (JSA) which you have enclosed.
The Committee noted that both the EDPS and the JSA share our concern that the second generation SIS broadens the categories of data included in the database and the categories of national authorities having access to it in the absence of data protection safeguards which ensure strict purpose limitation for the use of the information system. We particularly noted their reservations on the broad and imprecise wording of the stated purpose of SIS II which goes beyond Article 102 of the Schengen Convention. We would welcome any improvements to the drafts which would maintain the strict purpose limitation principle for the processing of SIS II data.

In relation to wider access to SIS II data, you explain that access to immigration data by asylum authorities is to be granted as a source of information for the purpose of determining whether an asylum applicant has stayed illegally in another Member State. We agree with the EDPS that access in such cases needs to be subject to strict conditions as to their use and the persons entitled to it. While access to immigration data by UK authorities is currently not allowed, we would still find it helpful if you could let us know which authorities would have access to such data. We have major reservations about giving asylum authorities access to SIS data for the purpose of facilitating the Procedures and Qualification Directives. It seems to us that security-vetting of asylum seekers exceeds the purpose of the database.

Your letter informs us that a first read through was to be completed by December 2005 and that updated texts would be available thereafter. We would be grateful if you could provide us with the latest texts setting out the Government’s position. You also promised the views of the Information Commission and we would be grateful to receive these too. In the meantime, we will continue to keep these documents under scrutiny.

12 January 2006

STRATEGY ON THE EXTERNAL DIMENSION OF THE AREA OF FREEDOM, SECURITY AND JUSTICE (13384/05, 14366/3/05)

Letter from the Chairman to Rt Hon Charles Clarke MP, Home Secretary, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered these documents at a meeting on 14 December.

The Commission Communication was cleared from scrutiny.

We understand that the final draft of the Strategy was agreed by the Justice and Home Affairs Council on 1–2 December, before we had sight of it. Your Explanatory Memorandum of 8 November states that the Strategy will be put to the General Affairs Council for agreement. We understand that it has now been adopted, thus overriding scrutiny. Although the document does not say anything of great substance, and commits this country to no action which it is not already taking, it is of some political significance, and we regret that it was not possible for the Sub-Committee to scrutinize it before it was adopted.

15 December 2005

STRENGTHENING CROSS-BORDER POLICE CO-OPERATION (6930/05)

Letter from the Chairman to Paul Goggins MP, Parliamentary Under Secretary of State, Home Office

The proposed Council Decision was considered by Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union at its meeting on 26 October.

The Committee noted that there are several Council initiatives that already provide scope for cross-border assistance in relation to major international events of the type envisaged by this proposal. These include the Joint Action 97/339/JHA of 26 May 1997 with regard to cooperation on law and order and security and the Council Resolution of 29 April 2004 on security at European Council meetings and other comparable events. We are doubtful whether there is adequate justification for this additional measure.

The Committee would be glad to know if the Government sees a need for this measure and if so what value it would add to the existing instruments. In the meantime we will keep the document under scrutiny.

26 October 2005

UK PRESIDENCY: HOME OFFICE PRIORITIES

Letter from Rt Hon Charles Clarke MP, Home Secretary, Home Office to the Chairman

With the start of the UK Presidency of the EU, the work of my Department on European issues, which I view as already essential to delivery of the Home Office’s priorities, becomes even more important. So too does the
relationship between the Department and your Committee, in order that all proposed EU legislation is properly scrutinised by the UK Parliament. With the recent extension of the co-decision process to more Home Office work, the links that my Department and your committee have with the European Parliament also become more important.

With this in mind, I hope that you might find it useful to have an opportunity for you and some of the members of your Committee to meet representatives from the European Parliament LIBE Committee when they visit the UK on 7 July.

I would also like to take this opportunity to consult you on a proposed change to the way in which my Ministerial colleagues and I work with you to ensure that Parliamentary scrutiny of EU work is as effective as possible—a change which I believe will further improve the service that you receive from the Home Office.

Following the recent changes in my Ministerial team, I have decided to establish three teams to deal together with the three main pillars of the Home Office’s responsibilities:

— Hazel Blears, Minister of State for Policing, Security and Community Safety will be supported by Paul Goggins;
— Baroness Scotland, Minister of State for Criminal Justice and Offender Management, will be supported by Fiona Mactaggart; and
— Tony McNulty, Minister of State for Immigration, Citizenship and Nationality, will be supported by Andy Burnham.

In recognition of this growth in importance of EU and international work, I have taken overall lead on international business and have asked each of my Ministers to ensure that they play their part in developing and delivering the international elements of the Department’s agenda in their areas. As part of this move to mainstream EU work into all areas of the Department, I have asked my Ministers to take responsibility for scrutiny in their respective areas.

It will mean that Ministers requested by your Committee to appear for either evidence sessions or debates on the floor of the House will be responsible for the policy under consideration and so will be able to give a more detailed and considered response to your questions. It should also mean that there will be less pressure on a single Minister’s diary allowing a quicker response to your requests for Ministerial attendance.

As part of this change, I have asked my Ministers of State supported by their Parliamentary Under Secretaries to make a renewed effort to achieving a further step change in the quality of Explanatory Memoranda and Ministerial correspondence that you receive. I hope that this and the proposed changes will make full and effective scrutiny of EU business both easier and more efficient for both your Committee and the Home Office.

I would very much welcome your comments on this suggested approach.

Received 25 June 2005

Letter from Rt Hon Charles Clarke MP to the Chairman

I thought that now would be a useful time to take stock, in the light of the first planned formal Council on 12 October and now that Parliament has returned from recess, of where we are and what has been achieved in the JHA field under the UK Presidency. I will be writing to you again in the very near future to outline what I believe this will mean for the December Council and what we will be planning to adopt or agree at that Council.

Emergency JHA Council—13 July 2005

As you will be aware, I called an Emergency JHA Council on 13 July 2005 in response to the terrorist attacks on London on 7 July 2005, to discuss the EU response. I chaired the meeting and Baroness Ashton from the DCA also attended.

The Council considered the acceleration of elements of the EU Counter-Terrorism Action Plan, in order to help to prevent further such attacks. Vice-President Frattini outlined the College of Commissioners’ agreement to speed up the delivery of the Commission elements of the Hague Programme and Action Plan and to prioritise key terrorism-related dossiers (including radicalisation; explosives; protection of personal data; the principle of availability; law enforcement access to the Visa Information System (VIS), data retention and cross-border police co-operation). He also said that operational-co-operation, terrorist financing and the protection of victims and witnesses all needed further work.

All Member States expressed both their sympathies with the UK and Londoners specifically, and expressed their commitment to work collectively to inject urgency into EU counter-terrorism work.
This meeting demonstrated the importance of European solidarity in the face of these attacks and the Council agreed a Council Declaration reflecting this and a renewed commitment to speed up necessary measures to combat terrorism. I urged the Council to engage the European Parliament further on Counter Terrorism issues and this has been reflected in their treatment of the issue of data retention at the 12 October Council as mentioned below.

**Informal JHA Ministerial Meeting 7–9 September 2005**

**Counter Terrorism**

The Council discussed Counter-Terrorism in its first plenary session with presentations from both Security and Intelligence services.

The EU Counter Terrorism Co-ordinator, Gijs de Vries, then set out what the EU had done since 9/11 and the need for the EU to set a strategy for the future.

It was agreed by all EU Member States that domestic and international Counter-Terrorism efforts needed to be stepped up and that the good progress already made by the EU since the Madrid bombings should be developed further under a coherent EU strategy and refreshed EU action plan.

**Retention of Telecommunications Data**

Two presentations were made by senior representatives of the telecommunications industry trade associations. They recognised the value of working with law enforcement but felt that the current draft of the Framework Decision was disproportionate in terms of cost, technical difficulty and radical restructuring of data systems.

Jim Gamble, Deputy Director General of the National Crime Squad gave a presentation on the considerable law enforcement benefits of retaining the telecommunications data for longer periods, giving both examples of its use and setting out the safeguards for restricting access to retained data.

**Civil Law**

The Lord Chancellor chaired a plenary session on current issues in civil judicial co-operation. There was agreed support for limitation of scope of application of measures under article 65 TC to cross border cases. There was also an acceptance of the need for a speedy, simple, European Small Claims procedure. Discussion also took place on the Civil Judicial Network, with a helpful exchange of views.

**Organised Crime**

Running alongside the civil law plenary session were three workshops largely attended by Interior Ministers, all with an organised crime theme.

**Intelligence-Led Policing**

— A presentation by Europol Director Max-Peter Ratzel on the virtues of an annual forward looking Organised Crime Threat Assessment (OCTA) by Europol, as part of a European Criminal Intelligence Model (ECIM), was well received. Those Ministers present supported development of both an OCTA and an ECIM and agreed that they should provide Europol with the necessary information to make them work.

**Human Trafficking**

— A presentation by a senior UK policeman on a case study involving the trafficking from Lithuania to the UK of a 15 year old Lithuanian girl helped focus discussion on the need to co-operate at EU level (including through an EU action plan) to address all parts of the trafficking cycle, including protecting and rehabilitating victims, disrupting trafficking routes and prosecuting the traffickers, and educating vulnerable people in countries of origin as part of a prevention strategy.

**High Tech Internet Crime**

— A presentation by a senior Belgian law enforcement officer on the ways organised crime and terrorist organisations can exploit the internet helped inform discussion on the risks and potential responses to this sort of crime. There was agreement to build on existing EU and G8 work in this area, particularly to tackle use of the internet for child abuse and to find ways better to protect critical IT infrastructure from attack.
Africa and Migration

Guest speaker from the UNCHR, David Lambo (Director for Africa) opened discussions by addressing Ministers on the political challenge faced by African governments with regard to massive numbers moving across the continent. He welcomed closer EU work with the African Union as well as individual governments and other players to bring their migration agenda together. In particular, he outlined strengthening protection for refugees; tackling human smuggling and trafficking; and remittances.

The Commission (Frattini) was supportive of further engagement with the African Union and EU and welcomed the fact that the Presidency had placed the wider questions of relations with Africa at the top of its agenda.

Afghanistan and Counter-Narcotics

Afghanistan’s Counter Narcotics Minister Habibullah Qaderi opened discussions in the final session of the meeting setting out the pillars of Afghanistan’s counter-narcotics plan, and the role of his new Ministry. The Commission outlined its contributions to the Counter Narcotics Trust Fund and also highlighted the need for Counter Narcotics activity to be mainstreamed throughout reconstruction efforts in Afghanistan. There was EU wide agreement on the need to increase assistance to Afghanistan in this important area.

JHA Council 12 October 2005—Luxembourg

I chaired the JHA Council in Luxembourg on 12 October and then the Permanent Partnership Council meeting with the Russians on 13 October.

Baroness Ashton, who also attended the Council, chaired the item on the European Order for Payment, where it was formally underlined (as per the Informal Meeting in Newcastle) that the scope of the instrument should be limited to cross border cases.

Council discussions were then dominated by data retention. There was agreement to maintain a twin track approach, pursuing negotiations on the Directive whilst continuing work on the Framework Decision. I believe it is important to work with the European Parliament to see if an agreement can be reached in the 1st Pillar, because our advice is that this route is legally more robust. I also believe it important that the European Parliament is actively involved in the fight against terrorism at an EU level. However, it is essential that we have an effective measure, to realistic timescales, which provides appropriate protection for the citizens of the EU. There will be intensive discussions over the coming weeks, with a view to gaining agreement to an appropriate instrument at the December Council, and I will ensure that you are kept informed of their progress.

UNCHR Commissioner Gutteres joined a discussion over lunch on regional protection programmes which continued in to the main plenary session after the lunch. The Council formally endorsed the draft Council Conclusions on the communication from the Commission on regional protection programmes, which will be passed to the GAERC Council for formal adoption as an “A” point.

Conclusions were adopted on Intelligence-led policing and the development of the organised crime threat assessment (OCTA). I stressed the importance of supporting this intelligence-led approach to law enforcement and of supporting Europol as it developed the Threat Assessment.

Productive discussions took place on the European Evidence Warrant with a view to bring negotiations on the Framework Decision to a successful conclusion at the December Council. As with Data Retention, there is likely to be a great deal of work on it in advance of the December Council, and I have asked officials therefore to ensure that you are kept informed of progress.

The text was also agreed on an agreement between the EU and Iceland and Norway on surrender procedures between the three parties. I stressed the importance of the need to bring these discussions to a close before the end of the year.

A meeting of the Mixed Committee took place on the draft framework decision on simplifying the exchange of information and intelligence between law enforcement authorities of the member states of the EU. Several member states had concerns with certain points of the text and I once again stressed that negotiations on this FD, including those difficulties, should be resolved by the end of the year.

Under AOB, the Commission briefly presented draft Framework Decisions on the principle of availability and data protection. I noted that work should and would be taken forward on both.
At the Permanent Partnership meeting with the Russians (held in troika format with the Commission, the UK Presidency, the incoming Austrian Presidency and the Russians), there was a useful discussion of issues around organised crime, counter-terrorism and border security. The Readmission Agreement between the EU and Russia was also initialled at the meeting.

I apologise that this letter was not with you at the end of recess in respect of the Informal and Emergency Councils, but hope that it is useful to put these in the context of the further discussions on key issues that have taken place since.

8 November 2005

Letter from Rt Hon Charles Clarke MP to the Chairman

I am writing to you to provide a breakdown of dossiers adopted under the UK Presidency. This is attached in annex A.

From the outset, the UK Presidency aimed to deliver existing commitments in the Hague Programme and the Counter Terrorism and Drugs Action Plans, and focus, in three areas, on delivering outcomes that make a real and practical difference to the lives of citizens in the UK and the rest of the EU.

COUNTER TERRORISM

Since July we have agreed a Counter Terrorism Strategy for the EU which sets out a common vision for our work and identifies specific priorities. The EU will tackle terrorism by:

- Preventing new recruits to terrorism—we agreed a strategy and action plan to combat radicalisation and recruitment, with key measures including promoting good governance and human rights, increased engagement to resolve regional conflicts and promotion of training for foreign Imans.
- Better protecting targets—we agreed a set of common principles for protecting critical infrastructure and reached agreements on document and border security.
- Pursuing terrorists—we agreed a series of recommendations to improve Member States’ domestic capabilities, agreed the Third Money Laundering Directive and principles for combating the misuse of charities to tackle terrorist financing, and practical measures to deny terrorist access to explosive substances.
- Responding to the consequences of terrorist attack—we agreed EU crisis co-ordination arrangements setting out mechanisms for the sharing of information and co-ordinated national responses.

We have also agreed common standards for retention of telecommunications data, such as that used by the Spanish police to trace the Madrid bombers, as one of the weapons to help to fight organised crime and terrorism.

TACKLING SERIOUS AND ORGANISED CRIME

The UK Presidency has delivered agreement on a range of measures to improve the exchange of information between law enforcement authorities so they can tackle organised crime more effectively.

- The Council agreed to an annual Organised Crime Threat Assessment by Europol using a criminal intelligence model.
- Steps have been agreed to improve the process of exchange of information for law enforcement, which include minimum time limits for such exchanges.

Under the UK Presidency an EU Action Plan on Human Trafficking has also been agreed. This is a focused plan which details the objectives, a timetable for delivery and assessment tools. It is aimed at achieving common standards and sharing best practices and mechanisms to prevent and combat trafficking in human beings. It will drive forward practical action and co-operation in the EU.

ASYLUM AND IMMIGRATION

The European Council adopted a paper on a “Global approach to migration: Priority actions focusing on Africa and the Mediterranean” which was annexed to the European Council conclusions, covering the following areas:

- Strengthening cooperation and action between Member States;
- Increasing dialogue and cooperation with African states;
— Increasing dialogue and cooperation with neighbouring countries covering the entire Mediterranean region; and
— Questions of funding and implementation.

Ministers agreed intergovernmental conclusions on common minimum security standards and issuing procedures to reinforce the security and integrity of national identity cards.

Council Conclusions on the timetable for collecting biometrics for the Visa Information System were agreed in December, and we oversaw a successful start to the EU Borders Agency, which is beginning work on a comprehensive risk assessment of the EU’s external border.

Furthermore, the JHA Council, under the UK Presidency, has addressed priority areas of EU immigration and asylum by:

— Initialling agreements with Russia on readmission and visa facilitation;
— Adopting Council Conclusions on pilot regional protection programmes; and
— Commencing negotiations on developing common standards for return of illegal migrants.

I am very pleased with what we have delivered in the JHA field during the UK Presidency and what we have achieved on other dossiers which will enable more practical measures to be delivered under the Austrian Presidency. Unfortunately two Parliamentary overrides did occur during the UK Presidency. They were:

— Council Decision for a Protocol Agreement between EC, Iceland and Norway on responsibility for examining asylum claims (8006/05)—Both Houses.
— Exchange of Information Concerning Terrorist Offences (15999/05)—House of Lords.

I would like to reaffirm my commitment to the Parliamentary scrutiny process and I hope you find the attached annex useful.

21 December 2005

Annex A

DOSSIERS ADOPTED UNDER THE UK PRESIDENCY

COUNTER-TERRORISM

— Council Declaration at the 13 July Emergency Council (July).
— Terrorism Evaluation Report (October).
— Exchange of Information Concerning Terrorist Offences (September).
— Presidency Recommendations on Counter-Terrorism (December).
— EU Counter-Terrorism Strategy (December).
— Strategy and Action Plan on Radicalisation and Recruitment (December).

ORGANISED CRIME

— Council Decision on Schengen Information System—Implementation Date (October).
— Council Decision on Signature of Convention 198 (Money Laundering) (December).
— Council Decision on the Common Use of Liaison Officers (December).
— Mid-term Review of the Customs Co-operation Strategy and Revised Customs Co-operation Action Plan (December).
— Report on Implementing the EU Drugs Strategy/Action Plan (December).
— Action Plan on Human Trafficking (December).

**Immigration and Asylum**

— Draft Council Conclusions on Voluntary Returns (October).
— Council Recommendation to Facilitate the Admission of Third-Country Nationals to Carry Out Scientific Research in the EU (October).
— Council Conclusions on Regional Protection Programmes (October).
— Council Conclusions on Common Agenda For Integration of Third-Country Nationals (December).
— Council Conclusions on Migration and External Relations (December).
— Council Conclusions on Consular Roll Out of Visa Information System (December).
— Adoption of Asylum Procedures Directive (December).

**External Relations**

— External Relations Strategy (December).

**Regular Reports and Routine A Points**

— Central SIS Management Report (October).
— Multi-annual table of Central SIS Installation Expenditure (October).
— Confirmation of Elections of Eurojust President (October).
— Council Conclusions on Eurojust Annual Report (October).
— Europol: Agreement with Croatia (November).
— Europol: Agreement with Canada (November).
— Eurojust: Agreement with Romania (December).
— Eurojust: Agreement with Iceland (December).

**Overrides**

— Council Decision for a Protocol Agreement between EC, Iceland and Norway on responsibility for examining asylum claims (June).
— Exchange of Information Concerning Terrorist Offences (September Agricultural and Fisheries Council).

**VISA INFORMATION SYSTEM (VIS) AND THE EXCHANGE OF DATA BETWEEN MEMBER STATES ON SHORT-STAY VISAS (5093/05)**

**Letter from the Chairman to Caroline Flint MP, Parliamentary Under Secretary of State, Home Office**

Sub-Committee F (Home Affairs) of the European Union Select Committee examined this proposal at a meeting on 2 March. We were pleased to see that the Commission has conducted a thorough assessment of the various options available for the development of the Visa Information System and have produced a very detailed and comprehensive proposal. We particularly welcome the fact that the Commission has tried to ensure that the use of the VIS is proportionate to the aims pursued and that the proposal contains a series of very detailed data protection provisions.
We note that respondents to the Commission’s consultation on the proposal raised concerns about the inclusion in the VIS of personal data of individuals and companies issuing invitations to third country nationals to enter and stay in the EU. Respondents also feared that the rejection of a previous visa application would automatically result in a future rejection. Does the Government share these concerns?

We note that the UK will not participate in the Regulation, as the latter is a Schengen-building measure. But the Commission envisages tabling a complementary instrument to develop a mechanism for the exchange of VIS data with the UK. We will examine this proposal fully when it is put forward by the Commission. In the meantime are arrangements in hand to ensure that the relevant British system will be compatible with the VIS?

We have cleared the document from scrutiny but would be grateful for your comments on the points raised above.

2 March 2005

Letter from Caroline Flint MP to the Chairman

I am writing in response to your letter of 2 March 2005, in which the Committee put forward its questions on this proposal.

The Committee notes the concerns of some respondents to the Commission’s consultation on the proposal, specifically the inclusion of personal data of individuals and companies issuing invitations to third country nationals to enter and stay in the EU. Information on host individuals or companies is used to assist in verifying whether the visa applications are genuine and to identify any persons or companies that make fraudulent invitations. The Government believes that the document makes clear that data protection issues in relation to host individuals and companies will be taken seriously. The annex to the Proposal notes that the Community’s relevant data protection legislation (Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data) fully apply to this Regulation.

The Committee asked whether the Government shares the concerns of those who fear that the rejection of a previous visa application would automatically result in a future rejection. We do not believe that in such a scenario an automatic rejection would be the result. While past history would be taken into account when assessing a subsequent application, an applicant would be able to provide further information to assist in his/her application and each application would be examined on its merits.

The Committee also asked the Government if arrangements are in hand to ensure that UK systems will be compatible with VIS. I can assure you that we are continuing discussions with the Commission and making arrangements for a mechanism for exchanging VIS information with the UK.

16 March 2005

Letter from the Chairman to Caroline Flint MP

Thank you for your letter of 16 March responding to points we raised on this proposal. Sub-Committee F (Home Affairs) of the European Union Select Committee considered your reply at a meeting on 6 April.

We are grateful for this further information but would welcome further clarification of two points. You say that information on host individuals or companies is used to identify “any persons or companies that make fraudulent invitations”. What would you regard as “fraudulent” in this context? As we understand it it is not an offence to sponsor the visa application of someone who subsequently fails to comply with the terms of their admission.

Secondly, we asked whether arrangements were in hand to ensure that the relevant British systems will be compatible with the VIS. You say that you are making arrangements for a mechanism for exchanging VIS information with the UK. But this does not answer the question whether action is being taken to modify the British systems to ensure compatibility with the VIS.

6 April 2005
Letter from Tony McNulty MP, Minister of State, Home Office to the Chairman

I am writing in response to your letter of 6 April 2005, in which the Committee put forward its questions on this proposal.

In a reply to a previous letter from the Committee, Caroline Flint advised that information on host individuals or companies would be used to assist in verifying whether visa applications are genuine and to identify any persons or companies that make fraudulent invitations. The Committee has asked for clarification of what we regard as “fraudulent” in this context. I consider this to mean companies or individuals that are issuing invitations solely in order to facilitate illegal entry into the EU. So, if for example, a “company” issues a substantial number of invitations a year, this fact would be highlighted on VIS and could warrant closer inspection of the “company” to ensure invitations are for genuine purposes.

The Committee has also asked whether arrangements are in hand to ensure that the relevant British systems will be compatible with VIS and how these systems will be modified. We are currently in discussions with the Commission on this and UK technical experts are in the process of drawing up a proposal for a technical link between UK visa systems and VIS. I am therefore unable to provide full technical details at this point in time.

19 May 2005

Letter from the Chairman to Tony McNulty MP

Thank you for letter of 19 May, which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 15 June. We were grateful for—and reassured by—your explanation that a visa invitation would be regarded as fraudulent only if it was issued solely in order to facilitate illegal entry into the EU.

We have noted that the proposal for developing a technical link between UK visa systems and the VIS are not yet sufficiently advanced to enable our question about possible modification of the UK systems to be answered and would ask to be kept informed of developments on this point.

15 June 2005
Social Policy and Consumer Affairs
(Sub-Committee G)

ADDITION OF VITAMINS AND MINERALS TO FOOD (14842/03)

Letter from Caroline Flint MP, Parliamentary Under-Secretary of State, Department of Health to the Chairman

I am writing to report the outcome of the Employment, Social Policy, Health and Consumer Affairs Council on 3 June on this proposed Regulation.

The Minister of State for Health Services attended this Council for the UK and participated in the vote for political agreement on this proposal. The proposal cleared scrutiny in your Committee by correspondence (your letter of 7 April to Melanie Johnson refers). The key objectives for the UK were to safeguard production and sale of tonic wine and to ensure a proportionate measure that would not unnecessarily restrict consumer choice of fortified products. The text before Ministers at the Council delivered these objectives, and the UK voted for political agreement in the vote. Political agreement was gained by qualified majority, with Denmark voting against because it wanted to prohibit fortification of some foods, such as confectionery.

It now remains to complete a few procedural steps before a Common Position can be communicated to the European Parliament and the second reading phase begin. The European Parliament has adopted an amended text that is fairly close to the Council text and a second reading deal should not be too difficult to reach.

4 July 2005

Letter from the Chairman to Caroline Flint MP

Thank you for your letter dated 4 July which was considered by Sub-Committee G on 20 July.

As you know, this document was released from scrutiny by the Sub-Committee on 6 April. We are pleased to note that the text submitted to Ministers at the Employment, Social Policy, Health and Consumer Affairs Council on 3 June met the remaining UK objectives and that political agreement was gained by qualified majority.

We also note that the Government are confident that it should not be difficult to reach a second reading deal at the European Parliament. We would be grateful if you would report again when that stage has been reached.

21 July 2005

AGREEMENTS FOR CONSUMERS (13193/05)

Letter from the Chairman to Gerry Sutcliffe MP, Minister for Employment Relations, Consumers and Postal Services, Department of Trade and Industry

Your Explanatory Memorandum dated 1 November was considered by Sub-Committee G on 17 November.

Publication of the Commission’s modified proposal is the trigger for which we have been waiting to resume the Committee’s Inquiry on the proposal to amend the Directive which was suspended following publication of our Interim Report (HL Paper 37) on 27 July.

We have already issued a Call for Evidence for the resumed Inquiry, a copy of which has been sent to your officials. I enclose a further copy for ease of reference (not printed). As you will see, the Call for Evidence invites responses by Wednesday 14 December. We understand that consideration of the modified proposal by the Council and European Parliament is likely to last for much of the tenure of the Austrian Presidency next year. We are therefore planning to start oral evidence sessions on the modified proposal early in the New Year, and would welcome early oral evidence from your officials to explain how the new proposal differs from the previous proposal and to amplify the Government’s attitude to it.

We also plan to call for oral evidence from the European Commission and other selected witnesses with a view to concluding the Inquiry and publishing a Report before the Easter Recess. We hope that you will be able to give oral evidence towards the end of the resumed Inquiry, in the usual way.
In the circumstances, the previous document (Commission reference 14246/04 COM (2004) 747) is released from scrutiny and scrutiny is retained on the replacement document (13193/05 COM (2005) 483 final).

18 November 2005

ARCHIVES IN EUROPE (6702/05, 6703/05)

Letter from the Chairman to Lord McIntosh of Haringey, Minister for Archives, Department for Culture, Media and Sport

Your Explanatory Memorandum dated 11 March was considered by Sub-Committee G on 4 April.

We support this proposal in principle and are prepared to clear the document from scrutiny. We assume that any recommendations made in the report of the proposed European Archives Group will be submitted for Parliamentary scrutiny in due course. In the meantime, we look to the Department to ensure that these activities are proportional, avoid duplication and give good value for money.

7 April 2005

ARTICLE 13 EMPLOYMENT DIRECTIVE: IMPLEMENTATION PROCESS

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

As Minister for Employment Relations, I am writing to update you on our plans to implement the age strand of the Employment Directive.

On 14 July we will be launching Equality and Diversity: Coming of Age. In October 2003 we launched Age Matters in which we asked for opinions on our proposals for retirement age, recruitment, selection and promotion; pay and non-pay benefits; unfair dismissal; employment-related insurance and statutory redundancy payments. We have now finalised our policy and translated that policy into our draft regulations.

A copy of the full consultation document is included with this letter (not printed).

In line with normal practice we have published more detailed supporting analysis of the benefits and costs of implementing the age strand of the Directive. Benefits and Costs are discussed in Chapter 10 of the Coming of Age consultation document. The Regulatory Impact Assessment (RIA) is also available as part of the consultation exercise, and this can be found at www.dti.gov.uk/er/equality/age

12 July 2005

CITIZENS FOR EUROPE 2007–2013 (8154/05)

Letter from the Chairman to Rt Hon Tessa Jowell MP, Secretary of State, Department for Culture, Media and Sport

Your Explanatory Memorandum dated 8 June 2005 was considered by Sub-Committee G on 15 June. It was decided to hold the Commission document under scrutiny because the proposed “Citizens for Europe” programme raises the following concerns.

Although we acknowledge that widespread lack of interest in, and misunderstanding about, the EU is a serious problem, we are not convinced that the Commission’s proposed new programme, as described in these documents, will address that problem effectively.

We would like to see some rather more clearly-articulated and imaginative proposals than the Commission has given thus far of the actions that might be taken. We are surprised that the Commission’s Extended Impact Assessment provides no real evidence on which we might judge whether the current programme has given good value for money. Nor does it offer a convincing analysis of the likely impact of the new proposals. Your Explanatory Memorandum notes that the Commission has failed to justify the proposed doubling of the annual expenditure. In our view, much will depend on the way in which this programme is to be managed, which is also not clear from the documents produced.

Although your Explanatory Memorandum states that the Government believes that the draft Decision is in accordance with the principle of subsidiarity, we are not sure that it will avoid duplication of effort or lead to actions that could be taken more appropriately or effectively at more local level.
Social Policy and Consumer Affairs (Sub-committee G)

Nor are we sure that Articles 151 and 308 of the Treaty would provide a proper joint legal base for Community action in this area. We are concerned by the statement in your Explanatory Memorandum that the additional provisions in the proposed new programme “will necessitate a further look at the argument for using Article 308 as a part-legal base”. We would like to know what is meant by that expression and what these additional provisions are. As you may know, the Committee attaches great importance to ensuring that all Commission proposals have a proper legal base, regardless of their other merits.

We hope that the Government will take a robust approach in negotiations in the Council, especially during the UK Presidency, with the aim of securing satisfactory answers to all the above points in good time before Council decision is required and look forward to receiving your promised Regulatory Impact Assessment.

28 June 2005

CONFRONTING DEMOGRAPHIC CHANGE: A NEW SOLIDARITY BETWEEN THE GENERATIONS (7607/05)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions

Your Explanatory Memorandum dated 8 June was considered by Sub-Committee G on 29 June. Although the Commission Green Paper is not a legislative document, we regard the questions it raises as potentially very important. Your Explanatory Memorandum does not give any indication of the Government’s views on those questions. We assume that the Government will be responding to the Commission’s consultation in due course and would be grateful for a copy of that response as soon as it is submitted. We would also be interested to know how the Government intends to handle this matter during the UK Presidency.

We are holding the document under scrutiny pending your reply.

12 July 2005

Letter from James Plaskitt MP to the Chairman

In your letter dated 12 July 2005, you indicate that the questions raised by the European Commission’s Green Paper “Confronting Demographic Change: A New Solidarity between the generations”, are very important, and ask for a copy of our response. I am sorry for the late reply. We have been holding a response to give you more information on the December Council.

The European Union cannot meet its Lisbon objectives if it does not respond effectively to the challenges of demographic change. This emphasis on responding to demographic change is consistent with our domestic strategy. The Department’s Five Year Strategy “Opportunity and security throughout life” made the point that raising employment participation rates was fundamental to responding to the ageing society. Demographic change extends beyond the DWP’s agenda and the UK’s position paper and response makes this clear. I attach both documents (not printed). David Blunkett attended the European Commission Seminar to discuss these issues on 11 July.

In terms of the UK Presidency, we have tabled a policy debate on Demography and Human Capital for the 8 December Employment and Social Policy Council, which will be informed by both the Commission’s Green Paper and a report from the Employment Committee on Human Capital. We expect this debate to focus on the labour supply issues necessary to achieve the Lisbon goals of increased economic and employment growth, including measures to maximise work opportunities for young people, older workers and disadvantaged groups.

The Hampton Court Summit of heads of state and government identified these issues as central to our response to the ageing society, and we expect the views of Employment and Social Policy Ministers to help inform further consideration of these challenges at the Spring European Council.

Enclosed:
1. The response of the UK to the European Commission’s Green Paper “Confronting demographic change: A new solidarity between the generations” (not printed);
2. Paper on the UK’s position on the ageing society (not printed).

29 November 2005
CONSUMER CREDIT HARMONISATION (14246/04)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations, Consumers and Postal Services,
Department of Trade and Industry to the Chairman

In my Explanatory Memorandum on 30 November 2004 on the Amended Proposal for a Consumer Credit Directive, I said that we would carry out a Regulatory Impact Assessment and launch a formal consultation. I would now like to update you on our progress.

We have carried out a Partial Regulatory Impact Assessment which we published alongside a consultation document on Friday 25 February 2005. I am attaching these documents, which can also be found on the DTI website at: http://www.dti.gov.uk/consultations/. The deadline for the consultation is 22 April 2005. This is a shortened deadline of eight weeks to ensure that we are able to develop the UK negotiating position in time for the Council negotiations, and the start of the UK Presidency. I will forward you a summary of the responses once the consultation is completed.

It is my understanding that the Commission is planning to adopt a further amended proposal for a Directive on Consumer Credit in the coming months. This proposal will take the form of a consolidated text and will aim to clarify some of the outstanding issues which remain unclear in the present amended proposal. The Council working group will then consider the text towards the end of the Luxembourg Presidency from May 2005. I will of course keep you informed of any developments.

2 March 2005

Letter from the Chairman to Gerry Sutcliffe MP

Your letter dated 2 March was considered by Sub-Committee G on 6 April.

We are grateful for this progress report and are retaining the document under scrutiny pending the summary of responses to the Department’s consultation and further report on the developments expected on a revised text, as indicated in your letter.

The Sub-Committee regards this as an important topic into which they would like to carry out a short Inquiry and produce a Report in the hope that this would be of assistance to the Department in guiding progress in further consideration of this Proposal, especially in negotiations during the forthcoming UK Presidency.

As Parliament is about to be dissolved for the General Election, it would be for the new Sub-Committee to be formed at the beginning of the next Parliamentary session following the General Election to decide whether to pursue the present Sub-Committee’s wish to hold a short Inquiry on this. But, in anticipation of that decision, we propose to issue shortly a Call for Evidence so as to give interested parties sufficient time to submit written evidence on which the new Sub-Committee could begin consideration early in the next Parliamentary session.

If we do not do this, the need to allow sufficient time for the production of written evidence would mean that the Inquiry would be unlikely to get under way before the Summer Recess. That would run the risk that the Inquiry Report would not be completed until too late to influence any decisions on the proposal.

We will send your officials a copy of the Call for Evidence as soon as it is issued and will continue to keep in touch with them. We hope that we can count on the Department’s full cooperation with the proposed Inquiry if the new Sub-Committee do decide to carry it out.

7 April 2005

Letter from Gerry Sutcliffe MP to the Chairman

When I wrote to you on 2 March concerning progress on the Consumer Credit Directive, I undertook to provide a summary of responses to DTI’s consultation once it was completed and to keep you up-to-date on developments regarding a revised text from the Commission.

I attach a summary of responses to the consultation, which will shortly be published. We have decided not to publish a formal Government response at this stage because we expect the Commission to come forward with a further amended proposal shortly and it would make more sense to set out a revised UK negotiating position once we have seen this. Latest information from the Commission suggests that their revised text should appear in July.

6 June 2005
Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 6 June enclosing the summary of responses to the Department’s recent consultation on the proposed Directive. We are particularly grateful to have had this at an early stage in the Inquiry about the Directive which Sub-Committee G have just started.

We are also grateful to your officials for giving a preliminary on-the-record briefing to the Sub-Committee at an oral evidence session on 15 June and to you for agreeing to give your own oral evidence to the Inquiry on the afternoon of Wednesday 6 July.

We will continue to keep in close touch with your officials as the Inquiry develops.

20 June 2005

Letter from the Chairman to Gerry Sutcliffe MP

Since Lord Grenfell wrote to you on 20 June about this Inquiry we have been considering what to do following the news that the College of Commissioners are not expected to adopt the revised text of the draft Directive before mid-July.

We understand that, even if the new text is adopted in mid-July, it is unlikely to be received in time for your Department to submit it with the necessary Explanatory Memorandum before the House rises for the Summer Recess on 21 July. We also understand that Working Group discussion of the text could not start until late September. Nor can we expect the Commission to be available to give the Inquiry oral evidence until some time after the House resumes following the Summer Recess on 10 October.

In the circumstances, we have decided to postpone the oral evidence session which you have kindly agreed to give to the Inquiry on the afternoon of Wednesday 6 July until the Autumn.

The two oral evidence sessions with representatives of consumers organisations already arranged for this Wednesday, 29 June will go ahead as planned to help us in clearing the initial ground for the Inquiry and comparing that evidence with the oral evidence given by your officials on 15 June and by the UK Cross-Industry Group last Wednesday. We hope to issue a short interim Report, based on the evidence we have received so far, before the start of the Summer Recess. Copies would be sent to you, as well as to the Commission, as soon as they are available and the interim Report would be published in due course.

We also plan to issue a fresh Call for Evidence, shortly after the publication of the interim Report. This would invite comments on the new text, as well as on the interim Report, to be submitted by the time that the House resumes following the Summer Recess. We then plan to review that fresh evidence, as well as the new Commission text and your Department’s Explanatory Memorandum about it, and to invite the Commission and possibly others to give us oral evidence about the new text during October and possibly early November. We hope that you would then be able to assist us in concluding the Inquiry in the usual way by giving oral evidence on a mutually convenient date in November.

If all goes according to plan, we would hope to be in a position to issue a final Inquiry Report before the House rises for the Christmas Recess.

I hope you will agree that this is the most sensible way to proceed in the circumstances. The alternative would have been to have attempted to produce a Report in the next few weeks on the basis of a text which we have already found to be lacking in clarity and which would be bound to be over-taken in the very near future. We hope that our interim Report will help to identify some key issues arising from the evidence we have had so far and perhaps provide some useful pointers for the Government and the Commission to bear in mind as the new text begins consideration by the Working Group. We also hope that, with your assistance, we will be able to produce a full rounded Report on the basis of the new text before final Council decisions are needed.

The present document will, of course, remain under scrutiny in the meantime.

30 June 2005

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letters of 30 June and 27 July (enclosing an Interim Report) concerning your Committee’s Inquiry into the above draft Directive. I see that your Committee will be focusing on broadly the same issues as we are. I am grateful for the useful work the Committee has undertaken on this dossier and look forward to receiving the final report at the conclusion of the Inquiry.
Since DTI officials gave oral evidence to the Committee last month, we learned, as you did, that the amended proposal was likely to be delayed even further than thought previously, until at least September and maybe considerably later in the autumn. This is disappointing as it greatly reduces the chances of reaching agreement under the UK Presidency.

I agree that it would not be sensible for your Committee to attempt to produce a final report in advance of the amended proposal and I fully understand why you must keep this dossier under scrutiny. DTI will produce a further Explanatory Memorandum once an amended text is received and will, of course, be happy to provide further evidence to the Inquiry as necessary.

I note from paragraph 25 of the Interim Report that the Committee is unclear what we mean by “targeted harmonisation” and I thought it might be helpful if I provided some explanation. “Full” or “maximum” harmonisation refer, of course, to the setting of standards which must be met and cannot be exceeded by Member States. Hence, full harmonisation provisions set out precise rules which Member States must comply with and prohibits them from introducing or maintaining additional rules. “Minimum” harmonisation, on the other hand, entails setting minimum standards which must be met by all Member States, but which allow Member States to go further in the interests of, for example, consumer protection, so long as this does not create a barrier to trade. By “targeted” harmonisation we mean a mixture of maximum and minimum harmonisation provisions within the same Directive (as opposed to “total” harmonisation which would imply maximum harmonisation provisions only).

Following a targeted approach, the level of harmonisation would be determined for each aspect of the Directive depending upon a range of factors, such as the degree of risk to the consumer, the needs of the single market and the extent to which prevailing circumstances in Member States would allow the adoption of a single set of detailed rules. Where it would be possible to achieve full harmonisation without lowering existing standards of consumer protection in Member States and without imposing undue burdens on the industry, we would support it. The advantage of a targeted approach is that it makes it easier to reach agreement on a Directive which impacts on areas subject to significant national differences, while still maintaining at least some elements of full harmonisation.

17 August 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 17 August which was considered by Sub-Committee G at our first meeting following the Summer Recess on 13 October.

We are glad to know that you found our Interim Report helpful and grateful for your clarification of the meaning of “targeted harmonisation”.

We understand that the Commission have just adopted a new modified proposal and look forward to receiving your Explanatory Memorandum about it. When we have considered that we will issue a new Call for Evidence but the Inquiry will probably not be resumed until early in the New Year as we have to allow interested parties sufficient time to consider and respond to the new Call for Evidence.

We shall, of course, continue to keep your officials closely in touch with our plans for the resumed Inquiry and will no doubt wish to invite you to give oral evidence on the new proposal in due course.

18 October 2005

CULTURE PROGRAMME 2007–2013 (11572/04, 11585/04)

Letter from Estelle Morris MP, Minister of State for the Arts, Department for Culture, Media and Sport to the Chairman

I thought I should write to you and your Committee again about this EU proposal, which your Committee currently has under scrutiny (reference 11572/04).

We submitted an Explanatory Memorandum about this Proposal to you and to the European Scrutiny Committee in the House of Commons in October 2004 and a supplementary Explanatory Memorandum in November. In those Memoranda, we explained the proposed remit of the various Strands of the Culture 2007 programme.

There have since been developments in the negotiations of the Council working group, the Cultural Affairs Committee, regarding Strand 2.2 of the Programme: Support for action for the preservation and commemoration of the main sites and archives associated with the deportations.
Following the Cultural Affairs Committee meeting on 7 March, the Baltic States have proposed amendments to the legislative text on Strand 2.2 relating to the preservation of memorials. Their proposal, if incorporated, would lead to this strand being broadened to fund projects associated with the mass deportations and exterminations carried out during the Stalinist era, not just those of the Nazi Holocaust.

The Baltic States have built up a strong alliance and feel that the expansion of this strand of Culture 2007 is necessary to reflect the wider cultural history of an enlarged European Union. The projects themselves will take place within the Member States involved and not on Russian territory. Neither is there any stated intention of broadening this strand of the Programme still further.

I am aware that this is a highly sensitive issue and support for the widening of this strand of the proposed programme could be presented as diminishing the Government position on the holocaust and its place in history. Equally, though, the UK should not be seen as unsympathetic to other atrocities, especially in the light of our forthcoming Presidency of the Council. As a result, I am inclined to support the Baltic States’ proposal; however, no decisions have yet been made by the Cultural Affairs Committee as to whether this amendment will be accepted.

I thought that it would be helpful for your Committee to have an opportunity to consider the issues which the proposed amendment raises.

6 April 2005

Letter from the Chairman to Tessa Jowell MP, Secretary of State, Department for Culture, Media and Sport

Estelle Morris’s letter dated 6 April arrived too late for consideration before Parliament was dissolved for the General Election. It was considered by Sub-Committee G on 8 June.

We are grateful to the Department for drawing our attention to the Baltic States’ proposal to broaden the legislative text of Strand 2.2 to enable funding of projects associated with mass deportations and exterminations carried out not only during the Nazi Holocaust, but also during what is described in Estelle Morris’s letter as the Stalinist era.

We agree that this is a highly sensitive issue. It is not entirely clear to us what precisely has been proposed by the Baltic States. Nevertheless, having considered the letter very carefully, the Sub-Committee agreed that the matter needed to be approached with great caution and political sensitivity, taking full account of all the factors involved, but felt unable to offer the Government any advice on the merits of the proposal.

We were, however, relieved to see from Estelle Morris’s letter that there is apparently no stated intention of broadening this Strand of the programme any further. European history contains a long catalogue of atrocities which could also be claimed to be worthy of commemoration. We see a considerable risk of provoking serious controversy, skewing the whole programme and setting undesirable precedents, if attempts are made to reach further back into history and broaden the scope even more. We trust that the Government would resist strongly any move to do so.

We would be grateful if you would keep us informed as discussions on the Baltic States’ proposal develop, especially under the UK Presidency of the EU.

More widely, Estelle Morris’s previous letter to me dated 21 February promised to report to the Committee on discussions expected at the Cultural Affairs Committee and to submit a supplementary Explanatory Memorandum on the programme as a whole. When Sub-Committee G considered this on 9 March, it was decided to take note of those promises and to examine the summary of responses to the consultation exercise enclosed with that letter when the further reporting promised was available.

Previous correspondence with your Department has highlighted other aspects of the proposed programme which needed to be resolved in further negotiation, about which we also wish to be kept informed.

As I pointed out in my letter dated 27 January to Estelle Morris, since the programme itself is not due to start until 1 January 2007, we hope that substantial progress can be made in resolving the outstanding detailed aspects of these proposals before political agreement is discussed and in good time before Council decisions are required.

We would therefore be glad to have an early report summarising the position reached in discussing the overall programme, covering any outstanding points raised in earlier correspondence, and setting out how the Government plans to handle further consideration of the programme during the UK Presidency. Scrutiny continues to be retained until further notice.

14 June 2005

Letter from Rt Hon Tessa Jowell MP to the Chairman

I am writing to outline to you our plans for progress on the Culture and Audiovisual dossiers within the Education, Youth and Culture Council.

MEDIA 2007

We hope to reach a partial political agreement on the Proposal for a Decision of the European Parliament and the Council concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) (Document 11585/04). The proposal was cleared by your Committee on 12 October. However, it is still under scrutiny by the European Scrutiny Committee and was most recently considered in Report No 36 2003–04. We are liaising with the European Scrutiny Committee to clear the outstanding issues prior to the Council in November.

RECOMMENDATION ON THE PROTECTION OF MINORS

Secondly, we will work closely with Member States, the European Parliament and the Commission to reach agreement on the Proposal for a Recommendation on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry (Document 9195/04). This proposal received clearance from your Committee on 8 June 2004 and from the European Scrutiny Committee on 9 June 2004.

CULTURE 2007

We hope to reach a partial political agreement on the Culture 2007 programme proposal (Document: 11572/04). This proposal is currently being held under scrutiny by both Committees. Your committee has sifted the proposal to Sub-Committee G. In the House of Commons, the European Scrutiny Committee has asked to be kept informed of the on-going negotiations, most recently in Report No 36 2003–04.

The European Parliament (EP) is due to provide their amendments by the end of the month. The UK Presidency will be tasked with incorporating the EP amendments into the text in order to achieve a “partial political agreement” at the Culture Council meeting in November. This would mean a political agreement was reached between Member States on all issues not directly related to the budget and should ensure that, once the financial perspectives are agreed, a common position within the Council can be reached as soon as possible. That is, the partial political agreement will cover neither the overall budget of the programme, nor the breakdown of the budget in percentage terms for the different strands of action within the programme.

The proposal was discussed at the Education, Youth and Culture Council in November 2004, where Ministers agreed that the programme should be as open and inclusive as possible and not list specific sectors. Since then negotiations have progressed on a number of issues.

Firstly, it has been agreed that there will be a new recital committing the programme to SMART (Specific, Measurable, Achievable, Realistic and Timed) objective setting, monitoring and evaluation methods.

Secondly, the agreement to an open programme and the establishment of an Executive Agency responsible for the implementation of the programme, along with improved transparency of information for applicants and simplification of application procedures, will ensure that this programme is accessible to all eligible cultural organisations.

It has also been agreed that there will be a reference to “cultural heritage” within Article 3(1) of the text, which outlines the general objectives of the programme. The aim of the reference is to highlight the “common cultural heritage” shared by Europeans which could be enhanced by the Culture 2007 programme; it does not list heritage as a separate cultural sector in line with the agreement to keep the programme open.

Finally, Member States have reached agreement for the memorials strand (Strand 2.2) of the programme to fund projects associated with both Nazi and Stalinist regimes.
Member States are currently looking at the issue of small projects and the participation of small organisations in the Culture 2007 programme, in particular through the support of the programme’s Management Committee, the Cultural Contact Points and Member States. As Presidency, our aim is working to ensure that Culture 2007 has high visibility and impact but at the same time is accessible to smaller operators. We will update you further when the results of these negotiations are clear.

**European Capitals of Culture**

With regard to the European Capitals of Culture proposal (Document 9620/05), we will be aiming for a general approach at the Council in November. However, we feel that a first reading deal during our Presidency may be possible and would be appropriate, if progress in the European Parliament is swift. An Explanatory Memorandum was submitted to you on this proposal on 17 June 2005. In your Committee, this proposal has been sifted to Sub-Committee G and in the House of Commons it is due to be considered on 13 July.

**European Year of Intercultural Dialogue 2008**

We hope to hold an exchange of views on the forthcoming Proposal for a Decision of the European Parliament and of the Council on the European Year of Intercultural Dialogue 2008, which is expected to be adopted by the Commission in the autumn.

**Citizens for Europe**

Finally, we aim to make good progress on the Citizens for Europe programme proposal (Document 8154/05). This proposal has been sifted to Sub-Committee G within the European Union Committee and is due to be considered by the European Scrutiny Committee on 13 July.

We will, of course, update you as appropriate regarding developments on all relevant proposals.

12 July 2005

**Letter from the Chairman to Rt Hon Tessa Jowell MP**

Thank you for your letter dated 12 July, which arrived too late to be considered before Parliament rose for the Summer Recess. It was considered by Sub-Committee G on 13 October.

The Media items you mention have already been cleared from scrutiny by Sub-Committee B, although we would be glad to have reports on any progress made at the Council on them.

We note that you hope for partial agreement, excluding budgetary aspects, at the Council on the Culture 2007 programme (11572/04). In my letter dated 4 November 2004 to Estelle Morris I said that, as we had no objection in principle to the proposed programme, we were prepared to agree to her request that the document should be cleared from scrutiny to enable political clearance to be given, as was then expected, at the Education, Youth and Culture Council on 15–16 November 2004. But that was on the understanding that the Department would submit a Supplementary Explanatory Memorandum covering points of detail and to satisfy our need to know more about what the proposals were likely to mean in practice, whether they addressed sensible priorities and whether they were likely to have a lasting worthwhile impact. We also asked to know more about the financial implications, as well as about the arrangements for monitoring and evaluating programmes and the plan to simplify administrative and financial procedures.

We have had considerable correspondence about this since then and would have appreciated a separate report on the progress made. We note the agreement which has been reached on the Baltic States proposal about projects associated with Nazi and Stalinist regimes. We welcome the commitment to SMART objectives and monitoring improved transparency of information and simplification of procedures. We note that the setting up of an Executive Agency has been agreed, but will want to know more about how it will operate. We are also glad that more consideration is being given to the inclusion of small projects and the participation of small organisations, which were raised during your own stakeholder consultation.

On the whole, we regard these developments as positive and encouraging and we continue to have no objection in principle to the proposed programme. Nevertheless, we still need to know more about what these ambitious proposals are likely to mean in practice and whether they address sensible priorities and are likely to have a lasting and worthwhile impact. We will also want to know more about the financial and administrative proposals.

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Please ensure that we have a separate report in good time before the Council meeting covering any further progress made in negotiations on the programme since your letter was written and setting out how the Department propose to satisfy our remaining concerns as set out above if partial agreement were to be secured as expected at the meeting.

My letter to you dated 8 July\(^4\) reported that the **European Capital of Culture proposal (9620/05)** had been cleared from scrutiny.

A reply is outstanding to my letter to you dated 28 June\(^5\) about the **“Citizens for Europe” programme (8154/05)** and again we would be grateful for a separate response in good time before the Council meeting.

We do not appear to have received any documents so far on the proposed **European Year of Intercultural Dialogue 2008**. We will want to look carefully at that proposal to see whether it is likely to add significant value to all the EU-sponsored cultural initiatives already either in-hand or under consideration.

13 October 2005

**Letter from Rt Hon Tessa Jowell MP to the Chairman**

Thank you for your response of 13 October 2005 to my letter outlining the Department’s plans for progress on the Culture and Audiovisual dossiers, including the Culture 2007 proposal (11572/04), within the Education, Youth and Culture Council during the UK Presidency. I would particularly like to thank you for agreeing with our approach of reaching a partial political agreement at the Culture and Audiovisual Council on 14 November.

As explained in my letter dated 12 July, we wish to reach partial political agreement on this proposal at the Culture and Audiovisual Council on 14 November; that is, agreement on the content of the programme but not the funding. Cabinet Office, Treasury and the Foreign and Commonwealth Office are content with this approach.

I hope you received a copy of my letter dated 13 October to the Commons European Scrutiny Committee, which set out the progress made on negotiations on the Culture 2007 proposal during the UK Presidency.

I am now able to update you on the outcome of the European Parliament plenary vote, which was held on 25 October. Following the vote there are a few significant areas of disagreement between the EP and the Council, and almost all amendments proposed by the EP Committee were accepted at the EP plenary vote. The Council will not accept the five EP amendments which were raised as concerns in the letter to the ESC on 13 October. Those concerns are that the EP:

- (a) places too much emphasis on the cultural heritage sector;
- (b) increases the proportion of Community support for projects from 50 per cent to 70 per cent;
- (c) promotes six partners from four Member States for the multi-annual projects (Strand 1.1), instead of the Commission’s proposal of six partners from six Member States;
- (d) reduces the minimum threshold of Community support for Cooperation measures (Strand 1.2) from €50,000 to €30,000;
- (e) inserts a reference to specific organisations or prizes, such as the European Youth Orchestra and Prix Europa, into the main text, which would indicate earmarking rather than the open calls for proposals as put forward by the Commission.

The officials’ working group will be considering five additional, non-budgetary amendments from the plenary vote prior to the Council meeting on 14 November. The working group has already agreed that the programme should be open to all and should not therefore prioritise sectors or types of activity, such as cultural heritage. Therefore, the Council is unlikely to accept these amendments either, as they are felt to duplicate what is already in the text.

Consequently, agreement has almost been reached between Member States for a partial political agreement on the Culture 2007 programme at the Culture and Audiovisual Council on 14 November, that is, agreement on the content of the programme but not the funding. The proposal will go to a second reading.

6 November 2005

**Letter from Rt Hon Tessa Jowell MP to the Chairman**

Following the Education, Youth and Culture Council meeting in Brussels on 14–15 November, I am now able to update you on the progress made on the Culture programme (11572/04), and attach a copy of the Statement

\(^4\) See page 598.
\(^5\) See page 571.
which has been laid in the libraries of both Houses. You will wish to note that this renaming of Culture 2007 has been agreed by the European Parliament, Council and Commission, and will therefore be used from now on.

As was our intention, we were able to reach partial political agreement on this programme at Council, having resolved a number of outstanding issues. A compromise was reached on the wording of Article 3 relating to the eligibility of non-audiovisual cultural industries, which made clear that EU funding could not be used to support profit-making activities. On comitology (Article 8), Member States unanimously agreed that all projects applying for an EU contribution of over €200,000 (£135,000) should be submitted to the management procedure, and therefore continue to be subject to scrutiny by the Member States (the Commission had proposed that the management procedure should no longer be used at all for project selection, in order to reduce time delays for applicants). Finally, the Commission proposal on the minimum number of operators participating in projects was also agreed: multi-annual projects should involve at least six operators from six different countries. However, annual projects (“co-operation measures”) would involve at least three operators (as opposed to four, as originally proposed by the Commission) from three different countries in order to make it easier for smaller operators to participate in these kinds of projects.

As a result of this agreement, it is hoped that the Austrian Presidency will be able to adopt a full political agreement on the Programme (subject to agreement by both the Council and the European Parliament on the 2007–13 financial perspectives), including agreement of the Programme budget and the budget breakdown between strands. The Parliament’s second reading should therefore be able to begin under the Finnish Presidency, who hope to reach final agreement with the Parliament on the Programme by the end of 2006.

In your letter of 13 October you also expressed a need for further information about the Culture programme. In practice, the programme will continue the good work which has been established by its predecessor, the Culture 2000 programme, but with more robust evaluation as a result of the incorporation of SMART principles. It is our view that the priorities and objectives of the programme are sensible, and that in particular they address the important issues of promoting intercultural dialogue, and of the trans-national mobility of both cultural objects and those working in the cultural sectors: This programme is effectively a fine-tuned version of Culture 2000, and the changes and improvements that have been made through the negotiations should ensure that its lasting impact increases. In particular, the emphasis on multi-annual projects should ensure greater visibility to citizens.

There has been some reform and simplification of the administration process: for example, under the Council’s partial political agreement, project applicants seeking less than €200,000 of EC funding would have to wait less time (approximately two months less) before finding out if they were successful. The Commission’s creation of the Education, Audiovisual and Culture Executive Agency—which will begin operating in January 2006 and will manage the Commission-controlled spending under the Culture, Lifelong Learning, Youth in Action, Citizens for Europe and Media 2007 Programmes—should also work to speed up these processes through economies of scale gained by combining the administrative management of these Programmes. The Agency has been set up, initially until 2008. An interim evaluation of the operation of the Agency, including a cost/benefit analysis, will be carried out in 2006. This will review the management by the agency of its programmes.

20 December 2005

Education, Youth and Culture Council, 14 November, Brussels

On 14 November I chaired the Education, Youth and Culture Council in Brussels, when the Culture and Audiovisual agenda items were taken. Patricia Ferguson MSP, Scottish Executive Minister for Tourism, Culture and Sport, represented the UK. Education and Youth issues were taken on 15 November.

I chaired a discussion over lunch regarding plans for the switchover to digital television. The aim of the discussion was to share experiences and exchange good practice. All Member States agreed that it was a big challenge, but one that is achievable. Many stressed the added value of digital television especially for minority groups and strengthening cultural diversity. Many felt that state aid may have a role to play in ensuring that minority groups were not left behind. It was noted that different Member States were using different technologies, partly reflecting their different backgrounds. Commissioner Reding (Information Society and Media) noted the close interest of Telecoms Ministers and suggested a joint meeting might be useful in the future.

The Council agreed partial political agreements on the MEDIA 2007 programme, which provides financial support for the European film industry, and the Culture 2007 programme, which will provide financial support for transnational co-operation projects in the field of culture. The budgetary aspects of these programmes will be decided once the financial perspectives have been agreed.
With regard to the Culture 2007 programme, a compromise was reached on the wording relating to the eligibility of non-audiovisual cultural industries, which made clear that EU funding could not be used to support profit-making activities. On comitology, Member States unanimously agreed that all projects applying for an EU contribution of over €200,000 (£135,000) should be submitted to the management procedure. The minimum number of operators participating in projects was also agreed.

The Council agreed to a general approach on the proposal to improve the selection and monitoring procedures and the EU dimension of the European Capital of Culture Programme. In addition, the Council designated Linz and Vilnius as Capitals of Culture for 2009 and nominated the Council’s two representatives (Mr Claude Frisoni and Sir Jeremy Isaacs) for the selection panel looking at the proposed Capitals for 2010.

I also chaired an exchange of views regarding the Commission’s proposals to develop European digital libraries. All Member States spoke in support of further work on European digital libraries and the great majority supported the Commission’s proposed approach of developing a network of digital libraries, rather than supporting a single, central library. Some felt that the latter option would be too costly and instead preferred to build on ongoing work. Cooperation with other Member States would avoid duplication and allow common standards to be developed so that digitised material could be shared more easily. A number of Ministers asked the Commission to do more work on possible costs involved and noted that decisions needed to be taken on what would be funded by the Member States and what would be funded by the EU. It was noted that there were a number of key issues, such as ensuring that intellectual property rights were respected and making sure the initiative promoted all European languages, including minority languages.

Commissioner Figel (Education, Training, Culture and Multilingualism) welcomed the adoption of the UNESCO Convention on Cultural Diversity in October and noted that the Commission would soon bring forward a proposal for Community ratification. He also presented the Commission proposal for a European Year of Intercultural Dialogue in 2008.

**DANGEROUS SUBSTANCES (13774/04)**

**Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman**

Further to your letter of 24 November 2004, I can now confirm that a consultation exercise with industry and other interested parties concerning proposal COM (2004) 638 final has been completed and a full Regulatory Impact Assessment (RIA) prepared.

Responses to the consultation have confirmed that the substances that would be subject to the prohibitions under the proposed Directive are not currently used in products placed on the market for sale to the general public and that, therefore, no costs to industry are anticipated.

Please find attached, as requested, a copy of this RIA.

This proposal is likely to receive its First Reading in the European Parliament on 23 June 2005.

