Correspondence with Ministers
January 2006 to September 2006
The European Union Committee

The European Union Committee is appointed by the House of Lords “to consider European Union documents and other matters relating to the European Union”. The Committee has seven Sub-Committees which are:

- Economic and Financial Affairs and International Trade (Sub-Committee A)
- Internal Market (Sub-Committee B)
- Foreign Affairs, Defence and Development Policy (Sub-Committee C)
- Agriculture and Environment (Sub-Committee D)
- Law and Institutions (Sub-Committee E)
- Home Affairs (Sub-Committee F)
- Social Policy and Consumer Affairs (Sub-Committee G)

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The Members of the European Union Committee in October 2007 were:

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Lord Bowness, Lord Marlesford
Lord Brown of Eaton-under-Heywood, Lord Powell of Bayswater
Baroness Cohen of Pimlico, Lord Roper
Lord Freeman, Lord Sewel
Lord Geddes, Baroness Symons of Vernham Dean
Lord Grenfell (Chairman), Baroness Thomas of Walliswood
Lord Harrison, Lord Tomlinson
Lord Kerr of Kinlochard, Lord Wright of Richmond

In addition, the following were Members during Session 2005-2006:

Lord Dubs, Lord Radice
Lord Goodhart, Lord Renton of Mount Harry
Lord Hannay of Chiswick, Lord Woolmer of Leeds
Lord Neill of Bladen

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http://www.parliament.uk/parliamentary_committees/lords_eu_select_committee.cfm

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Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website.

General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. The telephone number for general enquiries is 020 7219 5791. The Committee’s email address is euclords@parliament.uk.
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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 January 2006 to September 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 45th Report, Session 2005-2006 (HL Paper 243).
2 All letters are signed and sent by the Chairman of the Select Committee, regardless of which Sub-Committee has prepared them.
European Union Select Committee

EUROPEAN COUNCIL MEETING, JUNE 2006

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

Following my Evidence Session before the Committee on 13 July, I promised to respond in writing on the following questions.

The Challenges Facing Europe

The Conclusions (paragraph 16) note that the Council “took stock of progress in several of the areas discussed at Hampton Court and at the last Spring European Council, aimed at promoting the European way of life in the face of globalisation and demographic trends.” How important are the challenges of globalisation and demography to the future prosperity of Europe and what approach is being taken to face up to them? What progress has been made and is Europe’s response too sluggish?

At the Hampton Court summit, EU leaders collectively agreed that globalisation presented Europe with its biggest challenge of the first half of this century. The Hampton Court agenda is a major part of Europe’s response to that challenge. There has been, and continues to be, good progress made on the priority areas for action agreed at Hampton Court. On innovation, research and universities, the EU has agreed to establish a European Research Council, an independent body which will be run by scientists, aiming to channel additional funding to the best research teams in Europe. More resources will also be available for R&D; the December EU budget deal committed to increase EU funding for research by around 75% in real terms by 2013. These agreements will be delivered through the EU budget’s Framework Programme 7, which we hope to see agreed by January 2007. The Commission have also been tasked to produce further ideas on the proposed “European Institute for Technology”.

On energy, the Spring European Council reaffirmed 2007 as the target date for the liberalisation of EU energy markets. The Commission has identified “serious distortions in the market” and so is carrying out an inquiry into competition within the EU energy sector which will report early in 2007. The Commission are currently preparing an external energy strategy to use the EU’s leverage with third countries to enhance energy security of supply; this will be discussed at the Lahti summit on 20 October, where President Putin will join EU Heads. The Commission will publish later this year its detailed analysis and ideas on how best to respond to the demographic challenge.

Internal Market

Paragraph 21 of the Conclusions underlines the importance of the Single Market and the Commission’s review thereof “to be followed by concrete proposals for completing the internal market and ensuring its effective functioning”. What are the priority areas HMG would wish to see covered as part of the Commission’s review of the single market?