*9 June 2006*

**Full Regulatory Impact Assessment**

**PROPOSAL**


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PURPOSE AND INTENDED EFFECT OF MEASURES

Objective

2. Within the framework for action in the public health field, the European Parliament and the Council have adopted an action plan to combat cancer. The primary aim of the proposed Directive, therefore, is to reduce the risks of ill-health to the general public as a consequence of exposure to cmrs.

3. Further, the proposal aims to preserve the Internal Market by removing obstacles to trade caused by differences between Member States in legislation concerning restrictions on the marketing and use of these dangerous substances.

Background

4. The Dangerous Substances Directive (67/548/EEC) concerns the classification, packaging and labelling of dangerous substances. Annex 1 to this Directive contains a list of dangerous substances, together with particulars of the harmonised classification and labelling for each substance. The list is regularly updated to include further notified new substances and existing substances, as well as adapting the current entries to take account of technical developments and new knowledge about the danger of chemicals.

5. Directive 2004/73/EC (29th Adaptation to Technical Progress of Directive 67/548/EEC) was adopted on 29 April 2004 and, among other things, classified 42 substances as Category 1 or 2 cmrs for the first time.

6. The proposed 29th Amendment to the Marketing and Use Directive 76/769/EEC will have the effect of adding these substances to the Appendices concerning Points 29 to 31 of Annex 1 to that Directive. These Points specify that the substances so listed, and preparations containing them, may not be placed on the market for sale to the general public.

Risk Assessment

7. The primary aim of the proposed Directive is to reduce the risks of ill-health to the general public as a consequence of exposure to substances, which have been classified as cmrs. Such substances are capable of inducing cancer, hereditary genetic defects and non-hereditary congenital malformations. Since the use by consumers of substances classified as Category 1 or Category 2 cmrs cannot be effectively controlled, safety can be ensured only through prohibitions on the marketing of these substances to the general public.

Options

8. Option (i): To fully implement the provisions of the proposed Directive, if adopted.

   Option (ii): To request industry to adopt voluntary measures.

   Option (iii): To do nothing.

9. Option (i) The proposed Directive is consistent with UK policy and practice on these issues. Implementation of the Directive, if adopted, will provide a high level of protection to human health from possible exposure to these hazardous chemicals, now and in the future. It will also produce harmonised rules for the circulation of these substances.

   Option (ii) Under this option industry would be required to adhere to voluntary guidelines or targets. This, however, could not guarantee as high a level of consumer safety as Option (i) since it is likely that some manufacturers would adopt the code while others would not. It would also necessitate agreeing draft guidelines and the introduction of an effective monitoring system.

   Option (iii) Under this option no action would be taken to limit the risks to human health from exposure to these substances. Furthermore, since Member States have a Treaty obligation to implement all agreed Directives, failure to implement the Directive, if adopted, would result in infraction proceedings being initiated against the United Kingdom by the European Commission.

On balance, therefore, Option (i) is the preferred option.
**Benefits**

_Economic_

10. In the event that these dangerous substances are being used in products currently on the market, the proposed prohibitions on marketing for sale to the general public will serve to foster the development of safer alternatives.

_Environmental_

11. No specific benefits to the environment have been identified.

_Social_

12. The Directive, if adopted, would afford an increased level of protection to the general public from the risks of ill-health as a consequence of possible exposure to substances which have been classified as cmrs.

_Costs_

13. We have been unable to identify any products, currently on the market for sale to the general public, that contain any of these 42 chemicals. No unidentified uses were subsequently forthcoming from the responses to the consultation document. Indeed, one major trade organisation stated that none of its members used any of the substances in consumer products.

14. The majority of the substances that would be subject to prohibition are used as raw materials, or are intermediates, in chemical processes to synthesise other chemicals. Others are used for very specific professional or worker applications. The remaining substances, which have in the past been used in consumer products, or as constituents of consumer products, are now prohibited from being placed on the market for sale to the general public by legislation or other controls.

15. On the basis of this information, no costs to industry are anticipated.

_Equity and Fairness_

16. The overriding consideration in the proposed Directive is the safety of the general public. The Directive would impact equally across the particular sectors of industry affected and will be implemented in all Member States.

Consultation with Small Business: The Small Firms Impact Test

17. On the advice of the Small Business Service, stage one of the Small Firms Impact Test was carried out by contacting small businesses, SME trade associations and other representative organisations in the small business sectors most likely to be affected by the proposals. However, we have been unable to identify any disproportionate impact on small firms as a result of these proposals. We consulted the Small Business Service (SBS) on a number of occasions during the initial stages of the RIA process for advice on gauging impact of the proposals on small firms and they have agreed that there is no requirement to carry out further Small Firms Impact Test analysis. No unidentified impacts or unintended consequences of the proposals on small firms were identified during the consultation period.

_Competition Assessment_

18. Stage One of the Competition Assessment was undertaken. When applying the Competition Assessment Filter, the results indicate that, as the proposed Directive would place restrictions on the marketing and use of particular chemicals, it is unlikely to have the effect of distorting or removing competition in the market. The Directive, if adopted, would not serve as a barrier to entry for potential entrants nor impose substantially more cost on some firms than others. Indeed, the Directive would set harmonised requirements to ensure that all involved in the manufacture and supply of products that might possibly contain the substances in question can compete on an equal footing.
ENFORCEMENT AND SANCTIONS

19. If the proposed Directive is adopted, its provisions will be transposed into UK law by means of Regulations made using powers under Section 11 of the Consumer Protection Act 1987. The Regulations will extend to Great Britain and Northern Ireland.

20. In Great Britain, the Regulations will be enforced by Local Trading Standards Departments, and in Northern Ireland by Environmental Health Departments.

21. The sanctions that will apply are those applicable to breaches of safety regulations under Section 11 of the Consumer Protection Act 1987.

MONITORING AND REVIEW

22. The Regulations will be monitored and reviewed in accordance with normal procedures. A review is likely once the implementing regulations have been in force for 2–3 years.

CONSULTATION

Within Government

23. The following Government Departments and Agencies were consulted about these proposals during the consultation exercise: Health and Safety Executive, Health and Safety Commission, Department for Environment Food and Rural Affairs, Pesticides Safety Directorate, Medicines and Healthcare Products Regulatory Agency, and Department of the Environment (Northern Ireland).

Public Consultation

24. The Consultation Document listed those organisations and individuals to whom the document was sent. The consultees included, among others, manufacturers; the chemical industry, the DIY sector, consumer organisations, trade associations, charities, enforcement authorities and non-Governmental organisations. The consultation ran for 12 weeks, starting in February 2005.

SUMMARY AND RECOMMENDATION

25. The proposal for a Directive, in the framework of the Marketing and Use Directive 76/769/EEC, to place restrictions on the marketing and use of 42 substances newly classified as Category 1 or 2 carcinogens, mutagens or substances toxic to reproduction, is considered the most effective means of reducing the risks to human health from possible exposure to these hazardous chemicals. The Directive, if adopted, will ensure that these chemicals are not placed on the consumer market, either now or in the future, and thereby reduce the potential for human ill health caused by possible exposure to them.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed by the Minister responsible

Date

9 June 2005
Letter from the Chairman to Gerry Sutcliffe MP

Your letter dated 9 June (which was not actually received by us until 21 June) enclosing the Department’s full Regulatory Impact Assessment (MA) was considered by Sub-Committee G on 6 July.

We note the satisfactory outcome to the Departmental consultation reported in your RIA, which confirms the Department’s view that the additional restrictions proposed are necessary but unlikely to have a significant economic impact.

On that basis, we are prepared to release the document from scrutiny.

8 July 2005

DRUGS AND DRUG ADDICTION (12143/05)

Letter from the Chairman to Lord Warner, Minister of State, Department of Health

Your undated Explanatory Memorandum on the above was considered by Sub-Committee G on 3 November.

On the whole, the proposed changes seem sensible, and we are content with the reasons you have given for supporting them. But we note that you have not yet decided your position on the membership of the proposed Executive Committee and would be grateful for your views when you have done so.

Our main concern, however, is with the question of the legal base. As you may know, the Committee has consistently opposed the acceptance of proposals founded on inappropriate legal bases, regardless of their other merits.

We note your view that Article 308, as originally proposed by the Commission, would be a more appropriate legal base and that the establishment of a body, as covered by Article 152(4)(C), does not constitute an incentive measure. This is interesting because a similar question has arisen in correspondence with your colleague Meg Munn over the proposal for the European Institute for Gender Equality (7244/05). Copies of the most recent correspondence on this are attached for your consideration (not printed).

We think it is important that the Government should have a clear and consistent position on this question and assert it strongly. We do not regard entering a Minute statement alone as a sufficient response and would be glad to know if the Government proposes to vote against, or at least abstain from voting on, the proposal when it comes for Council decision.

We will continue to hold this document under scrutiny, pending your reply.

4 November 2005

ECO-LABELLING SCHEMES FOR FISHERIES PRODUCTS (10822/05)

Letter from the Chairman to Ben Bradshaw MP, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum dated 11 July was received too late for consideration before Parliament rose for the Summer Recess. It was considered by Sub-Committee G on 13 October.

We note that these very broad-brush proposals are still at a very early stage in what is apparently intended to be a wide-ranging Commission consultation. We are inclined to support in principle the objective of creating a Community-wide arrangement that would promote the sustainability of fish products under environmentally-responsible conditions and give consumers effective and consistent eco-labelling in which they could justifiably have confidence. But we foresee considerable practical difficulty in devising such a scheme and believe it will need very careful consideration.

We understand from your officials that the Department will be carrying out their own stakeholder survey which will contribute to the Government’s response to the Commission’s own consultation. We would be grateful if you could ensure that we are given a summary of the conclusions of that survey, as well as a copy of the Department’s response to the Commission.

In the meantime we are retaining this document under scrutiny. We would be grateful if you would also keep us abreast of significant developments before the proposals are discussed by the Agriculture and Fisheries Council and report on the outcome.

13 October 2005
EMPLOYMENT AND SOCIAL SOLIDARITY—PROGRESS (11949/04, 13691/05)

Letter from James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions

Your Committee considered this proposal on 12 October 2004, when negotiations on it were just beginning, keeping it under scrutiny and asking to be informed of developments.

Chris Pond subsequently reported by letter and Parliamentary question (Hansard 14 March, vol 432, no 53) that the March 2005 Employment and Social Policy Council had reached a “partial general approach” on this proposal: “partial” because the Council cannot agree the programme budget until the broader Financial Perspective is settled; “general approach” because the European Parliament (EP) had not yet tabled their amendments.

I am writing now to inform you in more detail of the headway made against the priorities your committee identified, and to report on the proposals for First Reading amendments from the EP’s 6 September Plenary (attached).

I should stress that the Council text remains under a UK scrutiny reserve, and the EP proposals have not yet been discussed by Member States. This note therefore sets out initial Presidency thinking on the EP’s suggested amendments to the Commission proposal, based on our understanding of earlier Council discussions. As Presidency, once we have the opinion of the Commission explaining why they support some amendments and not others, we will see what the Council makes of the amendments with a view to moving toward agreement. I will report separately on discussion at Council Working Party but, in the interim, wanted to update your committee on where we believe things stand and to move closer to clearance of scrutiny.

In summary, the 6 September Plenary supported all 72 of the Parliament’s Employment and Social Affairs Committee proposed amendments. The EP looked at the original Commission text, not the amended text on which Council reached partial general agreement under the Luxembourg Presidency, but the comments below report on the key changes proposed by both Council and EP.

The text agreed at March Council (also attached), excluding overall budget and percentage allocations between strands of PROGRESS activity, appears to meet the key issues raised by your committee:

— It delivers the promised simplification and consolidation of existing Community programmes supporting employment and social policies; and
— Addresses the need to ensure that the considerable but finite budget for this activity—once settled—is used where it adds most value. In particular, PROGRESS:
  — Better focuses future activity on Lisbon priorities (eg Articles 1 and 9.3) which Member States will also be able to pursue through their representation on the management committee;
  — Provides for better future evaluation, particularly of how outcomes add value, rather than just measuring activity (eg 9.2, 12.1.f and 19). This is a theme which the EP has also picked up, but is something to which the Commission appear aware and receptive, having highlighted the importance they attach to this and listed the current state of evaluation for the programmes which PROGRESS will replace in their ex-ante evaluation. (This accompanied the original Explanatory Memorandum on this proposal.) The evaluations to date are consistent with accepted practice, but several Member States wish to see these developed in the future as part of the better regulation agenda;
  — Seeks to ensure co-ordinated action without wasteful duplication (eg 15.2), although this is again largely dependent on Member States’ vigilance in management committee approval and evaluation of projects. This is another area where the EP supports improved oversight (although they resurrect a long-standing preference for advisory committees, see below.)
— We initially preferred to include a specific reference to Article 137(1) in the definition of legal base, as set out in the legislative financial statement accompanying the proposal, but are now content that a reference to 137(2) is sufficient for the “cooperation between Member States”, “excluding any harmonisation of [their] laws”, envisioned under PROGRESS. We also prefer not to carry forward the reference to Article 40 that appears only in the financial statement. (Article 40 is not referred to as the basis for any of the instruments which are consolidated by this Decision. Furthermore, Article 40 permits the Council to issue directives or make regulations. Unlike the other Articles mentioned, it does not refer to the adoption of “measures”, which would include decisions.)
Although the budget has yet to be discussed in Council, Member States are now broadly satisfied that the Commission proposal (€628.8 million) is consistent with existing spending on the activity that will be taken forward under PROGRESS (so excludes elements possibly moving to the European Gender Institute), uplifted for inflation and the expected accession of Bulgaria and Romania. However, the UK and several other Member States remain convinced that all expenditure must also be consistent with budget discipline, EU added value and the principle of subsidiarity. Any final figure will, of course, still need to be consistent with the overall Financial Perspective, which the UK believes need not exceed 1 per cent of EU Gross National Income.

Of the European Parliament’s proposed amendments, some 16 seem substantively different to the text provisionally agreed by Council, and cover 11 distinct themes which can be summarised as:

— Always meeting all access costs for disabled persons (Amendments 6 and 56). If this is indeed the EP’s intention, it goes beyond Council’s current proposal that the particular needs of people with disabilities should be taken into account while allowing projects a degree of freedom in how best to achieve this. The Commission have indicated they can accept Amendment 6, although their reasoning will not be known until they issue their Opinion.

— Achieving Social Agenda, rather than Lisbon Strategy, objectives (11, 52 and 65). The Commission, Council and EP have all previously agreed that the Lisbon objectives are the key focus. PROGRESS, and in turn the Social Agenda, provide framework instruments for action to help us deliver these objectives, but with detailed activity set-out in other texts. Council has therefore previously agreed that the focus here should remain on Lisbon outcomes, not programme activity. However, we understand that the Commission has accepted these proposals.

— Working at regional, national and trans-national levels, rather than primarily at EU level (14, 45 and 55). PROGRESS is about adding value at EU-level. Council agrees that NGOs organised at regional and national level can make an important contribution to this (eg in the proposed recital 9a), but primarily through affiliation to groups organised at EU-level. Here again, we believe the Commission partly accepts Amendments 14 and 45, and may not share Councils support for recital 9a.

— Boosting the capacity of key EU networks to promote the views of their member organisations, rather than solely promoting EU policies (16). This might be taken to imply the use of EU-level funding to promote an organisation’s domestic or political agenda, whereas Council has focussed on activity directly aligned with promoting EU policies.

— Mandating that key EU networks in the field of discrimination must always include smaller, specialised and impairment specific disability NGOs (38). This might be too restrictive where such specialist agencies do not exist or have little relevance to a particular project. The Council text refers to developing the capacity of key networks to pursue EU policy goals.

— An annual open forum to evaluate Social Agenda progress (47). Council chose not to specify such detail here, but the Commission can accept it.

— Supporting all employment services and agencies (54). This implies EU-level financial support for private commercial job-brokering companies, whereas Council specified only public services.

— The normal EU co-financing ceiling raised to 90 per cent, rather than 80 per cent as now, both allowing for higher funding in exceptional cases (57). Council accepted the established requirement for 20 per cent self financing, which imposes useful discipline in the use of finite resources. Nevertheless, PROGRESS already provides for flexibility if circumstances justify it.

— Implementation measures to be adopted under the advisory procedure, which gives Member States less influence than under the proposed management procedure (58). Member States supported a PROGRESS management committee that gives them proper influence, including through officials who will often work directly on policies and activities being taken forward through the programme. We understand that the Commission can accept an as yet unspecified part of the EP’s proposal.

— A management committee divided into five sub-committees, one for each strand of activity, rather than a single unified committee (59). Council has so far taken the view that a single management committee, which the appropriate expert representatives can attend, would support more coherent working across strands and greater visibility of spending both within and across areas of activity. In practice, projects are seldom confined to activity under one discreet area.
— A PROGRESS budget of €854.2 million, some 36 per cent higher than the Commission’s suggested €628.8 million. Council has not yet discussed this, but it is inconsistent with many Member States’ calls for budget discipline in the context of the overall Financial Perspective (66).

The EP has also proposed that proportionally more funding should go to Social Exclusion and Gender activity, rising by 2 per cent and 4 per cent respectively and thus reducing the unallocated budget to 6 per cent. (This unallocated budget allows a degree of flexibility as priority actions emerge under the agreed strands of activity.) Budget percentage allocations are another area on which Council has yet to take any view, but early general discussion indicated that most strands of activity are paramount to someone.

The remaining EP proposals include some revisions which have already been sought by Council (ie proposed amendment 39 on gender mainstreaming, which Council has expressly provided for in a new Article 2.2). There are also some potentially useful clarifications (eg Amendment 63 on re-enforcing existing text on avoiding overlap with activity under other programmes, proposal 68 on managing budget appropriations and several, including amendment 71, on evaluating outcomes rather than activity). Finally, there are some more minor textual revisions.

All the proposed amendments remain open for discussion when this comes back to Working Party. But as Presidency, we have an important role in advancing this key dossier, so that the important social and employment measures it underpins can continue—and be improved—from 2007. This, of course, includes working towards early scrutiny clearance.

The Commission opinion on all this is expected in the next few weeks, with Working Party discussion shortly after that. I will keep you posted on developments, and hope that your committee will help our Presidency to take this important measure forward.

30 September 2005

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills

Thank you for your detailed reply dated 30 September to our request to be informed of developments on the PROGRESS programme. This was considered by Sub-Committee G (Social Policy and Consumer Affairs) on 3 November.

We note that the March 2005 Employment and Social Affairs Council reached a “partial general approach” on this Proposal and that the text agreed addressed the issues raised in my earlier letter dated 28 October 2004.7 We are glad you consider that the proposal will deliver the promised simplification and consolidation of existing Community programmes and that the EC policies will add value with a focus on Lisbon priorities. We are also glad to note that better evaluation processes and coordination of action without wasteful duplication will be ensured.

Although we also note that the Government is now content for the programme’s legal base to include a reference to Article 137(2), it is not clear whether the Government has succeeded in deleting the reference to Article 40 TEC in the financial statement, as you said you wished to do.

We understand that final agreement on the PROGRESS programme budget for 2007–13 cannot be reached until the overall Financial Perspective is set by the European Council. However, we would urge the UK Presidency to resist the call from the European Parliament to increase the budget by 36 per cent to €854.2 million without clear evidence-based justification that this increase is absolutely necessary. We are anxious that the programme should continue to add value at an EU level, as well as to deliver financial accountability.

It would help us to judge the reasonableness of the financial proposals if we could be given a clearer indication than we have had so far of the ways in which it is envisaged that the money will be spent and what the programme hopes to achieve.

As the Commission’s opinion on the European Parliament’s first reading was not yet at the time of the Sub-Committee meeting, it was decided to keep the document under scrutiny. We understand from your officials that a new text has just been deposited by the Commission and will be submitted shortly by the Department under cover of a new Explanatory Memorandum. We would be grateful if this could be accompanied by your comments on the above and a report on any further progress made in negotiations.

We considered at our meeting on 27 October, the related Framework Strategy: *Non-Discrimination and Equal Opportunities for All*. (reference 9883/05) We understand that the Commission has proposed that funding for this framework strategy should come out of the PROGRESS programme. Although we cleared this document from scrutiny, we would be grateful if your response could also say whether there has been any discussion in the Council about what the financial allocation for that Framework Strategy would be and whether the necessary funding is likely to be available.

4 November 2005

**Letter from the Chairman to James Plaskitt MP**

Thank you for your Explanatory Memorandum of 16 November, which was considered by Sub-Committee G on 1 December.

We are grateful for your clarification on the exclusion of Article 40 TEC and note that no discussions have yet taken place on financial allocation for the Framework Strategy. We are also grateful for the detailed analysis in your Memorandum.

We note that you are content with all the Commission’s revisions to the text and welcome the emphasis on improved management, monitoring and evaluation of outcomes and added value as well as the better sharing of information between Member States.

On the basis that you are persuaded that the Commission and Member States’ own experience of the added value of the current programme and a shared commitment to improvement justify the continuation of these initiatives, we are prepared to clear this proposal from scrutiny to enable the expected Partial Political Agreement to be achieved at the December Council.

This is, of course, on the clear understanding that we will want to give careful scrutiny to the budgetary allocations for the PROGRESS Programme, which are yet to be agreed, in due course. I would like to reiterate that the Committee urges you to resist very strongly the European Parliament’s call to increase the budget by 36 per cent to €854.2 million since no clear evidence-based information appears to have been provided to justify such a huge increase.

1 December 2005

**Employment, Social Policy, Health and Consumer Affairs (ESPHCA) Council, June 2005**

**Letter from Rt Hon Patricia Hewitt MP, Secretary of State, Department of Health to the Chairman**

The next meeting of the Employment, Social Policy, Health and Consumer Affairs Council will be on 2 and 3 June. I will attend for the UK. Items on the agenda relating to health will be covered on 3 June. The major items for discussion are: European Commission proposals for a Regulation of the European Parliament and of the Council on medicinal products for paediatric use; and the proposal for a Regulation of the European Parliament and of the Council on nutrition and health claims made on foods; the proposal for a Regulation of the European Parliament and of the Council on the addition of vitamins, minerals and other substances to food; the proposal for a decision of the European Parliament and of the Council establishing a programme of community action in health and consumer protection; obesity, nutrition and physical activity; combating HIV/AIDS; and Community mental health action.

Health Ministers will have an orientation debate on paediatric medicines. The Luxembourg Presidency of the EU is expected to concentrate on articles 33 and 36 of the regulation. We expect that each Member State will be asked to set out its final position on article 36. The UK intends to support the Commission’s proposal for these articles.

There will be a public debate on the objectives of the European Commission’s proposed programme of action in the field of Health and Consumer protection. I am writing to you separately about this proposal. The UK intends to support the general objectives of the programme but also to remind the Council that it is important that the programme does not impact upon Member States’ ability to organise their own health care systems.

Ministers will be asked to adopt draft Council Conclusions on obesity, nutrition and physical activity, calling on Member States to develop initiatives aimed at promoting health diets and physical activity.

The Presidency will present draft Council conclusions on HIV/AIDS, inviting Member States to take further action in fighting HIV/AIDS.
Ministers will also be asked to adopt draft Council Conclusions on mental health, inviting Member States to implement comprehensive mental health systems that cover promotion and prevention as well as treatment and care.

We are content with the three sets of draft conclusions as drafted and we expect them to be adopted at Council. Under Any Other Business, the Presidency and the Commission will provide information on the International Health Regulations and on the Framework Convention for Tobacco Control. The Commission will provide information on the European Centre for Disease Prevention and Control, environment and health and the work of the Commission-led High Level Group on health care in the European Union. There will also be a progress report on the proposed directive modifying directive 95/2/CE on food additives and directive 94/35/CE on colourings used in food.

Over lunch, Ministers will discuss preparation for an influenza pandemic and the health response to the tsunami in South Asia.

I will write to you separately on the regulations on nutrition and health claims made on foods and on the addition of vitamins, minerals and other substances to food, as discussions on these dossiers are currently ongoing.

I will write again to update you following the Council meeting.

27 May 2005

Letter from James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions to the Chairman


The Council agreed a general approach on the Employment Guidelines, which now form part of the Integrated Guidelines Package under the revised Lisbon process. The UK maintained its parliamentary reserve.

On the Directive to implement the social partners agreement on cross border railway workers, the Council reached political agreement by qualified majority. The UK maintained its Parliamentary Scrutiny Reserve.

The Council reached political agreement on amending regulations for the Bilbao Agency for Safety and Health at Work and the Dublin Foundation for the Improvement of Living and Working Conditions.

There were extensive discussions in restricted session on Working Time but no agreement was reached. The Luxembourg Presidency returned the dossier to Committee of Permanent Representatives (COREPER).

Commissioners Frattini and Spidla jointly opened the discussion on managing economic migration. The Commission’s aim was to launch a broad debate on this important subject; immigration levels were clearly for Member States to determine, but it was undeniable that migration was economically essential, and that for the economic benefits to be fully realised, integration of migrants into society and labour markets must be addressed. There will be further discussions on this subject at a Commission seminar on 14 June.

On the Regulation establishing a European Institute for Gender Equality the Council agreed a general approach. The Council unanimously opposed the Commission’s proposal for reduced management structures in favour of a seat on the Management Board for each Member State, and a smaller Bureau for day-to-day business. The UK made a declaration to the minutes setting out reservations on the chosen legal base and supported a German minute statement stating that decisions on financial aspects must not prejudice the Financial Perspectives. The Deputy Minister for Women, Meg Munn will be writing to you in more detail to update you on the outcome of this institute.

The Council adopted without discussion Conclusions on follow-up to the Beijing platform.

The Council received information on a Commission report on a proposed year of mobility of European Workers (2006), and also on the Commission Communication on non-discrimination and a decision on a European Year of Equal Opportunities (2007).

10 June 2005

Letter from Rosie Winterton MP, Minister of State, Department of Health to the Chairman

The Employment, Social Policy, Health and Consumer Affairs Council met on 2–3 June. I represented the UK. Items on the agenda relating to health were covered on 3 June.
Items for discussion were: European Commission proposals for a Regulation of the European Parliament and of the Council on medicinal products for paediatric use; the proposal for a Regulation of the European Parliament and of the Council on nutrition and health claims made on foods; the proposal for a Regulation of the European Parliament and of the Council on the addition of vitamins, minerals and other substances to food; the proposal for a decision of the European Parliament and of the Council establishing a programme of community action in health and consumer protection; obesity, nutrition and physical activity; combating HIV/AIDS; and Community mental health action.

On the paediatric medicines regulation, the UK supported the European Commission on the length of the Supplementary Protection Certificate extension. The Commission was content with the proposal to incorporate a review mechanism specifically aimed at studying the reward mechanism. The UK spoke in favour of public access to the paediatric clinical trials database. This issue will need to be discussed further by Council.

Council voted for unanimous political agreement on the proposal for a regulation on nutrition and health claims on food; and political agreement by qualified majority (Denmark dissented) on the proposal for a regulation on the addition of vitamins and minerals and other substances to food. A reply to your letter of 7 April to Melanie Johnson will follow, with a full report on these votes.

The Council had its first discussion of the Commission’s proposed Health and Consumer Protection Programme for 2007–13. The Council’s exchange of views was structured around Presidency questions focused on the health objectives of the proposal. The UK gave its support for the general direction of the new programme but stressed that it would be important to ensure that the programme respected the scope of the Treaty did not impact upon Member States’ ability to organise their own health care systems.

Ministers unanimously adopted three sets of Council Conclusions on Obesity, Nutrition and Physical Activity, HIV/AIDS and Mental Health.

The UK undertook to take forward any work from the Commission and the World Health Organisation that emerged on the follow-up to the tobacco products Directive during the UK Presidency of the EU.

Finally, Ministers discussed the health response to the tsunami in South Asia.

30 June 2005

Letter from the Chairman to James Plaskitt MP

Your letter dated 10 June reporting on the Council meeting was considered by Sub-Committee G on 29 June. We note that political agreement has been reached on the regulations for the (Bilbao) Agency for Safety and Health at Work and the (Dublin) Foundation for the Improvement of Living and Working Conditions, which have been previously considered by this Committee.

The Minister for Employment Relations and Consumer Affairs at the DTI has already written to me reporting on Council consideration of the amended proposal for the Working Time Directive.

The only other item of particular concern to us is the proposal to set up a European Institute for Gender Equality (7244/05). We note that the Deputy Minister for Women, Meg Munn, is writing to me in more detail on this and await her letter with interest. I wrote to her on 14 June, following consideration of the proposal by Sub-Committee G. We note from your letter that the UK appears to have supported the “general approach” in favour of setting up the Institute, even though the proposal was still subject to Parliamentary scrutiny. I hope that reservation was made clear at the meeting. My letter dated 14 June to Ms Munn questioned whether the Institute was really necessary and raised numerous other serious reservations about this proposal. We regret that the Government should have apparently agreed to it in principle without waiting for even the first indication of a reaction from this Committee.

4 July 2005

Letter from the Chairman to Rosie Winterton MP

Thank you for your letter dated 30 June reporting on the Council meeting. Sub-Committee G considered this letter at their meeting on 20 July.

We are glad to see that your Ministerial colleagues have written to report in more detail on the various substantive items still held under scrutiny mentioned in your letter. We hope that the Department will continue this practice.
Your colleague James Plaskitt has already reported on the DTI and DWP aspects of the meeting in his letter to me dated 10 June.

21 July 2005

EQUAL TREATMENT OF MEN AND WOMEN IN MATTERS OF EMPLOYMENT AND OCCUPATION (8839/04 and 11865/05)

Letter from Meg Munn MP, Deputy Minister for Women and Equality, Department of Trade and Industry to the Chairman

I am writing to provide further information, following my predecessor Jacqui Smith’s letter of 2 February, accompanying a Supplementary Explanatory Memorandum (EM). This explained that agreement on a general approach had been reached at ESPHCA Council in December 2004.

The February EM noted that the Luxembourg Presidency had expected this dossier to feature on the agenda of the June Council meeting. This did not happen because consideration by the European Parliament had not taken place in time. However, the Parliament’s Committee on Women’s Rights and Gender Equality has now reported and proposed a number of amendments to the Commission’s original text, most of which—but not all—correspond to the general approach agreed by Council in December. The report, along with the majority of amendments proposed, was endorsed by the Parliament in plenary on 7 July.

It is expected that the Commission will issue a new proposed text by September which will then be available for discussion in Council working groups, under the chairmanship of the UK Presidency, and further negotiation as part of the co-decision procedure. At that point I will be in a better position to provide an updated EM and an indication of any possible regulatory impact entailed by the proposals.

17 July 2005

Letter from the Chairman to Meg Munn MP

Thank you for your letter dated 17 July which we received on 18 July but which, despite the very short notice, was considered by Sub-Committee G on 20 July.

We are grateful to you for bringing us up-to-date on developments since your predecessor’s last letter dated 2 February. We note that the Commission are expected to produce another revised text by September which you will then submit with an updated EM and RIA. We look forward to receiving those documents and will retain scrutiny of the present document in the meantime.

21 July 2005

Letter from the Chairman to Meg Munn MP

Thank you for your Explanatory Memorandum dated 29 September which was considered by Sub-Committee G on 20 October.

We note that the new text (11865/05) has overtaken the text previously under consideration (8839/04), which has therefore been released from scrutiny.

We also note that the Government, as Presidency, is due to open negotiations with the European Parliament in an attempt to reach a compromise text and that a further Memorandum will be submitted on the outcome of those negotiations.

We are therefore retaining the new document (11865/05) under scrutiny. We trust that you will continue to report significant progress and ensure that the promised new Memorandum is submitted for consideration in good time before Council decisions are needed.

We note that you will consider whether a further RIA is needed at that stage and would be glad to know whether, when doing so, the Department would plan to carry out any more consultations with interested parties in the UK.

20 October 2005

Letter from Meg Munn MP to the Chairman

Thank you for your letter of 20 October. I am writing to provide further information on progress since my last Explanatory Memorandum was submitted to you on 29 September. That document explained that, following consideration of the proposal in the European Parliament, when a series of amendments were proposed, the
European Commission issued its opinion of those amendments, for subsequent discussion in the Working Group on Social Questions.

The most recent Working Group discussion took place on 13 October. The Council confirmed at that meeting that it accepted 37 of the European Parliament’s amendments in full. The vast majority of their further 40 amendments were acceptable as redrafted by the Commission (the implications of the Commission’s redraft were explained in the EM submitted on 29 September). Subsequently, representatives of the European Parliament have given further consideration to the Council’s response and we understand that they will recommend acceptance. We are satisfied that the resultant text meets all the Government’s objectives by simplifying, modernising and improving Community law without making fundamental changes or imposing undue burdens on Member States and social partners. We are therefore hopeful of achieving a negotiated Common Position at the December Council of Social Affairs Ministers.

I have enclosed with this letter a draft partial regulatory impact assessment that reflects the position following the recent negotiations. It also sets out the consultations that have taken place with interested parties in the UK on matters pertinent to this Directive and how consultation will be taken forward. It concludes with the UK Government view that the recasting procedure simplifies existing EU legislation and is in the spirit of better regulation. The original Directives which are being recast have all been effectively implemented in the UK.

I hope that in the light of this information you will be able to lift the scrutiny reserve on this proposed Directive.

15 November 2005

DRAFT PARTIAL REGULATORY IMPACT ASSESSMENT


PURPOSE AND INTENDED EFFECT

1. The draft Directive is intended to simplify, modernise and improve Community law in the area of equal treatment between men and women, in matters of employment and occupation, by amalgamating selected Directives into a single new Recast Directive and incorporating existing European Court of Justice (ECJ) case law.

OUTLINE OF THE DIRECTIVE’S PROPOSALS

2. The Commission’s proposal seeks to amalgamate and repeal the following seven Directives:
   — Equal Pay (75/117/EEC);
   — Equal Treatment relating to access to employment, vocational training, promotion and working conditions (76/207/EEC) amended by (2002/73/EC);
   — Occupational social security schemes (86/378/EEC) as amended by (96/97/EC) following the decision in the case of Barber C-262/88;
   — Burden of proof (97/80/EC) amended by (98/52/EC to apply to the UK).

BACKGROUND TO PROPOSAL

3. The first EU law on equal opportunities—the Equal Pay Directive—was adopted in 1975. Other Directives have been adopted since then, and there have been many relevant rulings by the ECJ. These Directives and rulings have significantly enhanced both the original principles, and the coverage, of EU law; for instance the ECJ has ruled that pensions are deferred pay and therefore covered by equal pay requirements. In terms of non-legislative action five EU-wide, multi-annual programmes on gender equality have run using European Social Fund resources since the 1980s, and the projects, research and activities of those programmes have added to the Community’s expertise on equal opportunities and the solutions to common problems (such as the EU Code of Practice on sexual harassment).
4. The EU enlargement in 2004 saw the admission of 10 new Member States, some of which have less developed detailed legislation on discrimination. This made it more urgent for the European Commission to rationalise the relevant law on gender and make it more coherent, accessible and intelligible to a wider new audience.

**Economic Context**

5. If we are to achieve socio-economic Community policy goals, we need more easily accessible legislation. Legal certainty, and EU-wide standards, are central principles underpinning the expectation that all citizens will have the opportunity to enhance their prospects in any Member State. The Lisbon Agenda sets targets for an employment rate by 2010 of 70 per cent overall and 60 per cent for women. Clarifying and disseminating the rights and responsibilities of workers and of employers will assist in reaching these targets.

**Domestic Context**

6. In Great Britain, we already have legislation in place to protect people from discrimination on grounds of sex—the Sex Discrimination Act (SDA) 1975 and the Equal Pay Act 1970 (EPA)—and there are relevant anti-discrimination provisions in the Pensions Act 1995. There are Northern Ireland equivalents. We will consider in detail whether any amendments to the SDA, EPA and Pensions Act are needed to be consistent with European law when the final text becomes clear. However, we do not anticipate that, as it now stands, the Directive will necessitate any substantial changes to existing legislation. Any necessary implementation will be undertaken in the context of the current Discrimination Law Review which is considering opportunities for creating a clearer and more streamlined legislative framework having due regard to better regulation principles which will be more “user friendly” for employers and employees alike, as well as the providers and consumers of services.

**Rationale for Government Intervention**

7. From an EU-wide perspective, there are a number of definitional differences which exist across Community law, and (as is the case with many of the Directives being recast in this Directive), there are instances where there are basic Directives and accompanying but separate amendment Directives. This makes European legislation less accessible and overly complex. A recasting directive would help address these issues and thus help to achieve EU-wide socio-economic goals.

8. On the other hand there are always risks, when amending laws, that undesirable outcomes may arise, and disputes on interpretation and additional legal cases may result from bringing together equal treatment, equal pay and occupational pensions in the same legal instrument. This has therefore lent caution. On the basis of a final text of the Directive which in large measure conforms to the Commission’s original proposal, however, it is envisaged that the impact on UK law will be limited and no major changes will be required. This is due to the largely technical nature of the changes that are likely to result.

**Consultation**

9. The Commission held a consultation in Autumn 2003 on three options for simplifying and improving gender equality legislation. The first was a consolidation, the second the Recasting and the third the substantive amendment of this area of law. In broad terms, the Governments who responded, as well as stakeholders from industry and commerce, sought an approach that implied less change, whereas representatives of employees and NGOs favoured more far-reaching changes to the legislation. The UK made it clear to the Commission that consolidation and codification were our preferred ways forward rather than using this initiative to introduce significant legislative change. The Commission chose to adopt the second option.

10. The UK held a consultation from March to May 2005 on the Amended Equal Treatment Directive, which is one of the Directives that is being recast and forms the backbone of this Directive. There were 76 responses including the EOC, CBI and TUC. Further consultation on potential changes to the law will take place in the context of the Discrimination Law Review.
OPTIONS

Option 1—Do nothing

11. Without some form of consolidation equal treatment legislation would remain complex and could allow differences to persist between countries, adding to legal uncertainty and making it harder to achieve EC-wide socio-economic goals.

Option 2—Recast the key directives as proposed

12. This proposal addresses the issue that the current raft of EU level gender equality legislation and case law on employment related matters has evolved over a period of 30 years and in doing so has become complex and inaccessible. It provides a more coherent and consistent statement of the law, and by reflecting settled case law, adds to legal certainty.

Option 3—Go further to recast a wider range of Directives

13. Some had wished this Directive to have a wider scope by recasting other Directives eg the Pregnant Workers’ Directive (92/85/EEC). The UK Government agreed with the European Commission’s view, however, that it would have been neither user-friendly nor technically feasible to have included too many issues in one Directive. The Government does not support counter-arguments that separating out pregnancy-related rights concerning employment and occupation from other pregnancy-related rights (such as health and safety) might be confusing for citizens and present a regulatory disadvantage, or even increased costs due to lack of clarity and accessibility.

Option 4—Go further by substantially overhauling the Directives

14. A more radical overhaul of the European law in this area, as opposed to these proposals to recast and bring together existing legislation and case law, would have introduced the possibility of further changes to recently established legislation whose requirements are still only bedding down. It would be likely to create new legal uncertainties.

COSTS AND BENEFITS

15. The Government supports the Commission’s objective to clarify and simplify legislation on gender equality in employment and occupational pension matters. This is in line with the UK’s “better regulation” agenda. It is also generally helpful to have relevant texts brought together in order to avoid contradictions, duplications and ambiguities. The UK has already followed the same approach when implementing the equal treatment laws covering race, disability, age, religion and sexual orientation—to define the central principles as far as possible in the same way, to avoid confusion.

16. The Government considers that the Directives being recast now are already implemented effectively in the UK and so it does not anticipate any significant new costs should flow from the Directive. There may be some temporary and minor additional costs for employing organisations and pension scheme administrators in familiarising themselves with the new Directive. But in the longer term, reference to a single Directive rather than the seven that it replaces should lead to cost savings and enable anyone wishing to refer to EU law in this area to do so more easily. Without this proposal, equal treatment legislation in its current state will remain complex and differences between countries will add to legal uncertainty.

SPECIFIC AREAS

17. The changes made by the proposed Directive result from the application of certain principles that are already contained in the Amended Equal Treatment Directive (ETAD) and Burden of Proof Directive in respect of access to employment, vocational training, promotion and working conditions to the other areas that are covered by this draft Directive. Examples are the application of common definitions across the Directives that are being brought together in this recasting exercise, the provisions on remedies and enforcement and the general requirement to take equality into account when formulating laws.
Consultation with Small Business: the Small Firms’ Impact Test

18. Current UK and European law does not generally differentiate between small and large employers, and there is nothing in the recast proposal, which would change that. The lack of material change in the draft Directive means that there will be no differential change for small employers.

Competition Assessment

19. One of the aims of the Recast Directive is to “level” competition between Member States by ensuring they are all applying the same standards. Clarifying and disseminating the law within the UK will have the same effect by ensuring employers do not discriminate. We do not see that the Recast Directive will have any impact either way on competition.

Enforcement and Penalties

20. The Directive contains requirements on enforcement and compensation or penalties which reproduce those in the existing Directives and so no added penalties are being applied and the existing access in the UK to unlimited damages in most sex discrimination scenarios remains.

21. As regards enforcement, one route involves the position of the “Equality bodies” which Member States must set up under the Directive. In the UK, the long-established Equal Opportunities Commission already has enforcement powers that we believe are sufficient to meet the Directive’s requirements.

Monitoring and Review

22. Article 32 says “By seven years after the date of entry into force of this Directive at the latest, the Commission shall review the operation of this Directive and if appropriate, propose any amendments it deems necessary.” Final agreement on the timescales for monitoring and review is expected shortly, as the European Parliament wished to lower this to five, and a compromise of six was suggested. This ties in with the notion of the Recast in updating and incorporating important and relevant case law.

Summary and Recommendation

23. The UK Government welcomes the recasting procedure, which simplifies existing EU legislation and is in the spirit of better regulation. While our preference was for a consolidation only, we are satisfied that the effect of recasting the seven Directives is likely to be minimal. The original Directives concerned have all been effectively implemented in the UK.

Department of Trade and Industry
November 2005

Letter from the Chairman to Meg Munn MP

Thank you for your letter dated 15 November enclosing a draft Partial Regulatory Impact Assessment (PIRA) based on the outcome of recent negotiations on the text.

We understand from your officials that you are anxious for an urgent decision on your request to release scrutiny before the COREPER meeting next week which will prepare for the final negotiations of the Common Position you expect to achieve at the December Social Affairs Council. Despite the short notice, your letter was therefore exceptionally considered by Sub-Committee G at their meeting on 17 November.

We note that satisfactory progress continues to be made in negotiations over the European Parliament’s amendments and that you are satisfied that the resultant text expected will meet all the Government’s objectives without making fundamental changes or imposing undue burdens on Member States and social partners. That conclusion appears to be reflected by your PIRA.

On the understanding that any remaining changes to be negotiated in the run-up to the Council will not materially affect this satisfactory result we are prepared to lift scrutiny as requested.

We would be grateful if you would report on the outcome of the Council meeting in due course.

18 November 2005
Letter from Meg Munn MP to the Chairman

Thank you for your letter of 18 November. I am writing as requested, to let you know the outcome of the Employment and Social Policy, Health and Consumer Affairs Council (ESPHCA) held on 8 and 9 December, insofar as this proposed directive is concerned.

I am pleased to report that political agreement on a common position on this directive, as described in previous Explanatory Memoranda, was reached. The European Parliament had confirmed to the UK Presidency its undertaking to adopt unamended in second reading the Council’s common position as negotiated during informal discussions.

The Council text will now be translated and finalised, and should then be adopted by the Parliament in the first quarter of 2006.

21 December 2005

EUROPEAN AUDIOVISUAL SECTOR—MEDIA 2007 (11585/04)

Letter from Rt Hon Tessa Jowell MP, Secretary of State, Department for Culture, Media and Sport to the Chairman

I am writing to update you on the above-mentioned programme, MEDIA 2007 (11585/04).

I hope you received a copy of my letter dated 12 October to the House of Commons European Scrutiny Committee, which set out the progress made on negotiations on MEDIA 2007 during the UK Presidency.

We are very happy with how the programme has developed during the negotiations between the European Council and Parliament. I am now writing to update you on the outcome of the EP plenary vote, which was held on 25 October. The plenary amendments only differed slightly from the Committee vote. There were no disagreements of substance between the EP and Council. Whilst the European Parliament’s amendments mention financial aspects, these will not be dealt with in the Council until the overall financial perspective has been agreed.

Consequently, everything is now in place for us to reach partial political agreement on the MEDIA 2007 programme at the Culture and Audiovisual Council on 14 November; that is, agreement on the content of the programme but not the budget.

6 November 2005

EUROPEAN CAPITAL OF CULTURE 2007–19 (9620/05)

Letter from the Chairman to Rt Hon Tessa Jowell MP, Secretary of State, Department for Culture, Media and Sport

Your Explanatory Memorandum dated 17 June was considered by Sub-Committee G on 6 July and cleared from scrutiny.

8 July 2005

EUROPEAN CO-OPERATION IN QUALITY ASSURANCE IN HIGHER EDUCATION (13495/04, 13969/04)

Letter from Bill Rammell MP, Minister of State for Life-long Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to report on the latest position on this proposal and, in particular, to inform you of the amendments adopted in the European Parliament Education Committee on 30 August and subsequently agreed at Coreper on 21 September. The UK Presidency has worked very closely with the Parliament rapporteur on this dossier and we are hopeful that the Parliament plenary on 12 October will confirm the Committee vote and that the Education Council on 15 November will be able to take on board all of the Parliament amendments and thereby adopt the Recommendation.

I believe that the amendments that the Parliament Committee has adopted are significant and have specifically addressed the concerns that the Government and the Scrutiny Committee had raised previously. For instance, the European Parliament proposed more references to the progress that has already been achieved in respect of quality assurance under the Bologna Process so as to emphasise the need for the EU to move forward in a manner which is coherent.
In addition, the recommendations which were “requiring” Member States to ensure all higher education institutions had quality assurance mechanisms have been amended to “encourage” institutions to do so, and the recommendation about higher education institutions being able to choose from any of the agencies in a European Register, including one from any other EU country, has been amended to make it clear that general cross-border acceptance and the principle of choice for institutions are only possible if the rules in their own country allow it. I am clear that our previous concerns about the principle of subsidiarity and lowering standards are now covered.

Similarly, our concerns about the final recommendation that Member States would accept the assessments made by all agencies as a basis for licensing or funding have been allayed as this recommendation has now been deleted.

Instead, the Parliament has proposed further recommendations about encouraging institutions to work towards additional assessments by more than one agency on the Register to boost their international reputation, encouraging co-operation between agencies to build up trust and so facilitate recognition and ensuring public access to quality assurance assessments.

I am confident that the Education Council will be able to adopt the text as amended by the European Parliament. In addition, the Government can accept all of these recommendations. The changes mean that we have achieved our negotiating objectives in ensuring that the EU does not adopt a different course from that already agreed at Bergen under the Bologna Process and that the recommendations do not interfere with our ability to operate arrangements at the national level in accordance with our existing practice. I attach a copy of the text for your information.

The European Parliament plenary vote on the text will be on 12 October, but we are not anticipating any changes to their position between now and then. However, I will write to you again after the plenary vote to confirm the position.

Given that we are hoping to reach political agreement on this dossier at the November Council, I should be grateful if, in the light of the latest developments, the Committee was now able to lift its scrutiny on this draft recommendation.

Finally, I wish to bring you up to date with progress on the proposed resolution on mobilising the brainpower of Europe: enabling higher education to make its full contribution to the Lisbon Strategy. You will recall that your Committee cleared an Explanatory Memorandum earlier this year on the Commission’s communication on this topic. You may be interested to note that under our Presidency we have produced a resolution based on that text, which follows the Communication closely and is closely aligned with Government higher education policy, focusing on enhancing the quality and attractiveness of Europe’s universities, improving their governance and increasing and diversifying their funding. We are aiming to have this resolution adopted at the November Council.

3 October 2005

Letter from Bill Rammell MP to the Chairman

Following my letter of 3 October, I am now writing to report on the outcome of the European Parliament plenary vote on this proposal on 12 October.

You will recall that I was confident that the Parliament plenary vote would approve the amendments adopted in the European Parliament Education Committee on 30 August and subsequently agreed at Coreper on 21 September. I am now able to confirm that this was the case.

As you know, I believe that these amendments are significant and have specifically addressed the concerns that the Government and the Scrutiny Committee had raised with the original Commission proposal. For that reason I am hopeful that we will adopt this draft Recommendation at the Education Council on 15 November as part of a first reading deal with the European Parliament. I should therefore be grateful if the Committee would now confirm that it is able to lift its scrutiny on the draft Recommendation.

In addition, I note from your letter of 13 October that you would like to have a copy of the resolution based on the Commission’s communication on mobilising the brainpower of Europe. I believe that your letter may have crossed with mine of 3 October in which I outlined the content of our resolution, but I am pleased to attach a copy of the text for your information.

20 October 2005
Draft Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on mobilising the brainpower of Europe: enabling higher education to make its full contribution to the Lisbon Strategy


WHEREAS:
The European Council Conclusions of 22 and 23 March 2005 relaunching the Lisbon Strategy call for an emphasis on knowledge, innovation and the optimisation of human capital to deliver the key priorities of jobs and growth. The Conclusions underline the need for better investment in universities, modernised management of universities and university and industry partnerships. The Joint Interim Report 2004 of the Council and the Commission on “Education and Training 2010” explains that the European Higher Education sector should pursue excellence and become a world-wide quality reference to be in a position to compete against the best in the world. The Report points out that the Bologna Process has resulted in progress in reforming some aspects of higher education, including measures to increase mobility, facilitate greater transparency and make degrees more readily comparable.

NOTE THAT:
Higher education is a matter for individual Member States to organise and resource, in accordance with national priorities, legislation and practices.
In a knowledge-based economy and society, higher education should be seen in close conjunction with research and innovation.

TAKE NOTE:
Of the Commission’s Communication on “Mobilising the brainpower of Europe: enabling universities to make their full contribution to the Lisbon strategy” as an important contribution to the debate on how to raise the quality of higher education across Europe as a means of increasing Europe’s competitiveness.

SHARE THE VIEW THAT MEMBER STATES SHOULD:
1. enable higher education institutions in Europe to improve their performance in terms of attainment, access and research in comparison to other regions and countries in the world;
2. enable higher education institutions to adapt to changing circumstances in order to enhance their quality, attractiveness and relevance to society and the economy;
3. assist the development of governance in higher education institutions and ensure that they have sufficient autonomy;
4. improve the sustainability of funding for higher education institutions, by increasing investment and diversifying the sources of investment, as necessary;
5. strengthen the social dimension of higher education, particularly by widening access to a broad range of socio-economic groups whilst working to reduce student dropout rates;
6. encourage institutions to develop stronger partnerships with the society around them, including local communities and the business world.

UNDERLINE THE IMPORTANCE OF:
1. adapting, where necessary, the regulatory framework within which higher education institutions operate, with a view to developing a more flexible relationship between individual institutions and Member State authorities responsible for the strategic direction of higher education systems, thereby helping them to modernise and adapt to the changing needs of society and to be accountable for their decisions;
2. enhancing the attractiveness of higher education to students through high quality facilities, better information, greater diversity in teaching and learning, particularly by means of ICT, higher quality and better preparation of individuals so as to ensure their successful academic careers, their sustainable integration into the labour market and their active participation in society;

3. widening access to higher education, particularly for people from disadvantaged backgrounds, helping individuals to achieve their potential and enabling a greater variety of paths to higher education, making lifelong learning a reality;

4. encouraging diversity within higher education systems and institutions and also developing centres of excellence which can contribute to the process of reform through collaboration with other institutions and bodies;

5. encouraging higher education institutions to develop sustainable partnerships with the broader community and industry, in order to meet the changing needs of society and the labour market;

6. involving all stakeholders in the preparation and implementation of reforms;

6a. considering investment in higher education as an investment in the future of society;

7. examining the level of resources devoted to higher education and reviewing the possibilities for securing additional funds through a variety of means, including both public and private support as appropriate;

8. providing incentives for reform, for instance, by targeting investment to improve the quality of teaching and learning, research, innovation, management and student services.

**INVITE the Member States to:**

dress the issues raised in this Resolution and report on progress in their contributions to the 2008 Joint Interim Report on the implementation of the “Education and Training 2010” Work Programme;

**INVITE the Member States and the Commission to:**

make use of peer learning and the next Joint Interim Report on the implementation of the “Education and Training 2010” Work Programme to address the issues raised in this Resolution;

address the needs of higher education through more effective use of Community programmes such as Socrates, Leonardo and future education and training programmes, the European funding instruments of the European Investment Bank Group and the structural funds, where appropriate;

encourage international cooperation between higher education institutions, particularly through their participation in Community programmes such as Tempus and Erasmus Mundus.

**Letter from the Chairman to Bill Rammell MP**

Thank you for your letters dated 3 and 20 October which were considered by Sub-Committee G on 3 November.

We are glad to learn that the amendments adopted by the European Parliament plenary vote on 12 October have satisfactorily addressed the Government’s previous concerns about this proposal, which we share, and meet your negotiating objectives. On that basis, we are prepared to lift scrutiny to enable the Resolution to be adopted at the November Education Council, as proposed.

4 November 2005

**EUROPEAN INSTITUTE FOR GENDER EQUALITY (7244/05)**

**Letter from the Chairman to Meg Munn MP, Parliamentary Under-Secretary for Women and Equality, Department of Trade and Industry**

Your Department’s Explanatory Memorandum (EM) dated 31 March was sifted to Sub-Committee G for examination on 5 April, but too late for it to be considered before Parliament was dissolved for the General Election. It was considered by Sub-Committee G on 8 June.

Although we note that the Council has already approved the setting up of the Institute in principle, and that the Department supports that decision, we question whether it is really necessary or whether the work it is supposed to do could not be more efficiently and economically done by some existing agency.
We wonder whether the Department has consulted any of the British public bodies and NGOs working in this field to see whether they see a need for the Institute or whether they might be able to carry out the proposed activities as effectively themselves, if necessary with some additional Commission funding, in collaboration with counterparts in other Member States.

A succession of EU Institutes of this sort have been set up over the years. We have expressed concern in the past about the value of some of their activities and the efficiency and accountability of their administrative structures.

If we can be satisfied about the need for the Institute, we will fully support the Government’s wish to ensure that it will bring added value, avoid duplication and be “budget neutral”. We see a risk of duplication not only of the work done by Member States institutions but also by international bodies such as UN and World Bank agencies working in this field. The proposed activities also seem to us to be far too vaguely defined to judge their real worth.

The Commission have not shown so far what savings it proposes to make to compensate for the additional costs of setting up and running the agency. The overall costs estimates should also be probed rigorously.

We would be glad if you would explain more fully the Department’s reservations about the proposed legal base. We recall difficulties in the past over the appropriateness of the legal base proposed for similar EU institutions.

We would also be grateful if you would explain what is meant by having “some concerns” about the relative proportion of members nominated by the Commission and the Council.

We also wonder how a 15-member Management Board can have “an equal representation between men and women”.

Your EM says that appropriate SMART (sic) objectives should be developed for these proposals. We would be grateful if you would remind us what the acronym SMART means and how you expect to see those criteria applied in this particular case. While we agree that the Institute should have clear and sensible objectives and allocate its resources properly, we are anxious to avoid the pitfalls of excessive targeting and measurement.

We also note that Working Group meetings about this proposal were due to take place in April and that the Luxembourg Presidency were keen to make progress by the end of their term of office. We would welcome a report on any significant developments during these discussions since the EM was submitted.

We also see that the agenda for the ESPHCA Council meeting on 2 June showed that the proposal was due to be considered for a “partial general approach”. We understand from your officials this means that the Council would be invited to agree in principle to a text that has yet to be considered by the European Parliament and that the text would revert for further Council consideration once the Parliament had given its opinion.

We trust that it was made clear in any discussion at the Council meeting that the UK Scrutiny reserve had to be maintained because the relevant documents had not arrived in time to be considered before Parliament was dissolved. Please let us know what happened at that meeting and how you plan to carry discussions forward during the UK Presidency.

We are retaining the proposal under scrutiny pending your response.

14 June 2005

Letter from Megg Munn MP to the Chairman

I am writing to update you on the progress made during the negotiations on this proposal and on the outcome of the Employment, Social Policy, Health and Consumer Affairs (ESPHCA) Council on 2 June 2005.

At the Employment and Social Affairs Council on 2 June the proposal reached General Approach, which the UK Government is happy with and is supportive of the Council’s position. However, as the proposal is subject to co-decision, negotiations will continue into the UK Presidency when the European Parliament begins its examination of the text. The UK was able to maintain its parliamentary reserve on this dossier, but in terms of smooth handling of this dossier during the UK Presidency I hope the information below will enable the Committee to complete its consideration of this proposal at this stage.

Negotiations on the European Institute for Gender Equality were progressed quite quickly by the Luxembourg Presidency, who tabled six social questions working groups in two months. As outlined in our original EM, the main issues of concern for the UK were on the legal base, the budget and the composition of the management board. These issues were addressed within the working groups.
LEGAL BASE

In relation to the proposed legal base the Council maintained the Commission’s position and supported the use of Article 13(2) and Article 141(3) in this instance. As stated in the Explanatory Memorandum, the UK Government considers the use of Article 13(2) inappropriate, as its view is that the scope of incentive measures does not cover the establishment of an Institute. This is a view the UK has consistently taken in relation to other proposals. However, although the UK view is that on balance the legal base is incorrect, it accepts that there are arguments for taking the opposite view, which is the position taken by other Member States. They are content to focus on the point that the role of the agency would be to support action taken by the Member States in order to contribute to the objective of combating discrimination, and consider that Article 13(2) is an appropriate base for this aim, in combination with Article 141(3). There is precedent for the establishment of agencies using a legal base referring to incentive measures in Regulation 851/2004 of 21 April 2004 establishing a European Centre for disease prevention and control. The UK issued a joint Minute Statement with Germany in that case in relation to the use of Article 152(4).

Consequently, in view of the lack of support from other Member States, together with the sensitivity of the issue and the fact that the legal argument was not entirely clear, the UK took the view that it was an appropriate course of action to issue a Minute Statement at Council on 2 June to record our objections to the legal base.

BUDGET

It was made clear at the outset of negotiations that the budget would not be discussed until the EU Financial Perspective 2007–13 has been agreed. The UK firmly agrees with this approach. For this reason, the UK supported a Minute Statement at Council stating that decisions on financial aspects must not prejudice the Financial Perspective.

MANAGEMENT BOARD

The composition of the Management Board has been a point of much discussion during negotiations. The Presidency proposed a Management Board comprising one representative per Member State, alongside a smaller Bureau to take day to day decisions. This was unanimously adopted by Member States as the final position at Council. The Commission preferred to retain its original proposal to have a smaller Management Board, and issued a Minute Statement at Council reflecting this.

I hope that this information is helpful to your Committee. I will, of course, update you regarding the outcome of the European Parliaments consideration and any ensuing discussions. If you wish to discuss any of these aspects further please do not hesitate to contact my office.

23 June 2005

Letter from Meg Munn MP to the Chairman

Thank you for your letter dated 14 June requesting further information on the proposal for a European Institute for Gender Equality and its progress in Working Groups and at the ESPHCA Council on 2 June.

It would appear that my letter, dated 23 June, which answers some of the points in your 14 June letter, crossed with yours. My letter of 23 June updated you on negotiations in Council Working Groups and the outcome of the ESPHCA Council on 2 June, and also answered the points you raise on the budget, legal base and management board. In particular, the fact that there have not been any discussions on the budget means that the Working Group has not been able to explore the costs estimates. This will be done once the Financial Perspective of the EU budget has been agreed.

You question whether the European Institute is really necessary, whether it would duplicate work already being done by other bodies and whether the proposed activities of the Institute could be done by some existing agency.

Gender equality is a key objective of the EU and is a fundamental principal of the current Treaty and will therefore continue to be a high profile area of EU policy. In the Commission’s Communication on the Social Policy Agenda, the European Institute for Gender Equality is highlighted as a key tool for assisting the Commission and the Member States in implementing the next phase of the Community’s objectives for promoting equality between men and women and ensuring that they are incorporated into Community policies.
The Institute will therefore be able to, with its data collection, research and sharing of good practice, provide key information to policy makers in the European Commission, the European Parliament and the Member States on how best to achieve the Community’s objectives. It will also help them devise policies and take action to meet the targets of the Lisbon agenda on removing the barriers to labour mobility by promoting equal opportunities.

The purpose of the Institute is to carry out some of the tasks which existing institutions are not currently involved in, such as questions of coordination; centralisation and dissemination of information; the raising of gender visibility; and the provision of tools for gender mainstreaming. Indeed, the importance that you attach to the Institute not duplicating work done elsewhere, but adding value to other activity, has been a key element of the UK negotiating position and is well reflected in the general approach reached by Council. The current text negotiated in Council makes clear that the Institute shall “ensure appropriate coordination with all relevant agencies in order to avoid any duplication and to guarantee the best possible use of resources.” However, merging the activities of the Institute with other bodies or agencies runs the risk that gender equality could be sidelined, and be inconsistent with the priority which the Commission and the Treaty currently give to gender equality.

We have taken informal sounding from other Government Departments and the Equal Opportunities Commission on this proposal and this leads us to consider that the Institute’s activities would add value to the work of other British public bodies and NGOs. In addition, the Institute will compare data from Member States at a European level, which is not necessarily being done at a national or even international level.

It is also for this reason that we do not consider that duplication of work by international bodies such as the UN is a danger. The UN’s International Research and Training Institute for the Advancement of Women (INSTRAW) carries out research and training activities on different topics at national, regional and international levels, but to date its functions have not provided comparative relevant information which is one of the key tasks for the Institute. INSTRAW’s focus is more international, particularly developing countries, and it does not look specifically at how EU Member States are achieving targets set out in the Lisbon Strategy.

You also asked about SMART targets. These are targets which are Specific, Measurable, Achievable, Relevant and Timed. In a budgetary context having these targets is a way to ensure that there is both accountability for spending and to try and make sure that spending is focussed in the right way. SMART objectives are legally required for all EU spending programmes—specified in Article 27 para 3 of the EU Financial Regulation 1605/2002. In negotiations a number of Member States supported amending the text to ensure the overall objective meets the SMART targets. We are also pleased to see included in the text time-bound evaluation and review clauses.

In terms of the UK Presidency’s handling of this dossier, it is our aim to maintain, where possible, the Council’s general approach on the text during the European Parliament consideration. I visited the European Parliament on Wednesday 13 July and there is significant interest in the proposal there, not all of which is consistent with the Council and Commission’s thinking. The relevant Committee is planning to hold five sessions to discuss the Proposal and has appointed two Rapporteurs. This will make it less rather than more consistent with the Council and Commission’s thinking. The relevant Committee is planning to hold five sessions to discuss the Proposal and has appointed two Rapporteurs. This will make it less rather than more likely that we will be ready to see the Proposal on the ESPhCA Council agenda in December.

You will also see from my letter of 23 June that we were able to retain our parliamentary reserve at the June Council. However, I would like to point out that we submitted the EM on 31 March, which matched the deadline given to us by the Cabinet Office.

I hope these answers satisfy your concerns with which you can see I have a great deal of sympathy. In light of my response I would be grateful if your committee would be willing to lift its reserve, as this would be particularly helpful for the UK President of the EU to help progress on this dossier.

17 July 2005

Letter from the Chairman to Meg Munn MP

Thank you for your letters dated 23 June and 17 July about this proposal.

Your letter dated 23 June crossed with, but did not deal with the points raised in, my letter to you dated 14 June. We therefore agreed with your officials that we would withhold a reply to that letter until we had seen and had an opportunity to consider your substantive reply to my letter dated 14 June. Although your letter dated 17 July was only received on the afternoon of 18 July, Sub-Committee G exceptionally agreed to consider both letters at their meeting on 20 July.

We are glad to see that the Government maintained the Parliamentary reserve when this dossier was considered by the Employment, Social Policy, Health and Consumer Affairs Council on 2 June. Nevertheless, we regret that the Government should have felt it necessary to have gone along with even a partial decision.
in favour of this proposal in principle when neither Parliamentary Scrutiny Committee could have had an
opportunity of considering it. We do not understand why the Government are in such a hurry to be seen to
be endorsing this proposal which clearly needs thorough examination.

Your letter dated 17 July points out that the Department’s Explanatory Memorandum was submitted on
31 March which matched the deadline set by the Cabinet Office for submission. Nevertheless, it was clear to
your officials at the time that a document submitted on 31 March could not be considered by the Sifting
process until the following week, by which time it was not possible for it to be considered by the relevant Sub-
Committee before Parliament was dissolved for the General Election.

We note what you say about the need for the Institute. We accept that gender equality is a key objective for the
EU and a fundamental Treaty principle. We share the Government’s commitment to the principles of equal
opportunity and would support any sound, practical and cost-effective proposal that would add significant
to the work already being done by the Commission and Member States to improve gender equality and
combat discrimination. But that does not mean that we are prepared, simply because the cause of gender is
invoked, to go along with proposals which seem to us to be of doubtful merit.

As I pointed out in my letter dated 14 June, we have expressed concern in the past about the value of some of
the institutions which have been set up by the EU over the years. We will continue to look searchingly at any
proposals to set up new EU-funded institutions, whatever the cause they are supposed to espouse.

We note that informal soundings from other Government Departments and the Equal Opportunities
Commission have led the Government to conclude that the proposed Institute would add value to the work
of other British public bodies and NGOs. But in my letter dated 14 June I asked whether the Department had
consulted any of the relevant UK public bodies and NGOs to see whether they also saw a need for the Institute
or whether they might be able to carry out the proposed activities as effectively themselves.

We are still not clear precisely what purposes the data-collection, research, and sharing of good practice
described in your letter dated 17 July are supposed to serve. Nor do we understand why it should be necessary
to have a separate institute to provide policy-makers in the Commission, the European Parliament and
Member States with information which they could presumably already obtain for themselves from existing
sources.

The description in your letter dated 17 July of the proposed tasks of the Institute seems to us to be aspirational
but vague, and in some cases positively obscure. We therefore remain unconvinced at this stage that the
proposed Institute is really necessary.

Thank you for your explanation of the acronym SMART. If we can be satisfied that the Institute does indeed
have a worthwhile purpose, we would undoubtedly expect to see that these objectives could be assured, so long
as they did not impose unnecessary bureaucracy in the process.

We fully understand what you say about the effect of the Government’s position on the Financial Perspective
on budgetary considerations. But, given that the proposal is supposed to be “budget neutral”, we still want to
know what savings the Commission propose to make to compensate for the additional costs of setting-up and
running the Institute. Even if the result is “budget neutral”, we would expect the Government to probe the
costs estimates rigorously and report their conclusions.

We regret that the Government has apparently gone along with the proposal to increase the membership of the
Management Board from 15, as proposed by the Commission, to 25. This seems to us to be potentially
unwieldy, as well as needlessly costly. Nor does it explain how the Board can have “an equal representation
between men and women” as stated in Article 10.2 of the Commission’s proposal, which I mentioned in my
letter dated 14 June.

Moreover, you have not explained, as requested in my letter dated 14 June, what is meant in your EM about
having “some concerns” about the relative proportion of members nominated by the Commission and the
Council.

We are also surprised to see what appears to be a new proposal for a “smaller Bureau” which your letter dated
23 June says is supposed to take “day-to-day decisions”. This appears to be separate from, and in addition to,
the Advisory Board provided for by Article 12. We wonder how this additional layer of bureaucracy can be
justified in an organisation of the size envisaged and would be glad to know how it is supposed to be
constituted and work, what legal authority it would have, how it would affect the responsibilities and
accountability of the Director and what the extra cost might be.

What you say in your letter dated 23 June about the proposed legal base for the Institute is noted. You should
be aware that, in the past, we have consistently recorded our opposition to the adoption of any proposal on
an inappropriate legal base, regardless of the merits in other respects. Those reservations were raised very
strongly in the case of the proposed European Centre for Disease Prevention and Control (12098/03)
mentioned in your letter where the Minister concerned eventually over-rode scrutiny on this very point in order to secure adoption. That hardly seems to us to be an acceptable precedent.

We also regret that the Government does not appear to have managed to persuade other Member States to support their view on the legal base. We wish to give further consideration to this aspect of the proposal.

Although we are also grateful to you for reporting on your visit to the European Parliament on 13 July, we would be glad to know what you mean by saying that the Parliament’s interest is not fully consistent with the Council and Commission’s thinking on the Institute.

For all these reasons, I regret that we are not prepared to acquiesce in your proposition that we should lift scrutiny at this stage. We cannot understand why you should suggest this when it is clear from your letters that, quite apart from all the work that is still needed to justify and clarify the proposal, the timetable set by the European Parliament for consideration means it is unlikely to be ready for Council decision during the UK Presidency.

The document will be retained under scrutiny. To assist our further examination of this proposal, we would be grateful if you could give oral evidence to the Sub-Committee about it on a mutually convenient date after Parliamentary business is resumed in October. My staff will be in touch with your officials with a view to arranging this. In the meantime, we would be grateful for your considered reply to the above points.

21 July 2005

Letter from Meg Munn MP to the Chairman

Thank you for your letter of 21 July on the Proposal for a European Institute for Gender Equality.

I regret the detailed information that I provided you with in my last letter, dated 17 July, did not fully address all your concerns. I am now replying to your further specific questions on the Institute and I trust that this explanation will be helpful.

The Commission brought forward a proposed Inter Institutional Agreement this year, setting out a horizontal framework for Regulatory Agencies. An EM on this was submitted to Parliament in March. Since then the proposal has stalled while further consultation takes place. We will update the scrutiny committees on any further developments. But until such a time, it remains necessary to consider Agency issues on a case-by-case basis.

As I stated in my previous letter the objective of the Institute should be to develop methods that will improve the comparability, objectivity and reliability of gender equality data in the EU. These methods should also help to support the integration of gender equality into all Community policies. However, the UK maintains its position that the creation of such an Institute should add value and not be burdensome for Member State Administrations.

At present there is no single EU body that collects and disseminates information on gender equality that is easily accessible and draws on MS good practice. Eurostat produces some basic statistical data that is used by the Commission, but this is limited. The Council working group has agreed that the Institute should take account of existing information and not duplicate the research done elsewhere, in particular by Eurostat. A national body would find it difficult to justify, as well as actually undertake, the production of comparable, EU level data, drawing on good practice in 25 MS, which is the defined purpose of the EGI.

The discussion in Council working groups of the proposed tasks of the Institute is at this stage a broad exploration of the Institute’s role and structure. The detailed work programme will be drawn up by the Director of the Institute and with full agreement of the Commission and the Management Board. One of the reasons the Government supported having a Management Board of 25 is to ensure that Member States have influence over the priorities of the Institute’s work programme.

You are right to expect the UK Government to probe the costs of the Institute rigorously and we will do so when the Council is given the opportunity to review the budget and the Commission has presented its figures formally. However, the Commission have explained in working groups for the new EU Programme, PROGRESS, and the Institute, that budget neutrality implies that the combined funding requirements of the Institute and the activities under the Gender Equality strand of the PROGRESS programme should be in line with the funding in the current budget heading for the existing Programme relating to the Community framework strategy on gender equality. The Treasury is content with this in principle but agrees that the Commission should provide further information on how the funds are to be re-distributed in the light of this proposal.
Although, the membership of the Management Board has increased from 15 to 25 and would appear unwieldy, Member States were reluctant to move away from the precedent of other Agencies’ structures and felt that if one of the main objectives of the Institute was to share good practice then this would be more effective if all Member States were able to be present. The proportion of Commission to Member State representation has decreased, and equal representation between men and women no longer applies to this proposal (as simpler wording such as “balanced representation” was suggested). The group has also moved away from a separate advisory forum, to take into account the increased number of members on the Board and the smaller executive bureau. This therefore reduces bureaucracy overall.

With regard to your comments regarding the proposed legal base for the Institute, we would repeat the remarks we made in the letter of 23 June. But first I must clear up any misunderstanding that the UK considers the current legal base to be illegal. This is not the case. We do consider that Article 13(2) EC may be viewed as an acceptable legal basis for the Institute. We have, however, argued that there is a more appropriate legal basis for this proposal. Although we consider, on balance, that Article 13(2) EC is not the most appropriate legal base for the establishment of an Institute, I accept that respectable opposing legal views may be taken, which is the position taken by other Member States.

They take the line that the role of the Agency would be to support action taken by the Member States in order to contribute to the aim of combating discrimination, and that thus Article 13(2) EC together with Article 141(3) EC is appropriate. I did not therefore believe that the difference between the positions of the UK and other Member States merited any recourse stronger than a Minute Statement.

A further reason why we consider a Minute Statement was appropriate in this case is the ongoing case C-217/04 relating to the establishment of the European Network and Information Security Agency (ENISA). This is a challenge brought by the UK on the inappropriate use of Article 95 EC as a legal base for the establishment of an agency. Although it is not directly related to the present issue or Article 13(2) EC, it was expected that it might clarify what legal base will be appropriate for an agency. The Advocate General’s Opinion, given on 22 September, supported the UK’s challenge on the facts but failed to provide any clear guidance as to the correct legal base to be used for the establishment of an Agency. It remains possible that the judgment of the European Court of Justice will be more helpful.

The European Parliament has made strong calls to increase the budget of the Institute and enhance its role and scope to make it a more political instrument. The Council’s position on the Institute is modest compared with the approach taken by the EP. You will no doubt understand that as EU President, the UK’s role now is to maintain where possible the Council’s position in negotiations with the EP, but if that were to move further away, the UK would endeavour to pursue its objectives of value added, budget neutrality and avoid duplication in other activities in this area. The EP’s consideration is likely to continue into 2006.

I am pleased to be given the opportunity of appearing before the Sub-Committee on 24 November to further assist in the Committee’s examination of the proposal and to explain more fully the Government’s position.

12 October 2005

Letter from the Chairman to Meg Munn MP

Thank you for your letter dated 12 October which was considered by Sub-Committee G on 27 October.

We are grateful for your detailed reply to the various points raised in my letter dated 21 July about the Proposal. We are very glad that you have kindly agreed to give oral evidence to the Sub-Committee about the Proposal on 24 November and look forward to further discussion of most of these points then.

So far as the proposed legal base for the Institute is concerned, however, our view is that Article 13(2) and Article 141(3) would not be the correct legal base in this case. Article 13(1) is the enabling provision which allows the Council to “take appropriate action to combat discrimination”. Article 13(2) does not grant any greater, or different, power. Instead it changes the procedural rules which apply to certain measures adopted in the context of Article 13(1) to allow for qualified majority voting instead of unanimity where the measure is “a Community incentive measure”. Thus any reference should be to Article 13 (as in recital 3) or Article 13 (1) and (2), and not to Article 13(2).

As we see it, the key question is whether or not the current proposal is an “appropriate action” within the meaning of Article 13. The next question is whether it is an “incentive measure” under Article 13(2) (an “incentive measure” being one type of “action” under Article 13(1)).

As views appear to differ on this, it would be helpful to understand in what sense the proposal can be seen as an incentive measure. It is not clear from the correspondence why the majority of Member States and the Commission apparently consider that this proposal falls within the scope of Article 13(2). What is their reasoning? We would also be glad to know whether any other agency has been created on the basis of powers...
granted to adopt “incentive measures”. In this context, we note that the Government take the view that the creation of European Monitoring Centre for Drugs and Drug Addiction (reference 12143/05) is not an “incentive measure” as defined in Article 15(2) 4(C). I attach a copy of Lord Warner’s recent undated Explanatory Memorandum about that, which you may wish to consider and will send you a copy of my reply to him.

The issue is important since, if the proposal fell outside the scope of Article 13(2) but remained within Article 13, unanimity would be required (the basic rule for measures under that Article). Such a change in the legal base could affect the balance of the negotiations and would also result in incompatible legal bases for the proposal, because Article 13(1) requires unanimity and Article 141(3) prescribes qualified majority voting.

We also note from the correspondence note that the Government do not appear to have defined what legal base they consider to be “appropriate” as an alternative and would be glad to know. Do the Government believe that the Regulation should be made under Article 308?

We look forward to your comments. Scrutiny of this item is retained.

31 October 2005

Letter from Meg Munn MP to the Chairman

Thank you for your letter of 31 October about the proposal for a European Institute for Gender Equality, in particular on the legal base.

I entirely understand your view that Article 13(2) and Article 141(3) would not be the correct legal base. Perhaps it might be helpful if I set out in some detail our own thinking on this point, and in particular why I am of the view that the opinion of the Commission and my colleagues in Council, that the proposed legal base should be those two Articles, is sufficiently respectable, on balance, as to warrant no further objection than the inclusion of an appropriate Minutes Statement.

You asked what the Government’s preferred legal base would be for this proposal. Our view is that Article 13(1) EC is to be preferred to the combination of Articles 13(2) and 141(3) EC as legal base(s) for this proposal. It was acknowledged that a substantial pay element brought Article 141(3) EC into play. However, we recognised that in view of the conflicting procedures of Articles 13(1) and 141(3) EC, to which you referred in your letter, there would have been compatibility issues. On balance we felt that Article 13(1) EC was sufficient legal base as lex specialis for discrimination, and Article 141(3) EC, although substantial, was subsidiary to that.

However, if there had been pressure for a further legal base, we would have considered use of Article 308 EC. This would have been something of a last resort though as use of Article 308 EC where a specific legal base existed in the Treaty, despite the compatibility justification, would have been undesirable. Hence we took the view that Article 13(1) EC alone would be the most appropriate legal base and this was the approach taken at the Working Group.

Our impression of the view taken by the other Member States was that they focused particularly on the wording within Article 13(2) EC concerned with “measures to support action taken by the Member States in order to contribute to the achievement of the objectives [in Article 13(1) EC]”. They took the view that it was appropriate to make reference to the objectives in Article 13 EC, which Article 13(2) EC does. They did not support our view that Article 13(1) EC was the more appropriate legal base for this proposal. They also considered that it was desirable to cite Article 141 EC as lex specialis for equality in working conditions and pay. Thus they took the view that Articles 13(2) and 141(3) EC in combination were the most appropriate legal base. Although their view is not one the UK supported, it is recognised that it is not one without foundation. Let me elaborate that point.

Our impression was that the other Member States was that they focused particularly on the wording within Article 13(2) EC concerned with “measures to support action taken by the Member States in order to contribute to the achievement of the objectives [in Article 13(1) EC]”. They took the view that it was appropriate to make reference to the objectives in Article 13 EC, which Article 13(2) EC does. They did not support our view that Article 13(1) EC was the more appropriate legal base for this proposal. They also considered that it was desirable to cite Article 141 EC as lex specialis for equality in working conditions and pay. Thus they took the view that Articles 13(2) and 141(3) EC in combination were the most appropriate legal base. Although their view is not one the UK supported, it is recognised that it is not one without foundation. Let me elaborate that point.

The stated aims of the Institute are collecting, analysing and disseminating information, developing methods for improving the comparability of data, developing methodological tools to support the integration of gender equality into Community policies and resulting national policies, carrying out surveys, organising meetings of experts, organising conferences and meetings with stakeholders to exchange information and good practice and setting up documentation resources. It could be argued that some or all of these could constitute measures designed to encourage, facilitate and (in a broad sense) provide incentives for Member State action in the field of gender equality.

Accordingly, I think that a respectable argument can be made that these activities are sufficient to constitute “incentive measure”.

The legal base(s) for the Gender Institute Regulation will of course determine the procedure during the legislative process. While we accept that Article 13(2) EC is in some respects parasitic on Article 13(1) EC as a legal base we are not of the view that this necessitates additional reference to the latter as a legal base for
this proposal. The clear intention as respects Article 13(2) EC is that it should be available as a separate and standalone legal base, as evidenced by the fact that it is subject to a different procedure. Provided Article 13(2) EC is an appropriate legal base given the content of the measure then we believe that reference to Article 13(1) EC is unnecessary.

There is a precedent for an institution created with an incentive measures legal base. Regulation 851/2004 establishing the European Centre for Disease Prevention and Control (ECDPC) was adopted using Article 152(4) EC—incen‐tive measures designed to protect and improve human health. The UK objected to use of that legal base and produced a joint minute statement with Germany.

22 November 2005

Letter from the Chairman to Meg Munn MP

Thank you for your letter dated 22 November about the legal base for this Proposal, which was considered by Sub-Committee G on 1 December.

We note what you say but are disappointed that your reply does not fully answer our concerns on this matter. In my letter dated 31 October I directed your attention to the proposal for the creation of a European Monitoring Centre for Drugs and Drug Addiction (reference 12143/05), currently held under scrutiny by this Committee, and pointed out that, in that instance, the Government said it does not consider the creation of the Centre to be an “incentive measure”. In your reply you informed the Committee of another case in which the Government objected to the use of an “incentive measure” legal base for the creation of an agency.

We are troubled by the “a` la carte” approach which the Government appears to be taking to the matter of legal bases. This is all the more concerning where two apparently similar proposals held under scrutiny by this Committee at the same time give rise to opposing views on the suitability of the legal base proposed. We would be grateful for a full explanation of the Government’s position on when it is appropriate to rely on an “incentive measure” legal base. In particular it would be helpful if you would explain specifically why such a legal base is considered appropriate in the present case when it is not so considered in relation to the Monitoring Centre for Drugs and Drug Addiction, and indicate the differences between the two proposals which, in the Government’s view, would justify taking these apparently conflicting approaches.

On a technical point, as I explained in my previous letter, we do not consider it appropriate to refer to Article 13(2) without referring in addition to Article 13(1), which appears to be the enabling provision. While we continue to question whether or not the creation of this Institute can be properly classed an “incentive measure”, if 13(2) is the base upon which the proposal relies we do not understand why a legal base of Articles 13(1) and 13(2) and 141(3) has not been considered. This would not result in inconsistency of legal bases as Articles 13(1) and 13(2) together require qualified majority voting, as does Article 141(3). We would be grateful for your specific comments on this point.

1 December 2005

Letter from Meg Munn MP to the Chairman

Thank you for your letter of 1 December about the proposal for a European Institute for Gender Equality, in particular on the legal base.

In previous correspondence I have set out in some detail the views of the Government on the legal base for this proposal. While we believe that Article 13(1) EC is the most appropriate legal base for the Gender Institute, we acknowledge that a respectable argument can be made for a combination of Articles 13(2) and 141(3) EC. The question of the appropriate legal base for a Community Agency is presently before the ECJ in Case C-217/04, establishment of the European Network and Information Security Agency (ENISA). The Government brought this challenge not because we were unhappy with the policy behind ENISA but as a result of concerns over the legal base of Article 95 EC used to establish it. We are presently awaiting judgment.

However, given existing case law of the ECJ, the Advocate General’s Opinion in the ENISA case, the Opinion of the same AG in Case C-66/04 smoke flavourings (another challenge brought by the Government on grounds of legal base) which has certain parallels with ENISA and the subsequent judgment of the ECJ in the smoke flavourings case a pattern is starting to emerge as to how legal base issues are likely to be addressed by the ECJ. When the judgment in ENISA is handed down we hope that the legal position will be clarified further.

The approach being taken by the ECJ indicates that when considering the correct legal base for establishment of a Community Agency they may look at the end result of the activities to be undertaken by the Agency. The correct legal base to establish the Agency would then be found by reference to the EC Treaty and the corresponding Article covering those activities. For example, in the case of the Gender Institute if the end result of the proposed Institute’s activities would constitute incentive measures then an incentive measures
legal base could be used to set the Institute up. While the Government does not accept either that an incentive measures legal base should be used to establish an agency, or that in this case the proposed activities of the Institute constitute incentive measures, the above points add up to a respectable opposing view on the principle of an incentive measures legal base being used to set up an agency. I set out in previous correspondence the arguments which could be made to categorise the activities of the Gender Institute as incentive measures. The judgment of the ECJ in ENISA will probably bring some measure of clarification.

Therefore, while our view is that Article 13(1) EC is the most appropriate legal base for the Gender Institute, we accept that there is a respectable argument in favour of Articles 13(2) and 141(3) EC instead. The same general arguments can be applied in respect of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and its proposed incentive measures legal base of Article 152.4(c). We understand that the Department of Health will be responding to you on this issue. We do not believe that there is any significant difference between the two Departments in the legal approach to identifying the most appropriate legal base.

In response to the second point raised in your letter of 1 December, we have considered carefully whether the addition of Article 13(1) EC as a legal base, in addition to Articles 13(2) and 141(3) EC, is appropriate. Our conclusion, having taken advice from Cabinet Office Legal Advisers, is that Article 13(2) EC does not depend upon Article 13(1) EC in order to have effect as a legal base. If a proposal satisfies the requirements of Article 13(2) EC in terms of subject matter then no reference to Article 13(l) EC is required. If the contrary had been intended then it would not have been necessary to include a new paragraph (2) to Article 13 EC with a separate voting rule and legislative procedure and introductory words explaining that the paragraph operated independently of paragraph (1) in the case of proposals which met particular conditions. A similar position can be seen with the relationship between Articles 94 and 95(1) EC.

I would also like to take this opportunity to provide you with the proposed breakdown of costs which you requested at the Committee’s meeting on 24 November. The original proposal outlines that the annual budget for 2007 is envisaged to be about 4.5 million euros, rising to 8.5 million euros by 2013 once the institute has reached its full complement of 30 staff.

Below are the proposed costs, broken down into three categories for the next five years: staff (salaries, rent, IT etc), administration (Management Board, visits, and other meetings, interpreting and translation plus other admin costs) and operations (research and publications).

| Year 1          | Staff (10) | €1.080m |
|                | Admin      | €1.23m  |
|                | Operations | €2.19m  |
| Year 2         | Staff (17.5)| €1.925m |
|                | Admin      | €1m     |
|                | Operations | €3.5m   |
| Year 3         | Staff (23) | €2.576m |
|                | Admin      | €0.999m |
|                | Operations | €3.625m |
| Year 4         | Staff (25) | €2.875m |
|                | Admin      | €1m     |
|                | Operations | €3.625m |
| Year 5         | Staff (27) | €3.159m |
|                | Admin      | €1m     |
|                | Operations | €3.741m |

These figures support the original Commission proposal and will change according to the final shape and function of the Institute, and the Financial Perspective as concluded. The annual amounts are purely indicative.

3 January 2006
Social Policy and Consumer Affairs (Sub-Committee G)

European Medicines Agency (7798/05)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Minister of State, Department of Health

Your Explanatory Memorandum (EM) dated 20 May was considered by Sub-Committee G on 29 June. We are holding this proposal under scrutiny pending production of the partial Regulatory Impact Assessment promised in your EM, at which time it will be examined in greater detail.

We are sorry to see, however, that the Commission has so far only been able to produce a very rough estimate of the likely effect of the proposed increase and trust that they will be able to produce a more precise analysis before a decision is needed on the proposal.

We are also sorry that your EM does no more than summarise the Commission’s proposals, without taking a view on whether they are considered to be reasonable and giving us no background information on the work of the EMEA. We need to know what it is supposed to do and whether the Government and those in the UK who regularly use its services consider it to be a worthwhile organisation, providing a useful and efficient service and good value for money. We would be glad if all these points could be covered when you submit the partial Regulatory Impact Assessment.

4 July 2005

Letter from Rt Hon Jane Kennedy MP to the Chairman

I am writing further to your letter of 4 July 2005.

You asked for some additional information in relation to the proposal for a Council regulation on fees payable to the European Medicines Agency (EMEA).

The European Medicines Agency (EMEA) is a decentralised body of the European Union with headquarters in London. Its main responsibility is the protection and promotion of public and animal health, through the evaluation and supervision of medicines for human and veterinary use. The EMEA coordinates the evaluation and supervision of medicinal products throughout the European Union. The Agency brings together the scientific resources of the 25 EU Member States in a network of 42 national competent authorities. It cooperates closely with international partners, reinforcing the EU contribution to global harmonisation.

The EMEA is headed by the Executive Director and had a secretariat of about 360 staff members in 2004. The Management Board is the supervisory body of the EMEA, responsible, in particular, for budgetary matters. Moreover, the EMEA began its activities in 1995, when the European system for authorising medicinal products was introduced, providing for a centralised and a mutual recognition procedure. The EMEA has a role in both, but is primarily involved in the centralised procedure. Where the centralised procedure is used, companies submit one single marketing authorisation application to the EMEA. A single evaluation is carried out through the Committee for Medicinal Products for Human Use (CHMP) or Committee for Medicinal Products for Veterinary Use (CVMP). If the relevant Committee concludes that quality, safety and efficacy of the medicinal product is sufficiently proven, it adopts a positive opinion. This is sent to the Commission to be transformed into a single market authorisation valid for the whole of the European Union.

In 2001, the Committee on Orphan Medicinal Products (COMP) was established, charged with reviewing designation applications from persons or companies who intend to develop medicines for rare diseases (so-called “orphan drugs”). The Committee on Herbal Medicinal Products (HMPC) was established in 2004 and provides scientific opinions on traditional herbal medicines. A network of some 3,500 European experts underpins the scientific work of the EMEA and its committees.

The UK Government considers the regulation, and the fees proposed by it, reasonable for a number of reasons. These include:

— We recognise that the EMEA plays an increasingly important role in EU medicines regulation.

— The UK was a key player throughout the EU review of the pharmaceutical legislation negotiations and we recognise that new tasks and responsibilities have been conferred to the European Medicines Agency (EMEA).

— In the context of the “new” EU pharmaceutical legislation new tasks and responsibilities have been assigned to the European Medicines Agency (EMEA). It is acknowledged that the current fee scheme, as laid down in Council Regulation (EC) No 297/95 on fees payable to the EMEA, takes into account neither the new tasks of the Agency, nor the modifications of existing tasks, introduced by the revised legislation. We therefore believe it is therefore necessary to amend it.
— We support the proposal put forward by the Commission. We welcome the recognition that the effort required for licensing is not the same for all products, and that the draft regulation will introduce proportionality to the fees reflecting this.

The MHRA and VMD have regular and direct dealings with the EMEA and consider the organisation to be a worthwhile organisation, which provides a useful and efficient service and good value for money. The MHRA is entitled to a portion of any annual fees (for pharmacovigilance activity) charged by the EMEA, the MHRA stands to benefit from the proposed increases. Based on the assumption that the EMEA increases the fee it pays to the MHRA by a corresponding 10 per cent, we estimate that the MHRA could benefit to the extent of an additional £50,000 per annum and the VMD by some £4,000, as a result of the proposed annual fee increase.

Good progress has been made on this proposal during a series of Working Group meetings, which took place from April 2005 onwards to discuss this proposal. The UK, in common with most Member States, wishes to see this getting agreement as soon as possible. We have also consulted with the industry who support this proposal. A Full, rather than a partial, Final Regulatory Impact Assessment (RIA) accompanies this covering letter since there are no further foreseeable changes in relation to the ground the RIA covers or in relation to the proposed fees.

13 July 2005

FULL FINAL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

2. Purpose and Intended Effect of Measure

(i) The objective

In the context of the “new” EU pharmaceutical legislation new tasks and responsibilities have been assigned to the European Medicines Agency (EMEA). It is therefore necessary to amend the current legal framework on the fees payable to the EMEA in order to appropriately cover the costs incurred by the EMEA. Three major objectives have been pursued by the Commission in its proposal which are in line with the three strategic goals of the Community framework: (a) to adapt the existing fee scheme to the revised pharmaceutical legislation, (b) to ensure proportionality between the amount of the fees and the nature of the service actually provided by the Agency and (c) to alleviate the financial pressure put on applicants, without undermining the Agency’s ability to perform its tasks.

(ii) The background

The pharmaceutical legislation has recently been revised. In this context, Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation, supervision and surveillance of medicinal products for human and veterinary use and establishing a European Medicines Agency (EMEA) has been adopted by the Council and the European Parliament. It repeals Regulation (EEC) No 2309/93/EC.

As laid down in Article 67(3) of the Regulation, the Agency’s revenue shall consist of a contribution from the Community and fees paid by undertakings for obtaining and maintaining Community marketing authorisations and for other services provided by the Agency. It is acknowledged that the current fee scheme, as laid down in Council Regulation (EC) No 297/95 on fees payable to the EMEA, does neither take into account the new tasks of the Agency, nor the modifications of existing tasks introduced by the revised legislation. It is therefore necessary to amend it.

(iii) The proposal

The proposal elucidates the new tasks and responsibilities conferred to the European Medicines Agency, in the context of the recently revised EU pharmaceutical legislation. Since already existing tasks have also been revised, it is therefore necessary to amend the current legal framework on the fees payable to the EMEA, as laid down in Council Regulation (EC) No 297/95, so as to reflect these modifications. Without such a revision,
the existing fee scheme would not be adequate to properly cover the costs incurred by the EMEA in the context of the “new” pharmaceutical legislation.

Some of the provisions will carry a cost for the industry, i.e. applicants requesting the scientific services of the EMEA, and the Agency itself, whose revenues are directly dependent on the fees amounts. The proposal’s core suggestion is to increase the annual fee, both in the human and veterinary sectors, by 10 per cent. The general structure of the fees and the underlying principles has not been changed. Given the increase that was already applied in March 2003, most of the fees have been kept to the same level, or slightly reduced. In view of the experience gained since 1995, it is appropriate to maintain the general principles and overall structure of the fees, as well as the main operational and procedural provisions established by Regulation (EC) No 297/95; in particular, the calculation of the level of fees charged by the Agency should be based on the principle of the service actually provided and should be related to specific medicinal products. The key suggestions contained in the proposal are:

1. Annual fee

While it is required by law that activities relating to pharmacovigilance and to market surveillance shall receive ample public funding commensurate with the tasks conferred, such funding alone may not be sufficient to fully cover administrative costs e.g. maintaining up-to-date marketing authorisation dossiers and the various databases. Costs related to post-authorisation activities are, at present, not appropriately covered. If no action is taken, this discrepancy could increase with the entering into force of the revised legislation and the new responsibilities of the Agency. The EMEA’s financial stability is affected by its reliance on initial fees linked to new applications. For these reasons, it is hence proposed to increase the annual fee, both in the human and veterinary sectors, by 10 per cent.

2. Medicinal products for human use

Most of the fees for services related to medicinal products for human use have not been changed and kept to the same level. Specifically, it is suggested (a) to reduce the fee for generic medicinal products, in order to better reflect the actual cost of the evaluation of the marketing authorisation application, (b) to harmonise extension fees, Type II variation fees, and fees associated with the submission of additional presentations of a given medicinal product and (c) to reduce the fee for Type IA variations, so as to better reflect the administrative nature of the service provided.

3. Veterinary medicinal products

It is proposed to keep all fees related to veterinary medicinal products to the same level, apart from the annual fee as mentioned above, and the fee for Type IA variations, which has been reduced for the reason outlined above.

4. Scientific services

New types of fees have been defined for a wide range of scientific services provided by the EMEA. Based on previous knowledge gained by the EMEA on these services they can lead to the mobilisation of significant scientific, administrative and financial resources. These services refer to:

- Opinions on traditional herbal medicinal products;
- Assessment of applications for medicinal products intended exclusively for markets outside the Community, in the context of cooperation with the World Health Organisation.
- Consultation of the Committees on ancillary substances, including blood derivatives, incorporated in medical devices;
- Evaluation and certification of plasma master files and vaccine antigen master files.

5. Other provisions

Considerable flexibility has been given to the Management Board and the Executive Director of the EMEA for the practical implementation of this Regulation. In particular, the option to draw-up detailed lists of reduced fees for certain services, under well-defined conditions, has been extended to other fee categories. Specifically:
— A specific fee has been defined for similar biological medicinal products. The calculation of the fee is based on the complex nature of these medicines, the expected costs for the dossier evaluation, and the particular status of this emerging and fast-growing market.

— The time period within which fees shall be payable has been extended from 30 to 45 days.

— A special deferral rule has been proposed for applications concerning medicines to be used in human pandemic situations (such as pandemic influenza vaccines).

— An indexation clause has been introduced, in order to adapt the fees to inflation variations.

3. Options

(i) Continue to rely on existing arrangements. The current situation demonstrates that the current fee scheme does neither take into account the new tasks of the Agency, nor the modifications of existing tasks introduced by the revised legislation. If the fees remain at the same level they may not be sufficient to fully cover other post-authorisation administrative costs, eg maintaining up-to-date marketing authorisation dossiers and the various databases managed by the Agency. Moreover, public funding would not be sufficient to reduce the Agency’s financial dependence on new applications. To do nothing would risk incurring infraction proceedings from the European Commission.

(ii) Introduce the Commission’s proposal. The EMEA’s revenue is made up from a contribution from the Community and fees, paid by undertakings for obtaining and maintaining Community marketing authorisations and for other services provided by the EMEA. Within this structure, the main policy options, which are not mutually exclusive, are: (a) to increase/decrease the levels of existing fees, (b) to create new categories of fees, and (c) to extend/reduce the flexibility conferred to the Management Board and to the Executive Director of the EMEA to adapt certain fees, under certain conditions, to the particular situation of the application and the related product. This is especially relevant for innovative medicines, which constitute the “core business” of the Agency, and which often require special risk management strategies as well as tailor-made pharmacovigilance programmes. Such costs are not adequately covered by the corresponding fees, like the annual fee. In addition, the Agency’s revenues heavily depend on the payment of initial fees related to new applications.

Despite the introduction of the annual fee in 1998, such dependence is still significant, and may hamper the EMEA’s capability to perform long-term, multi-annual tasks, by affecting its financial stability. We are looking carefully at the proposed provisions to ensure that the modifications are adequate to allow the EMEA to perform their duties and can operate effectively following the EU enlargement and the recently revised pharmaceutical legislation.

4. Costs and Benefits

(i) Sectors and groups affected

The two main parties affected are (i) the industry, ie applicants requesting the scientific services of the EMEA, and (ii) the Agency itself, whose revenues are directly dependent on the fees amounts.

(ii) Analysis of costs and benefits

— Option 1: Continue to rely on existing arrangements

Under this Option the current fee structure is highly likely to create administrative financial and scientific delays and experience to date shows that this will not result in any significant health benefits but may hamper the EMEA’s capability to perform long-term, multi-annual tasks, by affecting its financial stability. Table 1 and 2 show the current fee structure for both veterinary and for human use medicinal products. Based on the above assumptions there is no evidence that there is any clear benefit to neither the EMEA nor the industry if the fees remain unchanged.

| Table 1 |
| CURRENT EMEA FEES STRUCTURE (MEDICINAL PRODUCTS FOR HUMAN USE) |

<table>
<thead>
<tr>
<th>Human</th>
<th>Current(€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full fee</td>
<td>base</td>
</tr>
<tr>
<td></td>
<td>addit strength/form</td>
</tr>
<tr>
<td></td>
<td>addit presentation</td>
</tr>
</tbody>
</table>
Option 2 would introduce new costs for industry but it will ensure that the EMEA can operate effectively. As mentioned above within this framework, there are three main Commission policy options, which are not mutually exclusive. The fees proposed are maximum amounts, rather than absolute. Tables 3 and 4 summarise the abovementioned suggestions. The majority of the fees except the ones described in Table 3 and 4 stay at the same level. Furthermore, the industry and Member States including the UK welcomed...
the proposal to extend/reduce the flexibility conferred to the Management Board and to the Executive Director of the EMEA to adapt certain fees, under certain conditions, to the particular situation of the application and the related product. The use of graduated fees better reflects the actual level of scientific input and service provided therefore in the light of the abovementioned principle of proportionality, such flexibility could be further extended to other types of fees. This cannot be numerically explained here due to its nature.

Table 3

INCREASE/DECREASE OF THE LEVELS OF EXISTING FEES

<table>
<thead>
<tr>
<th></th>
<th>Current(€)</th>
<th>Proposal(€)</th>
<th>Dif</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Human</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduced fee</td>
<td>base</td>
<td>116,000</td>
<td>90,000</td>
</tr>
<tr>
<td></td>
<td>addit strength/form</td>
<td>23,200</td>
<td>9,000</td>
</tr>
<tr>
<td>Extension fee</td>
<td>new strength/form etc</td>
<td>58,000</td>
<td>69,600</td>
</tr>
<tr>
<td></td>
<td>new presentation</td>
<td>11,600</td>
<td>5,800</td>
</tr>
<tr>
<td>Type I variation</td>
<td>5,800</td>
<td>IA</td>
<td>2,500</td>
</tr>
<tr>
<td></td>
<td>max</td>
<td>75,600</td>
<td>83,200</td>
</tr>
<tr>
<td><strong>Veterinary</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type I variation</td>
<td>5,800</td>
<td>IA</td>
<td>2,500</td>
</tr>
<tr>
<td>Annual fee</td>
<td>25,200</td>
<td>max</td>
<td>27,700</td>
</tr>
</tbody>
</table>

The EMEA’s financial stability is affected by its reliance on initial fees linked to new applications. For these reasons, it is hence proposed to increase the annual fee, both in the human and veterinary sectors, by 10 per cent.

Table 4

CREATION OF NEW CATEGORIES OF FEES

<table>
<thead>
<tr>
<th></th>
<th>Current(€)</th>
<th>Proposal(€)</th>
<th>Dif</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Human</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scientific services</td>
<td>Bio-similar</td>
<td>150,000</td>
<td>NEW</td>
</tr>
<tr>
<td></td>
<td>max</td>
<td>232,000</td>
<td>NEW</td>
</tr>
<tr>
<td><strong>Veterinary</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scientific services</td>
<td>Bio-similar</td>
<td>98,000</td>
<td>NEW</td>
</tr>
<tr>
<td></td>
<td>max</td>
<td>116,000</td>
<td>NEW</td>
</tr>
</tbody>
</table>

It should be noted that the proposed level of the annual fee (83,200 Euros for medicinal products for human use, 27,700 Euros for veterinary medicinal products) is relatively low compared to the typical annual turnover for a medicinal product authorised through the centralised procedure. In addition, this level is a maximum: as specified in the proposal, a reduced annual fee will apply for certain types of medicinal products. As a result, it can be expected that the impact of this fee increase will be moderate.

**FINANCIAL IMPACT**

For the fees where changes are introduced, the numbers of corresponding applications have been estimated, in collaboration with the EMEA, for the 2006–10 time period. This enables a forecast of the financial impact of the fees changes over that period, and comparison with the Agency’s total revenues forecast, as provided by the EMEA. The relative impact of the total EMEA Revenues from fees for both veterinary and for human
use medicinal products between 2004 and 2010 is estimated to be around 11.4 per cent and relative impact of the total EMEA Revenues from fees and community contribution is approximately 15.8 per cent. Please see table 5 below.

Table 5

TOTAL IMPACT OF THE FEES CHANGES FROM 2004 TO 2010

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Human</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduced fee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>generic</td>
<td>116,000</td>
<td>90,000</td>
<td>financial impact</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>biosimilar</td>
<td>—</td>
<td>150,000</td>
<td>—78,000</td>
<td>—156,000</td>
<td>—208,000</td>
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<tr>
<td>Total EMEA Revenues from fees</td>
<td>80,397,000</td>
<td>90,416,000</td>
<td>99,518,000</td>
<td>110,780,000</td>
<td>121,455,000</td>
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<td></td>
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<tr>
<td>Relative Impact (%)</td>
<td>2.8%</td>
<td>3.3%</td>
<td>3.2%</td>
<td>3.3%</td>
<td>3.2%</td>
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<tr>
<td>Total EMEA Revenue (fees + Community contribution)</td>
<td>117,615,000</td>
<td>128,567,000</td>
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<tr>
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<td>2.3%</td>
<td>2.3%</td>
<td>2.5%</td>
<td>2.4%</td>
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</tbody>
</table>

**Benefits for industry**

One of the two main parties affected is the industry, since they are the applicants requesting the scientific services of the EMEA therefore these amendments and modifications should have a positive impact on the services they receive by the EMEA.

In the context of the new legislation and the enlargement of the EU these amendments and modifications will ensure that both multinational companies and small and medium sized companies have access to timely and professional services without delays and discrepancies.

5. **Business Sectors Affected**

All sectors of the pharmaceutical industry will be affected, including the innovative and generics sectors.

6. **Costs**

**Costs to the EMEA**

In the context of the “new” EU pharmaceutical legislation It is necessary to amend the current legal framework on the fees payable to the EMEA in order to appropriately cover the costs incurred by the EMEA. It seems necessary to reduce the Agency’s dependence on fees related to new applications therefore the annual fee should be increased by 10 per cent to accommodate those changes. The overall impact on revenues has been calculated for 2005–10 and indicates a rough increase of the gross revenues of the Agency from two to four million euro per year which will assist the Agency to cope with the new demands of the new pharmaceutical legislation.
Costs to the pharmaceutical industry

The fees payable to the EMEA mainly derive from payments made to the EMEA for the processing of applications and other similar duties from the pharmaceutical industry. The EMEA’s dependence on the annual fees, despite the introduction of the annual fee in 1998, is still significant, and may hinder the EMEA’s capability to perform long-term, multi-annual tasks, by affecting its financial stability. Based on estimates for year 2004 the forecast shows that the overall impact of the fees changes represent:

— 2.8 to 3.3 per cent of the Agency’s annual revenues come from industry fees;
— 1.9 to 2.5 per cent of the Agency’s total annual revenues (fees + Community contribution).

Given that the error margin for the revenues forecasts is about 5–10 per cent, and that the calculation does not take into account inflation, which at present is around 2.1 per cent in the EU, the overall impact of the fees changes, compared to the Agency’s total revenues, is relatively moderate (less than 2.5 per cent). The overall impact on revenues has been calculated for 2005–10 and indicates a rough increase of the gross revenues of the Agency from two to four million euro per year, which will be mainly deriving from the pharmaceutical industry.

Costs to the generics sector

In the field of generics and similar biological medicinal products, there has been a substantial decrease of the fee for a generic marketing authorisation application from €116,000 to €90,000 (−22 per cent).

7. Equity and Fairness

The proposal will provide reassurance that the EMEA will have the necessary capability to perform long-term, multi-annual tasks, which will ensure its financial stability. Medicines used in adults and animals will be authorised within the necessary timeframe and will continue to be safe, effective and of high quality by laying down specific requirements to:

— Protecting public health across the Community;
— Maintaining a reliable and independent source of scientific advice and information on medicinal products;
— Supporting the achievement of the internal market for the pharmaceutical sector.

This will address an imbalance, which could be caused if the fees remain at the same level. In addition, introducing an amendment to the current EMEA fees will ensure fairness for companies by ensuring that the standards and procedures applied in the UK are the same as in the rest of the Community.

8. Consultation with Small Business: The Small Firms’ Impact Test

We have consulted with the pharmaceutical industry, including with small businesses. The situation of small and medium-sized enterprises (SMEs) has been considered separately, outside the scope of the present proposal because the SMEs may be more easily affected by these fees changes than bigger pharmaceutical companies. In that respect, Article 70(2) of Regulation (EC) No 726/2004 foresees that provisions shall be adopted by the Commission, establishing the circumstances in which SMEs may pay reduced fees, defer payment of the fee, or receive administrative assistance. A joint (human and veterinary) Standing Committee took place on 27 June which discussed this matter together with three other items. Overall, there was a vote—247 (human sector) 281 (vet sector) in favour of adopting the regulation.

9. Enforcement and Sanctions

All aspects of the regulation will be operated primarily by the EMEA.

10. Monitoring and Review

It is anticipated that within five years of the entry into force of the Regulation, the Commission will present a report on its implementation. Future reviews will be based on an evaluation of the Agency’s costs and on the basis of the related costs of the services provided for by the Member States, and calculated in accordance with generally accepted international costing methods. In addition, the Agency will provide annually an extensive analysis of the application of this Regulation, through its Annual Report.
11. Consultation

(i) Within government

The Department of Health is leading in negotiations on the proposal. The UK Government supports the objectives of the Commission’s proposal, and would like to see it getting agreement as soon as possible. The Department for Environment, Food and Rural Affairs, the Department of Trade and Industry, MHRA and the devolved administrations all have an interest in the proposal and we have worked together to develop the UK’s negotiating strategy. Specifically, on the assumption that the EMEA increases the fee it pays to the MHRA by a corresponding 10 per cent, we estimate that the MHRA could benefit to the extent of an additional £50,000 per annum and the VMD by £4,000, as a result of the proposed annual fee increase.

(ii) Public consultation

We have consulted the relevant interested parties, in particular the pharmaceutical industry. The industry supports the development of the EMEA and the means necessary to ensure improvement and efficiency in the Agency’s activities. Industry recognises that a one off adjustment in fees may be necessary at this time point to ensure that the EMEA can operate effectively following EU enlargement and can undertake the new tasks set out in regulation (EC) No 726/2004.

In addition, in July 2004, the Commission launched an external consultation on its draft proposal, and received contributions from industry associations, regulators, and individual companies. The vast majority of respondents welcomed the proposal, in particular, the principle of proportionality between the fees, the corresponding services, and the related costs, was strongly emphasised.

12. Implementation

The European Parliament (EP) would vote on its opinion on the Regulation at its mini-plenary in Brussels on 13 October. The regulation will apply from 20 November 2005. This Regulation will be binding in its entirety and directly applicable in all Member States.

13. Summary and Recommendation

Summary of costs and benefits

The estimates set out in this document are EU estimates produced by the Commission. It is not possible to analyse or gauge the impact of the proposal for the UK as this is an EMEA matter. In order to compare costs and benefits we compared the current fees with the proposed. In the context of the “new” EU pharmaceutical legislation new tasks and responsibilities have been assigned to the EMEA therefore we believe the proposed fees are justifiable in order to appropriately cover the costs incurred by the EMEA.

The benefits of the proposed fees would protect public health across the Community, maintain a reliable and independent source of scientific advice and information on medicinal products and support the achievement of the internal market for the pharmaceutical sector.

Table 6

<table>
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<th>2008</th>
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<td>3,149,500</td>
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<td>3,946,200</td>
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<td>2.3%</td>
<td>2.3%</td>
<td>2.5%</td>
<td>2.4%</td>
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</table>

(i) We recognise that the EMEA plays an increasingly important role in the EU medicines regulation and that since this has recently been revised and in this context, new tasks and responsibilities have
Social policy and consumer affairs
(sub-committee g)

been conferred to the European Medicines Agency (EMEA) so we therefore recommend that these changes are encompassed. In common with other Member States we support the proposal put forward by the Commission and we would like to see it getting agreement as soon as possible. We also welcome the recognition that the effort required for licensing all products is not the same, and introducing proportionality to the fees will now reflect this.

(ii) The costs and the benefits cannot be attributed to individual Member States. For example, the EMEA costs will be borne by the European pharmaceutical companies and, though ultimately may impact on the UK, the UK share cannot be readily estimated. Also, costs and benefits to the industry are also difficult to attribute to Member States as these will be borne by multi-national companies, and we have little idea of what the UK share would be. For this reason, the table above focuses on costs and benefits at the EU level.

14. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Janet Kennedy,
Minister of State
Department of Health
13 July 2005

Letter from the Chairman to Rt Hon Jane Kennedy MP

Thank you for your letter dated 13 July which was considered by Sub-Committee G on 20 July.

We are grateful to you for providing the helpful background information about the EMEA which was lacking in your previous EM. We note that the Government, UK agencies and British industry all value the work of the EMEA and that the Government believes the proposal to be reasonable. We are also grateful for the very thorough analysis in your full RIA, the conclusions of which appear to be generally positive.

We also note that the Government and other Member States are keen to secure agreement on the proposal as soon as possible and we are willing to release it from scrutiny. Please let us know if the proposal is approved by the Council.

21 July 2005

EUROPEAN QUALIFICATIONS FRAMEWORK FOR LIFE-LONG LEARNING (11189/05)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills

Your Explanatory Memorandum dated 4 October was considered by Sub-Committee G on 3 November.

We acknowledge the potential significance of this initiative, which is very relevant to many of the issues which were examined in our Inquiry Report on the Proposed EU Integrated Action Programme for Life-long Learning.

We therefore propose to retain the document under scrutiny and would be grateful if you could send us a copy of the Government’s response to the Commission’s consultation as soon as it is available.

4 November 2005

EUROPEAN QUALITY CHARTER FOR MOBILITY (12639/05)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills

Your Explanatory Memorandum dated 11 October was considered by Sub-Committee G on 3 November.

We regard this as a potentially valuable initiative, especially as the removal of barriers to mobility in education and training is very much in-line with the Conclusions and Recommendations of our Inquiry Report on the Proposed EU Integrated Action Programme for Life-long Learning. We agree that this could make a positive contribution to Lisbon and Barcelona objectives.
Although we support the voluntary approach proposed, we believe that the Charter guidelines will need to be clearly understandable, realistic and flexible if they are to gain the necessary wide acceptance. We agree with you that they should not create expectations that might impose inappropriate burdens or duplicate existing arrangements, and that unnecessary and potentially counter-productive bureaucracy should be avoided. Common sense and, as you say, a light touch will certainly be needed.

We also note your particular concern that the proposed guidelines about linguistic preparations and support, although inherently reasonable, do not apparently fall within the scope of Articles 149 and 150 Treaty. We would be glad to know what you propose to do about that.

Similarly, we note your concerns over the risk of creating expectations of favourable entitlements to residence or work permits or social security benefits and that the relevant guideline is also not covered by Articles 149 and 150.

We also agree with you that this exercise must not become over-prescriptive. We see some risk that this might happen through the adoption of the Recommendations, as envisaged by the Commission, which could erode the voluntary basis of the Charter and lead to a creeping extension of the Commission’s powers. We would welcome your views on that possibility and ask you to bear it in mind as negotiations on the text proceed.

We were also rather surprised that the Commission should have developed these proposals through an expert Working Group, without apparently consulting more widely, and wonder whether you are content with that.

We are glad that the Department has consulted with the Devolved Administrations, other Government Departments and relevant expert bodies, and will be carrying out more consultations through the DIES stakeholder group. We hope those consultations will contribute positively to the Working Group examination being carried out under the UK Presidency and look forward to a further progress report well before Council decisions are needed.

In the meantime, we will continue to hold the document under scrutiny.

4 November 2005

EUROPEAN SCHOOLS SYSTEM (6603/05)

Letter from Bill Rammell MP, Minister of State for Life-long Learning, Further and Higher Education, Department for Education and Skills

On 8 March 2005 the Department for Education and Skills (DfES) submitted an Explanatory Memorandum (EM) (6603/05) covering a communication from the European Commission to the Council and the European Parliament about a Consultation on Options for Developing the European Schools System. The EM was cleared by the European Scrutiny Committee in the House of Lords but not by the House of Commons, who asked to see a copy of the UK’s response to the communication. This is now enclosed (not printed).

In summary, the Department is generally in favour of the European Commission’s proposals, the most significant of which are:

— reducing the role of the international governing body by devolving decision-making to schools;
— achieving a more equitable distribution of costs among Member States;
— widening the curriculum as far as is reasonably possible to provide teaching in more technical and vocational subjects and making more provision for SEN and learning support; and
— by implication, the establishment of the European Schools as an EU institution to be funded via the EU budget with the abolition of the direct budget contribution made at present by member states.

7 September 2005

EUROPEAN YEAR OF EQUAL OPPORTUNITIES FOR ALL 2007—TOWARDS A JUST SOCIETY (9883/05)

Letter from the Chairman to Meg Munn MP, Parliamentary Under-Secretary for Women and Equality, Department of Trade and Industry

Thank you for your Explanatory Memorandum (EM) dated 29 June 2005 which was considered by Sub-Committee G on 20 July.

We have decided to hold the document under scrutiny because the Government’s view of this interesting and potentially important proposal is not sufficiently clear from your EM.
It would help us to give the proposal the careful consideration it deserves if the Government’s view could be more fully explained. In particular, we would be grateful if the explanation could include answers to the following questions:

— Does the Government consider that the Commission’s proposal to make 2007 the Year of Equal Opportunities will achieve the Commission’s stated objectives and add value?
— What analysis has been made of the lasting success of similar previous initiatives such as the 1997 Year Against Racism and the 2003 Year of People with Disabilities?
— How much does the Government estimate the UK human resource and funding implications of this proposal will be in both 2006 and 2007?
— How much of the estimated cost is the Government willing to fund and what other sources of UK funding would be expected to contribute?
— How are the proposals expected to be put into practice in the UK and which Department or agency would have overall responsibility for co-ordinating and implementing action?
— Which specific issues of competence does the Government wish to ensure are discussed fully in the Council Working Groups?
— What timescale for Council decision is envisaged?

We look forward to receiving your reply and trust that you will keep us informed of the progress of negotiations.

21 July 2005

Letter from Megg Munn MP to the Chairman

Thank you for your letter of 21 July on the Proposal for a Decision on the European Year of Equal Opportunities (2007).

I believe the United Kingdom should support this Proposal, for a number of reasons: it is an example we wish to encourage of the European Commission tackling all equality strands together, including gender; it supports the UK position that awareness raising and sharing good practice is useful and a better alternative to more European legislation; we are seen as good exemplars ourselves in this area; and the European Year would be a significant success for the UK Presidency serving to highlight UK initiatives towards equality of opportunity.

In the UK Government’s response to the European Commission’s Green Paper on Equality and non-discrimination in an enlarged Europe in 2004, the Government welcomed the opportunity, provided by the enlargement of the European Union, to learn about other initiatives to combat discrimination that are being used in the new Member States, and for networking between groups. We also highlighted the lack of information about rights and obligations under anti-discrimination legislation as one of the main obstacles to effective implementation of European legislation as well as a priority for EU funding. We are satisfied that the Commission’s proposal for the Year will aim to tackle this. We welcome therefore the Communication on Non-Discrimination and Equal Opportunities for All which recognises that evaluation of the existing legislation is needed before further legislation based on Article 13 is considered.

The Year encourages Member States to tackle multiple discrimination. This is important; those who are disadvantaged in society are often discriminated against in more than one way. For example, research has shown that disabled women are more likely to be disadvantaged both by comparison with other women and with disabled men.

Previous Years, including the 1997 Year against Racism and the 2003 Year of People with Disabilities, have been evaluated and the reports are on the Employment; Social Affairs and Equal Opportunities website: (http://europa.eu.int/comm/employment–social/evaluation/inclusive_en.html)

The European Commission’s ex-ante evaluation and impact assessment for the Year of Equal Opportunities concludes that European Years have proven to be an efficient instrument in putting issues at the top of the EU agenda and in ensuring political commitment from the various EU actors, such as EU institutions, Member States, regional and local bodies, social partners and civil society. The evaluations conclude that European Years have laid important groundwork for sustainable change, whether legal or policy commitments (for example, the Disability Action Plan and Resolutions adopted by the EU Council and Parliament) or the creation of networks such as the establishment of the European Network against Racism.

An independent evaluation of the UK’s programme of activities to support the European Year of Disabled People (EYDP) was commissioned in Autumn 2002. The evaluation found that the EYDP in the UK was run efficiently and well, that the projects had a real impact in involving organisations that had not previously
accessed national funding, and that disabled people were actively involved in all aspects of the planning and implementation of the EYDP.

In terms of the costs for funding of the Year of Equal Opportunities, the European Commission has not revealed the precise details of how they intend to allocate the budget amongst each Member State, as this is reliant on the Financial Perspectives for 2007–13 being agreed. The Commission will produce operational guidelines in early 2006 which will specify the exact amount that each Member State will receive. However, as outlined in the proposal the cost to the Commission of the Year, at EU and national level, is likely to be 13.6 EUR million, paying up to 80 per cent of EU wide activity and up to 50 per cent of Member State level activity (which will be divided pro rata to population size).

The UK Government expects that there will be some financial implications for the Year both in human resources and in funding, but with the launch of the UK Commission for Equality and Human Rights (CEHR) the Year provides an ideal opportunity to showcase the way in which we have brought the strands of equality together alongside human rights. Our preparations for the Year are at a very early stage, as they are reliant on the outcome of EU discussions. Therefore we cannot yet estimate the exact resource implications.

The Government will be looking at all Article 13 discrimination strands and has supported the Commission’s proposal that they should be treated equally. It is envisaged that the DTI will lead the implementation but a number of other departments and the devolved administrations will be heavily involved.

Negotiations on these proposals began in early July under the UK Presidency. As President we are seeking a consensus within Council that will lead to a political agreement rather than advocating a strong UK position.

The aim of the UK Presidency is to reach an agreement by early 2006 so as to allow Member States necessary time for planning their programme of activity. There have been four working groups thus far to discuss the proposal and the UK, with the help of the Commission, has made early contact with the European Parliament Civil Liberties (LIBE) Committee with a view to a first reading deal with the European Parliament. A Council Working Group on 5 October will aim to agree in outline a consolidated European Parliament and Council text. The European Parliament Committee will aim to vote on 22 November and a Plenary will aim to vote on 13–14 December.

10 October 2005

Letter from the Chairman to Meg Munn MP

Thank you for your letter dated 10 October which was considered by Sub-Committee G on 27 October.