The removal of barriers to trade and competition through the Single Market has had a huge impact in driving prosperity and job creation in the EU: it has boosted EU GDP by €875 billion over 10 years, generating 2.5 million jobs. We agree with the five themes that the Commission has identified as priorities for their review, and the Government set out its initial thinking on the review at the end of June in our response to the Commission consultation (currently being laid before Parliament). We feel that further work to removing remaining barriers should concentrate on energy, financial and other services, domestic rail services, and mobility of labour. We would also like the Commission to consider a number of other areas to improve the effectiveness of the Single Market, in particular:

— how implementation and enforcement of the Single Market rules can be improved so that people can exercise their Single market rights effectively;
— embedding the better regulation agenda in Single Market proposals;
— enhanced dialogue with countries outside the EU on removing trade barriers, with the full involvement of Member States; and
— enhancing the conditions for innovation and competition to flourish. Key policy areas that can support innovation are delivering on better regulation, improving access to venture capital and proper protection of intellectual property rights.

We will be developing our detailed ideas on all of these objectives as the review progresses.

**Migration**

*The Council calls for discussions to take forward the Policy Plan on Legal Migration. This proposes giving rights to legal migrants not yet entitled to long-term resident status. How is the Government going to participate in the Policy Plan on Legal Migration, given that it has so far refused to extend the protection of the Long-Term Residents Directive to those who are already entitled to that status?*

We have consistently not opted into legal migration measures such as the Long Term Residents Directive because we wish to retain our frontier controls and maintain domestic control over who is admitted to the UK, as provided for by our protocol on Title IV of the Amsterdam Treaty.

We will assess any legislative measures on the admission of labour migrants when we see the detail. Key to our position will be that any such measures are flexible enough to take account of our labour market needs and the points-based system we are developing for routes to work, train or study in the UK. Meanwhile, we welcome the recognition that decisions on the number of economic migrants admitted are the responsibility of Member States.

We are not convinced on the need for a common framework of rights for third country nationals, taking the view that these are matters for Member States. We welcome the emphasis on effective integration on legal migrants. Exchanging information on good practice should be facilitated.

UK policy is to opt in to Title IV measures where we can, provided they are consistent with our policy of retaining frontier controls. In remaining outside of these Directives it is not the Government’s intention that the UK should be seriously out of line with our European partners, and we will continue to monitor the UK’s position in relation to that of other Member States.

**Energy**

*Paragraph 22 of the Conclusions refers to an Energy policy for Europe and a set of actions. What are the priority areas HMG would wish to see covered as part of the development of energy policy?*

There are three priority areas for action. Firstly, although EU energy structures are increasingly integrated, electricity and gas supplies have not been liberalised. The EU lacks flexibility to move surplus capacity to areas where it is urgently needed. And the EU consumer is paying too much for gas and electricity.

Secondly, we need a more coherent EU external energy policy. The EU is increasingly dependent on imported energy, especially gas. The UK Government has for some time advocated a co-ordinated policy to assure energy security through diversity of supply. We now seem to be winning that argument, but there is much more to do. We give our full support to the action plan on external energy relations produced last month by the European Commission and High Representative Javier Solana.

Lastly, we need to ensure that our energy policy is compatible with, and reinforces, our climate change objectives. As our recent Energy Review has made clear, this Government attaches huge importance to tackling climate change nationally and internationally. Energy policy and climate security policy are inextricably linked. The promotion of energy efficiency and the development of renewable energies, to name but two examples, are common to both and are important priorities.
EU Agencies

We have recently had some exchanges with your colleague Meg Munn over the Management Board of the European Gender Institute. The Government supported a unanimous vote for a 25-member board, even though the Commission, European Parliament and the Select Committee had argued for a smaller one. We note that the agencies like CEDEFOP have three seats for the Commission, making 78 in all. Now that we have 25 Member States, soon to be 27, is it not time to challenge the convention that every member State has an automatic right to a seat on the board of every EU agency? Does the Government have a policy on this?

There is no one Member, one seat convention. The Government’s policy has been that each case should be decided on its merits. The Government has consistently maintained that the number of seats on the boards of EU agencies and their composition should be decided on a case by case basis.

Fundamental Rights

We note the commitment in the Preliminary Agenda for Finland’s Presidency (dated 24 May) to “mainstream, human rights policy, incorporating it into all EU policy areas” and to increase its coherence. Is securing agreement on the Fundamental Rights Agency proposal a priority for the Government? Will the UK be prepared to block the adoption of this proposal if other Member States agree on a Third Pillar remit?

We welcome the Commission proposal to establish a European Fundamental Rights Agency (FRA). There are, at present, no EU bodies to assist Community institutions on fundamental rights issues. The FRA will fill this gap. In order to add real value, the Agency should be a fact-finding and opinion-giving body, assisting Community Institutions on fundamental rights issues. It should avoid duplicating the work already done by the Council of Europe and other human rights institutions.

Negotiations on the FRA are still ongoing in Brussels at working group level. The Finnish Presidency hopes to reach agreement on the Agency by October 2006, so that it can start work in January 2007.

It is unlikely, at this stage, that the question of the UK blocking the adoption of the proposal on account of the Third Pillar remit will arise. A number of Member States share our view that there is no adequate legal base in the current treaties that allows the Council to extend the Agency’s remit to Third Pillar matters (police and judicial co-operation). We will continue our efforts to remove the Third Pillar remit from the proposal.

European Institute of Technology

The Conclusions of the European Council (paragraph 21) reaffirm that the European Institute for Technology “will be an important step to fill the existing gap between higher education, research and innovation”. How did the European Council come to support the European Institute of Technology in the absence of the specific proposals the Commission is (in the same paragraph) asked to bring forward? And how does this conclusion square with HMGs own stated opposition to the EIT in principle?

The Government is strongly of the view that there is a need to encourage greater business and industrial investment in research and development and closer collaboration between universities and business in exploiting research and knowledge transfer. The Government has therefore welcomed the Commission’s two communications as important contributions to the debate and has noted that a well-designed and well-focused EIT could be a useful tool in meeting the challenges in this area. The Government has not opposed the EIT in principle but has raised questions about the model that the Commission has presented so far. The Government welcomes the fact that the Commission’s latest Communication (which was presented to the European Council in June) has rightly acknowledged the complexity of the issues concerned and has recognised that it will need to continue consulting widely with Member States and stakeholders. It reaffirmed that the EIT will be an important step to fill the existing gap between higher education, research and innovation. The Government will continue to work with other Member States with a view to influencing the shape of the Commission’s formal proposal which is expected in the autumn. The proposal will be accompanied by a full impact assessment. This will be the first opportunity for a discussion of the concept in a formal Council forum.
UK ABATEMENT

Recent press reports have indicated that the Chancellor is raising questions over whether the UK should be required to contribute to the reductions in GNI and VAT resources to the Budget agreed by the December council meeting under the UK Presidency.

(i) **What is the definitive Government position on whether the UK should be required to help finance these reductions in the contributions granted to other Member States?**

(ii) **Can you give us figures which will enable us to compare the expected contributions from the UK, France and Italy to the EU over the period of the next Financial Perspective?**

(i) Discussions on the Own Resources Directive are on track. We are looking at the draft text carefully to make sure it properly reflects the December deal. We are confident that an agreement will be reached in good time to come into force in January 2009.

The December deal specifically states that “The UK abatement shall remain”. The only areas where the abatement is “disapplied” is in expenditure on economic development in the new Member States. The UK has always been a strong supporter of enlargement and accepts the additional financial burden that this places on the more wealthy Member States.

(ii) UK contributions will be published in the budget in the usual way. The Government does not generally publish forecasts of other Member States’ contributions, which are a matter for the Member States in question. But we (and the Commission) expect that, expressed as a proportion of Gross National Income, the total net contributions over the period 2007–13 of the UK, France and Italy will be closely similar. In contrast, on the same basis over the period 1984–2004, the UK has paid on average nearly two and a half times as much as France and three and a half times as much as Italy.

20 July 2006
Economic and Financial Affairs, and International Trade (Sub-Committee A)

BILATERAL TRADE AGREEMENTS ON TEXTILES AND CLOTHING

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

I am writing to 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. As soon as these countries join the WTO, the licensing parts of these agreements will lapse (any market access commitments will remain). The non-WTO Countries are:

Belarus, Uzbekistan.

There are political and human rights concerns with Belarus and any proposal that gives Belarus better access to the EU market will take these concerns into account. Not renewing the textiles and clothing agreement with Belarus will automatically give Belarus improved access to the EU market.

24 July 2006

COHESION POLICY IN SUPPORT OF GROWTH AND JOBS: COMMUNITY STRATEGIC GUIDELINES 2007–13 (10684/05, 5745/06, 11706/06)

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

Thank you for your letter of 11 January 2006¹, advising me that your Committee is continuing to keep the above Explanatory Memorandum 10684/05 under scrutiny.