We note your wish to support this Proposal because you hope it will encourage a more coherent EU approach to equality and anti-discrimination, particularly in new Member States, and because it is consistent with the UK position that awareness-raising and sharing good practice is useful and a better alternative to more European legislation. You also hope that it will draw positive attention to the UK’s good record in this field, especially because it will coincide with the launch of the proposed UK Commission for Equality and Human Rights. We agree that these are inherently laudable objectives which we would wish to endorse.

Thank you for reporting, in response to my letter dated 21 July, on the relative success of similar previous European Years. But, although this is encouraging, it does not necessarily mean that the new proposal will be equally successful.

In our view, everything will depend on how well thought-through the programme’s objectives are, and whether workable mechanisms are devised for seeing that those objectives are achieved across the EU. We think it is also important to ensure a sensible balance between Commission oversight, including the need for proper accountability for Commission funds, and giving due scope for national initiative.

We are not sure what you mean by saying that the lack of information about rights and obligations under anti-discrimination law is not only one of the main obstacles to effective implementation of European legislation but also “a priority for EU funding”. Does this mean that attention to the lack of information is, or should be in your view, a priority for EU funding and, if so, a priority in relation to what?

Your letter has not answered my question about which specific issues of competence the Government wishes to ensure will be fully discussed in Council Working Groups we would be grateful, if you could clarify that point.

Your letter says you hope that the European Year will be seen as a significant success for the UK Presidency. But it also says that you are not expecting to reach agreement before early 2006. As that will, of course, be under the next Presidency, we wonder to what extent agreement on the Year can be counted as a UK achievement.
It would be useful to know how much more progress you expect to make in Council Working Groups, as well as in negotiations with European Parliament, in clarifying the Commission’s plans before Council decisions are needed.

We appreciate that decisions on the programme budget will have to await the settlement of the Financial Perspective, and that it will not be possible to estimate the precise financial and other resource implications for the UK in the meantime. But we will want to look very closely at the budget proposals once the Financial Perspective has been settled to ensure that they are reasonable and likely to give good value for money and to know what the financial and other resource consequences are likely to be for the UK.

All in all, we would still like to have a clearer idea than we have seen so far of what this initiative is likely to involve, and whether it is likely to add significantly to the objectives you have identified. We will continue to hold the proposal under scrutiny and look forward to your further report on progress made, as well as your comments on the points outlined above.

31 October 2005

Letter from Meg Munn MP to the Chairman

Thank you for your letter of 31 October, concerning the Year of Equal Opportunities. I apologise for the delay in responding to your reply, but my attention, and that of my officials, has been on UK Presidency events and on providing your Committee with evidence on the European Institute for Gender Equality.

May I begin by updating you on progress made thus far on the negotiations for the Year of Equal Opportunities under the UK Presidency. As I mentioned in my previous letter, five working groups have been held and Council reached a common position in the last meeting on 5 October. The Chair, with the Commission, has since been working with the European Parliament Civil Liberties (LIBE) Committee to reach a first reading deal. Coreper, on 30 November, gave the Presidency a mandate, by qualified majority, to write to the European Parliament to say that if Plenary follows the Committee vote, Council will accept the EP First Reading. The Plenary will vote on 13 December. The decision is then likely to go to a Council in January for agreement as an A point.

I agree with you that success of the Year will be dependent on the programme’s objectives and how they are achieved. The exact mechanisms for this have not been determined yet and will of course be built upon once we have a decision that sets up the Year. We look forward to receiving the European Commission’s operational guidelines early next year, which will assist Member States in implementing the Year.

However, we will of course work with our key stakeholders to ensure that they are engaged and involved in the Year. With the establishment of the Commission for Equality and Human Rights (CEHR) the UK should be in a good position to use existing networks. The UK can also build upon the EU Stop Discrimination national working group, (which includes DWP and a wide range of voluntary sector bodies), which effectively advises the EC on how to raise the profile of the issue of equality. Quarterly working group meetings have given way to contributing to draft informational materials and shaping the UK Action Plan.

Our thinking thus far, using the good example of implementation of the Year of People with Disability, is that the Year of Equal Opportunities could include a small number of large projects, which tackle three or more diversity strands and have a, county or national reach and a larger number of smaller projects, which are grass roots based. These projects must be spread throughout the UK. They would need to be selected carefully and, where possible, they should deliver at different times during 2007, to maximise the publicity value of each. Scoping of implementation of the Year is obviously and necessarily at a very early stage.

Although the decision should be agreed in January under the Austrian Presidency, agreement on the Year will still be counted as a UK achievement as all negotiations will have been handled during the last six months and cooperation with the European Parliament will have been handled by the UK Presidency.

To clarify the point about lack of information on anti-discrimination being a priority for EU funding, information and awareness raising activities of anti-discrimination is one of the priorities for the UK Government in ensuring full use of EU funding in tackling discrimination.

On the issue of competence, the UK Presidency sought to ensure that all six strands of Article 13 were covered adequately in the decision and that when implementing the Year, all Member States must provide projects to cover all six. The UK will also ensure that there is a fair spread of projects covering each strand when implementation plans are finalised.
As I mentioned previously, we hope that the decision will be agreed in January in order to allow Member States enough preparation time for the Year to be implemented in 2007. I therefore hope you are able to give your early approval to the Proposal.

8 December 2005

EUROPEAN YEAR OF INTERCULTURAL DIALOGUE (13094/05)

Letter from the Chairman to David Lammy MP, Minister for Culture,
Department for Culture, Media and Sport

Your Explanatory Memorandum dated 25 October was considered by Sub-Committee G on 17 November. We support the general objectives of this programme but have a good deal of sympathy with those Member States who have asked for more clarity about the proposals and to know how the budget will be distributed between Member States. This may become clearer as the negotiations proceed, but the Commission document is couched in terms that do not make it easy to understand precisely what is intended by this initiative or what it might be expected to achieve in practical terms.

With so much cultural interchange already taking place between Member States, and so many new Commission-funded cultural programmes in the pipeline, we also wonder how the Year will add significant value.

It would also be interesting to know what activities the Government propose to promote the Year in the UK. We are therefore holding this document under scrutiny and would welcome a further report in due course.

22 November 2005

EUROPEAN YOUTH POLICY (11586/04, 13856/04)

Letter from Kim Howells MP, Minister of State for Life-long Learning, Further and Higher Education,
Department for Education and Skills to the Chairman

13856/04: European Youth Policy: Follow up to White Paper on a New Impetus for European Youth


I thought this might be an appropriate point at which to update your Committee on the most recent developments in the European youth policy area.

Firstly, I enclose copies of Presidency Resolutions (not printed) which have been discussed in Youth Working Party. These have direct links to the White Paper on a New Impetus for European Youth. They are the Luxembourg Presidency’s attempt to provide more focus for policy exchange on these topics. The Resolutions are likely to appear for adoption on the Education and Youth Council Agenda on 23–24 May 2005.

Secondly, I note your concern about aspects of the “Youth in Action” programme proposal and your request for a new EM when a new text emerges and before the proposal is due for adoption. However, I thought you might welcome a short update on the issues you raise in your letter of 28 February.8

The proposal has returned to Youth Working Party, although there is no sign of the European Parliament’s first reading opinion. My officials are continuing to argue for the age range to be 15–25, as it is in the current Youth programme. The UK has proposed new text for the aims and objectives of the programme to enable a more thorough and meaningful evaluation of the programme to be undertaken at the mid-term point. We are also pressing for the anomalies in the wording of this proposal on immigration, health and social security and the current acquis on the subject to be removed by a redrafting of Article 6 in this proposal.

6 April 2005

Letter from Bill Rammell MP, Minister of State for Life-long Learning, Further and Higher Education,
Department for Education and Skills

I am writing to update your Committee on further progress on the “Youth in Action” programme during the UK Presidency and attach the latest consolidated text for the programme. This incorporates changes made at the Youth Working Group meeting on 29 September 2005 and will be discussed further at meetings in October.

I hope that this correspondence will outline the key developments since the earlier proposal, as what we are seeking at this stage is short of full adoption. However, I am happy to provide a further EM on the latest text if that would be helpful.

The UK Presidency hopes to reach a partial political agreement on the content of the “Youth in Action” programme at the Education and Youth Council meeting on 15 November 2005.

Partial Political Agreement (PPA) is a way of securing Council agreement on the non-budgetary elements of the proposal, while leaving aside those articles which concern the budgetary amounts, or which are directly related to the budgetary amount. As adjustments to parts of the programmes might be necessary once the budgetary amounts are known it would be possible to reopen parts of the text again once the overall programme budget has been decided.

It should be noted that all areas of the proposal that are affected by the financial perspective will be left open until the financial provisions are agreed and have been exempt from negotiations. This includes the age range for the programme which will be agreed once the budget has been determined. However, during the course of negotiations the Council has made a number of changes to the rest of the programme which are expected to be agreed at the November Council. These changes answer some of the concerns that you raised in previous correspondence and include:

— Drafting changes—minor alterations have been made to correct translation errors and ensure that the wording is applicable to all Member States.
— Monitoring and evaluation—Following UK pressure the text has been redrafted to enable the programme to be better monitored and evaluated against its objectives. For example, the recitals have been altered to refer to monitoring and evaluation that includes measurable relevant objectives and indicators.
— Immigration and visa procedures—the proposal requiring Member States to take appropriate measures to ensure that beneficiaries from third countries are admitted to their territory has been deleted. The programme is also now in line with the wording of the current programme and the UK position on health and social security issues.

There is widespread support in the Council for the substance and composition of the proposed Youth in Action programme. There are a few minor outstanding issues which affect certain Member States and need to be resolved before the November Council meeting. The main issues include whether a ministry can be appointed as the national agency in smaller countries, how to validate and recognise informal learning and whether reference should be made to civic and voluntary services at national level. None of the outstanding concerns are contentious issues for the UK and it is likely that these will be resolved by the November Council meeting.

I am also writing to inform you of the outcome of the European Parliament Committee vote on the “Youth in Action” programme which took place on 12 September and to forward you a copy of the amendments adopted by the European Parliament Committee.

In general, the amendments are of a minor nature and are unlikely to cause other Member States any major problems in order to reach a partial political agreement at the Education, Youth and Culture Council meeting in November.

Substantial amendments are proposed to the financial framework, in particular proposing the weighting of funding for individual actions and an increase in funding for the European Youth Forum. The European Parliament also proposes an increase in the overall budget for the Youth in Action programme. However, these amendments will be out of the scope of the partial political agreement until the financial perspective is agreed.

Additional amendments include textual alterations to include reference to linguistic diversity and promoting tolerance and equality. It is unlikely that these will be rejected by the Member States as a number of similar drafting changes have already been accepted by the Council.

Similarly, amendments to ensure that young people with disadvantages can participate in the programme on equal terms are likely to be in line with the Council’s position. The same is also true of proposals for youth seminars and setting a minimum period for European Voluntary Service.

I will of course continue to keep you and your committee fully informed of progress and I will write again to inform you of the EP plenary opinion once it has had its vote on 25 October.

I hope this is a helpful clarification of where things stand in the Council negotiations and how the EP Committee amendments are likely to be taken forward.

12 October 2005
Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 12 October which was considered by Sub-Committee G on 27 October.

We are glad to know that further progress has been made by the Council and note that the Government is hoping to secure partial political agreement, apart from the budgetary aspects, at the Education and Youth Council meeting on 15 November.

The changes detailed in your letter seem to be broadly satisfactory and consistent with the points raised in our earlier correspondence, notably in my letters dated 21 October 2004 and 28 February 2005 to your predecessor Kim Howells. We are glad to note that these changes include improvements in the requirements for monitoring and evaluation against objectives and regarding immigration and visa procedures.

You will see that my earlier correspondence supported Kim Howell’s views on the need for the new procedures to be simpler and easier to follow, and to lead to greater decentralisation, so long as proper accountability could be assured. You have not commented specifically on that aspect in your letter and we would be glad if you would do so. But, provided that you are satisfied that the new text also incorporates improvements to that end, we are willing to release the present document from scrutiny to enable the proposed partial political agreement to be secured at the Council meeting.

This must, of course, be on the understanding that we will want to examine the financial aspects of the programme very carefully once they are submitted for scrutiny following the settlement of the Financial Perspective. We will expect the proposed overall increase in the budget to be fully justified and every effort made to ensure that the new programme achieves good value for money.

We note that you do not expect the question of age ranges, which was also raised in earlier correspondence, to be settled until the budget has been agreed. We hope that you will also be able to achieve a satisfactory outcome on that.

We look forward to receiving your report on the Council meeting in due course.

31 October 2005

EVALUATION OF COMMUNITY ACTIVITIES 2002–03 IN FAVOUR OF CONSUMERS (12805/05)

Letter from the Chairman to Gerry Sutcliffe MP, Minister for Employment Relations, Consumers and Postal Services, Department of Trade and Industry

Thank you for your Explanatory Memorandum which was considered by Sub-Committee G (Social Policy and Consumer Affairs) on 24 November 2005.

We are content to clear this document from scrutiny as it relates to initiatives funded in 2002 and 2003. But Members considered that the report provided very little substantive evaluation of whether the consumer protection initiatives financed by the Commission achieved any clear output and added value to consumer protection initiatives at national level.

The Sub-Committee will be taking this issue up with the Commission in due course. But you should bear in mind that this Evaluation Report does not convince us of the need for a substantial increase in budget for Consumer Protection initiatives, as is proposed by the Commission in its Joint Health and Consumer Protection Strategy for the period of the next Financial Perspective (EM 8064/05). Therefore we urge you to ensure that negotiation of the Commission’s 2007–13 proposal is realistic about what can be achieved at EU level. We also support you in your resolve to encourage more comprehensive evaluation of Community activities.

24 November 2005

FOOD ADDITIVES (13489/04)

Letter from Caroline Flint MP, Parliamentary Under-Secretary of State for Public Health, Department of Health to the Chairman

I am writing to update you on developments with this proposed Directive, which has been retained under scrutiny by the House.

The Food Standards Agency carried out an initial consultation in October 2004 to inform the UK position in preparation for the commencement of EU negotiations on the above proposal. This was subject to separate consultations in England, Scotland, Wales and Northern Ireland. This consultation resulted in comments of substance only from the meat products industry, who generally welcomed the derogation for nitrites and
nitrates in traditional UK meat products which had been based on their requests to the European Commission, but suggested certain amendments to more fully meet their technological needs. The Luxembourg Presidency has convened four meetings at official level. Whilst all Member States generally supported the Commission’s proposal, discussions have focussed heavily on the entries that would permit certain traditional UK and Irish bacon and ham products to be exempted from the new provisions on nitrates and nitrates in the proposal. After initial queries from a number of Member States on the technological validity and the remit of the UK entries, at the most recent meeting it became clear that, with the exception of Denmark, there is general support for the concept of including derogations which would satisfy the requirements of traditional meat products in individual Member States. The UK has been asked to take forward this issue during its Presidency.

Extensive discussions have also taken place on the new additive soybean hemicellulose, with a number of Member States continuing to oppose its use in products such as rice, noodles and fine bakery wares because of its allergenic potential. A number of proposed new entries have also been discussed, with the Commission supporting a UK proposal for sulphites at levels below 10 mg/kg to be permitted in table grapes.

The Luxembourg Presidency will prepare an updated proposal for further discussion at the next working group meeting, which will be chaired by the UK Presidency and take place on 8 July. The European Parliament’s Committee for Environment, Public Health and Food Safety discussed first reading amendments on the Commission’s proposal on 14 June, and a Plenary vote is expected either in July or September.

21 June 2005

Letter from the Chairman to Caroline Flint MP

Your letter dated 21 June was considered by Sub-Committee G on 6 July.

We are grateful to you for reporting on the results of the Food Standards Agency’s initial consultation and on the initial Working Group meetings held under the Luxembourg Presidency. We note that the outcome of the initial consultation appears to have been broadly satisfactory, at least so far as the UK meat products industry is concerned although they have suggested certain changes. We wonder why other industries did not respond.

We also note all Member States except Denmark now apparently support the concept of including national derogations for traditional meat products and hope that it will be possible to secure agreement on that during the UK Presidency.

We also note that various other changes have been proposed during Working Group discussion, from which the Luxembourg Presidency was due to prepare an updated proposal. We would be glad to know whether that updated proposal has been produced and how you plan to deal with this matter during the UK Presidency.

We propose to continue to retain this document under scrutiny pending your reply.

8 July 2005

Letter from Caroline Flint MP to the Chairman

As requested in your letter of 8 July, I am writing to update you on developments with this proposed Directive, which has been retained under scrutiny by the House.

A further Council Working Group meeting was convened by the UK Presidency on 8 July, during which good progress was made on achieving consensus on this dossier. The European Parliament’s Committee for Environment, Public Health and Food Safety adopted certain amendments to the Commission’s proposal on 14 June, and the majority of these were considered acceptable by the Council Working Group.

On the issue of the derogation for nitrites/nitrates in meat products, the Presidency has provided, on the basis of information supplied by Member States, a comprehensive list of national products where the general rules on nitrites/nitrates in the Commission’s proposal cannot be adhered to because of specific technological needs. This proposal was well received by Member States at the Working Group meeting and is in line with the view of the European Parliament’s Committee for Environment, Public Health and Food Safety. It will also enable the requirements of the UK and Irish meat products industries to be met, whilst protecting the health of consumers. An alternative proposal by the Belgian authorities to list traditional technological processes rather than products was supported by many Member States. The Commission considered this proposal out of line with the opinion of the European Food Safety Authority, and the European Court of Justice, and may attract further legal challenge. It would also likely to be opposed by the European Parliament. In the light of this, the UK Presidency proposed a compromise with the approach of granting derogations for specific national products.
Further discussions also took place on the new additive, soybean hemicellulose. Most Member States agreed with the Presidency’s compromise proposal to restrict its use in rice, noodles and fine bakery wares to those that are pre-packaged intended for retail sale, to address concerns raised regarding its allergenic potential. A few Member States continued, however, to express concern at the use of this additive in processed potato and rice products, and in egg products.

A number of proposed new entries were also discussed, with most Member States opposing the inclusion of two new additives, tertiary-butyl hydroquinone (TBHQ) and Starch Aluminium Octenyl Succinate (SAOS), which had been proposed by the European Parliament, pending further discussions at official level on the need for their technological use. Agreement was reached on the UK’s request for sulphites at levels below 10 mg/kg to be permitted in table grapes and the edible parts of fresh lychees.

With the exception of the entries on nitrites and nitrates in meat products, other entries in the Commission’s original proposal attracted few comments from industry. The Food and Drink Federation (FDF) were generally supportive of the proposal and requested three new entries on behalf of their members. The Agency was unable to take forward two of these requests, which were received too late to be presented to the Luxembourg Presidency. The other earlier request was raised at Council Working Group by the Agency but received no support from other Member States. The Agency has reported the outcome to the FDF who have not pursued this any further.

The Presidency met with the Rapporteur of the European Parliament’s Committee for Environment, Public Health and Food Safety on 13 July and discussed the possibility of a first reading agreement on this dossier. The Committee agreed to move its Plenary vote until the end of October to allow sufficient time to achieve first reading agreement and was receptive to working towards this.

21 July 2005

Letter from Caroline Flint MP to the Chairman

I am writing to inform your Committee that, following informal discussions between the UK Presidency, the European Commission, and the European Parliament’s Committee for Environment, Public Health and Food Safety, a First Reading agreement was reached on the above proposal at the European Parliament’s Plenary meeting on 26 October 2005. The formal adoption of the proposal will take place at a future meeting of the Council of the European Union.

A satisfactory conclusion was reached on several outstanding items. In particular, agreement was obtained from Member States on the use of nitrites and nitrates in meat products to take account of advice from the European Food Safety Authority to reduce levels of these additives, whilst recognising their use in certain traditional products in Member States. Exemptions were agreed to allow specialist meat products to remain on the market in Member States, including, for example, Wiltshire ham and other traditional meat products in the UK. Agreement was also reached on the UK’s request for sulphites at levels below 10 mg/kg to be permitted in table grapes and the edible parts of fresh lychees.

In addition, agreement was reached on the inclusion of a number of new additives in the proposal, including tertiary-butyl hydroquinone (TBHQ) and Starch Aluminium Octenyl Succinate (SAOS) which had been proposed by the European Parliament. The Presidency’s compromise proposal to restrict the use of soybean hemicellulose in rice, noodles, fine bakery wares and processed potato and rice products to those that are pre-packaged and intended for retail sale, to address concerns raised regarding its allergenic potential, was also agreed.

30 November 2005

Letter from the Chairman to Caroline Flint MP

Thank you for your letter dated 30 November which was considered by Sub-Committee G on 15 December.

As you know, this Proposal was cleared from scrutiny by the Sub-Committee on 3 October in the expectation that a proposed First Reading agreement would be endorsed by COREPER on 5 October.

We note that the First Reading agreement was reached at a plenary meeting of the European Parliament on 26 October and that formal adoption of the Proposal is due to take place at a future meeting of the Council.

We are glad to see that a satisfactory conclusion was reached on some outstanding items of importance to the UK, including allowing specialist meat products such as Wiltshire ham to remain on the EU market.

15 December 2005
GENETICALLY MODIFIED MAIZE (13042/05)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under-Secretary of State for Public Health, Department of Health

Your Explanatory Memorandum dated 13 October, submitted on behalf of the Food Standards Agency, was considered by Sub-Committee G on 3 November.

Although this is the first application to be submitted for scrutiny under the GM food and feed Regulation (EC) No 1829/2003, we note that the circumstances are identical with four applications previously cleared by the Sub-Committee under the former Regulation (Bt11 sweetcorn—5916/04—NK603 maize—11068/04, GA21 maize—11928/05 and MON863 maize—12197/05).

We are prepared to lift scrutiny on the same understanding that, as stated in your Memorandum, the proposal does not involve permission for growing genetically-modified maize line 1507 in the EU, but only the marketing of products derived from it, and that the Food Standards Agency has advised Ministers that genetically-modified maize line 1507 meets the necessary requirements for authorisation.

We note that the application is likely to be considered by the Agriculture and Fisheries Council meeting on either 22–24 November or 19–21 December. We would be grateful if you could report on the results in due course.

4 November 2005

GENETICALLY MODIFIED MAIZE (14425/05)

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

I am writing to inform you of a proposal to approve the placing on the market of a GM maize product (MON 863 × MON 810) which is on the agenda for the 2 December Environment Council as a “B” point.

The proposal is part of the routine process for dealing with applications to place GM products on the market. An Explanatory Memorandum was prepared and submitted on 22 November 2005. The UK voting position on this dossier was agreed by Cabinet Committee correspondence prior to officials voting on this dossier at 2001/18 Regulatory Committee stage. I wrote to you in July offering to provide the Explanatory Memorandum following the discussion at the 2001/18 Regulatory Committee, in the hope that this would enable your Committee to give the matter its consideration before the dossier was discussed at Council. Unfortunately, however, this proposal has been processed very quickly and will come to an Environment Council vote within three months of the vote at Regulatory Committee stage instead of the five to seven months that it has taken on previous proposals. Additionally the draft proposal had to be re-drafted following the Regulatory Committee so a definitive text upon which to base the memorandum was not available until 14 November. I apologise that we have been unable, owing to these circumstances, to submit the EM in time for your Committee to clear this proposal before the Council vote. It is clearly unfortunate that scrutiny procedures cannot be completed but I wish to inform the Committee of the Government’s decision to proceed.

30 November 2005

GM MAIZE LINE MON863 (12197/05)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under-Secretary of State for Public Health, Department of Health

Your Explanatory Memorandum dated 20 September was considered by Sub-Committee G on 20 October.

As with the parallel application for foods and food ingredients produced from genetically modified round-up ready maize line GA21 (11928/05), on which I have written separately to you, we understand from your Memorandum that this proposal does not involve permission for the growing of genetically-modified maize line MON863 in the EU, but only the marketing of products derived from it.

Similarly, we also note that the Food Standards Agency has advised Ministers that MON863 meets the necessary requirements for authorisation.
Our application is similar to earlier applications for authorisation for the marketing of sweetcorn derived from Bt11 genetically-modified maize (5916/04) and of genetically-modified Maize Line NK603 (11068/04), which were cleared from scrutiny by the Committee on the same grounds.

We are therefore prepared to lift scrutiny, but would be grateful if you could report on the outcome of the Agriculture and Fisheries Council meeting in due course.

20 October 2005

Letter from Caroline Flint MP to the Chairman

In your letter of 20 October you requested that I report on the outcome of the 24–25 October Agriculture and Fisheries Council meeting, at which a vote was to be taken on the authorisation of foods and food ingredients produced from MON863 maize. My Rt Hon Friend, the Secretary of State for Environment, Food and Rural Affairs, has already provided Parliament with a Written Statement, which appeared in Hansard on 1 November.

In the absence of a qualified majority, the Council was unable to reach a decision on the Commission’s proposal for authorisation of the use of MON863 maize in food. The Commission is therefore free to implement its proposal under its own competence.

The House of Commons European Standing Committee debated this proposal on 14 November. The proposal cleared Parliamentary scrutiny in the House of Commons following a deferred division on 16 November.

2 December 2005

Letter from the Chairman to Caroline Flint MP, Parliamentary Under-Secretary of State for Public Health, Department of Health

Your Explanatory Memorandum dated 15 July, submitted on behalf of the Food Standards Agency, could not be considered before Parliament rose for the Summer Recess because the official text of the Commission Proposal had not been received at that time. We have since received the official text dated 5 September and a letter dated 12 October from the Food Standards Agency to the Clerk of Sub-Committee G about it. These documents were considered by Sub-Committee G on 20 October.

We note that an urgent decision is required because this Proposal has been placed on the Agenda of the Agriculture and Fisheries Council meeting on 24–25 October.

We understand from your Memorandum that:

— the Proposal does not involve permission for the growing of genetically-modified GA21 maize in the EU; but the marketing of products derived from it; and that
— the Food Standards Agency has advised Ministers that GA21 maize meets the necessary requirements for authorisation.

We also note that the application is similar to earlier applications for authorisation for the marketing of sweetcorn derived from Bt11 genetically-modified maize (5916/04) and of genetically-modified Maize Line NK603 (11068/04), which were cleared from scrutiny by the Committee on the same grounds.

We are therefore prepared to lift scrutiny, but would be grateful if you could report on the outcome of the Agriculture and Fisheries Council meeting in due course.

20 October 2005

Letter from Caroline Flint MP to the Chairman

In your letter of 20 October you requested that I report on the outcome of the 24–25 October Agriculture and Fisheries Council meeting, at which a vote was to be taken on the authorisation of foods and food ingredients produced from GA21 maize. My Rt Hon Friend, the Secretary of State for Environment, Food and Rural Affairs, has already provided Parliament with a Written Statement, which appeared in Hansard on 1 November.

In the absence of a qualified majority, the Council was unable to reach a decision on the Commission’s proposal for authorisation of the use of GA21 maize in food. The Commission is therefore free to implement its proposal under its own competence.

The House of Commons European Standing Committee debated this proposal on 17 October. The proposal cleared Parliamentary scrutiny following a deferred division in the House of Commons on 19 October.

2 December 2005
HEALTH AND CONSUMER PROTECTION STRATEGY (8064/05)

Letter from Patricia Hewitt MP, Secretary of State for Health, Department of Health

I am writing about the above proposal on a programme of community action in the field of health and consumer protection which is on the agenda for the Health Council on 3 June 2005. At this stage only part of the proposal is available in English and the full version is needed to form a proper view of the impact of the proposals. The Government will submit an Explanatory Memorandum to the Committees when a full translation of the text is available. It is unclear what the timetable will be for full translation.

Unfortunately the timing of the Health Council on 3 June means that there will not be an opportunity for scrutiny procedures to be completed and for the Government to get the Committees’ views before the meeting takes place. However, the Government is conscious of the Committee’s function and for it to make its views known on proposals for effective scrutiny to take place. The debate at Council will be an initial discussion and we expect negotiations to continue into 2006.

I will write to you again when further information is available and a Government view is formulated on the proposals.

27 May 2005

Letter from the Chairman to Lord Warner, Minister of State, Department of Health to the Chairman

Thank you for your Explanatory Memorandum which was considered by Sub-Committee G (Social Affairs and Consumer Protection) on 27 October 2005.

The Commission’s proposal for a Health and Consumer Protection Strategy 2007–13 is ambitious and appears to be stretching the Treaty Provision for Community Action in these areas. This is particularly true for the health policy actions which the Commission is proposing. We therefore, support the Government in its resolve to ensure that all elements of the programme fall fully within the competence provided by Article 152. We would be grateful if you could send a full analysis of the Commission objectives and actions that the Government believe lie outside Community competence and the reasons why this is so.

We also believe strongly that any extension of the present EU programmes for Health and Consumer Protection must be based on clear evidence that Community action so far has added value and has shown progress towards reaching the stated goals. We would therefore urge the Government to support those Member States that have argued in the Council Working Groups that the current EU awareness-raising campaigns for public health and disease prevention must be evaluated before the Commission develops new ones.

This leads us to the issue of the Commission’s proposed increase in financial allocation for the new joint programme. Does the Government believe the €1.2 billion over seven years can be used effectively? Surely any increase in budgetary allocations can only be proposed after the mid-term review of the present health programme has been published.

We acknowledge that the EU has a role in dealing with health threats that transcend national borders, such as avian flu and HIV/AIDS, and in the area of consumer protection, but until we have received more information on the issues raised above, we have decided to hold the document under scrutiny.

31 October 2005

HEALTH AND LONG TERM CARE: OPEN METHOD OF CO-ORDINATION (8131/04)

Letter from Rt Hon John Hutton MP, Minister of State, Department of Health to the Chairman

I am writing further to your letter of 21 October 2004,9 which asked that the Committee be kept informed of significant developments and requested a copy of the policy note the Government is submitting this year. There have been no further significant developments as the social committee has not met to discuss these issues since my last letter to you. However, the oral evidence session requested by the other Committee was postponed at the Commons’ request from December to 23 February 2005. I am now able to report the Commons Committee cleared this proposal from scrutiny at their meeting on 15 March, asking to receive further progress reports. I will send a copy of the policy note to both Committees. This is due to be sent at the end of April.

24 March 2005

Letter from the Chairman to Rt Hon John Hutton MP

Your letter dated 24 March was considered by Sub-Committee G on 6 April.

We are grateful to you for this interim report. We note that no significant developments have taken place at an EU level on this matter since your letter to me dated 20 September 2004, although you gave oral evidence about it to the Commons Committee on 23 February.

We also note that the policy note which the Government are contributing to this exercise is due to be issued at the end of April and that you will be sending copies to the Scrutiny Committees of both Houses.

In the circumstances, we are retaining this document under scrutiny pending consideration of your policy note. We hope that this will reflect the views of the Committee as expressed in my letter to you dated 21 October 2004.

7 April 2005

Letter from Rosie Winterton MP, Minister of State, Department of Health to the Chairman

You will be aware of the ongoing European process of Open Method of Co-ordination on healthcare and long-term care (OMC). My colleague, John Hutton, gave oral evidence on this topic to the House of Commons on 23 February 2005. The UK recently sent a national update on healthcare and long-term care to the European Commission’s DG Employment, Social Affairs and Equal Opportunities (DG EMPL), a copy of which is attached.

This national report is a preliminary report covering the challenges facing Member States’ healthcare systems, current reforms and medium term policies. These reports were called for in the conclusions of the Health Council in October 2004. They will contribute to the framing of the streamlined process in 2006, suggesting possible future directions and approaches for OMC-based exchanges.

The UK report necessarily covers the regions of England, Scotland, Wales and Northern Ireland separately. A common introduction on how OMC may develop in future is followed by the specifics of the structure, health indicators, accessibility, quality and financial sustainability in each of the countries.

A substantive discussion will be held at the Social Protection Committee meeting on 14 July, when there will be a review of possible lessons and consideration of likely common objectives. In November 2005 (date to be confirmed), the Commission is due to present a Communication offering policy orientations, including common objectives and working methods, for the new streamlined process. We will ensure that you are kept updated on this process.

1 July 2005

Annex C

UNITED KINGDOM NATIONAL REPORT FOR THE OPEN METHOD OF CO-ORDINATION ON HEALTH CARE AND LONG-TERM CARE JUNE 2005

INTRODUCTION

In October 2004, the EU Health Council endorsed the Social Protection Committee’s proposal that Member States should prepare preliminary reports covering “the challenges facing their healthcare systems, current reforms and medium term policy”. The UK’s report is provided here, and contains the following information:

(a) The UK view of how the OMC in healthcare and long-term care can develop effectively;
(b) Summary of the UK National Health Service;
(c) UK Health Indicators; and
(d) Access, Financial Sustainability, and Quality.

Due to the devolved nature of responsibility for health and long-term care systems within the component countries of the UK, information is provided separately on health service provision within England, Scotland, Wales and Northern Ireland.

The information in this report has been gathered from government White Papers and other relevant legislative texts, which themselves have been subject to widespread public consultation. For example, the English “NHS Improvement Plan” of June 2004 was consulted on widely by relevant organisations and the public in a nationwide exercise. Further engagement with health stakeholders on the Open Method of Co-ordination in healthcare and long-term care will take place as this process unfolds.
A. The UK View of How the OMC in Healthcare and Long-Term Care Can Develop Effectively

As the current Treaty recognises, the UK is responsible for the organisation and delivery of healthcare services. However, within this clear competence framework we recognise that there is room for significant cooperation within European healthcare systems through a non-regulatory method such as the OMC. The economic significance of health systems in the EU economies, and also the fact that patients move around between systems makes this important.

All Member States do want to share experiences in the modernisation of their systems, apply best practice, and avoid reinventing the wheel. The UK is keen to explore alternative avenues, as long as these are not intrusive.

For the OMC to be effective it must recognise the need to be light touch, as ministers endorsed in the recent SPC opinion on extending the OMC to healthcare and long-term care. The UK has made clear that this process should not lead to new health indicators and that instead the process must use information that Members States already provide in areas such as access, financial sustainability and quality.

Equally, to foster the climate of co-operation and learning, this process must focus on data that enables Member States to learn lessons for their own systems as opposed to comparing performance between Member States. There should be no league tables, or guidelines dictating when MS plan their priorities.

In addition, this process should focus its effort on how best to extract value from EU learning on healthcare issues. It may, for example, be appropriate for the Member States along with the Commission to identify key macro health questions that Member States are keen to learn more about, within the three identified objectives. Other Member States would then be invited to outline how they have tackled these issues and Member States can then get added value from practical examples and solutions that are suggested. Of course, one solution may work well in one Member State but not be suited to another. However, Member States will be able to apply the practical lessons from these examples as they see appropriate in order to tackle the issue identified.

It is also important to recap other work going on within other areas to ensure there is no overlap. The Commission-led Group on patient mobility issues (High Level Group on Health Services and Medical Care) will be helpful at tackling some very practical problems to make life easier and safer for the small number of patients who move across borders. What kind of information do you need if you visit a hospital in another country? Can it be made easier for people from smaller countries to find out about centres of excellence on rare conditions in other countries, and so on.

The Council-led Group (Council High Level Health Group) will be a useful forum for tracking major initiatives from across the Commission which could significantly impact on health, and providing a forum for Member States to consider these from a health perspective.

In summary the OMC is an appropriate forum for Member States to have a look at macro issues in health systems—how are we modernising them, how do we know what is working, how can we learn from each other, in a structured way which, however, is not linked to any harmonising legislative activity or new indicators. The UK is keen to engage in a process that encourages collaboration between Member States whilst being clear about respective competencies.

B. Summary of the UK National Health Service

Overview

The Government is the dominant supplier of health care to the population of the UK, through the National Health Service (NHS), which provides comprehensive and universal coverage. Visits to the doctor and treatment in hospital are provided free of charge at the point of delivery. Since the NHS is funded by taxation and National Insurance, enrolment is effectively compulsory and based on residency in the UK. People can choose private health care, with or without private insurance, without affecting their access to NHS treatment.

Within government, responsibility for healthcare is devolved to the Component countries of the UK, with England, Scotland, Northern Ireland and Wales each responsible in their respective areas.

The Department of Health (DH) in London is responsible for setting health and social care policy in England. This Department, along with its counterparts in Scotland, Wales and Northern Ireland, agrees with the Treasury how much money is to be allocated to the NHS on a three- or four-year cycle. The division of money throughout the United Kingdom is partly constrained by a formula designed to improve the geographic distribution of medical resources. Funding and decision-making are increasingly devolved to a local level.
**England**

**Structures:**

*Strategic Health Authorities:* In England, 28 Strategic Health Authorities (SHAs) look after the healthcare of their region, being responsible for the development of strategies for health services in their local area, ensuring the quality and increasing the capacity of these services. SHAs are accountable to the Secretary of State for Health, who is the Government minister responsible for the NHS in England and answerable to Parliament for its work.

*Primary care trusts:* Health services are divided into “primary” and “secondary” care, and are provided by smaller local NHS organisations called “trusts”. Trusts are purchasing bodies, receiving the majority of the health budget directly, and employing most of the NHS workforce, including nurses, doctors, dentists, as well as allied health workers.

The 303 Primary Care Trusts (PCTs) vary in size and population covered, and are responsible for the provision and commissioning of services. PCTs work with local authorities and local health and social care agencies to ensure the community’s health needs are met. They are also responsible for secondary planning, commissioning hospital care, and deciding on the quantity and quality of services provided by hospitals, dentists, patient transport and population screening.

PCTs handle 80 per cent of the total NHS budget, managing budgets for local services. A contracting prospective payments system is being introduced, allowing money to follow patients, with PCTs paying hospitals and other providers on the basis of the number of treatments they carry out.

*NHS Trusts:* NHS services are run and managed by NHS Trusts. There are three main types of trusts:

- 176 acute trusts, providing medical and surgical care and are usually centred on a teaching or district general hospital; an acute trust may manage more than one hospital;
- 88 mental health trusts, either providing services in hospitals or in the community; and
- 31 ambulance trusts.

Acute Trusts also decide on a strategy for how the hospital will develop to achieve service improvement. SHA’s manage their performance but Trusts are self-governing organisations. Trusts report directly to the Secretary of State and are responsible for the service they provide to the public. They receive most of their income from service level agreements from Primary Care Trusts to provide services. Trusts are also obliged to deliver national priorities.

*Foundation Trusts:* Since April 2004, certain NHS trusts (the best performing hospitals with 3 star ratings) have been allowed to receive foundation status. The Secretary of State no longer has any powers of direction over Foundation Trusts as they will operate as not-for-profit Public Benefit Corporations. They have a stakeholder board of Governors with a majority of members elected and receive most of their income from legally binding contracts with Primary Care Trusts. Foundation hospitals have the power to manage their own budgets. They are able to borrow money privately and set their own financial and operational priorities.

Foundation Trusts represent the Governments commitment to decentralising the control of public services and are viewed as the way to improve service responsiveness and the standards of care in the NHS. With much more financial and operational freedom than other NHS Trusts, they are tailored to the needs of local populations and run by local managers, staff and members of the public.

**Scotland**

The first elections for the Scottish Parliament were held in May 1999. The Parliament and its Executive has responsibility for health and social services in Scotland, among other public services, and can pass primary legislation in these areas. The UK Parliament in Westminster retains control over a range of reserved issues, including matters relating to the protection of a single UK market (e.g. the licensing of medicines).

**Structures:**

*NHS Boards:* Powers to provide comprehensive healthcare services are conferred by the Scottish Parliament on Scottish Ministers who in turn delegate these functions to 15 area health boards, including three covering small populations in the Islands areas. Ministers fund the health boards and appoint the members of health boards. Boards employ all NHS staff. NHS Trusts ceased to exist in Scotland in 2004 and health boards now carry out the full range of functions including planning and providing healthcare services, public health services, and health improvement.
Community Health Partnerships: In order to provide a clearer focus for integration between primary care, specialist services and social care, NHS Boards are establishing Community Health Partnerships. These multi-agency and multi-professional partnerships will be expected to reduce health inequalities for their local communities and improve service outcomes, working in new ways with local service users, patients and their carers.

Special Health Boards: Some national functions such as ambulance services, blood donation and product manufacture, telephone health advice and the provision of secure accommodation for the mentally ill are provided by eight special health boards which cover the whole of Scotland.

Wales
The first elections to the National Assembly for Wales were held in May 1999. The Assembly has a smaller range of responsibilities than the Scottish Parliament; for example, the UK Parliament remains responsible for the police and the legal system. The Assembly does not have the power to make primary legislation but legislation specifically for Wales has been taken through the UK Parliament. The Assembly has responsibility for health and the NHS in Wales, and has put in place its own structures, regulations and performance management arrangements to suit the particular circumstances of Wales.

Structures:
NHS trusts: The main providers of hospital care in Wales are the 13 trusts. Between them, they manage 17 large acute hospitals plus a large number of community hospitals and other facilities. There is also an all-Wales ambulance trust.
Primary care: Primary care in Wales is provided by family doctors (GPs), dentists, optometrists etc who, like in England, are predominantly contractors rather than employees of the health service.
Local Health Boards: Local Health Boards (LHBs) were created in April 2003. The 22 LHBs share their boundaries with Wales’s 22 unitary local authorities (ie the local government). LHBs and the local authorities have a statutory duty to work in partnership to develop local Health, Well-being and Social care strategies. Each LHB has a widely-representative board of 22 people including GPs and other health professionals, members of the local authority, a patient, a carer and others. LHBs are responsible for determining the health needs of their local population and commissioning services from trusts, primary care and others to meet these; around three quarters of the budget is allocated directly to LHBs for this.
Regional Offices of the Assembly: The Assembly Government has set up three regional offices to improve its ability to support and manage the performance of the NHS across Wales.
Other organisations: There are a number of other NHS and related organisations, including Health Commission Wales, which commissions specialist services for the whole of Wales, and the National Public Health Service. The National Leadership and Innovation Agency for Healthcare is a national, strategic resource for NHS Wales, aimed at building leadership capacity and capability to deliver continuous service improvement, optimising technology, innovation and the implementation of leading-edge practice. Community Health Councils inspect hospital premises and provide advocacy and support for patients with grievances.

Northern Ireland
The Northern Ireland Assembly was set up in April 1998. It has similar executive and legislative powers to the Scottish Parliament. The Assembly has been suspended on a number of occasions as a consequence of the unstable political situation in Northern Ireland. During these periods direct rule from Westminster is introduced.

Structures:
Health and social care in Northern Ireland (NI) is delivered on an integrated basis by the Health and Personal Social Services (HPSS), which is accountable to the Department of Health, Social Services and Public Safety.
Health and Social Services (HSS) Boards: The four HSS boards commission health and personal social services for their resident populations from a range of providers, including HSS Trusts, and voluntary and private sector bodies. Each Board has a number of Local Health and Social Care Groups which operate as
committees of the Boards. They are made up of primary care professionals and community representatives and provide local input to the planning and design of services in their areas.

**Health and Social Services Trusts:** These are the main providers of health and personal social services and work within the commissioning arrangements agreed with HSS Boards. Although managerially independent, Trusts are accountable to the Minister. There are 19 HSS Trusts in Northern Ireland, some providing hospital services only, some (uniquely in the UK) community and personal social services and some, both hospital and community services.

**Health and Social Services Councils:** These are independent statutory bodies funded by the Department which represent the interests of the public and users of health and social services.

**NI Ambulance Service Trust:** This provides ambulance services for the whole of Northern Ireland.

There are also nine agencies that provide specific regional services eg the Health Promotion Agency and the NI Blood Transfusion Service Agency.

### C. UK HEALTH INDICATORS

All of the component countries in the UK have set targets on a number of indicators relating to health, long term care and tackling poverty and social exclusion. These are collated in the UK National Action Plan on Social Inclusion 2003–05, and further detailed below.

**England**

The Dept of Health’s Public Service Agreements and the Dept for Work and Pensions “Opportunity for All” strategy provide indicators covering key aspects of health, health inequalities and wider determinants, for example:

- by 2010, increase life expectancy at birth in England to 78.6 years for men and to 82.5 years for women;
- substantially reduce mortality rates by 2010, including:
  - from heart disease and stroke and related diseases by at least 40 per cent in people under 75;
  - from cancer by at least 20 per cent in people under 75;
  - from suicide and undetermined injury by at least 20 per cent.
- reduce health inequalities by 10 per cent by 2010 as measured by infant mortality and life expectancy at birth;
- reducing adult smoking rates to 21 per cent or less by 2010;
- halting the year-on-year rise in obesity among children under 11 by 2010;
- reducing the under-18 conception rate by 50 per cent by 2010.

The indicators are broadly based across demographic and socio-economic groups. For instance, the DH PSA inequalities target on life expectancy is geographically based, while targets on infant mortality and smoking in manual groups have a socio-economic focus. Other indicators such as teenage pregnancy, accidental injury (among children) and care for the elderly have an age focus. The UK NAP addresses aspects of financial exclusion.

**Scotland**

Scottish Ministers have set similar targets on a wide range of indicators relating to health and healthcare, in the context of tackling health inequalities. The Health Improvement targets include:

- Achieve a 60 per cent reduction in deaths from CHD in people under 75 between 1995 and 2010.
- Achieve a 50 per cent reduction in deaths from cerebrovascular disease (stroke) in people under 75 between 1995.
- Achieve a 20 per cent reduction in death from cancer in people under 75 between 1995 and 2010.
- Improve Life Expectancy (LE) and Healthy Life Expectancy (HLE) for men and women.
- Reduce inequalities in LE, HLE for men and women.
- Address health inequalities by increasing by 15 per cent the rate of improvement for most deprived populations in the areas of coronary heart disease, cancer, rate of adult smoking, smoking during pregnancy, teenage (13–15 years) pregnancies, and suicides for 10–24 year olds.
Wales

Wales has developed specific national health targets (health gain targets) and indicators for coronary heart disease, cancer, mental health, the health of children and older people, which were published in 2004. They provide a long-term measure of health outcome and health inequalities 2002–12. These health outcome targets will be underpinned by indicators covering the determinants of health to provide a short to medium term measure of progress at the local and national levels for improving health and reducing health inequalities in Wales.

Northern Ireland

An Inequalities Monitoring System was set up in 2003 in response to an action point in the Department of Health, Social Services and Public Safety new Targeting Social Need Action Plan. It comprises a basket of indicators which monitor area differences in morbidity, utilisation and access to health and social care services over time in the most deprived and rural areas across Northern Ireland. Indicators such as life expectancy, teenage birth rates and hospital admissions due to major diseases are all included and reported on.

The baseline results covering 2001–02 were first presented in the report Equality and Inequalities in Health and Social Care in Northern Ireland—A Statistical Overview. The morbidity and utilisation data was later updated to cover results from 2002–03 in an update Bulletin in 2004 and further update reports will be produced periodically.

D. Access, Financial Sustainability, and Quality

Details are provided below on the three broad principles of access, quality, and financial sustainability of healthcare services. Due to the devolved responsibility for healthcare systems within the component countries of the UK, information is provided separately for England, Scotland, Wales and Northern Ireland.

England

Ensuring access to care: One of the fundamental principles of the NHS is that there should be equal access to treatment for all, based on clinical need and regardless of the patient’s ability to pay. The recent combination of investment and reform is now beginning to make a real difference, with patients having faster access to the care they need. Since 1997:

- The maximum waiting time for an operation has fallen from 18 months to less than nine months;
- The maximum waiting time for an outpatient appointment has fallen from 26 weeks to 17 weeks; and
- 98 per cent of patients are seen, diagnosed and treated within four hours of arrival at accident and emergency.

When the current programme has been delivered by 2008, the 1997 maximum wait of 18 months for only part of patients’ treatment will have been reduced to 18 weeks for the whole journey.

This investment is also resulting in recruitment and retention of the workforce required to tackle these issues. There are 1,331,087 staff in NHS England, either directly employed or under contract. Of these, 34,855 are general medical practitioners; 82,951 are hospital doctors, 397,515 are qualified nurses. There are 128,833 qualified scientific, therapeutic and technical staff and 17,272 qualified ambulance staff, and 90,110 practice staff other than nurses. There are 368,285 clinical support staff and 211,489 NHS Infrastructure support staff, which includes managers, administrative, estates.

From the end of 2005, patients will have the right to choose from at least four to five different healthcare providers, including Independent Treatment Centre providers, with the NHS paying for this treatment. In 2008, patients may choose from any provider (NHS or independent sector), provided they meet NHS standards and treat within the national maximum NHS price. Patients will have access to their personal HealthSpace on the internet, where they can see their care records and note their individual preferences. By the end of 2005 electronic booking and electronic prescribing services will be available.

The UK has had considerable experience in relation to patient mobility both in terms of sending patients overseas for treatment and in providing treatment to overseas patients mainly from the European Economic Area. We have provided information to the Cross Border working group on the UK experience to date. Patients are referred for treatment under EU secondary legislation regulation 1408/71 (the E112 arrangements) but also through direct referrals set up by Dept of Health and managed by the NHS. Legal obstacles to PCTs referring patients on their own initiative have been removed (following ECJ judgements in
this area). There are likely to be further legal developments following the UK Watts case currently before the ECJ. Nevertheless, there are major programmes in progress within England to increase significantly the level of capacity available to meet the needs of NHS patients in the main General and Acute elective specialties towards the 18-week waiting target from 2008.

Promoting High-Quality Care: There have been improvements in the quality of care, achieved through the development and delivery of National Service Frameworks. More treatment and care are also available closer to home. There has been clear progress in tackling the country’s biggest killer diseases, with premature deaths from cancers and heart disease falling at the fastest rate of any European country. Patient choice has begun to have an impact on the way in which the NHS works: in future, with waiting times no longer the main issue, the NHS will be able to concentrate more on helping patients to decide on the time and place of their care. The NHS will provide better support to people with illnesses or medical conditions that they will have for the rest of their lives, such as diabetes, asthma, and some mental illnesses. Prevention of disease and tackling inequalities in health will also assume a greater priority in the NHS.

In national surveys, patients are increasingly positive about the quality of their care. By 2008, the Healthcare Commission will inspect all providers, whether in the NHS or in the independent sector. This independent health inspectorate is responsible for inspecting the quality of hospitals and other NHS organisations. Star ratings are awarded depending on how a Trust has performed against a set of performance indicators set by the Healthcare Commission. Hospitals are rated as having zero to three stars—the more stars the better.

To deliver this vision, investment in the NHS will rise to £90 billion by the year 2007–08. In return for this investment the NHS will offer the following:

— Patients will be treated within a maximum of 18 weeks from referral by their GP, and those with urgent conditions will be treated much faster;
— Patients will be able to choose between a range of providers, including NHS Foundation Trusts and Independent sector providers;
— Patients will be able to be treated at any facility that meets NHS standards, within the national maximum price that the NHS pays for the treatment they need;
— Patients will have access to a wider range of services in primary care, including access to services nearer their workplace;
— Electronic prescribing will improve the efficiency and quality of prescribing;
— Users of social care will be empowered through the expansion of direct payments;
— In every care setting the quality of care will continue to improve, with the Healthcare Commission providing an independent assurance of standards, and patient safety being a top priority;
— People with complex long-term conditions will be supported locally by a new type of clinical specialist, to be known as community matrons;
— Major investment in services closer to home will ensure much better support for patients who have long-term conditions, enabling them to minimise the impact of these on their lives;
— There will have been further progress in tackling the biggest killer diseases, with the country on track to secure by 2010 a 40 per cent fall from 1997 in death rates from heart disease and stroke, and a 20 per cent fall in death rates from cancer;
— The NHS is developing into a health service rather than one that focuses primarily on sickness and will, in partnership, make further in-roads into levels of smoking, obesity and the other major causes of disease. There will be a sustained drive to reduce inequalities in health;
— Local communities will have greater influence and say over how their local services are run, with local services meeting local priorities;
— Primary Care Trusts will control over 80 per cent of the NHS budget;
— The independent sector will provide up to 15 per cent of all elective procedures within the NHS so that patients have real choice;
— All NHS Trusts will be in a position to apply for NHS Foundation Trust status;
— More staff will work in the NHS and will be encouraged to work more flexibly in a way that best responds to patients’ needs;
— There will be incentives for healthcare providers to offer care that is efficient, responsive, of a high standard and respects people’s dignity.
Guaranteeing the Financial Sustainability of accessible, high-quality care: One of the fundamental principles of the NHS, that it should be financed by collective funding through national taxation, is the most effective way to ensure that quality care is available to all. Sustained investment is transforming the NHS: investment has increased from £33 billion in 1996–97 to £67.4 billion in 2004–05. Spending on buildings and equipment has increased from £1.1 billion to £3.4 billion. From 1997–2004, the average spending per head of population has increased from £680 to £1,345. Total (public plus private) health spend as a percentage of gross domestic product (GDP) in the UK for the year 2004-05, is forecast at 8.3 per cent. The spending plans announced by the Chancellor mean that by 2007–08 we expect the UK share of GDP spent on health to be 9.2 per cent—well above the current European average.

Scotland

Ensuring access to care: The National Health Service in Scotland operates on the same principles as elsewhere in the United Kingdom: comprehensive services are provided to every citizen, regardless of economic circumstances or of where they live, and are free at the point of delivery. These services are funded from general taxation. For a few services, such as dentistry and prescriptions, fees are charged, with exemptions for children, the elderly and people on low incomes.

There are 149,896 staff in NHS Scotland, either directly employed or under contract. Of these, 4,269 are General Medical Practitioners; 10,003 are hospital doctors, 45,540 are qualified nurses. There are 16,071 qualified scientific, therapeutic and technical staff. There are 26,368 clinical support staff (non-qualified nurses, AHPS, scientific & professional, technical and all ambulance staff) and 45,447 NHS Infrastructure support staff, which includes managers, administrative, estates. Scotland has four University medical schools for the training of doctors. Large numbers of nurses and other clinical staff are also trained through Universities contracted to the Scottish Executive.

Every year in Scotland, there are about:

- 40 million visits to community pharmacies;
- 15 million visits to a GP surgery (and about 10 million GP consultations);
- 4 million outpatient appointments;
- 1.5 million visits to hospital accident and emergency departments;
- 1 million hospital admissions; and
- 500,000 admissions from the waiting list for elective (planned) treatment.

Promoting High-Quality Care: Scotland has a poorer record on healthy life expectancy than most other western European nations, and there are larger gaps between the health experience of rich and poor people in Scotland. A key objective of the NHS in Scotland and of Scottish Ministers is to improve health generally through persuading and supporting people to make healthy lifestyle choices (diet, exercise, smoking, drinking). These services are aimed particularly at people with the poorest health record, to try to narrow the health gap between rich and poor.

NHS Boards are required to agree local health plans with the Scottish Executive Health Department and their overall performance is monitored. Ministers have set a range of targets for Boards, including maximum waiting times for primary care appointments, for first outpatient appointments in hospitals, and for admission to hospital for inpatient or daycase treatment. In December 2004 Ministers set Boards additional, challenging maximum waiting times targets that have to be achieved by the end of 2007. These will include targets for diagnostic procedures.

A wide range of highly specialised services is provided in Scotland. Very small numbers of patients are transferred for highly specialised treatment to hospitals in England. The NHS in Scotland carries out heart transplantation and liver transplantation surgery, and a full range of cancer treatment.

Guaranteeing the Financial Sustainability of accessible, high-quality care: Ministers provided around £7 billion a year to NHS Boards in Scotland in 2004–05. The balance of the health budget of £8 billion goes on centrally-managed activity. This includes the special health boards, medical education, information services and scientific research.
Wales

Issues specific to Wales: Parts of Wales, particularly the former mining and industrial areas in the Valleys in south Wales, have some of the worst health indicators in Europe, with reduced life expectancy and high levels of heart disease and cancer, coupled with a deprived local economy. Despite greatly increased funding for the NHS in Wales, the demand on acute hospitals is considerable, with very high levels of emergency admissions (as opposed to planned operations), resulting in long waiting times for treatment. The causes are complex, but contributing factors include a large population of elderly people and widespread poor health.

Responding to the Issues: The Welsh Assembly Government commissioned an independent review of health and social care in Wales and is implementing the recommendations which focus on Prevention; Optimising Service Delivery; Involving People; and Performance and Accountability. It is taking a twin-track approach to tackle the causes of poor health and focusing services on results. This includes implementing a resource allocation model which targets resources to Local Health Boards on the basis of the direct health needs of their residents.

There is considerable emphasis placed in Wales on a partnership approach to tackling poor health and the determinants bringing together groups from national and local government, the NHS, voluntary organisations, businesses and community representatives. Local authorities have responsibility for providing social services, as well as a range of other relevant responsibilities covering aspects of the environment, housing and local economy. The close relationship between NHS and local authorities is seen as vital to improving population health, and to relieving pressure on the acute sector of the NHS through better care at home particularly of the elderly.

The aim is to reduce the emphasis on acute hospital treatment by improving illness prevention, developing more comprehensive primary care to reduce the need for people to be admitted to hospital, and encouraging better social care provision to help them to return home quickly with the necessary support. Patients and the public are being given a greater role in local decisions about the NHS in a variety of ways.

Guaranteeing the Financial Sustainability of accessible, high-quality care: The Welsh Assembly Government determines how its total budget is allocated to the portfolios for which it has devolved responsibility. In 2005–06, the budget for health is £4.6 billion, nearly double the funding on health when the Assembly was established in 1999. The funding is due to increase to approximately £5.2 billion by 2007–08.

Ensuring access to care: There have already been significant improvements in access to services in the last few years and by 31 December 2009 the maximum total waiting time from GP referral to treatment, including waiting times for diagnostic tests will be six months.

Promoting High-Quality Care: Quality of care and safety is monitored by Healthcare Inspectorate Wales to ensure the continuous improvement. In addition The Advisory Board for Healthcare Standards in Wales has been set up to manage the process of adopting the National Assembly’s healthcare standards.

The Assembly Government sets standards and targets for the NHS in Wales to meet. This has been broadened to include a system based on a balanced scorecard approach, which looks at each organisation not only on delivery of targets, but on its internal systems, infrastructure, staff leadership and external relationships. The aim is to encourage organisations continuously to improve.

Northern Ireland

The population of Northern Ireland (NI) generally experiences poor health. One quarter of people (25 per cent) in NI (2003), considered that they had a limiting long standing illness. This is greater than for England & Scotland (18 per cent) and Wales (22 per cent). In particular, NI has higher levels of mental health problems and the rate of births with a congenital malformation in NI is over twice the level in England and Wales.

NI has a younger age profile than other UK countries but the elderly population is increasing more rapidly ie people aged 75 and over in NI are projected to increase by 37 per cent between 2004 and 2019 whereas the comparative UK figure is for 26 per cent growth. Overall deprivation levels in NI are high with GDP, disposable income and working age employment being much lower than the UK average.

Ensuring access to care: The majority of patients in Northern Ireland do not have to wait long for treatment. 95 per cent of people on the inpatient or day case waiting list receive treatment within 12 months and 74 per cent within three months. Reducing the length of time patients wait for treatment is a key priority and waiting times have reduced significantly in recent years. Inpatient and day case waiting lists have fallen by 18.2 per cent from 60,190 patients waiting at September 2002 to 49,250 at December 2004.
However, the number of patients waiting for a first outpatient appointment continues to increase. For the quarter ending December 2004, the number waiting for a first appointment was 164,672, an increase of 11.6 per cent on December 2003. 96 per cent of outpatients are seen within a year of referral and 70.3 per cent within three months.

Sustained efforts are being made to bring waiting times in Northern Ireland into line with the rest of the United Kingdom. There will be a longer-term shift of emphasis in Northern Ireland towards the measurement of total waiting times from referral to treatment. In the short-term, targets have been put in place, including that by 31 March 2006 there will be:

- a maximum waiting time of 15 months for inpatient or day case surgery and nine months by 31 March 2007, with:
  - three months for cardiac surgery;
  - six months for cataract surgery, and three months by 31 March 2007; and
  - nine months for major joint replacement, and six months by 31 March 2007.
- 95 per cent of patients requiring hospital inpatient and day case treatment are admitted within 12 months of being placed on a list.

The March 2005 Health and Personal Social Services Information and Communications Technology (ICT) Strategy outlines the three main aims of developing electronic care records, electronic care communications and electronic information. This will establish an electronic integrated community health and social care record for each patient by 2008. Electronic transfer of pathology results and digital imaging, and electronic prescribing will also be introduced, along with electronic referral and booking systems.

Guaranteeing the Financial Sustainability of accessible, high-quality care: In general, the standard of health within Northern Ireland remains lower than the UK average. Improving health and well being remains a priority for the government in Northern Ireland. This priority is reflected in sustained investment in Health and Social Services over the past five years. The Budget for Health and Social Services has almost doubled in the last five years from £1.9 billion in 2000–01 to £3.33 billion in 2005–06.

While this is a significant increase in investment, it represents a lower real terms growth in spending than in England, some 24.3 per cent compared to 26.25 per cent. Within this context Northern Ireland is taking forward a programme of Reform and Modernisation which will result in improved outcomes for patients and clients and will meet the needs of more people by streamlining processes, treating more people in primary care rather than more expensive hospitalisation, reducing the length of stay in hospital and using staff more flexibly by increasing the roles and responsibilities of lower paid staff.

The level of funding per head on health for Northern Ireland in 2002–03 was some £1,214. While this is ahead of England and Wales (although lower than Scotland) it is important to note that there are differences in demographic profile, morbidity and socio-economic status of the populations of the four countries which would impact on the level of spend per capita in each region.

Promoting High-Quality Care: Underpinning the Department’s Modernisation and Reform agenda is the promotion of safe and effective care and continuous quality improvement. The aim is to ensure that, regardless of where people come into contact with the HPSS, and whatever their circumstances, they receive consistent, high-quality services. There has been a statutory duty of quality in place in NI since 2003. This sets accountability at a local level for the delivery of services and for continuous improvement in quality. Improvements in quality and safety of local services are centred on five broad themes, two will be further developed over the next three years:

1. Improvements in governance arrangements within the HPSS;
2. The setting of standards against which service providers can be measured;
3. New arrangements for the regulation, inspection and review of services;
4. Improved accountability arrangements; and
5. Links with national standard setting and patient safety bodies.

To support HPSS bodies in this work, a range of controls assurance standards has been introduced on a phased basis since 2003–04. In addition, the DH Modernisation Agency has been contracted to provide support to HPSS organisations in implementing clinical and social care governance. A number of new standards will be introduced over the coming years including further controls assurance standards; care standards and quality standards supporting implementation of clinical and social care governance. All of these standards will assist HPSS organisations in assessing risk and in the reporting on the quality of service provision. They will also provide greater transparency for the public on what care they are entitled to expect from the HPSS, and facilitate organisations in the demonstration of good governance.
REFERENCES TO HEALTH RESOURCES


ii Dept of Health England Public Service Agreements: http://www.dh.gov.uk/AboutUs/HowDHWorks/ServiceStandardsAndCommitments/DHPublicServiceAgreement/fs/en


v National high-level targets and indicators for Wales: www.cmo.wales.gov.uk/content/work/health-gain-targets/index-e.htm


Letter from the Chairman to Rosie Winterton MP

Thank you for your letter dated 1 July which was considered by Sub-Committee G on 20 July.

We are grateful to you for sending us, as promised in your predecessor’s letter dated 24 March, the UK report which has been submitted as a national contribution to the Commission’s current consultation exercise.

You may have seen from earlier correspondence that we have some doubts about the value of this and other OMC exercises. In my letter dated 21 October 2004 to your predecessor I stressed that such exercises should not be overly burdened by indicators or duplicate existing work and should be carried out with as light a touch as possible, concentrating on adding value. I also said that what purports to be a worthwhile exchange
Social Policy and Consumer Affairs (Sub-committee G)

designed to share experiences and develop common strategies must not become unduly bureaucratic, generate nugatory work or infringe on the competence of Member States.

We are glad to see the approach outlined in the UK paper is broadly consistent with these criteria and we hope that the Government will continue to ensure that these aims are achieved in negotiations during the UK Presidency. We also hope that those views are shared by other Member States.

We note that substantive discussion of this proposal was expected to take place at the Social Protection Committee on 14 July and that the Commission is due to present a Communication, presumably based on the results of the current consultation exercise, in November 2005. We are grateful to you for promising to keep us in touch with developments and will continue to retain this item under scrutiny pending your further reports.

21 July 2005

Letter from the Chairman to Rt Hon Tessa Jowell MP, Secretary of State, Department for Culture, Media and Sport

Your Explanatory Memorandum dated 20 October was considered by Sub-Committee G on 24 November.

We recognise the potential importance of this ambitious programme, about which we will want to know more. But it is clear from the Commission document that it will pose formidable technical, organisational and resource challenges, as well as raising important legal questions.

We note that a debate on the project was expected to take place at the Education, Youth and Culture Council on 14 November and that the Department was due to host a Presidency conference on digitisation and e-learning during this month.

We also note that the Commission plan to submit a Recommendation to the Council next year, based on the results of its consultation, to which your Department will be coordinating a UK response.

We are holding this document under scrutiny and would be grateful if you could report on the outcome of the debate at the Education, Youth and Culture Council and on your Presidency conference and let us have a summary of the UK response to the Commission’s consultation in due course.

24 November 2005

INFORMAL EU GENDER EQUALITY COUNCIL, BIRMINGHAM, NOVEMBER 2005

Letter from Rt Hon Tessa Jowell MP, Secretary of State, Department for Culture, Media and Sport to the Chairman

I am pleased to enclose a copy of my written Statement to Parliament outlining the content of the Informal EU Gender Equality Council that took place as part of the UK’s Presidency of the European Union in Birmingham on 8–9 November 2005.

25 November 2005

WRITTEN MINISTERIAL STATEMENT

Secretary of State for Culture, Media and Sport and Minister for Women

The Informal EU Gender Equality Council, Birmingham, 8–9 November 2005

The Informal EU Gender Equality Council hosted by the UK Presidency took place in Birmingham on 8–9 November. Together with ministerial colleagues, Meg Munn and Baroness Crawley, I chaired this meeting which included visits to innovative community projects from across the West Midlands tackling the problems of gender inequality.

In addition to 15 Ministers from across Europe with responsibility for gender equality, I was delighted to welcome Rachel Mayanja, the UN Secretary General’s Special Advisor on Gender Equality and the Advancement of Women, Anna Zaborska, Chair of the European Parliament’s Women’s Committee and Vladimir Spidla, Commissioner for Employment, Social Affairs and Equal Opportunities.

On Tuesday 8 November, Ministers were divided into groups to visit community projects brought together in two venues in Birmingham. My colleague Meg Munn, visited a community arts centre called “The Custard Factory” and I hosted the other group of Ministers who visited a converted pub in Balsall Heath,
now a thriving centre of education as part of South Birmingham College. At each venue we had the opportunity to talk to a number of women about their projects and to learn about good practice in the United Kingdom. The areas covered by the projects included rural enterprise, education and training, business start-ups, confidence-raising, gender equality in the business world and the promotion of technology and enterprise for young girls.

A number of Ministers commented that they found this part of the Informal to be the most innovative as it gave them a chance to speak to individual women who had experienced various forms of disadvantage and to hear their stories. Indeed one of my Ministerial colleagues actually said that it reminded him of the reason why he had entered politics, and, several projects were invited to Ministers’ Member States.

On the second day, after a short welcome speech from Meg Munn, Ministers broke into three small groups chaired by the UK, Austria and Finland (the current and two succeeding Presidencies) for detailed discussions and an exchange of good practice. These discussions were based on questions prepared by the Presidency and sent to the Ministers in advance. The three themes flowed from the preceding Gender Equality Conference. These were:

“Breaking the Barriers”, which included issues such as breaking down traditional stereotypes of women’s work and occupational segregation, the kind of support needed for women entrepreneurs and using taxation and incentive policies to break employment barriers;

“Making work work” covering successful work-life balance initiative, childcare and how women can achieve economic security in retirement; and

“Getting in, getting on” covering educational initiatives aimed at inspiring girls to aim high in their professional lives, how women can update and expand their skills throughout their lives and the gender pay gap and how it can be abolished.

Discussions in these groups were lively and informative, aided in part by the smaller numbers of participants.

In the subsequent Plenary session, each chair reported back on some of the key issues discussed and highlighted examples of good practice that were shared in their group. In discussion, Ministers agreed that the key issues affecting gender equality include:

— The demographic challenge, meaning that people were living longer and having fewer children;
— The gender pay gap;
— Occupational segregation;
— The need for increased involvement of men in caring responsibilities and domestic tasks;
— The low status and consequent lower pay of many women’s jobs;
— Women’s lower pensions caused by interrupted working patterns and lower pay;
— Better quality and greater provision of childcare;
— Flexible working patterns and reconciliation of work-life balance.

During the Ministerial meeting a number of speakers also identified the need to increase the number of women in the labour market if Europe is to increase economic growth, productivity and competitiveness. The links between this and the EU “Lisbon Strategy” were made with particular reference to retaining women in the labour market.

Ministers agreed that the opportunity to share and exchange practical examples of good practice, which worked in their Member States, with other colleagues, had been extremely useful and hoped that it could be built on in the future.

At the end of the meeting, a Presidency statement was issued which will be formally presented to the Employment, Social Policy, Health and Consumer Affairs Council on 8–9 December. I attach a copy to this Statement.

**PRESIDENCY STATEMENT**

**Statement made by the UK Presidency at the conclusion of the Ministerial Meeting on Gender Equality in Birmingham on 9 November 2005**

1. Ten years ago in Beijing the United Nations drew up a Declaration and a Platform for Action that has been the template for progress on gender equality ever since. The enthusiasm and commitment of the national delegates and representatives of civil society, who worked day and night on the text, helped to inspire the development within the European Union of a strong legislative base for gender equality and innovative policies for women’s empowerment.
2. Together the Luxembourg and United Kingdom Presidencies were determined to lead the EU to a strong reaffirmation of the Declaration and Platform for Action to mark their tenth anniversary. This began with a Conference and Informal Ministerial meeting in Luxembourg in February, that reviewed progress in all EU Member States towards the goals in the Platform for Action, and provided a comparative review of the institutional mechanisms for promoting gender equality within Member States. The Luxembourg Conference report provides an important basis for future comparative EU study, and the Common Ministerial Declaration (adopted by Ministers of EU Member States responsible for gender equality on 4 February) provides a strong statement of support for the Beijing Platform for Action.

3. In March the Luxembourg Presidency led a very strong EU delegation to the 49th session of the Commission on the Status of Women at the United Nations, where, in no small part due to the determination of the EU, we secured a full and universal reaffirmation of the Beijing Declaration with a renewed emphasis on the importance of gender equality for the achievement of the Millennium Development Goals. These goals were reviewed at the Millennium Review Summit in September, where the UK led the EU delegation. The Outcome Document of the Summit makes even stronger linkages between the Beijing Declaration and the MDGs, including a reference to making the goals of full and productive employment and decent work for all, including women, a central objective of relevant international policies as well as national development strategies, including those aimed at poverty reduction.

4. Education and economic empowerment are key to promoting women’s advancement in all of the areas identified in the Beijing Platform for Action. An educated woman who has marketable skills and equal rights in the workplace can better resist discrimination in other arenas. Women, as 50 per cent of the EU population offer great economic and social resources of creativity, entrepreneurship and community cohesion. But economic empowerment, and gender equality, requires an effective legislative base and a wide range of policies, at national and local levels, and in business, for success. Within the EU we now have a strong legislative base, with the conclusion of negotiations on the extension of protection against discrimination on the grounds of gender into the field of goods and services. Therefore at the UK Presidency Gender Equality Conference and Ministerial Meeting in Birmingham we concentrated on sharing our experience of practical interventions and policy initiatives that deliver economic empowerment for women and gender equality for women and men.

5. Alongside practical examples from many EU Member States, generously shared by representatives from governments, business, trade unions, academics and civil society, we also considered ideas that have been successful in the developing world. And Ministers, prior to their own very valuable discussions, visited community projects based in the West Midlands—several funded by the EU—to see how local initiatives can make a significant difference to the economic chances of disadvantaged women, particularly to those experiencing multiple discrimination. These projects working with the specific needs of Minority Ethnic women, women in business, training and education of women, young female entrepreneurs, women facing social exclusion and support for women in rural enterprise, represent a microcosm of the complexity and diversity of issues facing women in their everyday lives across Europe, and, highlight the challenges faced by policy and decision makers to achieving full gender equality.

6. We were strongly influenced in our work by the mid-term review of the EU Lisbon Strategy. This strategy recognises overtly that gender equality and the advancement of women are fundamental to the achievement of full employment, sustained economic growth and social cohesion, as well as the promotion of knowledge and innovation in Europe, the reinforcement of social protection and the eradication of poverty. We encourage all Member States to ensure that their future annual Lisbon implementation reports, (which will report on their National Reform Programmes for 2005–08), are fully mainstreamed—in particular that; any targets and data are disaggregated by gender; that the goals of women’s employment and the provision of good childcare are properly resourced; and, that the Integrated Guidelines on Growth and Jobs for 2005–08, are heeded, (with particular reference to Guideline No 18 “promoting a lifecycle approach to work”). The EU Lisbon Strategy must be achieved by full acknowledgement of the importance of gender equality.

7. The EU made a firm commitment, renewed in Luxembourg in February, to continue its work on different aspects of the Beijing Platform for Action by the development and collection of helpful and relevant indicators. It was also agreed that this year no new specific indicators would be developed, so that Member States could focus on implementation of the Platform in its entirety. In 2006 this work will recommence under the leadership of the Austrian and Finnish Presidencies, including a focus on gender equality health indicators. However, in due course, this will be greatly assisted as a result of work done under Luxembourg and the UK this year on the establishment of the European Gender Institute. This, and the Recast Directive that simplifies and streamlines the existing gender equality acquis, have been the primary focus of our work in Council.
8. The Presidency is proud of the EU’s record of achievements in the field of gender equality but is all too well aware of the work that remains to be done. We believe that our emphasis at the Presidency Conference and Ministerial in Birmingham, on women’s economic empowerment, in the context of the Beijing Declaration and the Lisbon Strategy, is an important one, and has provided the opportunity for significant and purposeful conversations between practitioners from across the EU, and more widely. We are pleased that the European Commission plans to reprise the theme of women’s employment and work-life balance as the central part of its Third Annual Report to Heads of State and Government, (to be presented at the Spring Council in March 2006). This UK Presidency Statement will be presented to the Employment, Health and Social Affairs Council for consideration on 8–9 December.

INFORMAL EU SPORTS MINISTERS MEETING

Letter from Richard Caborn, MP, Minister for Sport, Department for Culture, Media and Sport to the Chairman

I am writing to outline to you the aims, proceedings and outcomes of the informal meeting of EU Sports Ministers, which I chaired on behalf of the UK Presidency in Liverpool on 19–20 September.

Although the EU does not have a competence in sport, EU Sports Ministers usually meet once during each Presidency. These informal meetings provide a forum in which Ministers can discuss issues of common interest and decide, if they choose, to cooperate and share information in various aspects of sport policy. In addition to the 25 Member States and Jan Figet, Commissioner for Training, Culture and Multilingualism, the Presidency invited Romania, Bulgaria and the European Parliament (represented by Nikolaos Sifunakis MEP, Chair of the Culture and Education Committee) to attend as observers. The agenda covered anti-doping, equal opportunities and diversity, sport and health and the promotion of volunteering in sport. The meeting was successful in securing agreement on the issues under discussion and was widely praised for its efficient organisation by the participants.

ANTI-DOPING

The main item discussed under this heading was the UNESCO Convention against Doping in Sport, the adoption and ratification of which imposes a legal obligation on all governments to support the Sporting Movement in eradicating doping in sport, primarily through formally recognising the role of the World Anti-Doping Agency and its World Anti-Doping Code. According to Article 37 of the Convention, 30 instruments of ratification must be received by the UNESCO Director General by 31 December 2005, if the Convention is to come into force prior to the Turin Winter Olympic Games, which start on 10 February 2006.

The Presidency, with support from several Member States, therefore urged Member States to ratify the Convention as quickly as possible in order to send a clear signal to other UNESCO members. While most Member States agreed to sign a “statement of commitment” to adopt the Convention at the UNESCO Convention in October, as the Presidency proposed and do their best to ratify by 31 December 2005, a few Member States said that it would be difficult for them to do so. In any case, the proposal subsequently failed to obtain sufficient support outside the EU. The Statement will therefore not be presented for signature during the UNESCO General Conference. However, the Convention is nonetheless expected to be adopted during the General Conference.

Ministers also discussed membership of the board of WADA (World Anti-Doping Agency), nearly all Member States wanted the next Chair to be a government representative as the Chair and Vice Chair positions should rotate between government and sporting movement representatives. They wanted a model that re-establishes five European representatives on the WADA Executive Board (the EU Troika plus two for the Council of Europe). However, two Member States noted the difficulties of a serving government Minister finding the time to devote to such a big role; therefore the government representative should not be a serving government Minister.

Most Member States called for a thorough review of how substances were added to or removed from the WADA list of prohibited performance enhancing substances. One Member State felt there should only be one single list rather than several sub-lists: in-competition, out-of-competition, sports specific lists and a specified substances list. The Presidency agreed to write to WADA putting forward Member States’ views on this as well as membership of the WADA Board.

There was some controversy about FIFA’s continuing failure to adopt the World Anti-doping Code. The Presidency, with support from Member States, noted that WADA and FIFA were finally moving towards agreement on this, but that FIFA’s rules, which require strong evidence that the individual is guilty of
deliberately doping, did not comply with the WADA Code’s “strict liability” of the athlete for what enters his/her body. The Presidency suggested it would be best to let WADA and FIFA try to work the issue out between themselves.

**Promotion of Equal Opportunities and Diversity in and through Sport**

Per Ravn Omdal, Vice President of UEFA, explained to Ministers how his organisation was leading the effort at European level in tackling racism in football. They were becoming tougher in terms of fines and forcing persistent offenders to play their games behind closed doors or in a neutral stadium. Money from fines was funding “football against racism in Europe” (FARE), which was organising campaigns across Europe.

The consultants PMP then presented their Commission-funded study on the contribution of sport to the fight against xenophobia and racism by highlighting case studies from across the EU of projects promoting the integration of minority ethnic groups through sport.

**Sport and Health**

The Presidency proposed setting up a small “working group” of Member State experts to share best practice on promotion of sport for tackling obesity, following a Commission-funded study on this issue. Slovenia was invited to give a short presentation on their initiative whereby doctors were encouraged to prescribe different levels of physical activity as well as improved nutrition to patients. Other Member States described a series of similar initiatives that they were introducing nationally. The Commission outlined the work of the European platform for action on diet, physical activity and health, launched in March 2005. They admitted that there had been a very strong emphasis on nutrition so far, but they were working to ensure more focus on sport.

Following a discussion of the draft Terms of Reference for the proposed working group, the Presidency agreed to take on board Member States’ comments that the expert group should: focus on physical activity rather than just sport; should look at all age groups rather than just focussing on young people; and should not only target those who are already obese, but should also aim at prevention. I enclose the final Terms of Reference for your information.

**Promotion of Volunteering in Sport**

The Presidency introduced this item by noting that volunteering was the lifeblood of sport, especially at the grassroots. The Commission said that they would convene a group of experts in the autumn to reflect on the recognition which could be given to volunteers. The Presidency also noted that high insurance costs for volunteers in particular in the case of extreme sports, and child protection requirements were putting volunteers in the UK off taking out groups of young people. It was agreed that sharing of best practice in the promotion of volunteering in future would therefore be welcome.

**Update from Commission on recent Developments in EU Sport Policy**

Commissioner Figel’ noted that it was now unrealistic to expect an EU sports policy by 2007, but he highlighted the Commission’s ongoing work on sport, in particular:

- On free movement of sports people, the Commission had asked all Member States for information concerning their guidance for amateur sports bodies to ensure that all EU nationals were free to participate in amateur sport in other Member States.
- While the European Parliament was likely to vote to exclude gambling from the Services Directive (and nearly all Member States agreed with this), Figel’ again stressed that there were rising numbers of complaints that certain Member States were blocking access to their markets for lotteries and gambling. Even if excluded from the Services Directive, such practices were still not in accordance with the Treaty. [NB this issue is of concern to EU Sports Ministers because in many Member States sport receives significant funding from the national lottery, as it does in the UK.]
INTERVENTION BY EP CULTURE AND EDUCATION COMMITTEE CHAIR

Mr Sifunakis updated Ministers on the work of the EP, and the Culture and Education Committee in particular, on sport. It had:

— expressed support for a resolution to be tabled by Italy in the UN General Assembly, calling upon Member States to observe an Olympic ceasefire during the Turin Winter Games in February 2006.
— held a public hearing in November 2004 on “drug-taking in sport: An obstacle to the ideal of athleticism”.
— Passed a resolution in 2003 calling for equal access to sport for women.

CONCLUSIONS

Austria set out plans for their Presidency. They would focus their Presidency priorities on sport’s contribution to the economy, for instance, through tourism and its impact on drastically reducing working days lost to sickness and state expenditure on healthcare.

The Presidency’s conclusions for the Informal are enclosed for your information.

18 October 2005

INTEGRATED PROGRAMME IN THE FIELD OF LIFE-LONG LEARNING (11587/04)

Letter from Bill Rammell MP, Minister of State for Life-long Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to update you on recent developments in negotiations of the European Commission’s proposals for an integrated programme in the field of Life-long Learning and to seek your agreement to us seeking partial political agreement on these programmes at the Education and Youth Council on 15 November.

It is an opportune time to do so given that the European Parliament Culture and Education Committee gave its opinion on the programme on 12 September and is set to adopt these opinions in plenary on 25 October. Given the tight timescale I am providing an analysis of the EP amendments which we expect to be accepted by the Council in order to provide you with as much advance notice as possible. I will of course write again after the 25 October plenary vote, hopefully to confirm the analysis in this letter.

The UK has set out its intention to make as much progress as possible on both the programmes during its Presidency. The Education and Youth Council will meet on 15 November and will be chaired by the Secretary of State for Education and Skills. As it is not possible to gain full adoption of the programmes until there is agreement on the overall EU budget, the UK Presidency is aiming to gain “partial political agreement” at this Council. This approach was developed by HMT, put to Coreper by the UK Presidency and endorsed by all Member States.

Partial political agreement (PPA) is the approach being used for EU spending programmes in first reading as the overall EU budget is not agreed. It is a way of securing Council agreement on the non-budgetary elements of the proposal, while leaving aside those articles which concern the budgetary amounts, or which are directly related to the budgetary amount, from the scope of the agreement on the proposals. As adjustments to parts of the programmes might be necessary once the budgetary amounts are known it is possible to open parts of the text again once the overall programme budget has been decided. For example, the targets of the programme and the minimum allocations for each sub-programme could not form part of a partial political agreement as they are directly affected by the budget. However, the objectives of the overall programme and the sub-programmes do not have direct budgetary implications and would be part of partial political agreement.

The PPA will also need to take account of amendments proposed by the European Parliament. The European Parliament Committee gave its opinion on both programmes on 12 September. The plenary vote on both programmes is scheduled for 25 October. I will write to inform you of the outcome of the plenary vote as soon as possible after 25 October so you are aware of the European Parliament’s opinion and those amendments likely to be adopted in good time before the Council.

Annex A provides a summary of the European Parliament Committee amendments and main issues for negotiation in the Council for the Life-long Learning Programme. Annex B provides a response to the House
of Commons Committee’s letter of 20 July which asked for further clarification on expenditure on mobility in the two programmes and is attached for your information. I also attach the latest version of the Lifelong Learning Programme text and the European Parliament Committee report.

12 October 2005

Annex A

MAIN ISSUES FOR PARTIAL POLITICAL AGREEMENT AND EUROPEAN PARLIAMENT COMMITTEE OPINION ON THE PROPOSED LIFE-LONG LEARNING PROGRAMME

As I mentioned in my covering letter we are aiming for partial political agreement (PPA) on proposals for a Life-long Learning Programme at the Education Council in November. This Annex gives an analysis of the main changes to the Commission’s original proposal made during the Council negotiations leading up to partial political agreement and the likely outcomes. It also summarises the key European Committee amendments and gives an indication of which amendments we anticipate will be accepted by the Council under PPA.

MAIN CHANGES MADE DURING COUNCIL NEGOTIATIONS

The Council has made a number of changes to the original proposals during the course of negotiations which are expected to be part of PPA and agreed at the November Council. A summary of the key changes follows:

— Disadvantaged groups—add a new stress on the need to “widen access to those from disadvantaged groups” as well as addressing “the special learning needs of those with disabilities”. (Recital 27)

— Simplification and proportionality—amend the text to ensure it better follows the principles of simplification and proportionality. The amendments include providing simplified systems for grants of less than €25,000, increasing flat-rate grants up to a maximum of €25,000 and broadening the definition of public learning providers which will be exempted from providing proof of financial stability and from audit requirements. (Annex)

— Languages—a new reference stating that “promoting the teaching and learning of languages and linguistic diversity should be a priority of Community action” has been added to the text (Recital 14a). This reference will make the text more enabling in deciding which languages the programme can support.

— ICT—a new specific objective of the programme has been added “to support the development of innovative ICT-based content, services, pedagogies and practice for life-long learning”. It has also been added to the sub-programmes. This recognises the significant impact which ICT can have in education and that it should play an important role in this programme. (Article 1, 3 f a)

— Making clear that ICT and language learning can be supported under all the sectoral sub-programmes as well as under the Transversal Programme and clarifying that they will be supported under the Transversal programme where the target group cuts across more than one of the sub-programmes (for example both schools (Comenius) and adult basic skills (Grundtvig).

— Advanced vocational education and training (advanced VET) in Erasmus—to make clear that Erasmus is open to institutions and students involved in advanced VET amendments have been made to the definition of “students” and “higher education institutions”. These ensure that students in vocational education at tertiary level and institutions offering tertiary level vocational education are properly covered in Erasmus. (Article 2, 5 and Article 2, 9)

— Monitoring and evaluation—to enable the programme to be better monitored and evaluated the Commission is now asked to regularly monitor and evaluate the programme “against its objectives” and to “regularly publish statistics for monitoring progress.” (Article 16)

— Tidying up areas of the text to avoid duplication for example ensuring that the specific objectives of the sub-programmes were not repeated upfront in the programme proposals as well as in each of the sub-programmes.
Issues for the Parliament and Council

It is a shared priority of the Council and the EP Committee that the principles of simplification and proportionality are fully woven into the programme proposals. The EP Committee has suggested virtually identical amendments (Amendments 33a, 67, 68, 69, 71) to those proposed in a recent UK Presidency compromise text and these amendments are likely to be part of a PPA. The amendments include providing simplified systems for grants of less that €25,000, increasing flat-rate grants up to a maximum of €25,000 and broadening the definition of public learning providers which will be exempted from providing proof of financial stability and from audit requirements.

The Council and EP Committee are also closely aligned on their positions on giving support to disadvantaged groups in the programme. The Council has stressed the need to “widen access to those from disadvantaged groups and address the special learning needs of those with disabilities”. The EP Committee has signalled the need to provide grants for programme participants with disabilities and to give special attention to those groups which are under-represented in education and training in the EU (amendments 16 and 17). I am confident that the importance of helping disadvantaged groups to participate in the programme will be included in the text in PPA.

The EP Committee has proposed to enable those participating in mobility or placements to take “refresher courses” in languages as well as the “preparation in the host language” courses which form part of the Commission’s original proposal. They also want to enable programme participants to go on “refresher visits” (amendments 6.30,31,38 51). These amendments are likely to be uncontroversial in the Council and should be included in PPA.

The Committee sees the promotion of wider and better understanding of Human Rights and Democracy as a key requirement in the development of a social Europe based on solidarity and believes this must be addressed in the Lifelong Learning Programme. It has proposed amending the text along these lines in a number of places (Amendments 7,15,25). The Council is likely to agree with this principle but it remains to be seen whether they are at appropriate points in the text or whether exact wording is appropriate in that context.

The EP Committee has also made a number of proposals which have implications for the programme budget. They propose to raise the overall budget from €13.6 billion to €14.6 billion (amendment 43), increase the mobility grant for Erasmus (amendment 8), increase the Comenius and Erasmus minimum proportions and reduce the Leonardo da Vinci minimum allocation (amendment 70) and increase the targets for Comenius (amendment 45). Due to their budgetary implications these amendments will not form part of a PPA. Indeed the Council will not take a view on them until after the overall EU budget is agreed.

I hope this is a helpful clarification of where things stand in the Council negotiations and how the EP Committee amendments are likely to be taken forward. I will write again to inform you of the EP plenary opinion once it has had its vote on 25 October.

Annex B

Response to House of Commons letter for information

Thank you for your letter of 20 July and your agreement with our view that supporting “unilateral and national projects” within the programmes was consistent with the principle of subsidiarity. In your letter of 20 July you also asked for a more detailed clarification of whether the proposed expenditure on mobility taking the Life-long Learning programme and the Youth in Action programme together was proportionate given the Community’s other priorities. Mobility is of course the major element of expenditure for both programmes and the Commission has proposed significant increases in both budgets.

The proposed expenditure in the two programmes must be considered in the context of negotiations on the overall EU budget and the approach of the UK and other net contributors; expenditure by the EU should be the most efficient way of achieving the objective, it should add value compared to action by Member States alone, and it should be consistent with the Commission’s ability to manage, and Member States’ ability to absorb, such funds.

After the failure to reach agreement on future financing at the European Council in June, the UK Presidency has been carrying out a consultation process with all Member States with a view to working towards a deal in December.

From the UK perspective, the Prime Minister has stressed the importance of reforming the EU budget and refocusing it on the areas, including education, where the EU could benefit most. In his June speech to the European Parliament he said, It cannot be right, in the 21st century, for the EU to spend seven times as much.
on agriculture than on the crucial areas for growth of R&D, science, technology, education and innovation combined. As Presidency, however, any proposal tabled will have to reflect the views of all Member States.

Once the overall budget is agreed I will be making the strongest case possible for education and training expenditure in cross-governmental negotiations. Of course until there is agreement on the overall budget I am not able to speculate about the exact amounts the UK Government thinks should be allocated to both programmes. However, it is clear that the increase proposed by the Commission of 20 per cent a year, a three and a half-fold increase over the period 2007–13, is unrealistic in the current circumstances. By comparison, these programmes have grown by around 3 per cent a year in the current financial perspective.

Within the two programmes I do think that it is right that mobility should receive a large share of funding—partly because this is where the EU value added is most obvious—but we also believe that partnerships and exchange of good practice, although less costly, are very valuable too. In an increasingly globalised economy the intercultural skills and language skills which programme participants gain through mobility can significantly enhance their future careers and have clear and obvious benefits for UK and EU international competitiveness. I also believe that the use of ICT and distance learning should also feature significantly in the programmes to help include groups that are not usually able to participate. The Transversal Programme, which will have a strong emphasis on innovative approaches to ICT, should help here.

I hope this explains more clearly the importance that I give to these programmes and mobility. I will continue to keep your Committee informed of developments and will be able to give you a more detailed position once the overall EU budget is agreed.

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 12 October which was considered by Sub-Committee G on 27 October.

As I pointed out in my letter to you dated 13 October about the UK Presidency priorities for the Education and Youth Council, Parliamentary scrutiny of this programme by the House of Lords was concluded with the Debate in the House on 7 July on our Inquiry Report. We do, however, continue to have a close interest in this proposal and are grateful to the Department for keeping us in touch with developments.

Most of the proposals for changes to the text set out in Annex A of your letter are consistent with the Recommendations in our Inquiry Report and are generally welcome.

We also support the shared priority given by the Council and the EP Committee on the need to ensure that principles of simplification and proportionality are fully woven into the programme proposals and we strongly endorse the additional emphasis proposed for disadvantaged groups. We also support the EP Committee proposal to provide refresher courses and visits for those participating in mobility or placement, the need for which was advocated by some of those who gave evidence to our Inquiry.

The EP’s Committee proposal to add amendments stressing the promotion of a wider and better understanding of human rights and democracy as a key requirement in the development of a social Europe based on solidarity is broadly acceptable in principle, although inevitably much will depend on the language finally proposed.

We also note that the EP Committee is proposing that the overall programme budget should be raised from €13.6 billion to €14.6 billion. While we understand that this proposal cannot be addressed until the overall EU budget is agreed, you will recall that our Inquiry Report observed that the proposed increase of more than 3.5 times the present budget would require searching investigation and convincing justification. We will want to consider the programme budget proposals very carefully once the negotiations on the Financial Perspective have been concluded and the Government has reported back to us on the outcome.

You may therefore take it that we are broadly content for the proposed partial political agreement to be secured at the Education and Youth Council on 15 November, although formally our approval is no longer needed at this stage.

We look forward to receiving your promised report on the outcome of the EP plenary vote on 25 October, as well as on the outcome of the Council meeting itself, in due course.

31 October 2005
MEDICINAL PRODUCTS FOR PAEDIATRIC USE (13880/04)

Letter from Rt Hon Jane Kennedy MP, Minister of State, Department of Health to the Chairman

I am writing to update you on developments in negotiations on the European Commission’s proposals for a Regulation on medicines for paediatric use and also to respond to the points you raised in your letter of 9 December 2004 to Lord Warner.

As you know, the UK has been supportive of the European Commission’s efforts to develop a legislative framework to address the current lack of medicines available specifically for use in children and considers that the Commission’s proposal for a Regulation will be key to addressing this situation.

Considerable progress has been made in negotiations on the dossier during the Luxembourg Presidency. The proposal was discussed at the Health Council on 3 June 2005. The European Parliament will be voting on the dossier in plenary in September 2005. The Commission has indicated that the Regulation is likely to come into force in late 2006, at the earliest.

The proposed provision (Article 36 of the draft Regulation) to grant an extension of six months to the supplementary protection certificate (SPC) for investigating the use of a medicine in children—in effect, extending the patent holders’ monopoly on the product by six months—has been the most contentious aspect of the proposal as it impacts on the health budgets of Member States. At the Health Council on 3 June, most Member States including the UK, Germany and France indicated their support for the Commission’s proposal for a fixed six months extension of SPC. Slovenia, Poland, Latvia, Hungary and Slovakia indicated that they favoured a shorter period of SPC extension given the strength of the generics market in their countries. In earlier discussions, the UK put forward an alternative proposal which linked SPC extension to sales as we believed this would be fairer to products with a low volume of sales and avoid excessive profits for “blockbuster” products. There was, however, little support from other Member States for this proposal and we were unable to find a workable way of implementing such a mechanism given that it would have to be implemented in 25 Member States. We did, however, press for a review of the economic impact of the Regulation at 10 years and this has been agreed. The dossier will be given priority during the UK Presidency and our aim is to make significant progress in negotiations in the Council.

I would like to respond in turn to the points you raised in your letter to Lord Warner of 9 December 2004.

ETHICAL CONCERNS

In your letter, you mentioned that there has traditionally been resistance to conducting clinical trials in children on ethical grounds and that you would want to be sure that the proposal strikes the right balance between ethical considerations and practical advantages. Ethical concerns about conducting clinical trials in children have to be balanced by the ethical issues related to giving medicines to a population in which they have not been tested (estimates suggest that more than half of all medicines currently used to treat children have not been tested or authorised for use in children). It is our view that the proposal effectively takes account of ethical concerns. A key objective of the proposal is to increase the information available on the use of medicines for children. To achieve this objective, it is proposed to build on the database established under the Clinical Trials Directive (2001/20/EC) to include all ongoing and completed paediatric studies conducted in the Community and in third countries. In addition, we have argued that in the interests of transparency, parts of the clinical trials database should be accessible to the public. This was discussed at the Health Council on 3 June where the Commission argued against making parts of the database publicly accessible on grounds of commercial confidentiality. The Luxembourg Presidency subsequently called on the Commission and the Council Legal Service to clarify the legal and technical requirements for amending Article 40 in order to increase public access to data concerning paediatric studies. This is an issue that we will need to take forward during the Presidency.

The proposal also contains a provision to allow for studies to be deferred when it is considered that studies in children would be more appropriate after initial experience on the use of a product in adults has been obtained. These provisions will help to avoid unnecessary clinical trials in children. Further ethical safeguards are provided in the existing European Clinical Trials Directive (2001/20/EC).
LEGAL BASE

It is the UK’s view that Article 95 EC is not appropriate for measures which establish a centralised EC procedure or body and we have raised our objections with the European Commission and in negotiations. Article 95 EC is concerned with the harmonisation of national law. Setting up bodies or procedures at the Community level does not in itself amount to the harmonisation of national law because it is outside the scope of national law. It is not something that any national legislator can do. The European Commission’s view is that Article 95 EC is the appropriate legal basis for achieving the aims set out in Article 14 of the Treaty, which includes the free movement of goods, in this case medicinal products.

This issue has arisen before and the UK has mounted a legal challenge to two Regulations based on Article 95 EC. The measures in question are Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods (Case C-66/04 UK v Council and Parliament) and Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency (Case C-217/04 UK v Council and Parliament). Until these cases are resolved, the UK will continue to register concerns about the inappropriate use of Article 95 EC. In this situation, we would enter a minute statement recording our disagreement with the legal base. This would not prejudice the UK’s approach to future challenges under Article 95 EC. More broadly, the UK Presidency will work with partners to help ensure that measures are adopted using legitimate and appropriate legal bases.

CONSULTATION

The European Commission consulted extensively, including with health professionals, patient representatives and the pharmaceutical industry on informal draft proposals in February 2002 and in March 2004. In addition, in 2002, the Medicines Control Agency, now the Medicines and Healthcare products Regulatory Agency (MHRA), co-ordinated a UK response to the consultation involving a wide range of stakeholders, including the medical profession, in the process. In the UK, meetings have taken place with a range of stakeholder groups, including patient representatives, the Royal Colleges, medical charities and the pharmaceutical industries to discuss the Commission proposal. On 25 May 2005, the MHRA issued a consultation document on the Commission proposal. The document was circulated to a range of interested organisations and is also available on the MHRA’s website at www.mhra.gov.uk/inforesources/publications/mlx323.doc. Responses were invited by 17 August 2005. Once the consultation is concluded, we will finalise the regulatory impact assessment for the proposal. A copy of the consultation document is attached for information.

To ensure the Committee is kept abreast of progress with this dossier, I will write again after the recess. In the meantime, if there are any further queries related to the proposal, please do not hesitate to contact my officials at the MHRA or the DH.

11 July 2005

Letter from the Chairman to Rt Hon Jane Kennedy MP

Thank you for your letter dated 11 July which was considered by Sub-Committee G on 20 July. We are grateful to you for reporting on the progress made thus far in consideration of the Commission’s proposal.

Before dealing with details, I must reiterate the importance we attach to the ethical aspects of this proposal. We will want to weigh up the ethical considerations fully in the round before final Council decisions are needed.

As we see it, three of the key ethical considerations raised by this proposal involve the retention of patent rights, the use of drugs on children and, related to that, clinical trials in children.

In my letter dated 9 December 2004 to Lord Warner I said we would want to be sure that the right balance will be struck between ethical considerations and practical advantages. I should perhaps have made clear in saying so that the over-riding priority in our view must be the health and welfare of the children concerned. With that in mind, we think it is important to understand what you mean when you say that the proposal “effectively” takes account of ethical concerns and would welcome clarification.

We note from your letter that the consideration of ethical concerns will depend to some extent on the clarification requested by the Luxembourg Presidency from the Commission and the Council Legal Service regarding public access to data concerning paediatric studies. We look forward to learning the outcome.

Your letter also mentions the provision to allow for studies on children to be deferred until initial experience of using the product concerned on adults has been evaluated. Your letter says that this will help to avoid unnecessary clinical trials on children. But your EM stated that this procedure would “ensure that medicines
are tested in children only when it is safe to do so”.

These two definitions do not seem to us to be entirely consistent. The former depends critically on what is meant by “unnecessary” and how it would be interpreted. It is not clear from your letter whether other Member States have supported this aspect of the proposal or whether more work needs to be done on it during the UK Presidency. In any case, we would want to ensure that satisfactory safeguards governed this procedure and would be grateful if you could explain how it is intended to work in practice.

Your letter adds that further ethical safeguards are provided in the existing European Clinical Trials Directive. We would be grateful if you would explain more fully what is meant by that statement.

We have tried to follow your description of the Government’s attempts to find a workable solution to the contentious proposal to grant a six-month extension to the Supplementary Protection Certificate for investigating the use of medicines in children. You say that the UK alternative proposal failed to gain acceptance, although a review of the economic impact after 10 years was agreed. We would not regard that as an adequate fallback.

On the other hand, you say that this will be given priority during the UK Presidency when you aim to make significant progress in negotiations, which would imply that the UK might still be able to resolve the impasse between the views of Member States. Here again your clarification would be appreciated.

We also note what you say about the UK view that Article 95 is not an appropriate legal base for this proposal. We recall that your EM stated that Article 308, which requires unanimity, would be more appropriate. We note that parallel legal challenges have already been mounted by the Government on two other proposals to base regulations on Article 95 and that the Government will continue to register concerns about the inappropriate use of Article 95, including in this particular case, in the meantime.

We reiterate our view that the Government should take a firm line in opposing any proposals to adopt an inappropriate legal base, whatever the other merits of the proposal might be. We trust that the Government will continue to press the Commission on this point, as well as striving to persuade other Member States to support that line in this particular case. We look forward to your further report on progress made on this important aspect.

We are glad to note the extent to which consultation has already been undertaken by the Commission and look forward to seeing the results of the MHRA consultation incorporated in the promised Regulatory Impact Assessment (RIA) as soon as it is available. We trust that this will include consultation with the medical profession, as recommended in my letter dated 9 December 2004.

We look forward to receiving the progress report which you have promised to let us have after the Summer Recess and hope that will cover the above points as well as developments in Working Group negotiations and in the European Parliament. We will continue to retain the document under scrutiny in the meantime, pending that report and your RIA.

21 July 2005

Letter from Rt Hon Jane Kennedy MP to the Chairman

Thank you for your response to my letter of 11 July about the European Commission’s proposal for a regulation on medicines for paediatric use. I am writing to respond to the specific points that the committee raised, and to update you on progress in negotiations.

Firstly, given the specific concerns outlined in your letter, I thought it would be helpful to provide further background information and reassurance on the ethical framework that now applies to the conduct of clinical trials in the UK and the rest of the EU, and how this will apply to the conduct of trials involving children. The committee will be aware that the Commission’s proposal was developed to address the current situation whereby more than 50 per cent of the medicines used to treat children in Europe have not been tested or authorised for specific use in children. The proposal builds on and is consistent with the existing European regulatory framework which exists for medicines.

The Clinical Trials Directive (2001/20/EC) and Ethical Considerations

The Clinical Trials Directive (implemented in the UK from 1 May 2004) requires all clinical trials to be designed, conducted and reported in accordance with good clinical practice (GCP). This ensures that the rights, safety and well-being of participants are protected and that the results of the trials are credible. The Directive also requires that all medicines used in trials must comply with good manufacturing practice. MHRA inspects against these standards and has powers to enforce them.
The Clinical Trials Directive also, most importantly, sets out the requirements for obtaining agreement from an ethics committee for every trial that is conducted in a Member State. This requirement will therefore also apply to UK trials conducted in compliance with the paediatric Regulation. In the recitals to the paediatric Regulation, there is a specific cross reference to the Clinical Trials Directive, making it clear that the controls and monitoring of studies in children conducted in the EU must comply with that Directive. Article 1 of the paediatric Regulation also states that the development of medicinal products to meet the needs of the paediatric population must be conducted in compliance with the Clinical Trials Directive. This is what was meant in my earlier letter, when saying that the proposal “effectively” takes account of ethical concerns. The Clinical Trial Directive also provides, in the body of the provisions, additional protection for minors (persons under 16 years). In particular (Article 4) it sets out specific restrictions that require:

- the ethics committee considering the trial must either have relevant paediatric expertise or take advice on questions relating to the protocol from persons involved in the relevant field of paediatric care;
- a person with parental responsibility or a legal representative must give informed consent and may withdraw the minor from the trial at any time;
- the explicit wish of the minor to refuse participation or to be withdrawn from a clinical trial at any time must be considered; and
- there must be no incentives or financial inducements to take part in the trial, except compensation.

In relation to the minor:
- staff with experience with young persons must inform him/her of the risks and benefits of the trial according to his capacity to understand;
- the investigator must consider his/her explicit wish to participate or to be withdrawn from the trial at any time;
- the clinical trial must relate directly to an illness from which he/she suffers or that can only be carried out on minors;
- the trial must aim to provide some direct benefit for the group of patients involved; and
- the interests of the patient must always prevail over those of science and society.

In relation to the trial itself:
- the clinical trial must be designed to minimise pain, discomfort, fear and any other foreseeable risk in relation to the disease and the developmental stage of the child.

These points are particularly relevant to the concerns raised by the committee—with which the Government strongly agrees—that the health and welfare of children must be the over-riding priority in conducting paediatric trials; and to provide reassurance that unnecessary trials would not be accepted by an ethics committee. In response to your question about the position of other Member States in relation to this specific point, I can confirm that all Member States share our view that it is important that the legislative provisions are tightly drawn in this respect.

The committee will also recall that the paediatric Regulation provides additional safeguards; the paediatric committee, which will include EU health professionals from relevant paediatric disciplines, is required, in reviewing paediatric investigation plans, to waive the requirement to conduct trials if there is evidence showing any of the following:

- the specific medicinal product or class of medicinal product is likely to be ineffective or unsafe in part or all of the paediatric population;
- the disease or condition for which the specific medicinal product or class of product is intended occurs only in adult populations (Alzheimer’s disease, for example); and
- the specific product does not represent a significant therapeutic benefit over existing treatments for paediatric patients (in this situation the paediatric committee may decide that as an appropriate product already exists there would be no significant therapeutic benefit to be gained from undertaking clinical trials to test product).

If the paediatric committee comes to a judgement that a waiver should be granted such that clinical trials/studies on a specific product should not take place on any one of the grounds specified above, there will be no financial or other incentive to conduct paediatric development work on that product.

In addition, sometimes studies in children will be more appropriate when there exists some initial experience on the use of a product in adults or studies in children might take longer than studies in adults. To deal with these situations, a system of deferrals is proposed along with a procedure for agreeing them with the paediatric committee.
The paediatric committee will also carefully consider the timing of any trials in children. For example, if there was uncertainty based on trials in adults as to whether a product is safe or effective in children or if a product looks likely not to complete development in trials in adults. There are also agreed international guidelines which cover the timing of the conduct of trials in the paediatric population in relation to trials conducted in the adult population. In July 2000, a guideline (ICH E11) was developed and agreed by the International Conference on Harmonisation (ICH). ICH develops harmonised guidelines on regulatory requirements for medicines which apply in the EU, Japan and the United States. In the United States, specific legislation to encourage clinical trials in children was introduced from 1997. The Commission’s proposal draws on experience gained in the United States. Under the Commission’s proposal, there would be a requirement for studies undertaken under the US regime to be submitted to the European regulatory authorities; thereby reducing participation of children in further trials.

Both the waiver and deferral aspects of the proposal have the full support of the Member States and no modifications have been suggested during the EU discussions so far. As is the practice with European pharmaceutical legislation, the details of how the procedure will operate, will be set out in implementing texts drawn up by the Commission in consultation with the Member States. These will include the scientific and other criteria to be considered when agreeing the conditions of a deferral.

On the proposal that data included in the paediatric clinical trials database should be accessible to the public, we continue to press our view that certain aspects of the database should be publicly accessible and there is significant support from other Member States. In their proposal, the Commission had proposed that the database would not be accessible to the general public. Currently the database established under the Clinical Trials Directive is not publicly accessible (it is proposed to build on this database to include paediatric clinical trials). However, the Commission has now changed its policy on this following the support from the Member States and a European Parliament amendment on transparency of the database. It may, therefore, be possible to include in the paediatric Regulation a requirement to make data on paediatric clinical trials publicly accessible. This has yet to be clarified with the Commission. We will also want to ensure that the proposal for public accessibility is consistent with current personal data protection legislation and there may also be technical issues to address, in relation to the level of transparency of some data but not of others.

In addition, in order to provide healthcare professionals and patients with information about the use of a medicine in children and as a transparency measure, it is proposed that information regarding the results of studies in children (whether positive or negative) would be included in product information. Information on the status of paediatric investigation plans, waivers and deferrals would also be included in product information. It is also proposed that when all of the measures in the paediatric investigation plan have been complied with, this would be recorded in the product’s marketing authorisation.

The committee also raised a concern about the retention of patent rights. The Regulation as drafted preserves all current patent rights, and aims to provide an appropriate extension of such rights (an extension to the supplementary protection certificate—SPC—which protects the product from generic competition for an additional six months) when the required trials have taken place. Further explanation of the SPC/patent provision is at Annex A.

**UK Position on the Proposal for SPC Extension**

The committee has noted that we have revised our original position on the SPC extension and commented that our current position (to support the six month extension but to seek a review of the economic impact of the rewards and incentives within 10 years) does not provide an adequate fallback.

As the committee was previously advised, there was no support for the UK’s proposal for a variable SPC extension based on volume of sales of product. We needed therefore to re-examine our position with a view to finding an alternative mechanism to limit the possibility of the industry generating unreasonable profits that the NHS could ill afford. Other Member States shared the UK’s concerns over the Commission’s proposal but it did not prove possible to find an alternative regime that these Member States could support (see section which provides an update on negotiations). One of the major stumbling blocks to our alternative model is the lack of real information about the possible impact on the health budgets of Member States. Our own calculations produced wide-ranging estimates of the possible cost to the NHS in England of between £30 million and £120 million.
**Review**

The proposal to require a review of the effect of the six months SPC extension and the scope to take action if profits are excessive, has received strong support from the Member States, and we feel that this represents a real opportunity to revisit the incentives offered in this Regulation. The review is timed for “within 10 years” after introduction of the Regulation because we calculate that it will be some years before products that are eligible for the incentives will be available on the market. Until a fair number have been marketed for a reasonable time, we can not make a realistic assessment of their economic impact. In many cases the paediatric plan will not be completed until after the initial marketing authorisation has been granted. An average programme of paediatric clinical trials on a product might be expected to take three to six years (excluding a deferral period) from beginning to end, followed by time to complete the regulatory process (currently around a year). Unlike in the UK, there is a delay in a number of Member States in new medicines entering the market following receipt of a marketing authorisation as Governments and companies negotiate pricing and reimbursement agreements. The delay in each country varies but in some Member States this can take up to three years. In addition, the economic effect of the SPC extension will not be measurable until the end of the patent life of the product. In short, it is unlikely that there will be a significant number of products on the market, for which sufficient volume of sales data will be available until a number of years have passed following entry into force of the Regulation.

We have therefore taken the view, based on this knowledge, that to undertake the planned full review of the economic impact of the new Regulation within a maximum of 10 years would provide us with the information to accurately forecast the impact of a six month SPC extension on health budgets. The impact of the SPC extension will be staggered as medicines will have started their patent life at different times so there should not be excessive burdens placed on health budgets during this period. That said, the committee will be aware that the original review clause in the draft Regulation remains. This requires the Commission to “publish a general report on experience acquired as a result of its (the Regulation’s) application, including, in particular a detailed inventory of all medicinal products authorised for paediatric use since its entry into force”. It therefore remains possible for Member States, on review of this report, and if the volume of products eligible for the incentives at that time appears to be more significant than we currently expect, to call for the full economic review earlier than at the end of the 10 year period. We will carefully consider this report.

**Legal Base**

On the issue of the legal base for this proposal, I can unequivocally reassure you that the Government intends to maintain a firm line with respect to any Commission text that proposes adoption under an inappropriate legal base. As you point out, the Government has mounted parallel legal challenges on two other proposals to base legislation on Article 95 rather than Article 308 of the Treaty. The cases concerned relate to the use of a centralised authorisation procedure for smoke flavourings and the foundation of the European Network and Information Security Agency (ENISA). As Presidency we are working to achieve agreement on this dossier, a centralised authorisation procedure for smoke flavourings and the foundation of the European Network and Information Security Agency (ENISA). As Presidency we are working to achieve agreement on this dossier, while continuing to register our concerns about the proposed legal base. In negotiations we continue to register our objection to use of Article 95 for this Regulation, and Denmark and Portugal have also registered a reservation on the use of this legal base. It is still possible that other Member States will register an objection in relation to the proposal, but it is highly unlikely that there will be sufficient opposition to affect the outcome of any vote.

**Update on the UK’s Consultation Exercise and Progress in Negotiations**

The committee has already seen our consultation document on the proposed Regulation and the consultation closed on 17 August 2005. The document was circulated to a range of stakeholders including the medical profession and was also posted on the MHRA website. 21 responses were received, two of which made no comments on the proposals. Responses were received from a range of organisations including the Royal College of Paediatrics and Child Health, Royal College of General Practitioners, Royal College of Physicians, Royal College of Nursing, the National Patient Safety Agency, the Association of Paediatric Anaesthetists, the Royal Pharmaceutical Society, the Guild of Healthcare Pharmacists, Epilepsy Action, the Consumer Association and industry trade associations.

You will see from the summary of responses (attached at Annex B) that those respondents who provided comments welcomed the aims of the draft Regulation and some were strongly supportive of certain proposed provisions. A number of respondents indicated support for the proposed system of waivers, deferrals and the inventory of therapeutic needs. Some respondents asked for clarification of some of the proposed provisions. I attach an updated regulatory impact assessment (RIA) that reflects the feedback received from the consultation exercise.
As I mentioned in my last letter, the dossier was discussed at the Health Council in June 2005. The majority of Member States, including the UK, signalled their support for the Commission’s proposal on Article 36. Poland and Hungary subsequently circulated alternative proposals for consideration by Member States but at present there remains overwhelming majority support in the Council for the Commission’s proposal for a fixed six-month extension to the SPC. As the Regulation will be agreed by a qualified majority vote, the six-month extension to the SPC is already secure in the Council. Two Council working groups have taken place under the UK Presidency. The European Parliament (EP) voted in plenary on the proposals on 7 September 2005. The EP voted to adopt the proposals (by a significant majority), including the proposal for six-months extension to SPC. The Commission has indicated that their response to the EP’s vote will be available by late October 2005. The proposals will be discussed at the Health Council on 9 December 2005, when it is hoped that political agreement will be reached. As I have outlined previously the Government attaches significant importance to this Regulation and is committed to making progress in negotiations. I hope that the information I have provided in this letter will enable the committee to grant scrutiny clearance at this time.

24 September 2005

Annex A

EXTENSION OF THE DURATION OF THE SUPPLEMENTARY PROTECTION CERTIFICATE (SPC)—Chapter 5, article 36

Under current legislation, a supplementary protection certificate (SPC) may be granted for the patent-protected active ingredient (“product”) of a medicine. This extends protection of the product to a maximum of 15 years from the date on which the first marketing authorisation (MA) for a medicine containing the product was granted in the Community. Under the paediatrics Regulation, it is proposed that a six-month extension to the SPC would be granted for products which comply with all of the conditions included in the proposal, including submitting all of the studies conducted according to an agreed PIP. The six-month extension would take effect at the end of the original SPC period and would in effect further extend the patent protection on the product by six months. It is proposed that a statement will be included in the marketing authorisation of the product to indicate that all of the conditions have been met. Companies will be required to present the MA to the appropriate patent office who will award the SPC extension.

This is the same period of extension that applies under the US paediatric exclusivity provision.

Letter from the Chairman to Rt Hon Jane Kennedy MP

Thank you for your letter dated 24 September which was considered by Sub-Committee G on 13 October and again on 20 October.

We are grateful to you for such a thorough response and for letting us have your updated partial Regulatory Impact Assessment and the summary of the results of the MHRA Consultation. All these have been carefully considered.

As we have already explained to your officials, however, the Sub-Committee decided that this Proposal raised sufficiently important issues to warrant carrying out a short Inquiry by gathering a selection of views from interested parties. Having considered those views, the Sub-Committee have decided to invite Professor Sir Cyril Chantler, the President of the Great Ormond Street Hospital NHS Trust, to give oral evidence about the Proposal at a public session on Thursday 27 October at 10 am in Committee Room 4. Your officials are, of course, welcome to attend that session if they wish.

We note from your letter that you hope to secure political agreement on the Proposal at the Health Council on 9 December and have asked for scrutiny to be lifted in time for that. Nevertheless, the Sub-Committee hope that you would be able to help them in completing their short Inquiry by giving oral evidence about the Proposal in the usual way. If a mutually convenient date and time can be found for this early enough in November it should still be possible to reach a decision on your request for scrutiny clearance in sufficient time for the Council meeting. We will be in touch with your officials in the hope that this can be arranged.

20 October 2005

Letter from Rt Hon Jane Kennedy MP to the Chairman

Thank you for giving me the opportunity to provide evidence about the European Commission’s proposal for a Regulation this morning. I promised to provide answers to the questions which were not reached during the oral evidence session this morning.

IDENTIFICATION/LABELLING

The committee will be aware that the original Commission proposal included a provision that medicinal products that were authorised through the Paediatrics Regulation would display a “P” on the product label. During the discussions in the Council working group it became clear that a number of Member States, including the UK, could not accept a “P” for different reasons. The current position agreed in the Council working group, which is in line with a European Parliament amendment, is that there will be a European symbol on the package label of all medicines authorised for paediatric use. The symbol will be selected by the paediatric committee within one year of the Regulation coming into force. The meaning of the symbol will be explained in the package leaflet. The symbol will be abstract, will not indicate a particular age group and there will be one symbol only. We do not believe that there is a danger of over-simplification.

RESEARCH

Under the proposals, the European Medicines Agency (EMEA) would act as a focal point to facilitate communication and collaboration between existing networks (such as the UK Clinical Research Collaboration paediatric clinical trials network) and act as an information point for pharmaceutical companies looking to conduct multinational trials. The proposed network will not affect the individual integrity of the existing national networks. It should help to disseminate good practice and communicate information on upcoming and ongoing trials. We are supportive of this approach. The EMEA will receive the necessary funding to carry out its co-ordinating role.

The committee asked about the Medicines Investigation for the Children of Europe (MICE) research programme. This specific programme was mentioned in earlier informal draft proposals but not in the formal proposals adopted by the Commission in September 2004. There is, however, a proposal for funding for research into the paediatric use of off-patent medicines through the Community’s research framework programmes.

We believe there is indeed a need for such funding for research into the paediatric use of off-patent medicines and that this can be achieved through the Community’s research framework programmes.

EXPERIENCE ELSEWHERE

The committee asked about the legislation in place in the United States and my officials have already provided a summary note. The patent protection incentive (six months) offered in the US is the same as that proposed under the European Regulation. However, there are some differences. In the US, a company is awarded an extra six months patent protection if it submits studies carried out according to a written request issued by the Food and Drugs Administration (FDA) based on public health needs. The written request does not usually cover all appropriate age groups and formulations. Under the European proposals, a company would be awarded an extra six months patent protection if:

— it submits all studies contained in an agreed paediatric investigation plan (PIP);
— the PIP covers all appropriate paediatric age groups and formulations;
— the studies have been assessed and the appropriate information on paediatric use incorporated into the product information; and
— the product has been placed on the market in all Member States.

Both Australia and Canada face the same problem of a lack of medicines licensed for use in children. Neither have an existing legislative framework despite calls from their national professional and regulatory bodies. I hope this information is helpful. I would like to re-iterate the point I made this morning about the importance the Government attaches to this proposal. We believe the proposal is long awaited and we hope to contribute to its progress by reaching political agreement under the UK Presidency at the Health Council next month. I hope the committee is able to grant scrutiny clearance on the proposal as soon as possible.

12 November 2005

Letter from the Chairman to Rt Hon Jane Kennedy MP

We are grateful to you and your officials for the helpful oral evidence given to Sub-Committee G on 10 November, as well as for the very thorough reply in your letter dated 24 September. We are also grateful to you for supplying a summary of the consultation on this Proposal carried out by the Medicines and Healthcare Products Regulatory Agency (MHRA).
Thank you, too, for your latest letter dated 12 November which supplies answers to the questions on Identification/Labelling, Research and Experience in other Countries, which were not fully covered in the oral evidence session.

We have also seen a copy of your letter dated 12 November to Jimmy Hood about the progress made in recent Council Working Group meetings, on which you touched in your oral evidence.

The next step is for Sub-Committee G to prepare and consider a draft Report on this short Inquiry and submit that to the Select Committee for approval and publication. We intend to do so as soon as possible, but that process is bound to take a few more weeks.

But we are aware that the Government is very anxious for scrutiny to be lifted in time to secure the expected "political agreement" at the Health Council meeting on 9 December and you have asked whether it might be possible to do so before the COREPER meeting which will consider the Proposal on 24 November.