This is clearly a good time to update you on the negotiations on Structural and Cohesion Funds reform post-2006.

At the December European Council the Member States agreed a Structural and Cohesion Funds budget of 308 billion euros for the 2007–13 Financial Perspective. As in the Commission’s original proposal, expenditure will be focused on three 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 Co-operation Objective for cross-border and transnational projects.

As a result, we estimate that the UK will receive a total of approximately 9.4 billion euros (in 2004 prices) in Structural Funds receipts from 2007–13.

Of this, the UK will receive approximately 2.6 billion euros in Convergence funding for its poorest regions (I have no doubt that this will often be called by its old title of “Objective I”). Cornwall and West Wales and the Valleys will receive full Convergence funding, while the Highlands and Islands will receive phasing-out Convergence funding averaging approximately half of its current allocation.

The UK will also receive approximately 6.2 billion euros in Competitiveness funding for its other regions. Of this, South Yorkshire and Merseyside would receive phasing-in Competitiveness funding averaging approximately a third of the intervention rates for the UK’s future full Convergence regions. It will be for the Government, in agreement with the Commission, to decide how the remaining Competitiveness funding should be allocated between the UK’s nations and regions.

Finally, the UK will receive approximately 0.6 billion euros in Co-operation funding. We will need to agree with the Commission how this should be allocated.

In summary, the agreement reached at the European Council represents a good deal for the UK. The overall budget is closer to our position than earlier proposals but our regions will continue to receive significant Structural Funds receipts in the next Financial Perspective and our poorer regions in particular will continue to receive substantial EU funds for regional development.

The next stage is for the Council to reach agreement with the European Parliament on the budget. It will be for the Austrian Presidency to lead on the inter-institutional agreement with the Parliament in the next few months.

On 18 January the European Parliament passed a resolution rejecting the December European Council budget settlement. This was entirely expected as it was always extremely unlikely that the Parliament would accept the Council’s budget settlement without any alteration.

The Austrian Presidency will now open negotiations with the European Parliament with a view to agreeing minor changes to the structure of the budget to satisfy the Parliament’s concerns. These will then be re-presented to the Council for discussion and eventual agreement, we expect, in the Spring.

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

4 February 2006

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

Thank you very much for your Explanatory Memorandum 5745/06 which Sub-Committee A considered at their meeting on 28 March. Given the interest of the Committee in the Lisbon Agenda we have decided to hold the document under scrutiny until our recently published report on the Agenda is debated on the floor of the House.

On the Explanatory Memorandum itself, the Sub-Committee were pleased to see the broad welcome the Government gives to this Communication. The Committee also notes your belief that the National Reform Programmes themselves are not sufficient to deliver the Lisbon goals; what mechanisms do you suggest for strengthening the Open Method of Coordination to ensure that the policies outlined in the Programmes are implemented?

Would you please also provide details of the discussions on the Lisbon Agenda which took place at both the recent ECOFIN Council and European Council meetings.

30 March 2006

**Letter from John Healey MP to the Chairman**

Thank you for your letter of 30 March about the Explanatory memorandum on the European Commissions’s Communication *Time to move up gear: The new partnership for jobs and growth.*

The Lisbon National Reform Programmes (NRP)s are a welcome step forward with all Member States pledging to undertake structural reforms, but what matters now is that Member States live up to those commitments and implement timely and effective reforms. Strengthening the OMC, broadly along the lines suggested by the Lords Select Committee on the EU following its recent review of Lisbon, could also help. In this context, the Government sees merit in a template for Lisbon NRPs with all Member States to include some common elements and the core Lisbon structural indicators, to facilitate comparability.

Peer review also has an important role to play, and that is why during our Presidency, ECOFIN undertook a review of the first Lisbon NRPs, as well as reviewing the Commission’s first Annual Progress Report earlier this year. ECOFIN Ministers have pledged to continue monitoring and evaluating Member States progress in implementing the Lisbon agenda and we understand the Finnish Presidency plans a further ECOFIN review of Lisbon NRPs this autumn.

I hope you find this response helpful.

29 May 2006

**Letter from the Chairman to John Healey MP**

Thank you very much for your Explanatory Memorandum 5745/06 on the Commission’s Lisbon Synthesis Report. This was considered by Sub-Committee A at their meeting on 20 June.