It would be unusual to lift the scrutiny reserve in advance of the normal process of publishing an Inquiry Report. In this case, we have given very careful consideration to your request in the light of your own evidence and that given in the selected sample given to the Committee, as well as the results of the MHRA consultation. We have taken particular note of the assurances you have given us, especially about the protection of the health, welfare and rights of any children involved in paediatric testing. We have also taken account of the overwhelming weight of professional opinion we have seen and heard which broadly supports the Proposal and is anxious to see it implemented as soon as possible. We also have considered the indications of broad support from industry representatives in our evidence and the MHRA consultation and we have noted the endorsement of the European Parliament.

Ideally, we would have preferred to have spent more time considering this Proposal in greater depth. But, in view of your assurances, the evidence we have been given and the widely-felt need to move forward in the interests of children, we would be willing exceptionally to grant your request to lift scrutiny at this stage so long as you would be prepared to address the three principal outstanding concerns set out in the following paragraphs in the way that we propose.

**Clinical Trials Database**

Firstly, we understand from your oral evidence that the Commission has already made some concession over access to the Clinical Trials Database. But, from what was said in that evidence and from the report in your letter dated 12 November to Jimmy Hood it is not entirely clear what degree or other conditions of access the Commission are now proposing. Regrettably it appears to be less than the firm and unequivocal commitment to full access which the Committee would wish to see. We must therefore ask the Government to press for clarification of the Commission's position at or before the Council meeting and to support the case for full access to the database vigorously at the Council meeting and in subsequent discussion of the guidelines.

**Guidelines**

Secondly, you will know from what was said at the oral evidence session that we continue to have some doubts about the adequacy of the ethical safeguards over the consent of minors to trials. Despite what you say in your letter dated 12 November, we also remain deeply concerned from the evidence we have had whether the proposed arrangements for labelling and identification of products, and for providing information on their suitability for use with widely-differing groups of children, will be a sufficient guarantee of safe practice. We accept that the practical implementation of these and other important aspects of the safe and ethically-acceptable implementation of the Regulation will largely be determined by the guidelines which have yet to be worked out. We wish to keep that activity under review and therefore request that your officials should provide appropriate on-the-record briefing to the Committee in due course on the progress made in developing those guidelines.

**Incentive Arrangements and Review Procedure**

Thirdly, we must register our concern over the uncertainties surrounding the incentive arrangements proposed through the Supplementary Protection Certificate, the Paediatric Use Marketing Authorisation and the special provisions for orphan medicinal products. We have taken careful note of what you, your officials and others have said about those proposals. But we find ourselves unable to judge from the information we have been given whether those arrangements are likely to provide the necessary incentives to industry, whether they
are likely to equitable and proportionate or whether they may give rise to excessive profits, penalise the health services of Member States or create unacceptable disadvantages for the manufacturers of generic products.

We were disappointed with the inadequacy of the costs estimates produced in your Partial Regulatory Impact Assessment (PRIA) and hope that the Department will continue to try to refine more reliable figures when the final RIA comes to be produced. But we accept to some extent the difficulties in doing so reliably in the circumstances and acknowledge that it may be some years before a clear picture will emerge of how well these arrangements are working.

For all these reasons, we welcome and attach great importance to the Government’s efforts in pressing for a full economic review of these proposals as soon as feasible. We look to the Government in its Presidency capacity to focus attention on this aspect at the Council meeting and to secure a firm and unambiguous commitment from the Commission that either such a review should form part of the general report required by Article 49 within six years of implementation or that the Commission should be required to explain clearly to the satisfaction of the Council why it would be premature to do so at that stage and to ensure that is undertaken as soon as possible after that.

We are also anxious to ensure that the Commission’s six-year review will contain a full evaluation of all other aspects of the working of the Regulation. We would expect that review to be subjected to rigorous Parliamentary scrutiny.

**Scrutiny Reserve**

On receipt of your confirmation that you would be prepared to agree to proceed as proposed above, we would be willing to release scrutiny forthwith in the hope that the expected “political clearance” can be reached at the Council meeting as you have outlined. Should it not be possible to secure “political clearance” on the terms you have outlined we would expect scrutiny to be resumed.

We hope you will find this helpful. Naturally, we would expect you to report on the outcome of the December Council meeting and would ask you to set out in that report how you see the remaining steps leading to implementation if the expected “political agreement” is secured.

I should also make clear that, even if the scrutiny reserve is lifted as proposed above, we cannot guarantee that on such an important issue, with potentially far-reaching consequences for the welfare of children and with so many uncertainties inherent in the nature of the Proposal, a debate in the House may not be called for on publication of our Report.

**Legal Base**

Our other conclusions and recommendations on the proposed Regulation will be contained in our Report and we will look forward to the Government’s response to that. But we promised to let you have some further observations on the legal base. We note what you say in your letter dated 24 September and would be glad to know whether any further progress has been made on this important question in Working Group discussions or elsewhere in the meantime and how you propose to deal with it at the December Council meeting.

The Department’s original Explanatory Memorandum, dated 8 November 2004, and your letter dated 11 July both said that Article 95 would not be appropriate for measures which established a centralised EC procedure or body. In this case, the centralised body is the proposed Paediatric Committee, which would function under the aegis of the European Medicines Agency (EMEA). But it appears that the Government have not challenged the use of Article 95 as the legal base for the EMEA itself under Regulation 726/2004. We find this surprising and seemingly inconsistent with the challenges which you mention the Government is making in several other cases. We would welcome an explanation.

18 November 2005

**Letter from Rt Hon Jane Kennedy MP to the Chairman**

I am writing in response to your letter of 18 November 2005. I am pleased to see that the Committee has agreed to grant scrutiny clearance at this time subject to our acceptance of the conditions that you have outlined in your letter. I can confirm that the conditions are acceptable. The issues for which you have sought reassurance are issues that are also important to the Government.

On the economic review of the Regulation, the Committee will be aware that the UK pressed hard in negotiations for a robust review of the incentives proposed under the Regulation. At this stage there is agreement that within six years of the Regulation entering into force the Commission will publish a general
report on the operation of the Regulation as well as a detailed inventory of all medicinal products authorised for paediatric use under the Regulation. A full economic analysis of the incentives will be undertaken at six years provided there are sufficient data available at that time. If not, the full economic analysis will be undertaken within 10 years of the Regulation coming into force.

On the proposed paediatric clinical trials database, there is currently agreement in the Council working group that it will be for Member States, the European Medicines Agency (EMEA) and other interested parties to agree what parts of the database will be accessible to the public. The Council’s view is, that at the very least, the results of all paediatric trials, whether terminated prematurely or not should be publicly accessible. The Government believes this is a very positive development.

On the legal base issue, the Government’s view is that Article 95 of the Treaty is not an appropriate legal basis for this Regulation and that Article 308 should have been used instead for the reasons invoked in two cases brought by the UK before the Court of Justice of the European Communities (C-66/04 and C-217/04).

While we are strongly supportive of the content of the proposal on policy grounds, we intend to record our disagreement that Article 95 is an appropriate legal base for this measure in a minute statement at the Council.

While we await the outcome of the two UK challenges in the European Court of Justice, the Government believes that it would not be desirable to oppose every measure which uses Article 95 in this way and where we support the underlying policy. The Government intends to vote in support of the proposal at the Council on 9 December 2005.

A reply will follow separately about the query you have raised in relation to Regulation 726/2004.

22 November 2005

Letter from the Chairman to Rt Hon Jane Kennedy MP

Thank you for your letter dated 22 November which was considered by Sub-Committee G on 24 November.

We are pleased that you have accepted the conditions outlined in my letter dated 18 November on which the Committee would exceptionally be prepared to grant scrutiny clearance. You may therefore take it that scrutiny clearance has now been lifted, so far as we are concerned, on that understanding. We welcome your reaffirmation that these issues are important to the Government.

What you say about the economic review of the Regulation is also noted. We continue to expect that the Commission’s review will also make a thorough evaluation of all aspects of the working of the Regulation.

We are glad to learn that the Council believe that the results of all paediatric trials, whether terminated prematurely or not, should be publicly accessible on the paediatric clinical trials database. We look to the UK Presidency to ensure that clear and firm agreement is secured on this at the Council meeting.

In due course we will want to agree with your officials when it would be appropriate for them to provide the agreed on-the-record briefing on progress in developing the guidelines, as also requested in my letter.

We also note what you say about the legal base and look forward to your response on the further comments about that made in my letter.

We will now proceed to prepare our Inquiry Report and will send you a copy in due course.

We also look forward to your report on the outcome of the December Council meeting.

25 November 2005

Letter from Rt Hon Jane Kennedy MP to the Chairman

In my letter of 22 November 2005, I promised to reply separately about the query you raised in relation to our position on Regulation 726/2004. I can confirm that the Government raised objections to the use of Article 95 for this measure.

At the time we had concerns about the use of Article 95 as the legal base for fundamental changes that we believed required use of Article 308 of the Treaty. At the Council of Ministers meeting in June 2003 (when political agreement was secured), the Government voted in favour of the agreed package on policy grounds, but submitted a statement with a number of other Member States to highlight our concerns about the use of Article 95 for the Regulation. In December 2003 when Member States agreed the final compromise package, we also submitted a minute statement to register our objection to the proposed legal base.

14 December 2005
MENTAL HEALTH STRATEGY FOR THE EUROPEAN UNION (13442/05)

Letter from the Chairman to Rosie Winterton MP, Minister for Health Services, Department of Health

Thank you for your Explanatory Memorandum which was considered by Sub-Committee G on 1 December. We have decided to hold this document under scrutiny. The consultation is at an early stage and we will want to examine the Commission approach, and the Government’s policy thinking on it, more closely as it develops.

We note your view that the Commission’s main priorities for an EU Mental Health Strategy are in line with current UK policy to combat the social exclusion and stigma associated with mental health and reducing suicide rates.

In considering the rationale for action by the Commission, we would be glad to know:

— whether the Government believes an EU Strategy on Mental Health would add value to the policies being pursued in individual Member States; and

— if the Government does believe the EU can add value in this policy area, which particular benefits to those suffering from mental disorders could the EU provide that are not already offered by World Health Organization and Council of Europe initiatives?

In addition to answers to these specific questions, we would like to see a copy of the Government’s submission to the Commission consultation in due course.

1 December 2005

Letter from Rosie Winterton MP to the Chairman

I am writing to reply to the Committee’s comments on the mental health Green Paper and its explanatory memorandum. I am grateful for the opportunity to set out the Government’s position, and let me begin by making it clear that I write as a member of the Government, not in any capacity related to the EU presidency.

The Committee asked whether an EU mental health strategy would add value, and whether it would complement the activity of the World Health Organisation or the Council of Europe. The question of whether a strategy would add value is one of the specific issues that the Commission is now consulting on, and the Government would like to take views on it before reaching a firm conclusion.

That said, we can certainly see potential benefits for the UK from the sort of strategy that the Green Paper envisages. The Green Paper echoes current UK policy priorities in a number of important aspects—including the importance of public mental health and promoting the mental health of the whole population, the need to address inequalities, social exclusion and stigma, and suicide prevention. A strategy that facilitated the sharing of information, evidence and good practice around these subjects could therefore support the successful implementation of our policies.

I agree that a strategy would need to complement the WHO Helsinki Declaration and other planned activity, not duplicate it. The Green Paper acknowledges the Helsinki Declaration and presents itself as a contribution to its implementation. An objective of our presidency has been to promote more integrated working between the EU and WHO (both were represented on 8 November at our seminar on mental health inequalities) and we would want any EU strategy to share that objective.

I also think we should bear in mind that EU Member States are in markedly different positions in terms of mental health services and indicators of mental health such as suicide rates. The Green Paper itself contains some examples. I think it is fair to say that the UK is seen as a relatively strong performer on mental health, and we have to recognise that the effect of a strategy, and the extent to which it is drawn on, may well vary between Member States. We would want the strategy to be flexible enough to accommodate that.

I expect all these points will be included in our formal response to the Commission’s consultation. We will, of course, provide the Committee with a copy of that response when it is completed next spring.

20 December 2005

Letter from the Chairman to Rosie Winterton MP

Thank you for your letter dated 20 December 2005 which was considered by Sub-Committee G on 12 January. We note what you say about the potential benefits for the UK and others from the sort of strategy proposed by the Green Paper and the need to complement, rather than duplicate, WHO and other international activities in this field.
We also note what you say about the marked differences in mental health services and indicators between different Member States, and what you regard as the UK’s relatively strong performance in this area. In responding to the Green Paper you may wish to consider the extent to which UK legislation and practices might provide a useful model for other Member States, as well as where the UK might learn useful lessons for other Member States.

We are grateful for you confirming that you will provide a copy of the Government’s formal Response to the Commission’s consultation in due course. We propose to retain the document under scrutiny for the time being.

You should also know that we are considering the possibility of setting up an Inquiry into the Commission’s Proposal at an appropriate time. We will let you know whether we decide to go ahead with that Inquiry in due course. If we do, evidence from you and your officials would, of course, be most welcome in the usual way.

12 January 2006

MINIMUM HEALTH AND SAFETY REQUIREMENTS REGARDING THE EXPOSURE OF WORKERS TO THE RISKS ARISING FROM PHYSICAL AGENTS—OPTICAL RADIATION (10678/04)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Minister of State for Work, Department for Work and Pensions

Your letter dated 1 March was considered by Sub-Committee G on 6 April.

We had already noted from the letter dated 10 January from your colleague Chris Pond that political agreement on this draft Directive was reached at the Employment, Social Policy, Health and Consumer Affairs Council on 7 December 2004, although UK Parliamentary scrutiny was reserved because the Commons Scrutiny Committee had not cleared the document.

Our position remains that, while we were content in principle to clear the document from scrutiny to enable political clearance to be given, we still have some doubts about the practicability of certain aspects of the proposed Directive and about the likely impact, which still does not appear to have been fully assessed.

You will know from our previous correspondence that we, like you, draw a distinction between the risks from optical radiation arising from the relatively-controllable environment of industrial, laboratory or workshop processes, which are subject to HSE inspections, and those arising from sustained exposure by outdoor workers to natural hazards such as strong sunlight. The merit of trying to lump together these very different kinds of risk in this Directive seems to us to be questionable, especially when the main risks to outdoor workers appear to be dermatological rather than optical.

We welcome the Department’s proposal to embark on a publicity campaign to alert outdoor workers and their employers to the risks of undue exposure to strong sunlight in the working environment and hope that it will be successful. But we still doubt the desirability and practicability of the proposed requirement that employers should record (albeit by a “simple note”) that the leaflets have been distributed with a “few words” of appropriate advice. We are not sure what useful purpose that will serve.

Moreover, it is not clear from your letter whether it is intended that the HSE, or some other Government agency, would be required to check that these records have been properly kept and, if so, what that might cost. Nor indeed do we know whether any penalties would be imposed for failure to keep such records. We would be grateful if you would clarify these points.

We accept that it may be difficult to distinguish between the incidence of harm arising from undue exposure by outdoor workers to strong sunlight during their working hours, and that caused by additional exposure during leisure activity. But are there no statistics and other research data which would indicate the extent to which outdoor workers may be at greater risk of incurring skin diseases than the rest of the population which could be taken into account when assessing the extent of the problem and the likely benefits of these proposals?

We note that, because much of the ground to be covered by the proposed Directive has already been laid by existing UK legislation, you do not expect the Directive to impose undue additional risk management burdens on employers. Even so, we regret that it was not possible to consult small organisations (including voluntary bodies as well as small firms) or to carry out a more satisfactory Impact Assessment.

You say this was not possible because of the rapid pace at which the proposed Directive was negotiated. We would have preferred the Government to have argued for delaying negotiations to give an adequate opportunity for stakeholders to be consulted and for a more satisfactory Impact Assessment to be prepared.

Your letter mentions plans for future consultation by the Health and Safety Commission and the production of a revised RIA. But it is not clear what timescale is envisaged for that activity in relation to further consideration of these proposals. We hope that it will be possible to reflect the findings in a revised RIA and submit it for further Parliamentary scrutiny well before the Directive is tabled for adoption. We would welcome your clarification on this, too.

We note what you say about the Commission’s continued refusal to produce their own separate updated Impact Assessment. We agree that this is regrettable and are sorry that you have not been able to persuade other Member States to support you in calling for the Commission to do so.

7 April 2005

Letter from Lord Hunt of Kings Head, Parliamentary Under-Secretary of State,
Department for Work and Pensions to the Chairman

As you will know from Chris Pond’s Written Answer of 11 January 2005 a Common Position Text was agreed at the Employment, Social Policy, Health and Consumer Affairs Council on 7 December 2004. At that time Chris maintained the UK’s Parliamentary Scrutiny Reserve as the proposal had yet to clear scrutiny via the Standing Committee B debate.

There have been a number of developments on this proposal on which I must update the Committee. I should also like to pick up the points you raised in your letter of 7 April 2005 to my predecessor Jane Kennedy now that the situation on the proposal has changed somewhat.

When the Common Position text went to the European Parliament it was the subject of fierce debate. Opinion within the Parliament was polarised with some MEPs calling for strengthened provisions on naturally occurring optical radiation (sunlight) and health surveillance and others pressing strongly for the removal of the sunlight provisions.

This process culminated in the debate and vote on Second Reading amendments to the common position text took place in the European Parliament on 6 and 7 September. A copy of the European Parliament’s Opinion at Second Reading (Council Doc 12057/05) is enclosed.

In summary, the Parliament voted for the amendments numbered 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 20, 22, 23, 25, 26, 28, 29, 30, 31 and 32. The key outcomes were as follows:

— **Natural radiation (sunlight):** the EP voted in favour of removing entirely the natural radiation provisions from the Common Position text, proposing that this issue come within the regulatory competence of the Member States;

— **Health surveillance:** the EP voted to amend the Common Position text to provide for appropriate health surveillance for workers exposed to optical radiation for medical examinations to be made available in accordance with national law and practice where exposure above prescribed limit values is detected.

Removal of the sunlight provisions was confirmed on 27 September, when Commissioner Verheugen, announced as part of the Commission’s Better Regulation agenda that a number of legislative proposals were to be withdrawn. The Commission Communication “Outcome of the screening of legislative proposals pending before the Legislator” (COM(2005) 462 FINAL) indicates that “... the screening exercise has led the Commission to conclude that the aspects dealing with exposure of workers to natural optical radiation should be deleted, as proposed also by the European Parliament...”.

We understand that following the Parliament’s vote, the Commission can accept all amendments except Amendment 5 which derogates in the case of sunlight from employers’ general duty to protect workers from all risks under the Framework Directive (89/391/EEC). A copy of the Commission’s Opinion on the European Parliament’s amendments to the Common Position (COM (2005) 526 final) is enclosed.

The Council cannot accept all amendments and conciliation will now take place on 6 December.

**Main Issues for Negotiation**

Having removed the naturally occurring radiation (sunlight) provisions from the proposal, the main areas for negotiation relate to the health surveillance provisions, where the Parliament is seeking some strengthening. The Council has also proposed an alternative formulation for removing the naturally occurring radiation (sunlight provisions) from the proposed directive. The European Parliament’s proposed amendment 5 was unacceptable to the Commission because of its incompatibility with the Framework Directive on health and safety (89/EEC/391).
The Presidency believes a reasonable compromise is near that is acceptable to the Council, Parliament and Commission.

Some serious concerns were raised in debate by European Standing Committee B and in correspondence with the Lords European Scrutiny Committee relating to potential costs and burdens on business attaching to the sunlight provisions in the original proposal. These now fall with the removal of the provisions. The changes relating to health surveillance are acceptable to the UK in terms of an overall agreement.

**YOUR LETTER OF 7 APRIL TO JANE KENNEDY**

Clearly the situation has changed somewhat since your letter to Jane was written, with the Parliament and the Commission accepting that the proposed directive should not cover sunlight. There will be no new regulatory requirements for employers in Great Britain to protect their workers from exposure to sunlight beyond what they should already be doing under the Health and Safety at Work Act and the Management of Health and Safety at Work Act. Accordingly, there should be no new cost burdens.

**Letter from the Chairman to Lord Hunt of Kings Heath**

Thank you for your letter dated 30 November which was considered by Sub-Committee G on 15 December. We are grateful to you for reporting developments on the Proposal since my letter dated 7 April to Jane Kennedy. As you know from previous correspondence, we had serious doubts about the practicability of the proposed requirements regarding exposure by outdoor workers to strong sunlight, where the risks in any case appear to be more dermatological than optical. We therefore regard the deletion of those requirements as a welcome victory for common sense.

We note that the proposed addition of requirements for medical examination of those exposed to optical radiation above certain prescribed limits is acceptable to the UK. It appears from your letter that the rest of the overall agreement that is now envisaged would also be acceptable, if it can be achieved.

Nevertheless, I would remind you that in earlier correspondence we regretted the Government’s failure to consult small organisations adequately about the consequences of compliance. Although the Government claimed that they did not have time to consult small organisations when an early decision was expected in November 2004, there should have been ample time to do so since then. We would be glad to know whether this has been done and, if so, what the findings were.

Moreover, Jane Kennedy’s letter dated 1 March acknowledged “some uncertainty” in the HSE’s initial Regulatory Impact Assessment and promised that the RIA would be revised. Now that you apparently expect a compromise to be reached between Council, Parliament and the Commission shortly, we would also be glad to know how this stands and when the revised RIA may be expected to be submitted for scrutiny.

15 December 2005

**MORTGAGE CREDIT IN THE EU (11500/05)**

**Letter from the Chairman to Ivan Lewis MP, Economic Secretary, HM Treasury**

Your Explanatory Memorandum dated 7 September was considered by Sub-Committee G on 27 October. As you acknowledge, these are important proposals with a potentially wide-ranging implications. Sub-Committee G is concerned with the consumer protection aspects and by the potential relationship of these proposals to the Commission’s parallel Proposal for the Harmonisation of Consumer Credit on which Sub-Committee G has set up an Inquiry. That Inquiry is currently suspended pending submission by the Department of Trade and Industry of a fresh Explanatory Memorandum on the revised text recently adopted by the Commission but we expect it to be resumed shortly. When it is we will want to keep the possible relationship between these two initiatives in view.

Two other Sub-Committees, Sub-Committee A which deals with economic and financial affairs and Sub-Committee E which deals with law and institutions, also have an interest in the implications of these proposals.

We are therefore retaining this document under scrutiny and would be grateful if you could ensure that we are sent a copy of the Government’s Response to the Green Paper in due course.

31 October 2005
Letter from Ivan Lewis MP to the Chairman

Thank you for your letter of 31 October, explaining that the Explanatory Memorandum on the Mortgage Credit Green Paper was being retained under scrutiny.

I am pleased to enclose a copy of the response that is being sent to the Commission on this Green Paper.

UK RESPONSE TO COMMISSION GREEN PAPER ON MORTGAGE CREDIT IN THE EU

OVERVIEW

EU mortgage markets constitute an important aspect of the overall economy of EU Member States. Increased efficiency and competitiveness in these markets has the potential to contribute to the overall growth of the EU economy by enabling consumers to enter housing markets, through helping homeowners maximise the value of their housing assets and by facilitating labour market flexibility.

As the Commission’s Green Paper makes clear, increased efficiency and competitiveness in EU mortgage credit markets is most likely to be delivered by ensuring that mortgage credit can be demanded and offered with limited hindrance throughout the EU and that market completeness, product diversity and price convergence are enhanced across Member States.

In order to achieve these goals the UK believes that the focus of future work in this area should be shaped by the following priorities:

Better enforcement

The better enforcement and implementation of existing measures is an important priority. A wide range of existing Directives bear on the ability of mortgage lenders to freely offer financial services at a distance, to structure their businesses appropriately, and undertake a number of specific activities across border, like “distance marketing”. It is important that all Member States transpose and implement agreed Financial Services Action Plan measures on time.

Better Regulation

The UK strongly believes that priorities for future work should be determined by continued focus on the principles of better regulation. The Commission’s commitment to open and transparent consultation to date has been very welcome and it is hoped this approach will continue when the Commission considers how it might take forward the issues in the Green Paper.

It is important as well that the Commission carries out a convincing economic impact assessment of any proposals. The London Economics study published alongside the Green Paper represents a first step, but is a long way short of the sort of rigorous cost benefit analysis that will be required to justify any specific action.

The UK’s recent experience of introducing regulation indicates that the cost of intervention can vary greatly depending on the measure concerned. For example, significant costs arise from intervening on consumer information and advice. At the same time, the evidence suggests that consumers’ information and advice needs are closely linked to the legal and cultural landscape of their specific national markets. The UK is therefore sceptical that Commission intervention in this area will prove effective in cost benefit terms, especially given the lack of evidence that action on this front will deliver greater integration.

Alternatives to Regulation

In line with our post-FSAP priorities, the UK believes that alternatives to regulation should be fully explored before any decision is made on legislative interventions in EU mortgage markets.

The Commission’s Green Paper itself highlights a number of areas where non-legislative action has begun to address barriers to market integration. The EU Code of Conduct and EULIS project are both examples of alternatives to regulation that have enjoyed some success to date and where there is scope for much more work. The UK also believes that credit data access and mortgage funding would benefit from similar cooperative initiatives. The evidence of EULIS shows that the costs of voluntary action would be modest. But there is real potential to increase market access, by reducing, for example, uncertainty over land ownership and valuation, and lack of access to borrower data. These represent significant barriers to mortgage market integration.
Global nature of financial markets

Whilst mortgage credit markets in the EU are at present very localised, the wholesale markets that increasingly provide the funds for EU mortgage lending are international. Reducing funding costs through increased liquidity in existing markets for national mortgage assets, or through developing a new pan-European markets will benefit consumers through reducing the cost of funding, facilitate product innovation, help extend market completeness and lower barriers to market entry for new lenders.

The UK therefore supports the Commission’s willingness to explore the potential of market led initiatives in this area and believes it should be a priority of work going forward to ensure that the existing diversity of funding options is protected and promoted.

And retail lenders are becoming increasingly active on the world stage too, as they seek growth and efficiency through international mortgage businesses.

The Commission’s Priorities

The need for the Commission to identify particular mortgage priorities is clear. These priorities should be areas where enhanced market access can be achieved using persuasive and voluntary measures, to foster greater collaboration and cooperation.

Given our detailed analysis in part 3, the UK believes the priorities should be:

— Increasing non-discriminatory cross-border access to consumer credit data, while maintaining key data protection safeguards. This will facilitate market entry for lenders and has the potential to strengthen over-indebtedness strategies.

— Developing trusted common valuation standards that can be widely used and understood by valuers and lending institutions.

— Raising confidence in repossession procedures, while maintaining significant consumer safeguards.

— Encouraging the development of EULIS and recognising it as an example of good practice.

In addition we welcome the recognition of the need for efficient, low cost mortgage funding arrangements in the Green Paper.

The mortgage funding priorities should be:

— The formation of a working group to contribute to further work on mortgage funding efficiency.

— Exploring the strong potential of industry collaboration in this area.

— Liberalising those regimes that restrict mortgage lending to particular sorts of enterprise, such as those taking deposits.

The Green Paper

Context—the UK mortgage market

With around 600 lenders and 12,000 intermediaries, and lending of upwards of £290 billion last year via over 7,000 different mortgage products, the UK has one of the most diverse and complete mortgage markets in the EU. In providing our detailed response to the questions posed by the Commission in the Green paper we have drawn on the experience of both designing and implementing regulation for this market. That process involved comprehensive cost benefit analysis and consultation with all of those involved in the lending industry and consumers, and included major programmes of consumer testing.

Consumer protection

There is a major social and human dimension to mortgage credit. For most consumers, mortgages are the most significant financial decisions they undertake.

Mortgage markets are, however, likely to continue to operate through national distribution arrangements. Accordingly the policy emphasis should be on respecting existing national arrangements for consumer protection. Any reform would not only need to be fully informed by appropriate analysis and impact assessment, but must also be developed using full consumer testing.
The voluntary Code of Conduct is a positive example of an alternative to EU legislation and as such should be encouraged. The Code has been operational for a relatively short period of time and in the UK’s opinion it should be given more time to become established and for its impacts to be assessed before any changes are proposed.

In the UK’s view it is fundamental that information should be provided at a stage that enables consumers to shop around and compare mortgages. The principal objective should be to ensure that the consumer has the opportunity to consider the information before being asked to commit to a particular product. Consumer research is essential in order to establish the optimal balance between detail and quantity of information that best helps consumers compare offers.

Whilst the UK welcomes the Green Paper’s recognition of a need for balance when providing information, it is important to recognise legislative standards for consumer information would involve significant costs for industry, which would be passed on to consumers. As there is no evidence that the absence of standardised product information is a primary barrier to integration, we do not think that legislative intervention in this area is likely to be justified in cost benefit terms.

Advice
In the UK’s view advice should not be compulsory. In the first instance, not all consumers will require advice, so a mandatory advice regime would impose costs without discernable benefit, as the costs of providing compulsory advice would inevitably be passed on to consumers.

Furthermore compulsory provision of advice could significantly harm consumer willingness to shop around. Evidence points to consumers being very reluctant to undergo repeated advice meetings with lenders. Given this consumer trait, there is also a danger that mandatory advice would favour intermediated sales, where the number of advice meetings would be limited, at the expense of direct sales, thus distorting the mortgage market.

Nevertheless, consumers should be able to rely on advice that they receive. The standards of advice, disclosure of charges and other disclosures should continue to be matters of national contract and consumer protection law.

Annual percentage rate
The purpose of APR disclosure is to provide consumers with both absolute and comparative cost information. It provides valuable information, for example illustrating the effect of charges on a stand-alone interest rate, but it also acts as a yardstick to enable cost comparison between similar products.

Existing EU legislation already provides a standard basis for the APR calculation. With many firms offering both consumer credit and mortgages, and consumers potentially comparing both, the calculation for mortgages and credit should be as similar as possible. The true cost of any credit deal, and therefore the basis for a proper comparison, is often dependent on facilities or services sold with the loan. This argues for the standardised calculation continuing to be broadly drawn in terms of the cost elements included.

Early repayment fees, usury rules and interest variation caps
In the UK’s view arbitrary caps on early repayment fees or interest charges will inhibit the willingness of firms to offer particular products or lend to higher risk consumers and so restrict market completeness. They may also distort lending behaviour through encouraging cross subsidy within product offerings, leading to higher overall pricing for consumers.

Caps on compound interest rates may have a particularly detrimental affect on the development of equity release products across EU markets. In the UK a large number of these products rely on the compounding of interest, as there is no repayment of interest during the life of the loan.

The UK believes that ability to repay a loan early is an important component of market liquidity and we therefore support the right of consumers to have this facility, subject to an entitlement for business to recoup fair and reasonable costs associated with early repayment.

There should be clarity for both consumers and businesses as to how compensation will be calculated and paid. UK rules require disclosure of illustrative cash amounts relating to possible charges. Consumers should not merely be presented with an arithmetic formula from which costs might be calculated.
The 26th regime

The UK would not be opposed to further work in this area, however the creation of a 26th regime would require strong, evidence-based justification. It would also need to ensure that the principle of subsidiarity was fully respected as the substance of contract law is properly for the national law of member states.

Alternative means of redress

In the first instance it should be the responsibility of firms themselves to treat consumer complaints fairly. Firms should resolve complaints themselves as far as possible, however separate national complaint schemes can serve a useful supplementary purpose by ensuring the quality of complaint handling is high.

In the UK the Financial Ombudsman Service provides a complaints arbitration service, which is free to consumers. Consumers who have complaints about the sale or administration of regulated mortgages have access to this scheme. We are aware that many other Member States also have effective redress arrangements, however as a first step there may be a role for the Commission in promoting the wider development of such schemes.

Legal issues and mortgage collateral

While these are two of the shorter sections of the Green Paper we believe they address the major areas where progress can be made to enhance market access by lenders.

The legal issues raised in the original Forum report were wide ranging. The Green Paper sets out views on the Rome Convention and applicable law, where the Commission should seek to avoid duplication of other work.

In common with our overall priorities, we believe the Commission should seek to find collaborative and non-regulatory measures that foster the development of a single market in this broad area. Accordingly we support the development of broader access to client credit worthiness and land register data. Ready access to this data underpins the operation of an efficient lending industry.

Our starting point is that business decisions on whether to enter new mortgage markets are invariably complex, and that no single issue is necessarily decisive. Nevertheless, firms are much more likely to enter markets where lending decisions are assisted by

- Access to consumer credit data.
- Trustworthy valuation standards.
- Confidence in repossession procedures.
- Access to land registration data, to demonstrate the extent and quality of the underlying security.

Credit data sharing

In the UK’s view, greater access to consumer credit data is an essential prerequisite for increased cross border supply of mortgage lending and thus of greater EU mortgage market integration. We would therefore suggest that the Commission prioritise further work in this area, however, we recognise that there are important considerations about the form of data held and consumer privacy that would need to be respected.

The UK believes that non-discriminatory access to credit data should be achievable through cooperative, non-legislative measures. The focus of Commission work should, in our view, be to address barriers to market entry created by discriminatory access to credit data. A useful first step for the Commission would be to take forward work to map credit data access across the EU and identify where specific issues exist.

Valuation

The UK believes that non-legislative methods may also be relevant to enhancing trust in valuation standards. The options appear to be to ensure greater understanding of national valuation standards or migration towards a single standard. A single valuation standard holds some attractions for both providers and users of valuation services. The way forward is to undertake work amongst industry practitioners and professional users to explore the scope to build on existing industry standards.

A good deal of work has already been done in this area, and the Commission should align any work in this area with proposals already developed by European and International professional bodies.
Forced sales

The UK supports the Commission’s proposed gradual approach in the area of forced sales procedures. Careful consideration must be given to understanding national procedures, and to ensuring that the data published is genuinely useful and comparable. Careful attention must also be paid to avoiding new regulatory burdens, and ensuring that any measures proposed in this area are subject to cost benefit analysis.

Land registers and EULIS

The UK believes that clarity around land registration is another important pre-requisite of more integrated markets in mortgage credit across the EU.

The approach used in the EULIS project appears to have been successful in delivering enhanced access to land registration information amongst participating Member States. EULIS accepts that national arrangements differ considerably, but provides access to, and explains, those arrangements. It functions as a portal to those countries that have electronic registers, including the UK, where all three registers belong to EULIS, and already allows worldwide access to registered land titles.

EULIS is looking to develop a user fee system to provide longer term funding. We also note that the central EULIS budget for shared costs in 2006 is €305,000. This clearly represents a wholly different order of costs compared to the multi-billion euro costs discussed in the London Economics study.

Given the success of this project to date and the efficiency with which it has begun to tackle barriers to cross border supply of mortgages, the UK would suggest that EULIS might serve as a useful model or pilot for other non-legislative interventions to encourage greater mortgage market integration.

Funding

The UK strongly supports further work on market led initiatives in the funding area. Improved efficiencies in EU mortgage funding markets should deliver consumer benefits both in terms of lower prices and product innovation. Equally important is the role that access to capital market funding has in lowering the barriers to market entry for lenders—clearly critical if EU mortgage markets are to become more competitive.

The UK mortgage market has benefited from the participation of institutions that are not deposit funded, and the availability of capital market funding has been important in facilitating mortgage lending to consumers with impaired credit histories. The UK therefore believes that subject to the minimum protections necessary to ensure the stability of the financial system and to safeguard the interests of consumers, there should be no restrictions on the categories of business able to offer mortgage credit.

The UK therefore supports the Commission proposal to set up an expert group to look more closely at the ways in which industry-to-industry transactions might be made more efficient by formal collaborative arrangements, such as the adoption of standard forms of contract and standard terms.

THE LONDON ECONOMICS STUDY

The UK welcomes the general approach the Commission has taken to this dossier. We particularly support the Commission’s commitment to carrying out a robust impact assessment of any proposed legislative measures and consider that the London Economics study is a useful first step. We believe that several issues would benefit from further careful study:

— Some of the differences between Member States’ mortgage markets result from structural differences in demographics, geography, social provision and culture. This suggests that there may be good reasons for the level of prices and product availability to be different between Member States, which would not disappear with greater integration.

— The London Economics study does not adjust prices for product differences. Evidence from the Mercer Oliver Wyman study shows that the gaps in adjusted prices are even smaller that the ones reported by London Economics. So the estimate of benefits from price convergence, which is already small, will reduce further when adjusted for product differences.

— In estimating the future trend for the level of mortgage debt for each EU Member State, the London Economics study does not take into account any price and/or interest rate adjustments that may result from short-term imbalances between demand and supply in the housing market that may lower or at least delay the benefits from integration.
As the Commission recognises, the London Economics study will need to be supplemented by a cost-benefit analysis (CBA) of any individual measures the Commission proposes. In the UK the FSA has considerable experience of undertaking such studies to support domestic regulatory interventions. As such we would offer the following thoughts on how such a cost-benefit analysis might be carried out:

— The decisions about which measures to put forward should be backed by a full market (integration) failure analysis. This will define the problem (if there is one). Knowing what the problem is will enable the Commission to design interventions that can improve how the markets work.

— The CBA of intervention needs to be based on a clear counterfactual—what would have happened if intervention had not taken place. For example, market forces might have delivered the benefits at the same time as intervention or not much later.

— CBA of each individual measure should examine the extent of the benefits, assessed in terms of the proposals’ ability to overcome the barriers to integration and ultimately their ability to bring about integration and unlock the additional welfare that may result from it.

— The CBA should estimate the one-off and ongoing costs imposed on firms and consumers of implementing and complying with the proposals.

— The CBA should examine other market impacts, in terms of indirect benefits, indirect costs and unintended effects of the proposal.

NEW INDICATORS ON EDUCATION AND TRAINING (15538/04)

Letter from the Chairman to Kim Howells MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills

Your letter dated 24 February was considered by Sub-Committee G on 9 March.

We are grateful to you for your detailed explanation of what is involved in these proposals which covers the points raised in my letter to you dated 7 February. We are glad to note that you agree with our views on the Open Method of Co-ordination, and especially the need to avoid duplication, unnecessary work and imposing burdens on schools and other small organisations. We trust you will continue to bear these criteria in mind in future exchanges with the Commission and other Member States about these proposals.

On that basis we are prepared to release the present document from scrutiny but would be grateful if you would report in due course on the outcome of the expected consideration by the Council.

10 March 2005

NOMINAL QUANTITIES FOR PRE-PACKED PRODUCTS (15614/04 and 15570/04)

Letter from the Chairman to Gerry Sutcliffe MP, Minister for Employment Relations, Consumers and Postal Services, Department of Trade and Industry

Your Department’s Supplementary Explanatory Memorandum dated 1 April was not received in time to be considered before Parliament was dissolved for the General Election. It was considered by Sub-Committee G on 8 June.

We note that the Government wish to encourage the deregulation of most products covered by the Commission proposal and that you also support the Commission’s proposal to retain mandatory specified quantities for wine, spirits, soluble coffee and white sugar.

We also note that, in addition, the Government wishes to reserve specified quantities for milk, other than sterilised or specialised milks, bread, tea, butter and margarine. We understand that this would lead you to support similar discretion for other Member States to make prescribed quantities mandatory for what are described as “staple products”, at least where they already maintain such restrictions.

Finally, we note that the Government intend to press for a review of the working of the Directive after a certain (unspecified) period, although your EM has not commented on the Commission’s proposal that remaining restrictions should be maintained for 20 years.

As I said in my letter to you dated 7 February, we support simplification and improved market access in principle, so long as the legitimate concerns of relevant trade sectors and consumers are fully taken into account. Having given this careful consideration, we have some doubts about the approach proposed by the Government.

On the whole, we believe these restrictions are no longer necessary. They seem anachronistic, complex, unduly restrictive and likely to inhibit competition, innovation and the development of an effective Single Market. We would like to see them removed completely, so long as reasonable time is allowed for producers, retailers and consumers to adapt to the necessary changes.

We question whether it is really necessary to retain the proposed controls on wine, spirits, soluble coffee and white sugar, especially for as long as the 20 years proposed by the Commission. We are not convinced that this type of protection is needed for consumers in modern circumstances, so long as effective weights and measures and labelling controls are maintained. We also question whether it is either appropriate or likely to be effective to retain this type of regulation to curb the power of supermarkets, as has been proposed.

Nor are we convinced by the arguments we have seen so far that derogations should also be allowed for specified quantities of bread, tea, butter, margarine and certain types of milk. We also see a risk that, in pressing for national exemptions, the UK may encourage pressures for similar but different national exemptions from other Member States which, if not firmly controlled, could undermine the essential liberalising objective of the proposed Directive.

We tend to prefer a bolder approach which allows maximum liberalisation as rapidly as possible. If a reasonable need for exemptions can be demonstrated more convincingly than we have seen so far, we suggest that they should be limited to a much shorter period, clearly defined at the outset, which could be reviewed a few years before the deadline.

We do want to see due consideration given to the interests of disadvantaged groups, as mentioned in my letter dated 7 February to you. But we note from the Commission’s EIA that representatives of diabetics want restrictions to be removed so that manufacturers can adapt packaging to sizes that are easier for diabetics to use in the quantities required to control carbohydrate intake.

Clearly the visually impaired need special consideration because they tend to rely on the size and shape of objects, although it is questionable whether the very restricted range of products for which it is proposed to retain control would help them much. Instead, we wonder whether, given a reasonable time frame for implementation and perhaps some Commission funding for the necessary research, it might not be possible to develop a simple Braille-related system of identification for sizes and quantities with which all packaged products were required to be marked to assist manual identification.

That would leave the special need of the elderly and single people on low incomes to have basic products available in small sizes at a reasonable cost. I also refer to this in my letter dated 7 February to you, but the Department has not commented on that aspect thus far. We would be grateful if you could do so when replying.

We look forward to hearing whether you consider that an approach on the lines indicated above might be a feasible way forward and are retaining the proposal under scrutiny in the meantime.

14 June 2005

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 14 June detailing the outcome of the Sub-Committee’s consideration of the Supplementary Explanatory Memorandum which my Department submitted on 1 April on the above mentioned Commission documents. I note the reservations which the Sub-Committee expresses about the Government’s approach to the Commission’s proposals, and the reasoning underlying them.

The memorandum of 1 April sought to set out the Government’s approach to the proposals at a time when it seemed likely or at least possible that discussions of the proposal in the European Council would commence under the Luxembourg Presidency. In the event, that did not happen, and Council discussions will instead commence under the UK Presidency. Before commenting on the implications of this significantly different context, however, I should like to explain a little more about the reasons for the Government’s approach as set out in the 1 April memorandum.

Like the Committee, we favour extensive deregulation in this area. Markets have changed very significantly since the 70s when the relevant Directives were agreed, and we do not see a case for maintaining this kind of requirement over the extensive range of products covered by present legislation. We have a definite preference for removing restrictions where we can in the interests of innovation and greater consumer choice. But it has to be recognised that the underlying advantages which originally justified this legislation have not disappeared—standard sizes are still welcomed by many consumers, and restriction of the range of sizes required still serves to restrain costs for packers and packing manufacturers. We therefore agree with the Committee that the legitimate concerns of relevant trade sectors and consumers should be fully taken into account.
DTI officials have sought views on the Commission’s proposals in the course of a broader exercise to reform and simplify related weights and measures regulations. The results are reported in the 1 April memorandum. While there was a recognition of the need for some simplification of the current system, there existed a strong preference amongst consumers for the retention of a wider range of specified quantities than those proposed by the Commission, especially for staple foods. Similarly, some business sectors, most notably wines and spirits, bread, milk, tea and butter/margarine, have expressed strong support for the retention of specified quantities; the Scotch Whisky Association have put their views to the Committee in writing.

As regards the interests of disadvantaged groups, we have had the benefit of the views of the RNIB, who confirm that specified sizes are helpful to those with restricted vision, and who would support the retention of specified sizes for a wider range of products than the Commission had proposed. Neither we nor the Commission have had any indication of the views of organisations representing diabetics; though as you note an individual wrote to the Commission arguing for complete deregulation on the grounds that this would be helpful to diabetics.

You also propose that packages should carry Braille-related labels for the benefit of the partially sighted, and ask for our comments on the need for elderly and single people on low incomes to have basic products available in small sizes at low cost. These are not matters which fall within the scope of the Commission proposals in question, or of the legislative provisions which they propose should be replaced. Visibility of labels is however mentioned within a different Directive (76/211/EEC). The Commission have indicated that they intend to bring forward proposals for the revision of this Directive, and we will bear in mind your suggestion in considering any such proposals. As for availability of products in small sizes, there are no EC requirements in this area, and we do not regard it as an appropriate matter for regulation—packers and retailers should be free to follow the needs and convenience of their customers.

Our overall conclusion has therefore been that while there was scope for a very extensive measure of deregulation as proposed by the Commission, it would nevertheless be desirable for restrictions to be maintained for the present in particular sectors where there is a clear consensus between businesses and consumers. This appears to be essentially the same conclusion that the Commission themselves had reached. The only difference is that we favoured continued restrictions in a few more sectors that the Commission. But even so, some forty products would be freed from regulation, so it is clear that the essentially deregulatory thrust of the proposals would be preserved. And as the starting point of this review is to note that markets have changed, it seemed only sensible to review the remaining restrictions after a suitable interval (say, 10 years) rather than to let them continue indefinitely or to attempt to decide now exactly how long they should last. We would regard a modification of the Commission’s proposals on those lines as striking a better balance, in present circumstances, between the advantages of deregulation and the interests and preferences of consumers, including those of restricted vision, and of businesses.

But as I noted earlier, the UK now holds the Presidency of the European Council, and it will be for us as Presidency to take forward the business of the Council, including consideration of the Commission’s proposals on specified quantities, in an expeditious and impartial manner. Our priority on these proposals will therefore now be to seek a consensus on the proposals, first within the Council and then between the Council and the European Parliament. In seeking that agreement, of course, we shall seek to be guided so far as practicable by the legitimate concerns of UK businesses and consumers. And no less, we shall seek to be guided by the views of the Committee set out in your letter.

13 July 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 13 July, which was only received by the Committee Office on 18 July. Despite the very short notice, it was exceptionally considered by Sub-Committee G on 20 July.

We are grateful for your detailed explanation of the Government’s reasons for wishing to maintain restrictions not only on the products proposed by the Commission (wine, spirits, soluble coffee and white sugar) but also for certain types of milk, bread, tea, butter and margarine. We note what you say about the preferences of UK consumers and relevant trade sectors and would naturally wish you to give due respect to those views.

Nevertheless, we still find it hard to understand why it should be necessary to retain these controls for these particular products in modern circumstances, especially if a reasonable time could be allowed for producers and consumers to adjust to the necessary changes. We regard clear and reliable labelling and product description as much a much more important safeguards for most consumers nowadays.
That is why we would still prefer to see these controls phased out completely well before the 20 years proposed by the Commission. We would therefore urge you to reconsider the case for retention of these restrictions for each of the items concerned. But if we can be satisfied that retention of any of these restrictions would be justified, we would agree with you that they should be reviewed again in 10 years or so.

We are sorry that what we saw as an imaginative solution to the particular problems of the visually-impaired (developing a simple Braille-related system of identification for sizes and quantities) cannot apparently be incorporated in the proposed Directive. We suggest that it should be discussed with the RNIB and, if they agree, passed on to the Commission to be given serious consideration when they deal with Directive 76/211/EEC.

Meanwhile, we would be glad to know precisely which products the RNIB regard as essential for continuing control in the interests of the visually-impaired. We also suggest that you should clarify the needs of diabetics by consultation with their representative bodies.

We are sorry that what we saw as an imaginative solution to the particular problems of the visually-impaired (developing a simple Braille-related system of identification for sizes and quantities) cannot apparently be incorporated in the proposed Directive. We suggest that it should be discussed with the RNIB and, if they agree, passed on to the Commission to be given serious consideration when they deal with Directive 76/211/EEC.

Meanwhile, we would be glad to know precisely which products the RNIB regard as essential for continuing control in the interests of the visually-impaired. We also suggest that you should clarify the needs of diabetics by consultation with their representative bodies.

We note what you say about elderly and low-income consumers, but find your view that their needs should be left to market forces surprising and inconsistent with your wish to retain the controls proposed.

We understand from your officials that these proposals are not likely to be considered by the Competitiveness Council before their second meeting under the UK Presidency on 28–29 November. That being so, we propose to retain this document under scrutiny to be given further consideration in the light of your response to the points made above, and whatever other developments you are able to report, well before Council decision is required. We trust that you will give fresh consideration to our views and bear them firmly in mind as negotiations proceed in the meantime.

22 July 2005

Letter from Rt Hon Alun Michael MP, Minister for Industry and the Regions, Department of Trade and Industry to the Chairman

Thank you for your letter of 22 July containing the views of the Sub-Committee in response to Gerry Sutcliffe’s letter of 13 July, and following the Committee’s consideration of the Government’s Explanatory Memorandum on the above proposal.

We have as you asked consulted representatives of diabetics. Diabetes UK inform us that they do not take the view that diabetics have different needs in relation to foods from the population at large; rather they see a healthy balanced diet as the key requirement. Their initial view on the question of pack sizes was that it was of no particular relevance to diabetics, but they are considering the Commission’s consultation papers and will if necessary advise us further.

I should also like to inform you of recent developments with regard to the timetable for consideration of this proposal in the European institutions.

At the time of the earlier correspondence, there was no reason to anticipate any issues in relation to the timing of consideration of the proposal by Sub-Committee G, in advance of any agreement in Council. However, it now appears, in the light of an initial meeting of the Competitiveness and Growth Working Group in July that there is a possibility that the proposal could progress more swiftly than expected. It emerged that there is wide support in the Council for the principles of the proposal. Further meetings of the Group are scheduled for September, so that, there is some possibility that a consensus on this proposal could emerge within the Council. Depending on the progress of the parallel consideration of the proposals in the European Parliament, there is a prospect of achieving a First Reading agreement between the Council and the Parliament in early October.

I stress that at this stage, this is no more than a possibility. Unfortunately, the Summer Recess means that, though your Committee convenes on 8 September, Sub-Committee G’s first meeting is in October. I thought it right that you should be aware of the possibility of consensus being achieved within the European institutions before the Sub-Committee has given its full consideration to the proposal.

As the UK now holds the Presidency of the European Council, we have a responsibility for taking forward the business of the Council in the most effective manner possible, including opportunities for First Reading agreements where these can be achieved. We would of course seek to avoid any “technical override”, in view of the interest expressed in this proposal by the Sub-Committee. However, given our responsibilities as
President, I am sure you will understand that in this instance we must put the collective interest of the Council in the modernisation and liberalisation of the relevant legislation before our specific national concerns on the proposal. We will of course keep you informed of further developments.

3 September 2005

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter dated 3 September which was considered by Sub-Committee G on 13 October. We are grateful to you for alerting us to the possibility that moves to secure an early First Reading agreement between the Council and European Parliament might have lead the Government to override scrutiny during the Summer Recess. We are relieved to learn from your officials that this did not happen, but would be glad if you could now explain what has been happening about these proposals since your letter was written and when you expect a decision on the proposal to be needed.

We are also grateful to you for consulting Diabetes UK and note that their initial view is that pack sizes have no particular relevance to diabetics. Please let us know if that view changes on further consideration.

You have not responded to some other points in my letter to Gerry Sutcliffe dated 22 July. I asked on which products the RNIB would regard continuing control to be essential in the interests of the visually-impaired. I also asked for our suggestion for developing a Braille-related system of identification of sizes and quantities for the visually impaired to be discussed with the RNIB and, if they agree, with the Commission.

We would be glad to know whether the Department has followed up these requests. We suggest that other relevant organisations such as Action for Blind People, should also be consulted.

I also pointed out that your view that the needs of elderly and low-income consumers should be left to market forces seems to be inconsistent with your wish to retain the controls proposed.

Nor have you addressed our fundamental question whether it is really necessary or desirable to retain the restrictions proposed by the Commission, let alone the additional restrictions proposed by the Government, in modern circumstances so long as reasonable time is allowed for producers and consumers to adjust to the necessary changes. We continue to believe that more emphasis should be given to developing clear and reliable labelling and product description as consumer safeguards.

We are surprised that the Government should be so convinced of the need not only to retain the restrictions proposed by the Commission but to add others, and apparently in such a hurry to strike a deal on that basis. We continue to question the assumption of which that conviction is based. My letter asked you to reconsider the case for retaining each of the restrictions proposed and we would be glad to know whether you have done so.

We also remain concerned that by pleading for additional exemptions the Government may open the door to requests from other Member States for other exemptions which would erode much of the effectiveness of the planned liberalisation.

In previous correspondence your colleagues have suggested that the Government would press for any remaining restrictions to be reviewed after an interval of 10 years or so. We would be glad to know whether the Government have continued to press for that review, whether they regard that as an indispensable condition and whether a period rather less than 10 years might not be more reasonable.

Scrutiny is retained pending your reply.

13 October 2005

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 13 October to Alun Michael.

On the progress of the Commission proposal, I can confirm that discussions are continuing between the Council and the Parliament, and we remain hopeful that it will be possible to secure agreement between the two institutions on an acceptable text, and so be in a position to achieve a First Reading agreement during the UK Presidency. We are not quite at that point yet, but perhaps only weeks away from it.

On the specific points of policy in your letter, I should perhaps respond first on the fundamental question of whether it is necessary or desirable to retain any such restrictions in modern circumstances. Our starting point is of course a preference for removing restrictions on business wherever possible. Although the nature of these particular restrictions is not such as to impose ongoing costs on business, they are nevertheless a restraint on innovation and on potential choice. And we should certainly take account of consumer information measures
which have been introduced more recently. In particular the requirements for unit pricing enable consumers to make price comparisons much more flexibly, and for all kinds of products, rather than just the 40 or so categories covered by specified quantities. There is therefore a good case for the removal of all restrictions on specified quantities, and this indeed is what the Commission originally proposed.

However, the Commission’s consultations with stakeholders showed that some of those who would be affected did not favour removal of all restrictions. Retail businesses in general, and a majority of manufacturers and packagers, would support the removal of all restrictions. Consumer representatives, however, while welcoming the prospects of greater choice from a wide-ranging measure of deregulation, continued to see value in fixed sizes, particularly for staple products in everyday use. They pointed out that unit pricing does not generally apply in smaller stores; and that fixed sizes may in particular cases be more useful to the partially sighted than unit prices. Also, certain manufacturing or packing sectors continued, on balance, to prefer retention of specified quantities for their sector. It is of course the case that limitation of the range of sizes required reduces manufacturing costs; the balance between that advantage and the dynamic advantages of the freedom to innovate are likely to vary from sector to sector. At European level, it appeared that producers and packers of wine and spirits, of sugar, and of soluble (ie, instant) coffee, were strongly in favour of retaining restrictions. You will have noted the evidence submitted to the Committee by the Scotch Whisky Association, on behalf of the equivalent European body, CEPS (Confederation Europeenne des Producteurs de Spiritueux).

In our own consultations with UK stakeholders, we found a similar pattern of opinion, except that the sectors preferring to retain restrictions also included manufacturers or packers of bread, milk, tea and butter and margarine.

While, as I say, we have a preference for removing restrictions on business wherever possible, we are no less strongly committed to genuine and effective consultation with those who might be affected by legislative change. I am glad you agree that the legitimate concerns of relevant trade sectors and consumers should be fully taken into account. Having taken into account the views and concerns put to us, we came to the view that it would not be right to remove all restrictions immediately, as the Commission originally proposed. Nor do we favour, as proposed in the documents under scrutiny, retaining restrictions for a few sectors only, subject to a sundown clause which would remove the remaining restrictions automatically after 20 years. Rather, we think the right thing to do for the present is to remove most restrictions—those for which there is a wide consensus for removal—and then to review the position after a sensible period of time, perhaps eight or ten years or so. We think this represents a reasonable balance, in today’s circumstances, between promoting innovation and choice, and maintaining consumer protection.

As for the particular sectors for which we proposed to retain restrictions, these were the sectors for which there was strong industry support, at European or UK level, for retaining restrictions. Consumer groups, as I have said, would also in general support retaining such restrictions, though they did not identify particular products or sectors as particularly necessary or desirable. The reasons for retaining restrictions in each case would be that consumers and the relevant industry sector support the continuation of restrictions; and that the market conditions cited by the Commission to justify retaining restrictions on spirits, etc, are likewise relevant to that product. But you might find it helpful to know that the European Parliament has asked for an impact assessment of all the amendments which they propose, and the Council will be taking account of the conclusions of this assessment case by case.

You expressed concern that our proposing the addition of further sectors of interest to our markets would open the door to similar requests from other Member States, which would erode the value of the proposed liberalisation. I have to say that I think that door would be open in any case, and I do not believe that other Member States would in any way be inhibited from putting forward their own proposals, merely because the UK had refrained from doing so. But it is in the nature of Community lawmaking that Member States may start from differing and indeed conflicting starting points. This is perfectly normal, and everyone is well aware that if changes are to be made—and our central reaction to this proposal is that change is indeed desirable—it is necessary to move forwards to find a position on which a sufficient measure of agreement can be found.

And as Alun Michael explained in his letter of 3 September, we now have a responsibility as President of the Council to take forward its business in the most effective manner possible. Pursuing that aim, we still hope that it will be possible to secure a First Reading agreement within the next few weeks. If this is possible, it seems likely that it will be on the basis I outlined above—removal of most restrictions now, retention of restrictions for those sectors where there is strong support for retention, and a review of the remaining restrictions after a suitable period of time. As to particular sectors, it seems likely that any agreement would include a few sectors additional to the four proposed by the Commission for mandatory restrictions. But it does not appear that there is widespread support for including the sectors of particular interest to UK manufacturers and packers (ie, bread, milk, tea and butter and margarine), and it seems unlikely that they would figure in any package likely to secure agreement.
I hope this will have dealt with the broader issues raised in your letter of 13 October, but there are a few more detailed points I should perhaps comment on.

We have as you suggested contacted Action for Blind People. They see specified quantities as a sensible restriction, and helpful to visually impaired persons. They comment that removing such restrictions could reduce the ability of a blind or partially sighted person to shop with independence and confidence.

On the views of RNIB, they have not advised us of any particular products for which they would regard specific quantities as essential. But like Action for Blind People, they see specified quantities as generally helpful to visually impaired persons; and like other consumer groups, they would support retention of such restrictions for a wide range of staple foods.

We will as you suggest have discussions with these organisations on the possibilities of a Braille-related system of identification of sizes and quantities and will take account of their views in appropriate contexts, including relevant discussions with the Commission.

On the needs of elderly and low-income consumers, I do not see any contradiction between retaining certain restrictions on permissible quantities, and leaving it to the market to decide which sizes will actually be supplied. It would be a very severe intervention in the market to require particular sizes to be supplied. It would also be very difficult and complicated to enforce—which sizes should be supplied by particular manufacturers, which should be stocked by particular shops, and what enforcement action would be appropriate if any of these requirements were not met? An intervention of this kind would at the least require very strong justification. For my part, I cannot imagine that any regulatory action on these lines could be proportionate or appropriate.

In conclusion, I hope the further information and explanations in this letter will be helpful to you in giving further consideration to these Community documents. And, in the light of the possibility that early decisions might be required, I should be grateful, if the Committee is now on balance content, for early scrutiny clearance. Of course, if the Committee recommends that the House should debate the documents, we would be very pleased to do so as soon as time can be found.

10 November 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 10 November which was considered by Sub-Committee G on 24 November.

We note that you hope to secure a First Reading agreement between the Council and Parliament before the end of the UK Presidency, although you have not given us much indication of the terms on which that agreement might be made.

In particular, you have not detailed the European Parliament’s proposed amendments, on which an Impact Assessment has apparently been requested. Nor have you said what effect the need to produce that Impact Assessment might have on the likely timing of any decision.

So far as Council discussions are concerned, you have told us that it now seems unlikely that the additional restrictions proposed by the UK for bread, milk, tea, butter and margarine will secure sufficient support from other Member States. But you have not said what additional restrictions are being proposed by other Member States, nor whether any of those are likely to receive sufficient support.

This is hardly a basis on which we can be expected to agree release scrutiny, as you have urged. We have made plain throughout this correspondence that we are not satisfied that it is necessary to retain any of these restrictions so long as reasonable time can be allowed for producers, retailers and consumers to adapt to the necessary changes.

As you point out, we have received representations from the Scotch Whisky Association which make a detailed case for retaining restrictions for spirit bottles. But we have not seen similarly detailed arguments for derogations for any of the other items proposed by the Commission, or indeed those proposed by the Government.

Your letter says that most of the producers and packers consulted by the Commission wanted all restrictions to be removed, as the Commission originally proposed. But, for reasons that are not entirely clear, the Commission then decided to concede the retention of restrictions for wines, spirits, sugar and soluble coffee. From what you say this reflected representations by certain producers and packers, rather than by the consumers organisations consulted which apparently wanted continued protection for a wider (but unspecified) range of what are described as “staple products”.

Similarly, you have reported that the RNIB and Action for Blind People would support retention for what would also appear to be a wider range of products, which the RNIB has defined as “staple foods” but apparently without giving details.

Thus it appears that the Commission are proposing to retain restrictions that would meet the wishes of a minority of producers and packers but would not meet the wishes of consumers’ organisations, nor the special concerns of the visually-impaired. This seems to us to be inconsistent and unsatisfactory. We must ask why the interests of the producers and packers of such a narrow range of products should be preserved when those of the majority of other producers and packers should apparently be disregarded, along with the more general preferences of consumers’ organisations and those caring for the visually impaired.

Nor is it clear from your correspondence where matters stand on the possibility of a review clause. We note that your own preference appears to have moved from “10 years or so” in earlier correspondence to “8 or 10 years or so” in your latest letter. But you have not told us whether you have made a firm proposal on those lines, nor what the views of the Commission and other Member States are on the possibility of substituting a review clause for the present proposal to remove any remaining restrictions automatically after 20 years.

I am sorry to prolong what has already been a protracted and detailed correspondence, but I am afraid that we are not prepared to take a decision on lifting scrutiny without having a much clearer understanding than we have been given so far of the final proposal we would be expected to endorse. We must also have a better justification than we have had so far for any remaining restrictions and a clear understanding that those restrictions would be reviewed within a specified and reasonable time. We are therefore continuing to hold this item under scrutiny.

24 November 2005

NON-DISCRIMINATION AND EQUAL OPPORTUNITIES FOR ALL (9884/05)

Letter from the Chairman to Meg Munn MP, Parliamentary Under-Secretary for Women and Equality, Department of Trade and Industry

Thank you for your Explanatory Memorandum of 29 June 2005 which Sub-Committee G (Social Policy and Consumer Affairs) considered on 27 October.

We have decided to clear the document from scrutiny. As transposition and practical implementation of EU non-discrimination and equal opportunities legislation is not complete in several Member States, the objectives which the Commission propose in this Framework Strategy appear sensible.

However, I would like to reiterate the view expressed in my letter to Chris Pond of 28 October 2004 on the financial implications of the proposed PROGRESS Programme, that the Committee continues to support the Government in ensuring that initiatives financed by this programme add value. We will be writing shortly to the Minister to reply more fully to his letter of 30 September about this,

We also remain uncertain whether the proposal for a European Year of Equal Opportunities for All in 2007 will achieve the Commission’s stated objectives as I first outlined in my letter to you of 21 July. I am replying separately to your reply dated 10 October about this.

31 October 2005

NOVEL FOODS OR NOVEL FOOD INGREDIENTS (12127/05, 12135/05, 12136/05)

Letter from the Chairman to Lord Warner, Minister of State for Delivery, Department of Health

Your three Explanatory Memoranda dated 6 October submitted on behalf of the Food Standards Agency, were considered by Sub-Committee G on 20 October.

We understand that decisions on all three applications are likely to be required at the Agriculture and Fisheries Council meeting on 24–25 October. On the basis of the assurances given by the Food Standards Agency that phytosterols/phytostanols are acceptable in the use of food ingredients in each of these cases we are prepared to release the documents from scrutiny.

20 October 2005
NUTRITION AND HEALTH CLAIMS MADE ON FOOD (11646/03)

Letter from the Chairman to Melanie Johnson MP, Parliamentary Under-Secretary of State for Public Health, Department of Health

Your letter dated 10 March, which also deals with the separate issue of the addition of vitamins and minerals and certain other substances to food (14842/03), was considered by Sub-Committee G on 6 April.

As you know, the Committee agreed in principle on 21 October 2004, at your request, to clear the Proposal for a Regulation on nutrition and health claims made on food from scrutiny to enable political agreement to be secured. But my letter to you dated 21 October 2004 pointed out some concerns that we still have about the details of this Proposal which we wish to keep in view.

We are grateful for the progress report in your letter. We are particularly glad to note that the proposed transition period has now been extended from six to 18 months. We hope that your officials will succeed in their efforts to secure a further extension to two years, and for additional transitional arrangements in certain cases. We attach importance to this because, as you will know from our earlier correspondence, the impact on British business, and especially smaller businesses, remains one of our concerns about this Proposal.

We are not clear exactly what is meant by some of the other amendments under discussion mentioned in your letter. Would the proposed amendment to the requirement that applications should be made in all Community languages mean that, if approved, British manufacturers would only have to submit applications in English?

Nor is it clear what you mean by the proposal to “extend the scope of the lighter touch system of “generally accepted” claims to a wider range of health claims and relax the prohibition of certain claims provided they can be substantiated”. We would be grateful if you could explain what this means.

We note that you propose to submit a further Regulatory Impact Assessment on “nutrient profiling” once the Commission has made a specific proposal on that aspect. We look forward to examining that RIA in due course.

But we will also want to have a clearer idea than we have had so far of the overall impact of these proposals on British business and consumers in other respects once the remainder of the detailed arrangements have been finally negotiated. We would be glad to know whether you are in a position to estimate how much longer those negotiations might take.

I am replying separately to the other part of your letter which deals with the addition of vitamins, minerals and certain other substances to food. It would be appreciated if we could have separate reports on each substantive matter under consideration in future.

7 April 2005

Letter from Caroline Flint MP, Parliamentary Under-Secretary of State, Department of Health to the Chairman

I am writing to report more fully the outcome of the vote at the Employment, Social Policy, Health and Consumer Affairs Council of 3 June, as promised in the letter of 30 June15 from Rosie Winterton. This letter also responds to points in your letter of 7 April to my predecessor about this proposal.

Your Committee last considered and cleared the proposal on nutrition and health claims on 21 October 2004 (Progress Scrutiny Report dated 1 November). The Committee supported the Government’s approach to negotiating a proportionate measure that would deliver the objective of consumer protection from misleading claims, but also minimise potential burdens on industry.

Negotiations on the proposed Regulation were expedited by the Luxembourg Presidency. The UK was able to join in unanimous political agreement on this proposal on 3 June, but not without a further change in the text of the proposal and a statement relevant to the second reading phase of the co-decision procedure.

The statement noted the progress made in the first reading phase to make the proposal more proportionate in balancing the needs of both consumers and industry, particularly small and medium enterprises. It recorded the UK’s view that it would be necessary to continue to assess the potential impact on firms, especially small businesses, and consider whether there are more proportionate alternatives. This allows the UK to encourage further consideration of a proposal of the European Parliament for notification arrangements which might reduce the burden on businesses.

The change to the text that the UK negotiated clarifies the scope of the proposal by relating nutrition claims only to “beneficial” properties. The effect of this is to safeguard a commitment in the White Paper “Choosing Health—Making Healthy Choices Easier” to develop a single voluntary scheme of signpost labelling giving “at a glance” nutrition information on the front of food packaging. One of the signposting options currently being considered would help consumers make healthy eating choices by highlighting non-beneficial properties (such as high salt or sugars).

Turning to the points raised in your letter, you asked for an explanation of the “lighter touch” regime for “generally accepted” claims. Here Member States will propose a list of health claims for inclusion on a Community list of approved claims. Such claims must be based on generally accepted scientific data. This list will be subject to decision by comitology after advice from the European Food Safety Authority (EFSA). It is a lighter touch system because full scientific dossiers will not be required. This listing approach is expected to cover a majority of existing and future health claims.

There would still nevertheless be health claims that would have to go through a prior approval procedure involving assessment of dossiers by EFSA. The Government felt this was worth looking at again and therefore made the statement to this end.

As regards prohibited claims, the Commission originally proposed that certain health claims should be banned outright. The UK was successful in seeking changes which would allow businesses to substantiate these claims (such as on slimming and weight control, psychological and behavioural functions and on general well-being). There is now a very limited and acceptable list of banned health claims, which no longer includes a ban on endorsements by health-related charities.

I can report that the Council agreed a text that does not require applicants to submit notice of the claims they require in all Community languages. British manufacturers wishing to use claims on the British market would only have to submit a version in English.

You asked for a clearer idea of the overall impact on British business and consumers once all the remainder of the detailed arrangements have finally been negotiated. A final Regulatory Impact Assessment will accompany domestic legislation introducing the enforcement provisions and this would assess the Regulation’s overall impact. The partial Regulatory Impact Assessment has been updated since you last saw it, and I enclose a copy for your information (not printed). There is a new summary table of costs and benefits at appendix 2.

In general terms, the Regulation as it stands should protect consumers from misleading and spurious claims at a time when there is increasing focus on making healthy eating choices. As regards British business, a number of improvements have been achieved during negotiation which ease potential burdens. As I have already mentioned, the Government will nevertheless explore further a less prescriptive approach than the approval mechanism for health claims not covered by the lighter route I have described.

Now that Council has political agreement it is a relatively short step to agreement of a Common Position. Once this is communicated to the European Parliament the second reading phase will begin. The European Parliament is at odds with the Council on a number of issues, including the use of nutrient profiles to control claims being made on less healthy foods. I am hopeful that a deal will be struck along the lines the UK has been negotiating during the Austrian Presidency in 2006. I would be happy to keep your Committee informed of progress.

I have written separately to report the vote on the proposal for a Regulation on the Addition of Vitamins and Minerals and Other Substances to Food.

4 July 2005

Letter from the Chairman to Caroline Flint MP

Thank you for your letter dated 4 July which was considered by Sub-Committee G on 20 July.

We are grateful to you for bringing us up-to-date and are pleased to note the progress made by the Government in further negotiations.

We trust that the Government will continue to stress the importance of taking due account of the potential impact of these proposals on business, especially small businesses, and to look for more proportionate alternatives.

Thank you for clarifying the meaning of the “lighter touch” regime for “generally accepted claims”, which was not clear from earlier correspondence. These arrangements do now seem to be broadly satisfactory.

We are pleased that the Government has succeeded in making the arrangements for prohibited claims more reasonable, especially allowing businesses to substantiate most claims, and in reducing the list of banned health claims to what you regard as an acceptable level.
Your confirmation that British manufacturers wishing to use claims on the UK (and presumably also Irish) market need only submit applications in English is also welcome.

We are also grateful to you for your clarification of the overall impact on British businesses and consumers and for setting out how the Government plans to continue upholding British interests, especially by easing regulatory burdens, during further negotiations.

As you know, we have already released the proposal from scrutiny but we would nevertheless be grateful if you could let us have a further progress report before final Council approval is required.

21 July 2005

PARTNERSHIP FOR CHANGE IN AN ENLARGED EUROPE—
ENHANCING THE CONTRIBUTION OF THE SOCIAL DIALOGUE (12002/04)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs,
Department of Trade and Industry to the Chairman

Following a meeting on 17 June 2005, I am writing to update both Scrutiny Committees on EM 12002/04 “Partnership for change in an enlarged Europe—enhancing the contribution of the social dialogue”.

The original Communication made no specific proposals for consideration by the Council but the Commission identified and suggested to social partners ways in which they might take action to strengthen social dialogue. It also urged Member States and Social Partners to work together and set out the Commission’s intentions for further actions in carrying out its own role in supporting social dialogue.

The Communication is a list of suggestions for action and a statement of intent on behalf of the Commission and there is no formal role for the Council to debate the issues contained in the document or to take any decisions. However, Member States have had the opportunity to consider some of the issues raised by the Communication at the Commission chaired meeting of Directors’ General of Industrial relations, a group that meets twice yearly, most recently in London in June. It is in the light of these recent discussions that I thought it would be helpful to update you.

At the previous November 2004 meeting of the Group, the Commission announced its intention to propose the establishment of a separate sub-group to deal only with issues of social dialogue. This proposal was made and discussed at the meeting in June. The proposal was that a group be set up, to be chaired by the Commission and attended by a nominated representative of each Member State, to monitor developments in social dialogue; exchange experiences; and in particular to discuss the implementation of agreement and Directives.

A number of Members (including the UK) questioned the role and purpose of such a group consisting of member states, reviewing social partner agreements and consequent lack of a social partner voice.

It was therefore agreed that, in the first instance, a UK Presidency Conference on Social Dialogue (to be held on 17 November 2005) would make provision for an initial discussion with member states and social partners on the implementation of social partner agreements; this would be followed in Spring 2006 by an ad hoc technical meeting of social dialogue experts (from social partners and Member States) to look at questions of implementation in more detail.

From both a UK Presidency and national UK perspective, this is a positive outcome. UK social partners have a good track record in the implementation on European Social Partner agreements, being among the first to implement both the Telework Agreement and just this month, the agreement on Workplace Stress—so the UK Presidency is well placed to support dissemination of good practice.

At the recent meeting the Commission also provided more details of its intention to conduct a Legal Study on transnational collective bargaining in the context of examining the possibility of drawing up a framework. A number of Member States, including the UK expressed the view that it was premature to consider any Community action in this area; that this is a matter for the Social Partners who should be consulted. It was made clear that this would be preliminary exploratory work and that results of the study will be made available to the social partners.

19 July 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 19 July, which arrived too late to be considered before Parliament rose for the Summer Recess. It was considered by Sub-Committee G on 13 October.

We are grateful to you for reporting on developments since I last wrote to you about these proposals on 28 October 2004.
We note that the UK Presidency will be holding a Conference on Social Dialogue on 17 November, at which Member States and social partners will discuss the implementation of social partnership agreements, and that this will be followed in Spring 2006 by an ad hoc technical meeting of social dialogue experts. We would be grateful if you would report on the outcome of the Conference and on how you see the prospects for the proposed ad hoc technical meeting of social dialogue experts.

We also note that the UK and some other Member States have expressed reservations about the Commission’s plans to carry out a legal study on transnational collective bargaining and to examine the possibility of drawing up a framework. As I said in my letter dated 28 October 2004, we share your caution about any proposals for legislative intervention by the Commission in this area and would be grateful if you could continue to scrutinise any Commission proposals very closely as they emerge and report to us on them.

We will continue to retain the document under scrutiny pending your further reports.

13 October 2005

RECOGNITION OF PROFESSIONAL QUALIFICATIONS (7239/02, 8726/04, 5376/05)

Letter from the Chairman to Kim Howells MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills

Your letter dated 2 February16 was considered by Sub-Committee G on 2 March.

We note that the Common Position was adopted by the Council on 21 December 2004 on the basis of the text on which political agreement was secured at Council on 18 May 2004, as reported in your letter to me dated 9 June 2004. As you know, the original document to which this refers was cleared from scrutiny by Sub-Committee F on 3 July 2002 and the subsequent documents on 12 May 2004.

We are grateful to you for keeping us in the picture and look forward to receiving the report you have promised when the outcome of the European Parliament deliberation is known.

3 March 2005

Letter from Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to you about an oversight in the application of scrutiny procedures.

In May 2004 the previous Committee cleared a draft of this directive on professional recognition. As Kim Howells told the previous Committee on 2 February 2005 the Council adopted the Common Position on the document just before Christmas.

In May 2005 the European Parliament (EP) adopted some amendments to the draft directive. These amendments did not change the substance of the draft directive. However, the Committee should have been notified. I apologise for not taking the opportunity to update the Committee on the EP’s second reading amendments before the Council confirmed the second reading deal on 6 June. Negotiations on this proposal have spanned three years and during this time we have endeavoured to keep the Scrutiny Committees informed of developments, recognising the importance of the scrutiny process. It is regrettable that on this occasion scrutiny arrangements were not strictly adhered to. All endeavours will be made to ensure this does not happen again.

13 July 2005

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 13 July, which arrived too late to be considered before Parliament rose for the Summer Recess. It was considered by Sub-Committee G on 13 October.

We are grateful to you for reporting the outcome of the European Parliament consideration of the draft Directive and for apologising that we were not informed more promptly of these developments.

13 October 2005

SOCIAL AGENDA 2005–10 (6370/05)

Letter from the Chairman to Chris Pond MP, Parliamentary Under-Secretary of State for Work and Pensions, Department for Work and Pensions

Thank you for your EM on the Communication from the Commission on the Social Agenda which was considered by Sub-Committee G (Social Policy and Consumer Affairs) at its meeting on Wednesday 6 April 2005.

The Sub-Committee decided to clear the document from scrutiny and agrees that each individual proposal will need careful consideration and will need to be assessed against the principle of subsidiarity.

7 April 2005

SUPPLEMENTARY PENSION RIGHTS (13686/05)

Letter from the Chairman to Stephen Timms MP, Minister of State for Pension Reform, Department for Work and Pensions

Your Explanatory Memorandum and accompanying initial Regulatory Impact Assessment dated 4 November were considered by Sub-Committee G on 1 December.

We recognise the potential importance of this proposal but note that it is difficult to estimate the likely impact on the UK at this early stage in negotiations. We see that significant clarifications are still needed, especially over the position of UK stakeholder pensions, and are concerned to note that poorly-funded pension schemes may face difficulties in meeting some of the requirements.

In these circumstances, we are retaining this document under scrutiny. We look to you to ensure that we are kept up-to-date with developments and will want to be confident that we fully understand what the practical consequences are likely to be as this becomes clearer. While we welcome your assurance that the RIA will be updated to reflect any significant changes to the text during the negotiation process, we may wish to invite you to explain the full implications in oral evidence to the Sub-Committee at an appropriate point before Council decisions are required.

1 December 2005

EUROPEAN INDICATOR OF LANGUAGE COMPETENCE (11704/05)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills

Your Explanatory Memorandum dated 20 September was received during the Summer Recess and was considered by Sub-Committee G on 3 November.

You will be aware that the Committee’s Report on the Proposed EU Integrated Action Programme for Lifelong Learning stressed the importance of improving language competence. We are therefore very interested in this proposal and the contribution it might make to improving standards of language learning and assessing linguistic competence in the EU.

We note the policy implications outlined in your Memorandum and agree that this exercise should not impose undue burdens on schools and pupils. We believe that it should be carried out efficiently with a sound methodology which pays due regard to the individual circumstances of Member States and fully respects their individual competence for education policy.

It will also be important to avoid needless duplication, especially in relation to tests already carried out by the OECD mentioned in your Memorandum and to any similar proposals to be developed from the EU New Indicators on Education and Training programme.

We note, too, that the Commission propose that the central costs of running the exercise should be met from existing EU education and training programme budgets and from 2007 onwards from the proposed Life-long Learning Programme, the budget for which is yet to be agreed. We also note that the (as yet unquantified) costs of local participation would have to be met by Member States, including presumably the Devolved Administrations in the UK.

We fully support your wish to find out much more about all these aspects, and to consult more widely on them, before embarking on substantive Council discussion. We agree that the Commission’s urging for an expression of Council support before the end of the year seems premature. On the other hand, we presume that a
preliminary exchange of views between Member States at the November Council might be useful, though at the time of writing it appears that you had not yet decided how best to handle this.

Although more detailed professional examination of these proposals will be needed before decisions can be taken, it is not clear to us whether it would be necessary to set up the proposed Advisory Board to do so, as the Commission recommends, or whether the evaluation could be made in some other way.

We should be grateful if you would let us have a separate specific report on any discussion about this at the November Education Council and on your plans for further consideration of these proposals beyond that. In the meantime, we will continue to hold this document under scrutiny.

4 November 2005

TOYS SAFETY (PHTHALATES) (13308/99)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

I am writing to provide the Committee with an update on developments with this proposal which was last brought before the Committee when the Government submitted an EM on document 13308/99 which was cleared at the Chairman’s sift (sift 1017) on 18 January 2000.

Since that date there have been on-going negotiations between Member States and whilst several proposed texts of the Directive have appeared, they have never reached the point where the Government felt the texts were in a condition to be taken forward with the committee. These drafts were subsequently withdrawn.

On 6 July the European Parliament voted, at Second Reading, in favour of a compromise text proposed by the European Commission. We have yet to receive a copy of the revised text following the vote, however, it is likely that the changes are significant enough to warrant submission of a new EM when the text is received.

We understand that the Parliament have agreed four amendments to the Common Position text. The first extends the ban on the use of phthalates to toys and childcare articles, which although not intended to be mouthed, can be put in the mouth. The second amendment requires the Commission to review other applications of articles made from plasticised materials, which may expose people to risks, especially those used in medical devices. The third extends the definition of a childcare article to include products intended to facilitate hygiene. The final amendment extends the ban on the use of three of the phthalates (DINP, DIDP and DNOP) to all toys and childcare articles, which can be placed in the mouth by children, rather than just those intended for children under three years of age.

The purpose of this letter is to alert you to the fact that we will submit a new EM as soon as an official text is received from the Council Secretariat.

4 August 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 4 August which was considered by Sub-Committee G on 20 October.

We were grateful to you for forewarning us that a new revised text will shortly be submitted under cover of a new Explanatory Memorandum. We assume that this will give details of relevant developments since document 13308/99 was cleared in January 2000 and look forward to examining it when it arrives.

20 October 2005

Letter from Gerry Sutcliffe MP to the Chairman

Further to my letter to you of 4 August, I am writing to advise you that the Proposal came before Coreper as an “I” point on 16 November and will go to Council for agreement in due course. I apologise that the final texts were not seen by your Committee prior to Coreper, due to the following reasons:

As I explained in my letter of 4 August, the European Parliament voted at Second Reading in favour of a compromise text proposed by the European Commission, representing a deal between the Council, EP and the Commission. Though my letter of 4 August summarised the amendments, I regret that I did not attach the full text of the amendments, as set out in the EP’s report to the Council (10802/05 now attached (not printed)). However, as the Commission still has not issued a consolidated text, I have been unable to provide the promised EM. I attach a copy of the jurist/linguists text on which Coreper signalled its agreement and which will be formally adopted by the Council in due course.
The significant change made by the European Parliament is to extend the ban to all toys and childcare articles, which can be placed in the mouth by children, rather than just toys and childcare articles intended for children under three years of age, which was the Common Position agreed at the Competitiveness Council on 24 September 2004. This broadening of the restriction is likely to have a significant impact on the toy industry, its manufacturing processes and costs.

In addition to providing the attached additional background texts, I would of course be happy to provide an EM on the final consolidated text, if you would find it helpful for me to do so? Once again, I regret that I have not provided you with a clearer picture before now on the final stages of negotiations on this proposal but it was unclear at what stage late amendments would be finalised and able to be fully scrutinised.

29 November 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 29 November which was considered by Sub-Committee G on 15 December.

As you know, the original proposal was cleared from scrutiny in January 2000. But we note that the European Parliament has proposed a much more extensive ban than originally intended which you say is likely to have a significant impact on the toy industry. That being so, we would be grateful not only for an EM on the final consolidated text, as proposed in your letter, but also a Regulatory Impact Assessment showing what the costs to industry in this country are likely to be and what offsetting health and safety benefits are to be expected.

Given that so many toys and childcare items are imported from outside the EU, we will also want to be sure that compliance with the proposed Directive can be adequately supervised and enforced where non-EU products are concerned.

15 December 2005

UK PRESIDENCY: DEPARTMENT FOR WORK AND PENSIONS

Letter from James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions to the Chairman

Now that the UK Presidency of the EU is underway, I would like to take the opportunity to update you on the Department’s plans and priorities. It is now clear what business we are expecting to take forward during the Presidency and this letter sets out the key dossiers the Department will aim to progress as well as key events we have planned.

As the Prime Minister has stated, effective management of business is the key priority for the UK’s Presidency. As such, the Department’s policy priorities are largely inherited from the previous Presidency and we will be looking to focus on these key themes: Increasing Employment Levels; Modernising Employment Services, Reintroducing the Economically Inactive to the Labour Market and improving social inclusion.

In view of the volume and timing of relevant business, one Employment and Social Policy, Health and Consumer Affairs (ESPHCA) Council is scheduled for 8–9 December. This Council will specifically focus on health issues during the second day. The Council provisionally scheduled for November will not go ahead.

The agenda is likely to change during the run up to the the Council, and our focus will become more specific as we see which dossiers we will be in a position to really progress. I will, of course, provide the Committees with a pre-Council statement in advance of the Council meeting to set out the outcomes we will be aiming for.

We expect the following items to feature for possible political agreement at the Council:

— Decision establishing PROGRESS social spending framework programme.

Other items likely to appear on agendas (though not for agreement) are:

— Regulation 883/04 on social security co-ordination—proposal for “missing” Annex XI.
— Directive on portability of supplementary pensions.
— Directive amending and simplifying reporting procedures in existing health and safety directives.
— Social Services of General Interest.
— Regulation to implement Regulation 883/04 on the co-ordination of social security schemes.
We expect to hold debates and discussions on the following items:

— Demography and Human Capital.
— Commission Biennial report on disabilities.
— Commission Communication on the sustainability of the Social Model.
— Directive on portability of supplementary pensions.

We will note the following reports:

— Conference for people experiencing poverty held under Luxembourg Presidency.

We will also be holding a number of Presidency events throughout the six months which will explore the key issues of the Lisbon Agenda. A list of these events is in the enclosed Presidency brochure. David Blunkett has already hosted an informal meeting of Employment Ministers in Belfast on 7–8 July. I have made a written statement to Parliament on this Council—this appeared in Hansard on 14 July and advance copies were sent to both Committees.

I look forward to continuing to work closely with your Committee during the Presidency. I will of course continue to keep you informed of developments in preparation for the December Council, in order to ensure scrutiny is completed and the desired outcomes achieved for this key Presidency event.

17 August 2005

Letter from James Plaskitt MP to the Chairman

I wrote to you in August outlining my Department’s plans and priorities for the UK’s Presidency of the European Union. Now that the Presidency has finished, I am writing to you to update you on what we achieved.

David Blunkett hosted an Informal meeting of Employment Ministers in Belfast on 7–8 July, where there was general agreement on foundations of the European social model the need to modernise the social model. There was also agreement on the value of Ministers sharing best practice and committing to action at the European level. A written statement to Parliament on this meeting appeared in Hansard on 14 July and advance copies were sent to both Committees.

The main focus of legislative work was the Employment, Social Policy, Health and Consumer Affairs Council which took place on 8 and 9 December 2005. Crucially, partial political agreement was reached on all bar the budget of the PROGRESS social spending programme. A written statement to Parliament on the outcomes of this Council appeared in Hansard on 13 December.

In October, the UK Presidency hosted a Social Inclusion Round Table which brought together a wide range of stakeholders in the EU Social Inclusion process. Discussion focused on looking forward to Member States’ 2006 National Action Plans for Social Inclusion. Following on from that event we hosted the first ever joint meeting of the Employment Committee (EMCO) and the Social Protection Committee (SPC). The purpose of this meeting was to explore further how our employment and social protection policies can complement each other. The meetings proved to be an excellent opportunity to discuss and share ideas on how to make our social protection systems sustainable in the face of the demographic challenges we all share.

Later in October, the UK Presidency hosted an Informal Tripartite Social Summit, attended by the Commission, social partners, Austrian and Finnish Presidencies. At the Summit there was a broad consensus on the challenges facing the EU’s economic and social systems (globalisation and democracy) and on the need to boost R&D and innovation, as well as broad agreement on the Lisbon jobs and growth agenda as the right strategy to pursue.

Following the Summit David Blunkett also hosted a Stakeholder Forum where organisations with an interest in employment and social policy issues were able to feed in their views.

We also hosted a range of conferences during the Presidency:

— An Occupational Health and Safety Conference which was attended by senior figures from OSH bodies across Europe. The purpose of the conference and the meeting was to initiate dialogue on and to discuss the shape and content of the next EU OSH strategy, which will run from 2007–12. The meeting produced an outcomes paper, setting out ideas for the next EU strategy.
— A Committee of Competent Authorities meeting. This event formed part of a regular series of meetings of national authorities from across Europe responsible for regulating major hazards. Discussions focused around the Seveso Directive and future strategies to ensure consistent compliance.

— The closing event for the European Week for Safety and Health at Work Campaign (co-hosted with the European Agency for Safety and Health at Work). Debate focused on the problem of excessive noise in the workplace.

— A conference on Improving Life Chances of Disabled People. The conference explored how to bring disability issues in to the mainstream. Discussion focused on the role the media can play in the acceptance of disabled people, how we can help to provide disabled people with the same opportunities as non-disabled people so that they can lead independent lives. The work was supported by an analysis of the importance of engaging with disabled people and groups when making policy.

— An Economic Inactivity and Ill Health conference which focused on the UK approach to tackling the problem of incapacity and long term sickness, and discussed the wider European implications of such inactivity.

— A European Social Fund Conference which examined how ESF in 2000–06 was supporting national policies to promote employment opportunities for all. It showcased good practice from current ESF programmes, looked at their contribution to the Lisbon employment agenda and disseminated good practice to domestic policy makers and planners. This helped to inform the development of successor programmes after 2006.

— The Informed Choices: Retirement and Savings event which used the open method of coordination to give an opportunity for delegates to learn what practical steps other Member States and social and industry partner organisations are taking to improve levels of financial education, and planning and saving for retirement.

Overall, this was a good Presidency for the UK and the DWP. We moved the debate forward in a number of key areas and secured political agreement on the PROGRESS spending programme, which will now return for discussion of the programme budget under the Austrian Presidency.

23 January 2006

UK PRESIDENCY: DEPARTMENT OF HEALTH

Letter from Rosie Winterton MP, Minister of State,
Department of Health to the Chairman

I am writing at the start of the UK Presidency of the European Union to let you know about the programme of events that is planned during the course of the next six months and to update you on our priorities. The UK Presidency Health Programme is enclosed with this letter.

During our Presidency, we will be focusing on two main themes—patient safety and health inequalities. Both themes are relevant to the legislative proposals that need to be progressed over the coming months; our work on patient safety will also pick up work started under the Luxembourg Presidency.

The summits on Tackling Health Inequalities on 17–18 October and Patient Safety on 28–30 November will be headline events, involving policy makers and experts from all Member States.

The Tackling Health Inequalities summit will highlight the scale of the health gap within countries, and explore the scope for action to address this. It will focus on cross-government action on social determinants such as poverty and education, starting early in life, as well as policy development on key health determinants such as nutrition, smoking and alcohol.

The Patient Safety summit will look at ways of bringing together information and best practice from across the EU to make healthcare services and products safer for patients. It will foster collaboration between the EU, WHO and other key bodies to develop a coherent package of work on patient safety at the European level.
The Informal Meeting of Ministers for Health will take place on 20–21 October and the Employment, Social Policy, Health and Consumer Affairs Council under the UK Presidency is scheduled to take place on 8–9 December. We expect that the health items will be dealt with on 9 December and will provide you with updates both before and after the Council.

Please let me know if you require any further information about our plans for the Presidency.

1 July 2005

Letter from the Chairman to Rosie Winterton MP

Thank you for your letter dated 1 July setting out your Department’s plans for the UK Presidency and enclosing a copy of the UK Presidency Health Programme. This was considered by Sub-Committee G on 20 July.

We are grateful to you for alerting us to your Department’s plans and look forward to receiving your reports on any developments of substance in due course.

21 July 2005

Letter from Rosie Winterton MP to the Chairman

I wrote to you at the start of the UK Presidency of the European Union to let you know about the programme of events that was planned and to update you on our priorities. I set out our plans for two main themes—patient safety and health inequalities, as well as the formal Council work to agree legislation and to set strategic policy direction. This note provides an end of term report on what has been achieved.

Legislation

The UK Presidency has made good progress on the legislative proposals currently on the table. We reached a political agreement amongst the 25 EU Health Ministers on the proposal on paediatric medicines. The paediatric medicines proposal provides incentives to the pharmaceutical industry to carry out better testing and will help significantly to improve the safety of healthcare given to children.

We are also pleased to have successfully taken forward the work under the Luxembourg Presidency on a set of proposals for food legislation designed to improve the information available to consumers about their food. These proposals can now move to the next stage of the negotiation with the European Parliament.

Presidency Themes

On health inequalities, we have been pleased to see a growing consensus around the need to ensure that the forthcoming EU alcohol harm strategy includes a focus on the marketing and promotion of alcohol to young people, and around the need for EU level work on diet and physical activity to address food promotion and marketing to children. Similarly encouraging was the interest generated in using the opportunity offered by next year’s negotiations to take forward the Framework Convention on Tobacco Control and focus on illicit trade of tobacco. Work was also progressed on ensuring that the evolving EU information and knowledge system includes information on the patterns and trends in health inequalities.

The work on patient safety has built on work during the preceding Luxembourg Presidency. A programme of future work has been agreed by the Member States and the Commission which will support Member States as they establish national patient safety programmes (including patient safety reporting and learning systems). Other projects that have been agreed in this area include work to bring together design experts from a range of industries to embed best thinking in systems design in patient safety, carrying out further research on patient safety as well as developing a skills and knowledge framework for patient safety education.

Setting and influencing the strategic direction of health policy at EU level

The UK Presidency has also been active in influencing and guiding the strategic direction for policy in a number of key health-related areas.

On Mental Health, EU Health Ministers discussed the Commission Green Paper on Mental Health that issued in October. The Green Paper sets out the links between mental health and important social challenges throughout the EU, such as alcohol and drug abuse, and the problems of discrimination against people suffering from mental illnesses.
The identification, in October, of the first cases of highly pathogenic avian flu in the European Union has prompted a significant amount of work to prepare for a possible human influenza pandemic. The Health Council has been active in addressing the human health aspects of a pandemic while pandemic influenza was the headline item at the Informal Meeting of EU Health Ministers held at the end of October. The Presidency has been working with the other Member States to identify the practical questions that would benefit from co-ordination, both in preparation for a pandemic and in managing a pandemic should one break out. These discussions, which culminated at the Health Council in December, have identified interest from the Member States in seeing a feasibility study of EU action on stockpiling anti-virals for targeted use in the event of a pandemic.

Working together: Member States and the Commission and the global context

Progress in legislation and in policies was not the only objective that we set ourselves. We also set out to influence the way that EU business is managed. We wanted to foster a strong voice for the EU in global health matters. It has been encouraging to see the extent to which the WHO has been involved in much of the work that has been taken forward, in particular, placing both health inequalities and patient safety in a global context, so that the EU work complements and influences the WHO’s Commission on Social Determinants of Health, and the WHO World Alliance for Patient Safety. Similarly, there has been close involvement with the WHO in the work on pandemic influenza, laying the foundations for reinforced co-ordination between the Member States and the Commission.

We have also looked to promote non-regulatory ways of working. On both patient safety and health inequalities—but also in other areas such as recent proposals from the French Government for a Cancer Alliance—there has been interest from the Member States and the Commission in working together on practical projects that can release the benefits of closer co-operation across Europe without necessarily resorting to legislation as the first option. For example, it has been encouraging to see the project to get professional regulators to share information on professionals that work in different EU countries.

It is particularly welcome that the Commission has agreed to set up a new expert working group on social determinants of health inequalities, and is continuing the patient safety group. In the Council itself, the work of the UK Presidency to structure a work programme for the Health Working Group at Senior Level to take forward on the impact that the EU Treaties have on healthcare services was well received by Member States: progressing work for this Senior Level Group includes a further innovation, which is to use a group of past, current and future Presidencies to prepare future meetings.

11 January 2006

UK PRESIDENCY: PRIORITIES FOR EDUCATION AND YOUTH COUNCIL BUSINESS

Letter from Bill Rammell MP, Minister of State for Life-long Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I would like to take this opportunity to set out for you the Government’s priorities for our Presidency of the EU Education and Youth Council. This was launched with an Informal meeting of Education Ministers in London on 12–13 July. I am pleased to attach a copy of a written statement which I will be submitting to Parliament reporting on that meeting.

Education

Our Presidency will focus on the goals of economic growth and greater employment, to show how education and skills can raise performance and contribute to the Lisbon agenda through:

(i) Highlighting the contribution that investment in skills can make to raising productivity;
(ii) Promoting innovative approaches to employer engagement through sector skills development;
(iii) Developing world-class higher education;
(iv) Delivering effective learning using ICT.

We have planned a series of meetings and events around these themes and they also reflect the business which we hope to take through the Education Council. The overall EU agenda for 2005 was set out in the Multi-Annual Strategic Programme of the Council 2004–06 and in the UK-Luxembourg Annual Operating Programme for 2005. We aim to progress EU Education and Youth Council business in an efficient and
effective way and working closely with the Commission and Presidencies which precede and follow ours. I also look forward to continuing close cooperation with you and your committee.

We expect the following items to feature on the agenda for the Education Council on 15 November, which will be chaired by my Rt Hon Friend, the Secretary of State for Education and Skills:

— The Commission’s proposal for an Integrated Lifelong Learning programme for 2007–13. Agreement of the programme cannot be completed until the EU budget is finalised but we intend to make as much progress as is possible on this dossier, possibly aiming for partial political agreement (excluding the budget articles) at the November Council. This item is subject to co-decision with the European Parliament. We expect the European Parliament first reading opinion in October and I will of course notify you of anything significant in this.

— A Recommendation on Quality Assurance in Higher Education. This item is subject to co-decision with the European Parliament. We also expect the European Parliament’s first reading opinion on this dossier in October, and hope to achieve political agreement on this at the November Council.

— We hope to adopt a Resolution based on the recent Commission Communication “Mobilising the Brainpower of Europe: Enabling Universities to make their full contribution to the Lisbon strategy”.

— We plan an exchange of views on the priorities for the Spring 2006 Joint Interim Report on education and training’s contribution to the Lisbon competitiveness goals under the Education and Training 2010 Open Method of Coordination work programme.

— We hope to agree modest Council conclusions on possible areas of cooperation between Member States on skills and sector skills, drawing in part from discussions at the Informal Ministerial meeting in London on 12–13 July.

— We expect a proposal from the Commission shortly for a Mobility Charter Recommendation. I will of course provide you with an Explanatory Memorandum when we see the proposal. We do hope to make good progress on this dossier and to have this on the agenda for our November Council.

Youth

We anticipate having two items on the agenda for the Youth Council on 15 November, which will also be chaired by my Rt Hon Friend, the Secretary of State for Education and Skills:

— The Commission’s proposal for a Youth in Action Programme for 2007–13. As with the proposed EU lifelong learning programme, agreement of this programme cannot be completed until the EU budget is finalised but we intend to make as much progress as is possible on this dossier. This may also include partial political agreement (without the budget articles) at the November Council;

— We hope to agree a Council Resolution on European Youth Policy, which will include the implementation of the Youth Pact, based on the Commission Communication published in May.

I will of course continue to keep you and your Committee fully informed of progress on dossiers and in advance of the November Council in the usual way.

19 July 2005
(1) Sector skills

My Rt Hon Friend (Ms Kelly) outlined our Presidency focus on highlighting how education and skills can contribute to the Lisbon agenda and the importance of skills responding to the needs of employers. Ministers discussed national experiences in developing sector-based approaches as a mechanism for employers to express skills requirements and to link education and training with labour market requirements in a knowledge economy.

There was consensus that employers should be involved in both designing and delivering vocational training courses, but only a few Member States involved employers in academic education. Ministers agreed that vocational training should be made more attractive to learners.

(2) European Qualifications Framework

This session was focussed on a presentation by Commissioner Figel of the European Commission’s consultation on a proposed European Qualifications Framework. This would provide a tool for improved understanding of qualifications from different countries. This should help mobility of learners and workers and thereby alleviate skills gaps. The Commission consultation is planned to last until the end of the year. The idea was welcomed by ministers, but they underlined that it should be user-friendly and must be implemented on a voluntary basis. Commissioner Figel explained that the Commission would propose a Council and Parliament Recommendation next spring.

(3) The Relationship of Skills to Productivity

The Presidency tabled a paper, prepared by the four UK Government Skills Alliance Departments and agreed jointly with the European Commission. This sets out evidence for the contribution of skills to increasing productivity. It also raises questions for Ministerial discussion.

Ministers discussed skills in a panel session with representatives from industry. John Monks, General Secretary ETUC, explained that unions could be ambassadors for learning. He pointed out that employees were often nervous about undertaking training, as they were worried about failing. Philippe de Buck, Secretary General of the EU-wide employers’ organisation, UNICE, argued that governments needed to provide more support for training in companies particularly for SMEs. Bill Thomas, a member of the UK’s ICT Sector Skills Council, underlined the importance of businesspeople understanding how ICT could be used to improve productivity.

Ministers agreed that economies would increasingly need highly skilled people, but also underlined the importance of having good basic skills as a foundation for achieving this.

(4) Possible Next Steps

The meeting concluded with Ministerial discussion groups. I chaired one group, with other groups chaired by Phil Hope MP, Parliamentary Under Secretary of State for Skills, and Allan Wilson MSP, Deputy Minister for Enterprise and Lifelong Learning in Scotland.

During these groups, Ministers agreed that: skills needs should be addressed at a sectoral and regional level; better recognition of informal and non-formal learning was needed; and that businesses should be encouraged to invest more in training their employees. There was an interest in Member States continuing to share experiences and learn from each other on sector-based approaches. There was also recognition that Education Ministers should explore ways of working across Government, with other Ministers with an interest in skills and productivity, and that Education Ministers should be closely involved drawing up Lisbon National Action Plans.

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 19 July which arrived too late to be considered before Parliament rose for the Summer Recess. It was considered by Sub-Committee G on 13 October.

We are grateful to you for setting out the priorities for the UK Presidency and for enclosing a copy of the Ministerial Statement to Parliament on the informal meeting of Education Ministers held under the UK Presidency in London on 12–13 July.

We are also grateful to you for your comments on the main items expected to feature on the Agenda of the November Education and Youth Council. The following are of particular interest to the Committee:
— **Integrated Action Programme for Life-long Learning for 2007–13 (11570/04)**—As you know, Parliamentary scrutiny of this proposal by the House of Lords was concluded with the Debate in the House on 7 July on the Committee’s Inquiry Report. Nevertheless, we continue to have a close interest in this proposal and are grateful to the Department for keeping us in touch with their thinking about it. We note that you envisage the possibility of securing a partial political agreement (excluding the budget articles) at the November Council and that a European Parliament First Reading opinion is expected this month. We trust that you will bear the recommendations of our Inquiry Report and the outcome of the Debate carefully in mind in judging whether the time is indeed right to secure partial political agreement at the Council. We look forward to seeing a separate report on developments in good time before the Council meeting.

— **Quality Assurance in Higher Education (13969/04)**—You should be aware that this item remains under scrutiny. Action rests with my letter dated 27 January to Kim Howells. We note that you also hope to achieve political agreement on this proposal at the November Council. Here, too, we will need to have a full separate report on progress and prospects in good time to enable us to consider whether to release scrutiny before the November Council.

The Commission Communication on “Mobilising the brain power of Europe” (8374/05) was cleared from scrutiny on 22 June, but if a Resolution is adopted by the Council on this we would be glad to have, a copy for the record.

The exchange of views at Council on the contribution of education and training to the Lisbon Competitiveness goals, in preparation for the Spring 2006 Joint Interim Report, is also of interest to the Committee. So will be the planned Council conclusions on possible cooperation between Member States on skills and sector skills. We look forward to your reports on both.

We also look forward to the promised Explanatory Memorandum on the proposed Mobility Charter Recommendation.

As for the Youth items on the Agenda, we see from our files that your officials expected the Commission to produce a new text on the Youth in Action programme for 2007–13 (11586/04). We would need this to be submitted with an Explanatory Memorandum in good time before we could consider whether to release the proposal from scrutiny to enable partial political agreement (without the budget Articles) to be secured at the November Council, as proposed.

We also note that you hope to agree a Council Resolution on European Youth policy (13856/04) and look forward to receiving more details.

13 October 2005

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**Letter from Bill Rammell MP to the Chairman**

I am writing to report back to you on the achievements of the UK Presidency of the EU in the area of Education and Youth. My letter of 19 July set out our intentions for our Presidency, so as you know, our Presidency aimed to show how education and skills can raise performance and contributes to the Lisbon agenda of both greater competitiveness and social inclusion through:

— Highlighting the contribution that investment in skills can make to raising productivity;
— Promoting innovative approaches to employer engagement through sector skills development;
— Developing world-class higher education;
— Delivering effective learning using ICT.

We held a series of very successful events in the UK around these themes, including the Informal meeting of EU Education Ministers and the meeting of Directors General for Vocational Training in London in July, which looked at employer engagement in skill development, and particularly sector skills. There was also a series of Higher Education events in Manchester, and the ICT conference “Xchange 2005” in Birmingham, in October. Our Presidency themes are also reflected in the business we have taken through the Education Council. Looking back to the expected Council agenda items I set out in my letter of 19 July:

— Ministers adopted a partial political agreement on the Decision establishing an action programme in Lifelong Learning at the Education Council on 15 November. This involved agreement on all parts of the programme without budgetary implications; the budget articles cannot be agreed until the EU budget is finalised.
— Negotiations on the Recommendation on Quality Assurance in Higher Education have been completed and we have achieved a first reading deal with the European Parliament. The text is currently with Jurists/Linguists and will go to the Council as an A point at some point in the New Year.

— The Resolution on Mobilising the Brainpower of Europe: Enabling Universities to make their full contribution to the Lisbon strategy was adopted at the November Council. This built on a Commission Communication and was reflected in the themes of our HE events in Manchester. It was also closely aligned with subsequent discussions amongst Heads of State and Government at the Informal Summit at Hampton Court about developing world-class higher education and building closer links with business.

— Ministers had a useful exchange of views on the priorities for the 2006 Joint Interim Report on the contribution of education and training to the Lisbon competitiveness goals under the “Education and Training 2010” work programme. A number of amendments have subsequently been made at working group level to the Commission’s draft report and the text is now close to being finalised, enabling the Austrian Presidency to focus on drafting a short political message from the Education Council to the European Council.

— The Education Council also adopted Conclusions on the role of the development of skills and competences in taking forward the Lisbon agenda, which call for the Commission to look at sectoral approaches to skills development. These conclusions were a UK Presidency initiative, building on discussions at the Informal meeting of Education Ministers in London on 12–13 July, but fit within the ongoing Education and Training 2010 work programme and will be reflected in the Joint Interim Report. I attach a copy of these Conclusions for your information.

— The Commission’s proposal for a Recommendation for a European Quality Charter for Mobility was presented by Commissioner Figel at the November Council and has since been negotiated in the working group. A number of useful revisions have been made and the dossier is now awaiting a first reading position from the European Parliament; we do not yet have an indication of when this can be expected.

— Ministers adopted a partial political agreement on the Youth in Action Programme at the Youth Council on 15 November. As with the Lifelong Learning programme this involved agreement on all sections of the text without budgetary implications.

— As planned, a Resolution on implementing the European Pact for Youth and promoting active citizenship was also agreed at the same Council.

I am pleased that we have been able to progress this Council business in an efficient and effective way, and have worked closely with the Commission, the European Parliament Culture and Education Committee and the preceding and subsequent Presidencies.

I would like to take this opportunity to thank you and your committee for your cooperation and commitment throughout our Presidency, and I look forward to continuing to work together.

16 December 2005

UNFAIR COMMERCIAL PRACTICES (10904/03)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations, Consumers and Postal Services, Department for Trade and Industry to the Chairman


In delivering its second reading the European Parliament followed without change the Recommendation of its Internal Market and Consumer Affairs Committee, adopted on 2 February. With Council having previously indicated that it could accept the Committee Recommendation as the basis for concluding negotiations, this means that substantive negotiations have effectively been concluded. The proposal will now be translated
before being formally adopted at the 6-7 June Competitiveness Council. Member States will then have two years—until mid 2007—to transpose the Directive into their domestic laws.

The main substantive changes adopted by the European Parliament are described below.

“Average consumer” benchmark

To ensure proportionality and a fair balance of responsibility between business and consumers the Directive uses the benchmark of the “average consumer”, as interpreted by the European Court Justice. However, as I explained in my letter of 7 May, a clear majority of Member States were opposed to including a definition of the “average consumer” in the substantive provisions of the Directive. This was because they were concerned that this would prevent it from adapting in line with the jurisprudence of the European Court. These Member States argued it should be sufficient to rely on a reference in the Recitals. The first part of Amendment 3 reinforces this reference in Recital 18 by inserting the current definition of the “average consumer” as a consumer who is reasonably well informed and reasonably observant and circumspect, and taking into account social, cultural and linguistic factors. The Government welcomes this amendment.

Continued use of minimum clauses in existing EU directives

Article 3(5) contains a six-year derogation during which Member States can apply national provisions which are more restrictive or prescriptive than the Directive in reliance of the so called minimum clauses in existing sectoral directives. Amendment 4 limits Member States ability to do this to such national provisions which were in existence at the time this Directive comes into force. The Government can accept this amendment because it would be contrary to better regulation principles to require businesses to incur costs adapting to new rules which it knew will have to be repealed after only a few years.

Vulnerable consumers

Article 5(3) of the Directive is intended to provide greater protection for vulnerable consumers. However, concerns had been raised about the interaction between this provision and the “average consumer” benchmark. Amendment 5 seeks to clarify this provision so that it applies only where a “clearly identifiable” group of vulnerable consumers are likely to be affected. The Government believes that this amendment does not completely remove the remaining ambiguity in the text over the operation of the vulnerable consumer clause, and will therefore seek to provide greater legal certainty during the transposition process.

Annex

Amendments 2 and 6 provide further clarification that the list of practices in Annex I to the Directive is an exhaustive list of practices which are prohibited under all circumstances and which can only by modified by revision of the Directive.

Amendments 12 to 19 make specific amendments/additions to the “blacklist” of practices in Annex I. In particular, amendments 12 and 13 widen the prohibitions under paragraphs 4 and 7 to include closely related practices which the Office of Fair Trading identifies as causing detriment to UK consumers. Amendment 15 introduces a new prohibition in respect of traders who seek to hide the commercial intent of a practice, for example, rogue car salesmen posing as private sellers by placing advertisements in the small ads columns of local papers to deprive consumers of their rights under sale of goods legislation. Amendment 18 extends the prohibition on advertising to children to include direct exhortations to children to purchase. The second part of Amendment 3 adds a new sentence in Recital 18 to make it clear that the latter is not intended to introduce an outright ban on the advertising to children. Finally, Amendment 19 provides a comprehensive prohibition on bogus prize draws and lottery scams where unwitting consumers are persuaded to part with money in the false belief that they have already won or on doing something will win a substantial prize or other benefit. I believe that this latest amendment represents a significant improvement to the Common Position text.

Draft Regulatory Impact Assessment

Further to your letter of 14 May 2004, please also find attached an updated draft Regulatory Impact Assessment on the Directive.
The RIA notes that the Directive should make it easier to take effective enforcement action against unscrupulous traders who exploit consumers, especially vulnerable consumers. Honest businesses that comply with existing legislation should not incur any additional ongoing costs in ensuring compliance with the Directive, though they will undergo one-off costs in reviewing their existing practices. However, these costs should be offset to some extent by the result of clearer legislation in the field covered by the Directive, which should reduce the time taken by business to ensure such compliance. In addition, businesses should benefit from improved protection against rogue traders, who otherwise compete unfairly against legitimate businesses. Further, they should benefit from harmonised rules on unfair commercial practices across the EU, which should allow them to trade more freely. Surveys indicate that 40 per cent of European companies targeting final consumers would increase the proportion of their marketing and advertising budget given to encouraging cross-border sales with complete harmonisation of regulation on advertising commercial practices and consumer protection.

The RIA also notes that consumers will be important beneficiaries of the Directive. The Directive’s safety-net effect will plug loopholes in existing legislation and set standards against which new practices will be judged. It should also make it easier for enforcers to take action against aggressive practices. A particular improvement to the Directive is also a new amendment on prize scams, which are currently estimated to cause £150 million pounds of detriment a year. OFT research (2000) estimated that total consumer detriment in the UK ran at around £8.3 billion pounds a year. If the UCP Directive led to a 5 per cent reduction in problems related to selling practices, then it could lead to a £100 million reduction in UK consumer detriment.

30 March 2005

Letter from the Chairman to Gerry Sutcliffe MP

Your letter dated 30 March was received too late for consideration before Parliament was dissolved for the General Election. It was considered by Sub-Committee G on 8 June.

We are grateful to you for reporting the latest moves on this Directive, which was released from scrutiny by this Committee on 12 May 2004, and for sending us the response to your consultation and revised Partial Regulatory Impact Assessment, which are duly noted. We understand from your officials that, since your letter was written, the Directive was adopted on 18 April and signed on 11 May.

We note that you regard this as a satisfactory outcome for both traders and consumers, although we hope that the Government will be able to improve the clarity of the detailed points noted in your letter during transposition. We are glad that the negotiations on this important item of legislation have been satisfactorily concluded.

14 June 2005

WORLD HEALTH ORGANISATION—INTERNATIONAL HEALTH REGULATIONS (13074/03)

Letter from John Hutton MP, Minister of State, Department of Health to the Chairman

I am writing, further to my letter of 26 January,\(^{18}\) to let the Committee know that on 23 March the World Health Organisation (WHO) produced a further draft of the new International Health Regulations (IHR). A copy is enclosed (not printed).

 Unlike the draft enclosed with my letter of 26 January, this latest draft has not been formally published by WHO on their website. It is instead a “conference paper”, which records the progress made at the intergovernmental meeting which WHO held in February to discuss the January draft. The intergovernmental meeting is being reconvened on 12 and 13 May, with a view to agreeing a final text which can then be adopted at the World Health Assembly (due to be held on 16–25 May 2005). On WHO’s current plans, there will be a very short interval between the end of the intergovernmental meeting (13 May) and formal endorsement and adoption of the new regulations (17 May), so I thought it would be helpful to let you see the current conference paper (not printed).

As explained in the memorandum which the Department of Health provided for the Committee in 2003, once new IHR have been adopted by the World Health Assembly, the UK will need to consider whether to ratify the IHR or to enter any reservations.

7 April 2005

Letter from Rosie Winterton MP, Minister of State, Department of Health

I am writing, further to John Hutton’s letter of 7 April, to let the Committee know that the World Health Assembly adopted new International Health Regulations (IHR) on 23 May. A copy of the new IHR, taken from the World Health Organisation (WHO) website, is enclosed (not printed).

Article 59 of the new IHR provides that the new regulations enter into force twenty-four months after notification by the Director-General of WHO that they have been adopted by the World Health Assembly. If any Member State wants to reject the new IHR, or enter a reservation to them, this needs to be done within 18 months of the Director-General’s notification. We do not yet have a firm date for when the Director-General will give his notification, but we expect this to be shortly.

With the adoption of the new IHR, the EU role in negotiating their content has now ended. We shall therefore now turn to considering implementation of the new IHR within the UK.

3 June 2005

Letter from the Chairman to Rosie Winterton MP to the Chairman

Your letter dated 3 June enclosing a copy of the new International Health Regulations as adopted by the World Health Assembly on 23 May was considered by Sub-Committee G on 29 June.

Unfortunately the previous letter dated 7 April from your predecessor John Hutton was received too late for consideration before Parliament was dissolved for the General Election. As a result, we did not have an opportunity of examining the text before the World Health Assembly took place.

As you know, the Department’s Explanatory Memorandum about the negotiations for the new Regulations was cleared from scrutiny by Sub-Committee D on 29 October 2003. We are grateful to you and your predecessor for continuing to keep us informed about developments since then. We note that the formal role of the European Commission in negotiating the new Regulations on behalf of Member States has now ended and that it is for the UK Government to consider implementation. That being so, we see no need for further correspondence between this Committee and the Department on this matter.

4 July 2005

WORKING TIME (12683/04, 9554/05)

Letter from the Chairman to Gerry Sutcliffe MP, Minister for Employment Relations, Consumers and Postal Services, Department of Trade and Industry

Thank you for your Supplementary EM dated 17 May enclosing the Department’s Initial Regulatory Impact Assessment, dated November 2004, the Summary of Responses to the Department’s preliminary Stakeholder consultation, dated December 2004, the French text of the Commission’s Impact Assessment, dated 24 September 2004, and the Department’s translation of it. It is not clear why it has taken so long for these documents to be produced for scrutiny.

Your Supplementary EM says that the Luxembourg Presidency aims to reach political agreement at the ESPHCA Ministerial Council on 2 June, but apparently no revised text for the draft Directive has been produced so far.

You will know from our Inquiry Report last year and subsequent correspondence that our principal concerns over the draft Directive are to retain the voluntary individual opt-out for the time being, with certain safeguards, and to achieve a workable solution to the problems for on-call duties caused by the SiMAP and Jaeger ECJ rulings. The new documents you have produced do not change those concerns.

The policy implications detailed in your Supplementary EM appear to be identical to those set out in your EM dated 18 October 2004, about which we have corresponded. Nor do the new documents address the more detailed questions raised in my letter to you dated 13 January, to which a reply is outstanding. But they will require careful consideration which will be given by Sub-Committee G at their first meeting on 8 June.

Meanwhile, we will retain this dossier under scrutiny. If the revised draft is considered by the ESPHCA Council on 2 June we will expect the Government to maintain a robust defence of the voluntary individual opt-out and to press for a workable solution to the problems caused by the ECJ rulings and to point out that Parliamentary scrutiny is retained.

26 May 2005
Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 26 May regarding the Supplementary EM and Initial RIA on the Commission’s Working Time proposal.

I apologise for our delay in providing the Supplementary EM, RIA and the other information you asked for. We had been promised an official Commission translation of their RIA, but after long delays the Commission decided not to provide one. The subsequent need to commission our own translation for the benefit of the Committee, combined with delays caused by administrative changes within the Department and the fact that the Election period meant that the Committees were not sitting meant that our response was delayed. I very much regret that you and the Committee were inconvenienced and we will ensure that such a delay does not happen again.

I am delighted that you share our determination to retain the individual opt-out and to achieve a workable solution to the problems raised by the SiMAP and Jaeger ECJ cases. We are working hard with colleagues across Europe to put our case forward. The Secretary of State, Alan Johnson, argued both points strongly at the Council in Luxembourg last week.

Turning now to your substantive points, you note that the policy implications detailed in the Supplementary EM are identical to those set out in our original EM on this subject. At that point, neither the Commission’s proposals nor the Government’s position on them had changed and we wanted to make it clear that our views remained the same. I look forward to hearing from the Committee once you have had the opportunity to consider the documents on 8 June.

I note your continuing belief that stricter record-keeping would be a reasonable safeguard against abuse of the opt-out. The Government is keen to consider options to reinforce the voluntary nature of the opt-out, and we would welcome a provision on record-keeping, such as that proposed by the Commission in their latest proposal (we will be sending you a copy together with an EM shortly) which provides greater safeguards without creating a disproportionate administrative burden.

You will have seen from our summary of responses to the Government Consultation that the majority of respondents were opposed to any additional form of record-keeping. I know from my own contacts with business representatives that the requirement in the original Commission proposal to record all hours worked by opted-out workers would be a very significant burden, particularly for small businesses. The Government does not feel that there would be enough benefit to employees to justify this additional red tape.

I note your comments on sectoral exemptions. When we commented that sectoral exemptions in the past had been time limited, what we had meant to explain was that the presumption in the EU has nearly always been that sectoral exemptions should be time limited or subsequently phased out. Thus, we in fact share the Committee’s view that these sectors will have continuing issues and thus require a continuing solution retention of the opt out. That said, our research shows that there are no sectors in the UK where long-hours working is not an issue. The Government view is that the individual opt-out should be available to all workers, should they want to use it. We have considered this issue in further detail since you raised the matter in your letter, but we are not persuaded that a sectoral solution would fit the needs of UK workers.

I also note your recommendation that the Commission should pursue more research on the relationship between long hours and health and safety. I agree that this is a complex issue, but previous studies in this area, such as the Barnard report, have not been able to shed much light on the issue and have at times been misinterpreted or misquoted. I note that the evidence given to your inquiry suggested that further studies may be useful, and we will seek an opportunity to bring this point to the attention of the Commission.

I would like briefly to update you on the outcome of the Employment Councils in December 2004 and June 2005.

The December Ministerial Council discussed an interesting compromise proposal put forward by the Dutch Presidency, but Ministers were unable to reach agreement on either the SiMAP/Jaeger issues or the opt-out. The Presidency’s proposals to solve SiMAP/Jaeger were supported by the vast majority of Member States. However, unless all Member States or the Commission and a qualified majority agree to consider SiMAP/Jaeger separately from consideration of the rest of the Directive, agreement on SiMAP/Jaeger must wait for agreement of the whole package. Nonetheless, we felt the debate was useful.

Under the Luxembourg Presidency, there have been further developments on the dossier. As you know, the European Parliament concluded its first reading of the proposal in May. We were disappointed that the Parliament voted to phase out the opt-out. However, as this is a co-decision dossier, the Parliament vote is only half of the process.
The Council on 2 June discussed the Working Time dossier and the Commission’s new proposals in some detail, but the wide divergence of Member States’ views on different aspects of the revised proposal, made it impossible to reach agreement.

It was unfortunate that the Commission proposal was not issued to Member States until late on 31 May. Both the Secretary of State and I were in Luxembourg for the Council from 1–2 June so it has not been possible to write to you regarding the proposal until now.

The revised proposal from the Commission has now been deposited with both Parliamentary Committees and we will produce an Explanatory Memorandum on the new proposals as soon as possible according to the usual procedure.

We await news of the Luxembourg Presidency’s further plans. If the issue falls to us in our Presidency, we will of course do our best to make progress on the dossier.

I hope this letter answers all your outstanding concerns and questions. The supplementary EM covered a summary of responses to our consultation, as you requested in your letter of 13 January, in addition to the DTI initial RIA and the Commission RIA. As we explained, the Commission MA was, in the end, never translated into English so we had to provide our own translation.

7 June 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 7 June which was considered by Sub-Committee G on 22 June.

We accept your apology over the handling of the Department’s Supplementary Explanatory Memorandum (EM) dated 17 May and the documents enclosed with it. We welcome your assurance that documents will be submitted for scrutiny more promptly and efficiently in future.

The key issues for the Committee remain the need to retain the voluntary individual opt-out and to achieve a workable solution to the problems raised by the SiMAP and Jaeger ECJ rulings. We are glad to note that the Government remains committed to achieving those objectives and argued strongly on them at the ESPHCA Council meeting on 2 June.

It is a pity that it was not possible to reach agreement among Member States at that meeting. We note that this was partly due to the very late presentation of the Commission’s new proposal. We have just received that document, together with an advance copy of your new EM about it. These will be considered by Sub-Committee G as soon as possible.

We were interested to see the findings of your initial Regulatory Impact Assessment (RIA) dated November 2004. The responses to your consultation generally mirror the views expressed in evidence given to our Inquiry. So does your assessment. It is also broadly in-line with the Conclusions and Recommendations of our own Inquiry Report on the Directive dated 8 April 2004, which we continue to regard as being a thorough and valid analysis of the issues involved.

We have also noted the Commission’s detailed Impact Assessment dated 22 September 2004 and your Department’s unofficial translation of it, for which we are grateful. Here again, we see nothing in that assessment to invalidate the Conclusions and Recommendations in our Inquiry Report, which the Department broadly supported at the time. We note the divergence of views between the Member States over the voluntary individual opt-out. But we continue to believe, with the Government, that the voluntary individual opt-out is particularly appropriate to the circumstances of the UK, where collective agreements are not the norm.

We are less clear where matters now stand on the problems posed by the ECJ rulings. No doubt that will become clear when we have an opportunity of examining the Commission’s new text and your Department’s EM about it.

We are grateful to you for addressing the points raised in my letter dated 13 January. We continue to believe more stringent and transparent record-keeping and rules of inspection designed to detect and deter abuses would be an important safeguard which ought to be incorporated in the Directive. We are sorry that you do not agree with us on that point and hope that you will reflect further on ways of doing this without creating too much “red tape”.

As for sectoral exemptions, we agree with you that retention of the voluntary individual opt-out would undoubtedly be the best way of coping with the special needs of certain categories of employment. But if the Government fails in its attempt to retain the voluntary individual opt-out, it may be worth considering whether the case for sectoral exemptions should be re-examined.
We are also glad to note you agree that further research on the relationship between long hours working and health and safety is desirable and hope you will succeed in convincing the Commission of the need to carry out those studies.

The document remains under scrutiny.

28 June 2005

Letter from the Chairman to Gerry Sutcliffe MP

Your Explanatory Memorandum (EM) dated 21 June was considered by Sub-Committee G on 6 July.

We note that the Commission’s new document (9554/05 COM (2005) 246 final) replaces the Commission’s previous amended proposal (12683/04 COM (2004) 607 final). We are therefore releasing the latter document from scrutiny.

Our approach to the essential issues related to the Working Time Directive remains as set out in our Inquiry Report. The points made in my letter to you dated 28 June remain valid in our view and should continue to be borne in mind.

Against that background, we note that the Commission’s new text continues to propose linking extension of the reference period to collective agreement. We agree with you that such a stipulation is inappropriate for the UK where, as our Inquiry found, only 36 per cent of overall employment and only 22 per cent of private sector employment is covered by collective agreements.

You have not commented on the feasibility of the alternative option now apparently offered of achieving extension by national legislation. We would welcome your views on that.

We also note your view that the proposed deletion of the standard four month reference period would be too inflexible and that the Commission have so far apparently been unable to explain why they propose to delete it. We shall be interested to know what explanation they give.

It also appears from your EM that the Commission have not given enough consideration to the effect that the proposal to reduce the maximum number of hours worked in any one week from 65 to 55 might have for seasonal workers on short-term contracts. Here, too, the insistence on linkage with collective agreements does not seem to take account of UK circumstances.

We welcome your proposal for a “cooling-off period” of three months, during which workers would be able to withdraw voluntary opt-outs without notice. A “cooling-off period” was proposed, in rather different terms, in paragraph 2.103 of our Inquiry Report as one of the important safeguards for the voluntary individual opt-out.

We note that, from what you say, this would appear to be more satisfactory from a British standpoint than the Commission’s proposed linkage to probation periods which would lack statutory definition in the UK.

We are glad to see that you welcome the proposal on improved record-keeping and note that you expect it to address potential abuses adequately without imposing disproportionate burdens on employers. In my letter to you dated 28 June, I reiterated the importance we attach to stringent and transparent record-keeping, as well as to effective rules of inspection to detect and deter abuses.

We are inclined to agree with you that the proposal that the Commission should decide on requests for extension of the opt-out after only three years would not give adequate legal certainty. The proposal to review the working of the Directive after only three years does seem insufficient and likely to cause undesirable uncertainty.

At first sight, it seems to us that much more needs to be done to clarify and improve the rather complicated rules now proposed for on-call duties if they are to achieve the workable solution to the perverse and damaging consequences of the ECJ SiMAP and Jaeger rulings which were also highlighted in our Inquiry Report.

We note that the Government are not planning to carry out a full consultation on the new proposals until the Amending Directive has been agreed. But we strongly recommend that health service managers, unions and professionals, and possibly their counterparts in related sectors, should be consulted as soon as possible about whether the new proposals for on-call duties are likely to be workable in practice.

When so much clearly remains to be done to improve the Commission’s proposals we must retain the new Commission document (9554/05) under scrutiny. We trust that the Government will continue to pursue all these outstanding issues with vigour and determination, especially during the UK Presidency, to protect British interests and promote a sound practical outcome. We look forward to your reply on the above
points and to examining your promised revised RIA. We also trust that you will continue to keep us fully informed of significant developments.

8 July 2005

Letter from Gerry Sutcliffe MP to the Chairman


Thank you for your letter of 28 June. I look forward to receiving your comments on the EM and RIA. I understand you are particularly interested to know if we believe the revised Commission proposal would be likely to cost the UK more than the original proposal. Overall it is very difficult to estimate the costs of the proposal. We believe it would effectively result in the loss of the opt-out. Therefore in the light of this we believe that the costs of the revised proposal would be greater than the original proposal, which allowed the opt-out to stay, albeit in a very limited form. It is not certain what the impact of losing the opt-out would be, but it is likely that the economic cost would reach billions of pounds.

I am writing in similar terms to the Chairman of the House of Commons European Scrutiny Committee and am copying this letter to the Clerk to your Committee, Les Saunders, Cabinet Office European Secretariat and Alison Bailey, DTI.

12 July 2005

INITIAL REGULATORY IMPACT ASSESSMENT (RIA)

COMMISSION’S REVISED PROPOSAL TO CHANGE THE WORKING TIME DIRECTIVE

JUNE 2005

http://www.dti.gov.uk/er

1. SUMMARY


The proposal sets out amendments to Directive 2003/88/EC as follows:

— insertion of three new definitions: “on-call time”, “workplace” and “inactive part of on-call time”;
— insertion of new requirement on “compatibility between working and family life”;
— modification of reference periods and conditions under which the reference period can be extended;
— indication of a period by which compensatory rest must be taken;
— new provisions relating to the use of the opt-out, and new conditions to be applied to opted-out workers;
— a requirement to remove the opt out after three years, unless the Commission agrees otherwise; and
— a requirement for the Commission to report on the application of the Directive after three years.

PURPOSE AND INTENDED EFFECT OF MEASURE

2. THE OBJECTIVE

The stated purpose of the proposal is to modify the Directive 2003/88/EC in the light of European Court of Justice rulings, and to review the provision for individual workers to opt out of the maximum 48-hour working week in a way that ensures a high standard of workers’ health and safety; allows companies and Member States more flexibility in managing working time (avoiding unreasonable constraints on companies, and SMEs in particular); and achieves greater compatibility between work and family life.
3. Background

The Working Time Directive 2003/88/EC provides, in general:

— that an employed worker shall not work in excess of 48 hours per week—on average;
— a right to four weeks paid annual leave per year;
— rights to certain daily and weekly rest breaks;
— a day off each week;
— a limit on night workers’ hours; and
— entitlements to free health assessments for night workers.

Article 22(1) permits a Member State to allow, in its national legislation, a worker to work more than the 48-hour weekly working time limit provided the worker has individually agreed to perform such work (the opt-out). There is no opt out from the other provisions. Article 22 also requires the Council, on the basis of a Commission proposal accompanied by an appraisal report, to re-examine Article 22(1) and decide what action to take by 23 November 2003.


The Commission published a revised proposal COM (2005) 246 on 31 May 2005, which took into account the European Parliament’s opinion. This proposal is set out in more detail below.

Detail of proposals

The proposal for new definitions (amendment to Article 2: addition of paragraphs la, 1aa and lb) proposes the insertion of three new definitions: “on-call time”, “workplace” and “inactive part of on-call time”, which are added to the existing definitions of “working time” and “rest period”. “On-call time” is defined as the period when the worker has to be available at the workplace in order to intervene at the employer’s request to carry out work. The “workplace” is defined as the place or places where the worker normally carries out his activities or duties, determined in accordance with the terms laid down in the relationship or employment contract applicable to the worker. The “inactive part of on-call time” is defined as the time when the worker is on call but not required by his employer to carry out his activity or duties. A new Article 2a establishes that the inactive part of on-call time is not considered “working time”, unless otherwise stipulated by national law or by collective agreement or agreement between the two sides of industry. Member States may not, however, take inactive on-call time into account when calculating rest periods. (Inactive on-call time in the workplace was not considered to be work before the SiMAP/Jaeger judgements).

The proposal on compatibility between working and family life added as Article 2b, indicates that Member States should encourage the social partners at the appropriate level, without prejudice to their independence, to conclude agreements aimed at improving compatibility between working and family life. The Article requires Member States to take measures necessary to ensure that:

— firstly “employers inform workers, in good time of any changes in the pattern or organisation of working time”; and
— and secondly that “workers may request changes to their working hours and patterns, and that employers are obliged to examine requests taking into account employers’ and workers’ needs for flexibility”.

The proposal on modification of reference periods, which is now covered in Article 19, would allow Member States subject to certain conditions to extend the reference period, over which working time is averaged, to a set period not exceeding 12 months. The reference period can be decided by collective agreement or agreement between the social partners, or by legislative or regulatory provision. However there are extra conditions applied. In the latter case, Member States must take measures to ensure employers “inform and consult” their workers “in good time” before introducing a reference period and that the employer is required to take measures necessary to avoid or overcome any risk relating to health and safety. The deletion of Article 16b means that the standard four-month reference period is no longer available so the default reference period would be one week. Special 12-month reference periods which are in force in the current directive for doctors-in-training and offshore workers have also been deleted.
The proposals dealing with compensatory rest, amending Articles 17(2) and 18, provide that compensatory rest (for missed daily and weekly rest) has to be granted within a reasonable period, to be determined by national legislation or a collective agreement or social partner agreement.

The amended Article 22(1) sets out the conditions to be met by Member States who choose to apply the opt-out (derogation from Article 6—maximum weekly working time). The Commission proposes the following conditions:

- the worker’s agreement cannot be given at the time that the employment contract is signed or during any probation period;
- an opt-out automatically expires after one year unless renewed;
- workers will be subject to an absolute limit of 55 hours work in any one week, unless a collective or social partner agreement provides otherwise;
- employers must keep up-to-date records of opted-out workers and adequate records for establishing that the provisions above are complied with;

The proposals also state that the opt-out will be removed after three years. Member States may request an extension, permitting them to continue using the opt-out, but the decision as to whether they could retain the opt-out would be left to the Commission. This would be likely to mean the end of the opt-out. In practise this means that employees would be unable to work more than 48 hours in any one week, unless the conditions were fulfilled to extend the reference period, in which case they would be unable to work more than 48 hours a week, averaged over a reference period of up to 48 weeks (52 weeks less four weeks leave). The proposal on the cap of 55 hours in any week appears to apply to all workers in any Member State permitting opting out, whether or not the worker in question has actually chosen to opt out. It is not clear whether the Commission intended this effect.

The proposals must be agreed by the Council of Ministers and the European Parliament in co-decision.

**Data Source**

Unless otherwise stated, all statistical data quoted in this Regulatory Impact Assessment are taken from the Spring Labour Force Survey 2004.

**Risk Assessment**

This section considers the risks attached both to the failure to reach agreement on the Commission’s proposals, and to their implementation in the UK (where this is not covered under “Impact” below).

**Changes to the Definition of On-Call Time**

The SiMAP/Jaeger rulings—effectively that on-call time spent at the place of work, even when asleep, constituted working time; and that compensatory rest must be taken immediately (following time on call)—have made the Working Time Directive significantly more difficult to implement for a range of sectors. The judgments have implications for all sectors across the EU that use on-call working; however, the effects are greatest on health services. The judgments have significant impacts on the effective delivery of healthcare.

The principal risk of the revised proposal on on-call time as it stands is that the new definition of the workplace could be interpreted as encompassing on-call work at home, which would cause even greater problems than SiMAP/Jaeger for the efficient delivery of health services and potentially many other sectors. There is also a risk that the proposed definition of the workplace, combined with the revised on-call proposal, which says that inactive on-call time is neither work nor rest, could make some sensible shift patterns impossible and so compromise patient care.

**Compensatory Rest**

The Government believes that the Commission proposal would resolve issues raised by the recent Jaeger ECJ case. The adequate provision of health services in the UK was seriously threatened by this ruling. The Commission has proposed that compensatory rest be given within a reasonable period to be determined by national legislation or a collective agreement or an agreement concluded between the social partners.
Introduction of “measures on compatibility between working and family life”

This addition’s stated aim is to improve compatibility between working and family life. The risk of these proposals is that although they seem to introduce a standard approach, in fact it is very unclear how they would work and therefore they introduce a very significant element of legal uncertainty and would add significantly and disproportionately to the administrative burden for business.

They could also undermine the progress the UK has made in this area through targeted, light touch legislation, which (unlike this proposal) does not insist on a standard approach.

The proposal would require the UK to widen the scope of its existing legislation and require a more onerous and legally uncertain test to be applied when considering requests.

The UK’s experience is that its legislative approach has facilitated positive and creative dialogue between employers and their employees to enable them to identify working patterns that suit both, with many employers going above the requirement of UK legislation. Seven in 10 employers say that they are willing to consider flexible working from all staff and the proportion of requests for flexible working that are declined in the UK is half (20 per cent compared to 11 per cent) that from before the introduction of its “right to request” in 2003.

Changes to the Reference Period

The risks of this proposal are that the conditions attached to extending the reference period make it difficult for Member States, such as the UK, who do not have a tradition of collective or social partner agreements to use it. Were it to prove impossible to extend the reference period, UK workers would then be left with a one-week reference period, which would cause problems for workers and companies across all sectors. Workers would then have no choice but to opt out if they ever wanted to work more than 48 hours in a week. Were the UK able to extend the reference period by national legislation without further conditions the potential benefits are that it would reduce the number of people who have to opt out in order to maintain their current working patterns, though we estimate that 1.3 million people (9 per cent of full-time employees) would still need the opt-out.\(^\text{19}\)

Changes to the compensatory rest period

There is some risk that courts could still interpret the proposal as meaning that compensatory rest must be taken immediately, in line with the Jaeger judgment. This would thus perpetuate current problems for the healthcare service. However, we consider this risk to be relatively low, particularly compared to the certainty that the problems would continue if there is no agreement on changes to the specification of the compensatory rest period.

Changes to the operation of the opt-out

The principal risk of this proposal is that the opt-out would be removed, restricting the flexibility of the labour market and removing the right to choose their hours from workers.

If the opt out were removed altogether, employees would lose a proportion of their wage packet. The lost overtime could be replaced with increased hours for other workers, including those working part time to balance work and family life; where it was not, the income would be lost to the economy.

There is a risk that any measures to restrict the flexibility of the labour market would reduce the current diverse spread of work patterns in the UK. The incidence of long-hours working in the UK has fallen by over 17 per cent between Spring 1998 and Spring 2004. This follows a period of time—throughout the early to mid 1990s—when the proportion of employees working long hours steadily rose. The UK is traditionally seen as having a long hours culture, but the full picture is that the UK has a wider range of working patterns than most EU Member States and that average hours worked are falling. In the UK 22 per cent of workers have flexible working arrangements and a further 26 per cent work part time.\(^\text{20}\) The Government has successfully improved the availability of different working patterns, thus widening the choice of working hours available to employees. Flexible working can include: annualised hours; compressed hours; flextime; home-working; job-sharing; shift working; staggered hours; and term-time working.

\(^{19}\) This has been calculated using the Spring 03-Spring 04 Labour Force Survey Longitudinal dataset.

\(^{20}\) Data from the Spring 2004 Labour Force Survey.
Employees would only be able to work 48 hours in any one week and no more, unless they were able to negotiate extension of the 12-month reference period, in which case they could do 48 hours per week, averaged over a maximum of 48 weeks (52 weeks less four weeks leave). In the UK an estimated 3.3 million employees usually work over 48 hours in a week. As this figure only considers those who usually work over 48 hours and not those who ever work over 48 hours it clearly underestimates the number of people who would be affected by the loss of the opt out.

The Spring 2004 Labour Force Survey indicates that although 69 per cent of long-hours workers would like to reduce their hours, only 26 per cent of these workers would want to do so if it meant a loss in pay. Another survey conducted for DTI indicated that only 12 per cent of those long hours workers questioned would want to reduce their hours if it meant a loss in earnings. Anecdotally we know that workers with short term contracts (for example, farm workers at harvest time) would be particularly badly hit due to their traditional working patterns, which involve very long hours during certain periods and few or no hours at other times.

Options

In practice, were the Amending Directive to be agreed, the UK would have no option other than to transpose the new Directive into UK law. Our options are to agree the Directive as it stands, which would have an adverse impact in the UK, or improve it through negotiation. The Government is therefore working with other Member States, the Council Presidency, the Commission and the European Parliament to ensure that the final version of the Directive takes into account the views of all stakeholders, including employers’ organisations, trade unions, and individual workers.

4. IMPACT OF THE PROPOSAL

The definition of on-call time

The Government believes that the Commission proposal could resolve the majority of the issues raised by recent ECJ cases. The adequate provision of health services in the UK has been seriously threatened by these rulings. The NHS was on track to implement sensibly and successfully the Working Time Directive for doctors in training before the SiMAP and Jaeger judgments. SiMAP/Jaeger diverted hospitals’ attention from these efforts, forcing some hospitals to adopt systems that were compliant but less effective.

Introduction of compatibility between working and family life

The proposals would require employers to inform workers “in good time” of any changes in shift pattern, which could cause problems for production and other sectors. It is not clear what, in this context, “in good time” means. Proposals would also give rights for all workers to request flexible working, and an obligation for all employers to assess requests balancing the needs of the business with the individual’s. This is considerably wider than the UK’s existing approach. The UK’s “right to request flexible working and duty on employers to consider requests seriously” applies presently to parents of young and disabled children, who are employees only, and have worked for their employer for six months. It requires the employer to follow a procedure to assess whether the requested pattern of work is compatible with the needs of the business. We believe this works better than the proposed requirement to consider the personal needs of the individual, both because of the difficulty of evaluating the magnitude of the workers’ need and because not all employees will be comfortable in being open about their personal circumstances.

Reference Periods

An extension of the reference period to 12 months without restrictive conditions could give the system more flexibility, allowing fluctuations in work to be evened out, and reducing the number of workers who have to opt out. There are, however, conditions attached to using this 12-month reference period, which will make it more difficult for employees to make use of the opt-out especially in countries which do not have a tradition of collective agreements such as the UK. These conditions state that the employer must inform and consult the workers in good time concerning the introduction of such a reference period; and that the employer must

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21 Throughout this document “long-hours workers” are defined as workers who usually work more than 48 hours a week.

take the necessary measures to avoid and overcome any risk relating to health and safety that could arise from the introduction of a reference period.

The Labour Force Survey figures give the best indication of the effect of a longer reference period on numbers of long hours workers: overall 19 per cent (3.3 million) of full time employees report that they “usually” work more than 48 hours a week. If asked in two consecutive quarters (to approximate the current 17 week reference period) this drops to 14 per cent (2.3 million). If asked over five quarters (to approximate a 12-month reference period), the figure drops again to 9 per cent (1.3 million).

The proposal would mean that the reference period could be extended by collective agreement without conditions, whereas the extension by national law requires both the Information and Consultation and health and safety provisions. This discriminates against Member States without a tradition of collective agreement coverage. It is also illogical to suggest that a 12-month reference period requires health and safety provisions in one context, but not in another. Either they are necessary or they are not.

Additional Conditions Attached to the Opt-out

Impact of requiring the opted-out worker’s agreement

The UK requirement currently states that the worker’s agreement to opt out must be in writing so this introduction would have no additional impact.

Impact of automatic expiry of opt-out agreement after one year unless renewed

At present UK law requires anyone who wants to work more than the working time limit to say so in writing and in advance, but does not set out any other rules. Whilst there would be no change with regard to opt-outs being in writing, the proposed change would mean that this had to be done annually. The implications of this would be that it may raise general awareness of the rules surrounding the operation of the opt-out, but would also increase the administrative burden on business. We raised the possibility of a renewal period in our consultation last year and responses indicated that the burden would not be excessive.

Impact of prohibiting signing of opt-out at the time as the employment contract

This proposal was suggested by the UK. While it would place a certain administrative burden on business, consultation and discussions with stakeholders have indicated that the burden would not be excessive.

Impact of prohibiting signing of opt-out during any probation period

There is uncertainty as to what is meant by “probation period” in the Commission proposal. Probation periods tend to be contractual in nature in the UK, with no general statutory requirement for employers to have one nor any maximum length set out in legislation (probation periods are provided for in UK legislation in respect of a few particular sectors such as teachers and police). It is therefore difficult to predict the likely impact of this proposal, other than to note that it would be more easily applicable in some sectors than in others, which would lead to inconsistency in the way the measure was implemented and enforced. There is a risk that in sectors without statutory probation periods the courts could decide that workers were not allowed to opt out for a year until they had full employment rights.

The prohibition on signing an opt out during any probation period would also have a disproportionate effect on short-term contract workers, particularly those who do seasonal work such as harvesting. There is a risk that the entire contract period would be defined as probation within the meaning of the Directive, so the worker would not be able to choose to opt out.

Impact of subjecting all workers to absolute limit of 55 hours’ work in any one week, unless a collective or social partner agreement provides otherwise

The negative impact on all sectors’ flexibility would be great. While no reliable figures exist for the number of workers in the UK who ever or occasionally (as opposed to usually) work more than 55 hours in any given week, we are aware that millions of workers are likely to be affected and that an absolute limit would cause problems for workers across all sectors, and particularly in sectors such as construction, accountancy, event
organising, etc. We can know for certain that this proposal would affect the 7 per cent of workers who say they “usually” work more than 55 hours a week. But clearly the most important impact would be on the large, unknown number who occasionally work more than 55 hours in a week.

**Impact of requiring employers to keep adequate records of all opted-out workers and records to establish that the provisions of the Directive are complied with**

The UK regulations already require employers to keep records adequate to show the Directive is being complied with. However, the new limits contained within the proposal could create an extra burden on employers.

**Impact of loss of opt-out after three years**

The loss of the opt out after three years would have a very significant effect on the UK. The loss of the opt-out altogether, without the extension of the reference period, would imply that workers would not be able to work more than 48 hours in any one week. In the UK 3.3 million people usually work over 48 hours in any week. This number does not include workers who occasionally work over 48 hours—the number of people affected would be much higher than this. Even if the conditions were fulfilled to extend the reference period from one week to 12 months, the 1.3 million workers who usually work over 48 hours averaged over a year would be affected.

5. **Costs and Benefits**

Tightening the conditions attached to the opt-out would generate a variety of costs and benefits for employees and employers.

The new conditions would tighten the way the opt-out is used and hence restrict the ability of individuals to choose the hours they work and the flexibility of business. The new record-keeping requirement could impose administrative costs on business.

The loss of the opt out after three years would have a substantial financial impact on many UK employees. Almost one million employees currently work more than 48 hours as paid overtime. These employees would suffer the potentially significant financial consequences of losing the opt-out.

The opt-out is not a licence for employers to force an unsuspecting workforce into working longer hours. Rather, by making its use dependent on individual consent, it secures for individual workers both protection and freedom of choice. The diversity of opinion and reasons behind long hours working demand a solution which reinforces the rights of individual workers. With appropriate levels of enforcement and regulation the opt-out provides the appropriate balance between individual choice and protection which is central to the sustainable success of the UK’s labour market.

Other benefits from long-hours working include increased job prospects and security. A reduction in paid work hours rather than an increase could potentially cause psychological distress through a reduction in income.23

Positive aspects of working long hours were shown in a recent employee survey which stated that a “number of people came up with positive aspects of working long hours, including a better standard of living (51 per cent), better quality of life (46 per cent), improved self-esteem (38 per cent), and promotion and career progression (24 per cent).”24

Research on the health and safety effects of long-hours working is inconclusive. There is no clear-cut evidence that working long hours causes ill health, and research shows that flexibility to choose hours is a more significant factor in workers’ health and safety than the actual length of the working week.25

The introduction of central EU legislation on compatibility between working and family life would have a financial impact on employers by adding significantly and disproportionately to the administrative burden. As detailed in Section 3, the proposals are more prescriptive than current UK legislation in this area. Some workers might benefit from wider rights to request flexible working, but it is not clear how far this would add to existing informally agreed flexible working arrangements and in any case, the lack of clarity in the proposal makes it difficult to predict its outcome.

The proposals on on-call time and compensatory rest would result in some benefits to the organisation of healthcare in the UK, as discussed in the previous section, though there are concerns about the possibility of the home being included in the definition of the workplace. This could represent a large cost to the National Health Service, as inactive time at home would not count as rest. It is difficult to estimate the costs, financial and otherwise, of compliance with the current SiMAP and Jaeger rulings, but there would be considerable benefits from an adequate solution to the problems caused by the rulings.

The overall cost to business of the Commission’s revised proposal cannot at this moment be calculated because the figure that would be produced would be static and thus not take account of the bigger picture. This would involve estimating the effects that these changes would have on productivity and staffing levels. In order to estimate this complex econometric modelling would be needed.

6. **Equity and Fairness**

The loss of the opt out would have a disproportionate impact on men as they are much more likely to work long hours than women. 24 per cent of full-time male employees usually work over 48 hours a week, while only 11 per cent of full-time women do so. The Government does not foresee any disproportionate impact on any other group. The impact on particular sectors and on small firms are dealt with in the next section.

7. **Distributional Impacts**

The extent of long-hours working in the UK differs substantially by industrial sector and occupation. The broad industry sectors where the highest proportion of full-time employees work in excess of 48 hours are “agriculture and fishing”, “transport and communication”, “construction” and “energy and water” (Chart 1). However, there is a significant number of workers exceeding 48 hours in all sectors.

The data can also be analysed by occupational group as well as industry. The occupational groups with the highest proportion of full-time employees reporting usually working over 48 hours per week are “managers and senior officials” (32 per cent) “professionals” (27 per cent) and “process plant and machine operatives” (27 per cent) (Chart 2).
Small Firms Impact Test

The Labour Force Survey indicates that long-hours working is somewhat more prevalent in smaller workplaces. In enterprises with five to 49 employees, 6 per cent of all employees worked over 48 hours on a sustained basis compared to only 2 per cent in enterprises with 250+ employees. It should be noted that this is the case for all occupational groups to varying degrees—eg senior managers, junior managers, other non-manual and manual workers. On this basis alone, therefore, it can be seen that any changes restricting the use of the opt-out would have a greater impact in SMEs than in larger organisations.

The proposed additional conditions attaching to use of the opt-out would also impact disproportionately on small firms. The need to review and renew opt-out agreements as they expired (given the proposed 12-month automatic expiry condition); prohibition of signing of the opt-out at the same time as the contract of employment; additional record-keeping requirements; and the requirement not to sign opt-outs during any probation period are all likely to cause a greater administrative burden on small businesses, as there will inevitably be less resource (eg no or very limited Human Resources capability) available to manage the introduction of these requirements: Initial soundings taken from small business organisations during the recent DTI consultation support these conclusions.

The impact of an absolute cap on working hours is also likely to have a greater impact on small firms, as their ability to juggle workers’ shifts and work patterns is inevitably constrained by the fact that they have fewer employees.

The requirement to use information and consultation to implement the 12-month reference period could also have a significant impact on small firms, as current formal I&C structures only apply in firms with 150 or more employees.26

Table 1 below shows that full time employees who work in small to medium-sized workplaces are slightly more likely to work long hours than those who work in larger workplaces.

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26 From 2007 I&C will apply to undertakings with 100 or more employees, and after from 2008, to ones with 50 or more. Undertakings with 50 or more employees account for about 1 per cent of all undertakings in the UK and employ about 75 per cent of UK employees.
Table 1
FULL-TIME EMPLOYEES USUALLY WORKING GREATER THAN 48 HOURS PER WEEK BY WORKPLACE SIZE

<table>
<thead>
<tr>
<th>Size of Workplace</th>
<th>Number of full-time employees &gt; 48 hours per week</th>
<th>% of full-time employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 25</td>
<td>991,000</td>
<td>19.4</td>
</tr>
<tr>
<td>25–49</td>
<td>485,000</td>
<td>20.6</td>
</tr>
<tr>
<td>50–499</td>
<td>1,258,000</td>
<td>19.0</td>
</tr>
<tr>
<td>500 or more</td>
<td>582,000</td>
<td>17.6</td>
</tr>
<tr>
<td>Total</td>
<td>3,316,000</td>
<td>19.1</td>
</tr>
</tbody>
</table>


There is a risk that losing the opt-out could cause employees, particularly in small businesses, to re-categorise themselves as self-employed with a loss of statutory employment rights, in order to continue working the hours of their choosing.

The on-call time and compensatory rest proposals would obviously have greatest impact on the health sector. We do not foresee any distributional impacts of any of the other proposals.

8. Competition Assessment

The Commission’s proposals raise competition concerns only where they are likely to have the effect of putting different Member States into different positions. This is most likely to occur with the proposed loss of the individual and collective opt-out after three years, as this would discriminate against the UK labour market tradition, which is based on individual agreements. Other Member States are able to use their traditions of collective agreements to make wider use of the other flexibilities provided in the Directive.

As the Commission’s Impact Assessment points out, a significant number of employers fear that the loss of the opt out would have an adverse effect on their business. Prior to losing the opt-out after three years, the proposed cap of 55 hours in any one week would cause problems for workers across a wide range of sectors and would cause particular problems for workers on short-term contracts, who cannot use a long reference period to take account of peaks of work. Construction workers on remote site or oil rig workers, for example, who typically work two weeks of very long hours followed by two weeks off, represent sectors where workers sometimes need to work more than 55 hours a week over short periods without adverse effects.

The proposed extension of the weekly working time reference period to 12 months could enable more labour flexibility. However, there are concerns about the new conditions attached to the extension of the reference period. Under the proposal, preference would be given to the extension of the reference period by collective agreement and thus would discriminate against countries such as the UK, which do not have a strong tradition of collective agreements. The Government has concerns that the Commission proposal removes the default four month reference period. If companies could not use collective agreement, this would effectively mean a one-week reference period, which would cause problems for all sorts of workers.

The Commission argues that the loss of the opt-out would eventually have a beneficial effect on productivity. The Government does not accept a causal link between productivity rates and the use or otherwise of the opt out. However, it is probably the case that if there were to be greater productivity this would often reduce the need to work long hours.

9. Enforcement and Sanctions

Enforcement of the Working Time Regulations in the UK is split between different appropriate authorities. It is not envisaged that the Commission’s proposals would affect the structure of these enforcement arrangements although additional conditions such as a cap on hours would need enforcement.

The entitlements to rest and annual leave are enforced through employment tribunals; the working time limits and health assessment requirements (for night workers) are enforced by the Health and Safety Executive, local authority environmental health departments, the Civil Aviation Authority and the Vehicle and Operator Services Agency.
10. Monitoring and Review

The DTI has commissioned several surveys and research reports to assess the impact of the Working Time Directive in the UK. The DTI also monitors trends in long-hours working in the UK through the Labour Force Survey and other data sources. Should there be any significant changes to the Working Time Directive, a monitoring and evaluation plan will be developed in order to gauge its impact.

11. Summary and Recommendations

The Government welcomes the general thrust of the Commission’s proposals relating to on-call time and the timing of compensatory rest and is considering the detail of these proposals, subject to clarification that on-call time at home is not included and that the “neutral time” formula solves the problems the health service is facing.

The effect of the proposals would be to return the meaning of the Directive to what it had been generally understood to be before the SiMAP/Jaeger rulings, whilst retaining the core health and safety focus of the Directive.

The Government would be pleased to see the extension without additional conditions of the reference period for the opt-out to 48 weeks (52 weeks less four weeks leave). This would give the system more flexibility, allowing peaks and troughs in work to be evened out, and reducing the number of workers who have to opt out.

However, the Government believes that the individual opt-out should be retained. While the Government is happy to see tighter safeguards, it does not find all the Commission’s proposals acceptable.

The Government also believes that problems exist with some of the proposed conditions attaching to the opt-out. For example, the Government has concerns over the proposed absolute 55 hour cap. A weekly limit of this kind does not reflect the non-traditional working patterns that now exist in some industries.

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 12 July, which crossed with mine to you dated 8 July, about the Commission’s new proposal for amending the Directive. Your letter and enclosure were given initial consideration by Sub-Committee G on 20 July.

Your initial Regulatory Impact Assessment clearly needs more careful examination than has been possible in the time available. We therefore propose to consider it further at the next meeting of Sub-Committee G following the Summer Recess on Thursday 13 October.

We hope that by then you will be in a position to reply to our initial reactions to the Commission’s new proposal, as set out in my letter to you dated 8 July. By then, too, we hope that you may be able to let us have a more considered view of the Commission’s new proposals for on-call time and compensatory rest, which the summary of your RIA says are still being studied.

We note that your best estimate is that the economic costs of the Commission’s new proposal could reach billions of pounds if the voluntary individual opt-out is lost. It is hard to know how much store to set by such figures and, as you are well aware, there are also important wider implications to consider.

As you know, we continue to maintain that the voluntary individual opt-out should be retained for the time being on the lines recommended by our Inquiry Report of April 2004, as re-stated in my letter to you dated 28 June. We trust that the Government will continue to stand firm on that position.

21 July 2005

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 28 June and your helpful comments on this complex dossier. You will now have received our Explanatory Memorandum and initial Regulatory Impact Assessment on the revised Commission proposal, and I look forward to receiving your comments on these documents in due course.

I was interested to see your comments on our initial RIA on the original Commission proposal. I was pleased to see that you approve our assessment and see an overlap with your own Inquiry Report. I have noted your points on record-keeping and on the possibility of sectoral exemptions.

21 July 2005
Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letters of 8 July and 21 July concerning the Working Time Directive. I look forward to receiving your more detailed comments on our initial Regulatory Impact Assessment. At that stage I will reply to some of your initial points, including the Government’s more considered view of the on-call and compensatory rest proposals.

I have noted your helpful comments in your letter of 8 July. In particular, you ask for a commentary on the feasibility of extending the reference period by national legislation. As you know, under the present proposal this would only be possible if certain conditions were fulfilled: the employer must inform and consult the workers in good time concerning the introduction of such a reference period, and the employer must take the necessary measures to avoid and overcome any risk relating to health and safety. The Government believes that the requirement to use information and consultation would introduce a potentially divisive new issue into I&C arrangements and risk damaging the carefully developed support for and acceptance of I&C by UK employers. At the moment, coverage of I&C in the UK is far from universal.

You have also asked that the Government consider consulting health service managers, unions and professionals about the feasibility of the new on call proposals. I have received assurances from the Department of Health that they will carry out a consultation with key stakeholders along the lines suggested. We will of course keep you informed of any progress in the negotiations. We have already developed our plans for discussing this issue during the UK Presidency of the Council of Ministers. We have placed the dossier on the “fantasy agenda” for the December Employment Council and have reserved two working groups in September for official-level discussions on the subject.

23 August 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 23 August which was considered by Sub-Committee G on 13 October. At that meeting, the Sub-Committee also gave further consideration as promised, to the Department’s Initial Regulatory Impact Assessment (RIA) of the new text enclosed with your letter dated 12 July.

You will know from previous correspondence and our Inquiry Report the importance which we attach to finding a workable solution to the problems caused by the SiMAP and Jaeger ECJ rulings and the burdens they have imposed on the NHS. We therefore welcome your assurance that the Department of Health (DoH) will be consulting key stakeholders, including Health Service managers, unions and professionals, about the feasibility of the Commission’s revised on-call proposals. We consider this as vital, even though we are pleased to see from your RIA that the Government’s initial view is that the new proposal could resolve most of the issues raised by these ECJ rulings.

We look forward to learning the results of the DoH consultation and any further views the Department may have on the revised proposal on further consideration. We also hope that your negotiations will be able to clarify whether on-call workers’ homes might be included in the definition of the work-place and, if so, whether that might mean that inactive time at home would not be counted as rest.

The initial findings of your RIA confirm our long-held view, as reflected in our Inquiry Report and re-iterated in my letter dated 21 July, that the voluntary individual opt-out should be retained for the time-being and that the reference period by which the maximum working week is defined must be calculated in terms that are reasonable and appropriate to UK circumstances. It is regrettable that the Commission are still insisting on linkage with collective agreements. We hope that it has been possible to secure some support from other Member States for the Government’s view on this.

We are grateful for your explanation of the potential drawbacks associated with the Commission’s new proposal to allow the extension of the reference period by national legislation. We agree that the conditions proposed by the Commission for this are illogical and inconsistent, in comparison with those proposed for collective agreements. We also note your view that these conditions may be detrimental to the development of good inform and consultation arrangements in the UK. But we would be interested to know whether, if it was possible to modify these conditions by negotiation, national legislation might represent a reasonable fallback option.

While we hope that you will be able to secure all-embracing arrangements to retain the voluntary individual opt-out in terms that are relevant to UK employment circumstances, we continue to believe that some sectoral exemptions may be worth considering as a potential fallback.
We agree that the proposal to phase-out the opt-out after three years appears to be inherently unreasonable and note that your RIA estimates that this would have a substantial financial impact on the UK, affecting over a million workers. Again we would be glad to know whether other Member States support the UK’s view of this.

We are glad to see that the proposal to prohibit signing an opt-out agreement at the same time as an employment contract, which is in-line with our Inquiry Report’s Recommendations, would not create excessive burdens for employers. We note your continuing concern, on the other hand, about the burden which you expect to be caused by the proposed requirement for employers to keep adequate records of opted-out workers and compliance with the Directive. But you will recall that our Inquiry Report stressed the importance of stringent and transparent record-keeping, as well as effective rules of inspection, to help detect and deter abuses.

It is clear from your RIA that the proposal to prohibit signing an opt-out agreement during a probation period needs clarification and would tend to penalise seasonal and other short-term contract workers. We hope that you will be able to secure satisfactory improvements on this during negotiations.

We are sympathetic to the principles of improving the compatibility between working and family life, which we supported in our Inquiry Report. But we note that the Commission’s present proposal would appear likely to restrict employers’ flexibility unreasonably and hope that it may be possible to modify that proposal to make it more consistent with current UK practice.

Your RIA’s findings about the attitude of workers to longer hours working are interesting and potentially important. You will recall that our Inquiry Report supported the legitimate and reasonable rights of those who wished, for whatever reason, to work longer hours where extra work is available for them to do.

The competition assessment in your RIA points out that British companies could be at a disadvantage in comparison with the EU competitors if the linkage to collective agreements is retained. But we wonder whether any assessment has been made of the likely competitive disadvantages for EU industry as a whole in comparison with international competition with countries where these restrictions do not apply. This obviously has important implications for the Lisbon Agenda.

On the other hand, our Inquiry Report also recommended that the Government, business and trades unions should look actively for other ways of improving competitive flexibility to reduce dependence on long hours working. This should not be lost sight of as a desirable and not unreasonable longer-term aim.

We were also interested to see that the RIA concurs with the Inquiry Report’s finding that current research on the health and safety effects of long hours working is inconclusive. You may recall that the Inquiry Report recommended that the Commission should carry out detailed research into the possible relationship between long hours working and health and safety work risks. We suggest that this might be made a condition of the review process.

Your letter dated 12 July and the RIA refer to the problems of trying to produce reliable estimates of likely overall cost to business. We appreciate that it may be difficult to do so in the short run, but hope that further consideration will be given to this. We also wonder whether it is not unreasonable to ask the Commission to undertake some more detailed research than they appear to have done thus far on the likely financial and economic impact.

We are grateful for your assurance that you will continue to keep us closely informed of progress on negotiations and would be grateful if you could ensure that this will be done in good time before any discussion at the December Employment Council. Scrutiny is meanwhile retained.

13 October 2005

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 13 October concerning the Working Time Directive and detailing your consideration of the Department’s Initial Regulatory Impact Assessment (RIA).

As suggested in your letter of 8 July, the Department of Health (and the NHS Employers organisation) invited comments on the SiMAP/Jaeger proposals during Autumn 2005 via the NHS Workforce Bulletin and the WTD 2009 National Stakeholders Group. Responses were received from a wide range of key stakeholder organisations and individuals including representatives of the Medical Royal Colleges and the British Medical Association (Junior Doctor Committee), postgraduate deaneries, doctors, and NHS managers. The results, appended in Annex A, indicated that:
Most respondents supported the proposed definition of the workplace, provided that further clarification was given to the status of doctors on call from home, and those who may have to provide on-call services on a different site from the one on which they “normally” work.

Several respondents indicated that the “inactive” on-call time proposal would give more flexibility to the health service, especially in some specialties and hospitals particularly challenged by the WTD. However, some identified that there could be practical difficulties with implementation and a few added that guidance or an agreement on the proportions of time to be treated as work and rest would be helpful.

Most stressed that the “compensatory rest” proposals would provide important additional flexibility but would welcome guidance on the interpretation of “reasonable period” based on health and safety principles.

I am grateful for the work carried out by the Department of Health on this consultation.

You ask for clarification of the definition of on-call work at home. This issue has been discussed at length in Working Groups and we have also raised it privately with the Commission. The consensus view is that on-call at home does not fall within the scope of the definition of the workplace, and therefore inactive on-call time at home will count as rest within the terms of the Directive. Our lawyers are, however, concerned that there may be scope for a Court to interpret the clause differently, so, unless the definition of inactive time is changed to rest in all cases, we will look to clarify the text in some way.

I note your continuing view that the individual opt-out should be retained. Working Groups and bilateral meetings at both official and Ministerial level have assured us that there is significant support across the EU for this position, although a number of Member States still favour the abolition of the opt-out.

I also note your views on the proposed conditions attached to extending the reference period. Following negotiations in Working Groups, we are hopeful that an improved text on these conditions can be agreed. The Government is keen to extend the reference period by national law and would like to see an amendment to the Directive which would permit this—individual businesses would then be able to consider whether they were prepared to accept the conditions.

I was interested to receive your comments on the need for a competition assessment of the potential effect of the loss of the opt-out on the EU as a whole. I am not aware of such a study, but I agree that it might be beneficial for the Commission to conduct one and I will look into suggesting it to the Commissioner. As you say, this is a key area for the Lisbon Agenda.

Your Clerk advised us that you might also be interested to hear about the widespread use of multiple jobs in other EU countries. In the course of the negotiation process, we have found that a large number of Member States, both old and new, interpret the 48-hour limit as per contract rather than per worker. This means workers with more than one job could legally exceed the 48-hour limit without opting out. If the opt-opt was removed or restricted, this would raise some competition concerns because our lawyers advise us that any attempt to use a similar provision would be struck out by the courts. The Commission has made it clear that the limit should apply per worker, but has not found it necessary to insert the European Parliament text which would make this explicit.

I also note your views that the Commission should carry out detailed research on the health and safety implications of long-hours working and your recommendation that such research should be made a condition of the review process. In addition, your comments that the Commission could also undertake detailed research on the financial impact of the opt-out are interesting. We will bear in mind both recommendations during the negotiating process.

I was also interested to read your comments regarding the long-term need for measures to reduce competitive dependence on long-hours working. The Government fully supports this aim and we have been working together with the CBI and TUC through the Long-Hours Partnership Project to identify best practice in this area. I recently hosted an event to highlight the productive conclusion of the Project. I have enclosed for your information a copy of the report produced by the Project and would be happy to send more information if you are interested.

We will continue to update both Committees on the progress of the negotiations. The UK Presidency has held three official-level Working Groups so far this Autumn to discuss the technical detail of the proposals. Good progress was made in improving some aspects of the Commission’s text, for instance regarding requirements for family-friendly working, the definition of on-call time, and the conditions attached to the reference period. My officials have also conducted bilateral meetings with all Member States, in order to understand their concerns and assess the appetite for compromise proposals.
Alan Johnson and I are now considering, together with Ministerial colleagues, the next steps to be taken in the lead up to the December Council. As you know, Working Time is on the “fantasy” agenda for the Council. Our next step would be to put the dossier to the Permanent Representatives Committee for debate.

I will write again to the House of Lords Select Committee and separately to the House of Commons European Scrutiny Committee when the position for the Council becomes clearer.

9 November 2005

Letter from Gerry Sutcliffe MP to the Chairman

I am writing further to my letter of 4 November, to update you on the progress of the Working Time dossier. The UK Presidency has put forward some ideas on a way forward on working time for discussion by Member States, including at the Employment Council on 8 December. As you know, the Prime Minister recently said, “on Working Time, I hope we can reach agreement in the UK Presidency—we will certainly try” and we have tabled Working Time for “possible political agreement” at the Council.

Our Presidency proposal is not a public document but an internal paper of the Council therefore I have summarised it below. The Proposal contains a number of provisions, including:

1. A definition of on-call time that would allow all active on-call time to be defined as work and inactive on-call time as “neutral” time, unless otherwise provided for by collective agreement or national law. This would provide the NHS with a solution to the problems caused by the ECJ rulings on the SiMAP and Jaeger cases.
2. A requirement that compensatory rest should be taken within a reasonable period to be determined by collective agreement or national legislation.
3. A provision for the reconciliation of work and family life that would require Member States to encourage the Social Partners to reach agreements to improve the reconciliation of work and family life.
4. A proposal to allow the four-week reference period to be extended to 12 months by collective agreement or by national law.
5. A proposal that would allow the UK and other Member States that wished to do so to retain the opt-out, but which adds a number of conditions and additional provisions intended to ensure proper protection of workers and to address the concerns of Member States who oppose the continuation of the opt out. These conditions and provisions include two new requirements:

   — for Member States to set up or designate a single point of contact to which workers can complain in confidence if they consider they have been put under unfair pressure to opt out; and

   — for Member States that have implemented the opt-out to report annually to the Commission on the use of the opt-out in their territory.

We also propose to allow Member States that wish to do so to choose irrevocably to renounce the right to introduce the opt out in their territory. We have also suggested that those Member States that wish to renounce the opt out should also be able to block nationals of other countries (who may have opted out in their home state) from being able to use the opt-out in their territory. We believe this is a balanced proposal as it will allow those Member States that have no wish to use the opt out to ensure it is never exercised in their territory, whilst also allowing those Member States that take a different view to continue to use the opt out, but under tighter conditions to safeguard workers.

The Government feels that these proposals provide a good basis for agreement on this difficult dossier. The Government has noted the views the Committee has expressed in the past and I do hope you find these proposals acceptable.

29 November 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letters dated 4 and 29 November, which were considered by Sub-Committee G on 1 December.

We are grateful for the detailed response in your letter dated 4 November to the points made in my letter dated 13 October. It is gratifying that so many of our suggestions we have made, most of which derived from our Inquiry Report, seem to be regarded by the Department as helpful.
We are very pleased to see from your letter dated 29 November that further significant progress has been made in your negotiations and that the UK Presidency plans to put forward a Presidency proposal on which you hope that “political agreement” might be secured and which you regard as a good basis for agreement in the circumstances.

We understand from your officials that the Presidency proposal was cleared in discussion at COREPER on 29 November, although some further refinements were suggested to the proposed package on which you will shortly be reporting to us. It would be very useful if you could let us have that report for consideration at the next meeting of Sub-Committee G at 2.30 pm on Tuesday 6 December.

On the elements of the proposal as reported in your letter dated 29 November, we are very glad to see that you believe the revised definition of on-call time will provide the NHS with a solution to the problems caused by the ECJ SiMAP and Jaeger rulings and that this will be buttressed by the requirement that compensatory rest should be taken within a reasonable period to be determined by collective agreement or national legislation. But we are anxious to know more clearly to what extent the serious consequences of these judgments for the adequate staffing of hospitals and the proper training of doctors will be overcome by the Presidency Proposal.

Your letter dated 4 November reported general satisfaction emerging from the Department of Health’s stakeholder consultation on the SiMAP and Jaeger proposal as it then stood. But it noted the need to clarify the status of doctors (and presumably other workers in a similar position) who were on-call either at home or at a different site from the one where they “normally work”. The possibility that the Courts could interpret that clause differently had also been raised by DoH lawyers.

You also reported some concern from respondents about possible practical difficulties with the implementation of the “inactive” on-call time proposal and the need for further guidance on that, as well as on the interpretation of the “reasonable period” based on health and safety principles.

I should be grateful if you would confirm in time for the Sub-Committee meeting on 6 December that the Department of Health consider that the revised definitions in the Presidency proposal have satisfactorily overcome these difficulties and that Government lawyers are also satisfied that the new definitions are likely to withstand possible challenge at the Courts. More broadly, we will want to be sure that health service professionals and managers are satisfied that the Presidency proposal does indeed represent a workable solution to the problems caused by these judgements.

We agree that the proposals which would allow the retention of the voluntary individual opt-out and the extension of the four-week reference period to 12 months by national law, as well as by collective agreement, would seem to meet the other major objective which we share in relation to the Directive.

We understand from your officials that further detailed negotiation is quite likely to continue up to the very last minute. Nevertheless, we would be grateful if you could reassure us in time for the meeting on 6 December that these additional details would not compromise the essential understanding outlined in your letter and would indeed provide both the desired flexibility for employers and reasonable protection for employees.

With those additional clarifications, we would hope to be in a position to let you know immediately after the meeting on 6 December whether the Committee would be content for “political agreement” to be reached at the Council on the basis proposed.

1 December 2005

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 1 December regarding the negotiations to amend the Working Time Directive. I am writing to update you on our plans for the Employment Council on 8 December. As I told you in my letter of 29 November, the UK Presidency has tabled a proposal on the Directive. As a result of comments made by Member States in the discussion at COREPER, we have now tabled a revised proposal for discussion in Council.

As with our previous proposal, this is not a public document, so I have summarised the contents below. The provisions with regard to on-call time, compensatory rest, the 12-month reference period, and the reconciliation of work and family life remain unchanged from our previous proposal. The new provisions concern the individual opt-out:

1. Those Member States who want to retain the opt-out can do so, while those who want to remove the possibility of the opt-out can renounce it and block its use on their territory. However, in response to comments from Member States, this option is no longer irrevocable. Member States would be able to reintroduce the possibility of the opt-out following consultation with their Social Partners.
2. Again in response to comments, the enforcement requirement introduced in our earlier proposal has been changed to a menu of enforcement options, with the choice left to Member States to follow a route which suits their national laws or practice.

3. The annual reporting requirement has been changed. Member States must provide evidence on the use of the opt-out and on the use of multiple jobs to work long hours, within three years of implementation of the revised Directive. The Commission can set up a working group of Member State representatives and Social Partners to monitor use of the opt-out and multiple jobs. The Commission must then submit a report on the operation of the Directive and, six years after the date of implementation, they may present proposals to amend the Directive if necessary.

Alan Johnson will also write to Employment Ministers to suggest a list of topics for discussion at the Council meeting. These include areas which the UK on the basis of its national position would prefer not to see included, but where there has been pressure from other Member States for a debate—for instance whether the Directive should include a cap on weekly working hours over an appropriate reference period; or whether protection for workers in the probation period of a new job can be tightened without discriminating against workers on short-term contracts. The areas for discussion also include subjects where there has been intense debate for instance the application of the Directive to workers with more than one job. We have also raised a recent ECJ case (Dellas, C-14/04) which does not affect the UK but could have an impact on some other Member States.

We feel that the amended proposal better reflects the concerns of Member States and therefore could provide a good basis for agreement, though views remain polarised on the issue of the opt-out.

You asked for more detail regarding the proposed solution to the SiMAP and Jaeger ECJ cases. The text set out in the UK Presidency proposal would enable Member States to count active on-call time as work and inactive on-call time as rest for the purposes of the limits in the Directive.

The Department of Health have told me that timely amendments to the Directive to reflect the Presidency’s proposals would enable the NHS to resolve the difficulties caused by the rulings. For instance, while new methods of shift-working have solved the problems for many specialties, not all are suited to shift-working. SiMAP and Jaeger has also made Working Time Directive implementation more difficult in smaller hospitals and those on isolated sites.

Department of Health tell me that discussions with the Medical Royal Colleges and NHS managers indicate that the UK Presidency proposals would be very helpful to medical training. This is particularly the case in specialties and parts of the NHS where patient care and effective training opportunities would be better supported by on-call, compared to full shift, working.

The UK Presidency proposals for amending the Directive address concerns raised by stakeholders about clarifying the status of doctors on call from home. They would provide for on-call time at home spent resting to count as rest. It was clear from discussions in the Social Questions Working Group in Brussels that the Commission and Member States agreed that on-call time at home should continue to be counted as rest.

You also ask about the legal certainty of the new provisions on on-call time. Government lawyers are satisfied that the revised definitions are likely to withstand possible challenges in the Courts, and the legal advice we have received suggests this is a sensible way forward.

I understand that you will be able to discuss the proposal at your meeting on 6 December. I hope you will find the proposals acceptable. I will write again after the Council.

6 December 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 6 December which was considered by Sub-Committee G within hours of its receipt.

We note what you say about the revisions to be made to the UK Presidency Proposal following discussion at COREPER.

On the whole, the three new provisions regarding the voluntary individual opt-out set out in your letter seem to be acceptable, so far as we can tell. We are less clear about the likely consequences of the topics for discussion at the Council meeting listed in the third paragraph on the second page of your letter. But we note your confidence that the amended proposal could provide a good basis for agreement.
On the understanding that it would meet the essential national objective of allowing the UK to retain the voluntary individual opt-out in a manner that was appropriate to British circumstances and which ensured the necessary blend of flexibility and worker protection which we advocated in our Inquiry Report, we would be content if you are able to secure agreement at the Council on that basis.

We have also considered what you say about the proposed solution to the SiMAP and Jaeger ECJ rulings. We regret that it is still not fully clear from the explanation in your letter precisely what is now proposed nor how it would affect the UK interests involved. But we note the Department of Health’s view that the Presidency proposals would enable the NHS to resolve the difficulties caused by these rulings and that the medical Royal Colleges and NHS managers think the proposals would be very helpful so far as medical training is concerned.

We also note that the proposals appear to have ensured that on-call time at home (or presumably at locations other than those where the persons concerned normally work, as raised in earlier correspondence) should count as rest time and that Government lawyers are satisfied that the revised definitions are likely to withstand possible challenges in the Courts.

If you are also able to secure agreement on that basis at the Council, we would similarly be content.

That said, we are less than happy to agree to release the document from scrutiny on the basis of a revised set of proposals which you have not fully explained, which we do not fully understand and which cannot be sure that you will be able to secure. We are only prepared to do so exceptionally because we recognise that to achieve a workable solution to the problems caused by the Working Time Directive Proposal that fully met essential national objectives would be a very significant achievement which we would not wish to prevent.

But it must be understood, that if you fail to secure agreement on this basis the lifting of scrutiny would not apply so far as we are concerned. In any case, we will expect you to report as soon as possible on the outcome of the Council meeting and to explain fully and clearly the nature of any agreement reached and precisely what the consequences are likely to be for all the UK interests involved.

7 December 2005

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 7 December concerning UK Presidency plans for the Employment Council on 8 December. I am grateful for your swift consideration of my last letter, and for your support regarding the Presidency proposals presented at Council.

I am writing to update you on events at Council. As you are now aware, although we came very close to a consensus along the lines suggested in my letter, Member States were, in the end, unable to reach agreement.

Following the early debate between Ministers during a closed session over lunch, the UK Presidency slightly revised our proposals to reflect Member States’ concerns. These revisions included:

— introducing a cap of 65 hours for workers who work longer than 48 hours a week on average, with the cap averaged over a three-month reference period;
— a derogation from the cap for workers on contracts of a month or less, provided they don’t work more than a month each year in total for the same employer; and
— and a Council Minutes Statement (a minutes statement is not legally binding) stating that the Commission’s next review of the Directive should consider progress on the reduction of the use of the opt-out and the possibility of setting a date for its eventual phase out. The minutes statement noted that it had not been possible to find agreement on a date fixing the end of the use of the opt-out.

The Government felt that these alterations gave due recognition to the position of those Member States that are opposed to the opt-out and provided helpful protection to workers, but would not materially affect the central principle: that workers should be able to choose whether or not they want to work over 48 hours a week. Contrary to what you might have heard, there was no question of a decision being taken or a date being set for phasing out the opt-out.

The solution to the SiMAP/Jaeger issues remained as I described it to you in my earlier letters.

Member States were very close to an agreement based on the Presidency proposal, but in the end they were unable to agree on the question of whether the limits in the Directive should be applied per job or per-worker. The Government will now consider further how to resolve this issue and seek to build on the progress made last week. We are discussing the best way forward with the Commission and the Austrian Presidency.
In your letter of 7 December you asked me for more information regarding the SiMAP/Jaeger provisions in the UK Presidency proposal. The provision on “on-call time” included in the Presidency proposal would define all active on-call time as work, which has always been the case in practice. However, inactive on-call time would not count as work unless national law or collective agreement decided otherwise.

The provision also states that the inactive part of on-call time should not be taken into account in calculating rest periods, unless otherwise agreed in national law or collective agreement. So effectively, Member States would be able to choose to count inactive periods of on-call time as part of the rest entitlement of workers (provided that they consulted social partners). Department of Health tell me that this solution would be welcomed by the NHS, particularly for those services where the intensity of the work does not justify shift working, nor the extra staff that this requires. It would also be welcomed by doctors in those specialties whose training has been affected by SiMAP/Jaeger.

This solution would also mean that concern over the treatment of on-call time at home would not be an issue, because Member States would be able to choose, if they so wished, to count all inactive on-call at home as rest in any case.

The compensatory rest provision set out in the Presidency proposal would enable compensatory rest equivalent to missed rest breaks to be taken within a “reasonable” period, which can be determined by national law or collective agreement.

15 December 2005

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 15 December 2005 which was considered by Sub-Committee G on 12 January. We are sorry that you failed to secure agreement on the basis of the UK Presidency Proposal at the December Council. As I said in my letter of 7 December 2005, it would have been very significant achievement if you had been able to do so. Nevertheless, we would like to congratulate you and your officials for your efforts to find an acceptable solution that fully met the national interests in this vexed and difficult matter.

As it is, you will recall that we agreed that scrutiny could be lifted in the event that you could secure the solution proposed. My letter dated 7 December 2005 explained that, should you fail to do so, scrutiny would continue to apply. Thus if the Austrian Presidency decide to resume negotiations on the basis of the present Commission Proposal we would regard the scrutiny reserve as continuing to apply. But if the Commission table a fresh set of proposals then those new proposals would themselves be subject to Parliamentary scrutiny. That would in effect overtake the scrutiny reserve on the present proposal. I hope that is clear.

We look forward to hearing what the Austrian Presidency and the Commission decide to do in these circumstances.

12 January 2006