The Committee have decided to continue to hold this document under scrutiny until their report, “A European Strategy for Jobs and Growth” published on 16 March 2006, has been debated on the floor of the House.

22 June 2006
Letter from Rt Hon Ian McCartney MP, Minister for Trade, Investment and Foreign Affairs, Department of Trade and Industry/Foreign and Commonwealth Office to the Chairman

I am writing to update you on amendments agreed to the Community Strategic Guidelines on Cohesion. DTI provided an explanatory Memorandum 11706/06 on the Guidelines on 27 July, to the Guidelines as published on 14 July. However the Council has agreed some amendments since that version was published. Most of these are minor, but one is significant because it establishes the status of the Guidelines very clearly.

The significant amendment is to the Articles governing the Guidelines. Member States were concerned that actions included in the Guidelines might be seen as compulsory, and actions not included might be seen as not eligible. Therefore the Council agreed to state the indicative nature of the Guidelines very clearly in the text of the decision. Where in 11706/06 “the Member States shall ensure that the national frameworks and operational programmes are consistent with these guidelines”, this is amended so that the Guidelines are “adopted as an indicative framework for the Member States for the preparation of the national strategic reference frameworks and operational programmes for the period 2007 to 2013.” The UK was one of many Member States calling for clarity here and we welcome the amendment.

There were other minor amendments, correcting references, for internal consistency and consistency with the regulations, and to avoid unnecessary repetition. The other substantive changes are:

— indicated priorities on transport in 1.1.1 are limited to “as appropriate”;
— text on Research and Technological Development now acknowledges that market failures do exist;
— under Guidelines 1.3 (More and better jobs) a reference to cultural infrastructure is added;
— also in 1.3 text on skills is amended, it now includes a reference (suggested by the UK) to National Reform Programmes.

Looking ahead, the REGI Committee of the European Parliament is likely to address the Guidelines on 11–12 September, and we expect the Parliament to adopt the guidelines with few or no further amendments.

10 August 2006

Letter from Jim Fitzpatrick MP, Minister for Employment Relations and Postal Services, Department of Trade and Industry to the Chairman

On 10 August my colleague Ian McCartney wrote to you to update you with amendments agreed to the Community Strategic Guidelines on Cohesion. He stated that we expected the European Parliament to adopt the Guidelines with few or no further amendments.

On 11 September the Regions Committee of the European Parliament agreed a Resolution on the Guidelines. One oral amendment was agreed to add a new citation calling for discussions with the EP prior to the mid-term review.

We now expect the Council to adopt the Guidelines on 6 October. I regret that this means that it is likely that we will need to override your scrutiny reserve before your Committee meets again. Margaret Hodge will write again following adoption.

The Guidelines are the last element in the set of Community legislation to govern the Structural Funds 2007–13. Any delay at this point would mean a delay to the start of Structural Funds Programmes across the Community.

18 September 2006

COMMUNITY LISBON PROGRAMME: A PAPERLESS ENVIRONMENT FOR CUSTOMS AND TRADE (15380/05, 15381/05)

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

Thank you for your Explanatory Memoranda 15380/05 and 15381/05, which Sub-Committee A considered at their meeting on 14 March and decided to hold under scrutiny.

The Sub-Committee note that your Explanatory Memoranda do not contain any details about the likely costs associated with the proposed changes. The Sub-Committee would like further clarification on both the likely financial costs and the potential operational difficulties associated with any implementation of these proposals.

15 March 2006
Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter dated 15 March 2006 in which you requested further details on financial costs and potential operational difficulties relating to the proposed changes to the Customs Code.

Implementation Costs

HMRC has estimated costs for Multi-Annual Strategic Plan (MASP) related projects and I attach a table showing these under category headings. The table indicates which projects relate to which categories and I hope this will be more meaningful than the project names alone.

I must stress that these are high-level estimates based on discussions with HMRC’s IT supplier on a requirement that is not yet fully established. These estimates are therefore subject to change as we go through the project lifecycle. Each project will be subject to a robust business case and the HMRC approvals process and no investment decision will be taken until the business case is authorised. Delivery of the projects is scheduled between 2005–06 and 2012–13.

Potential Operational Difficulties

The implementation of the EU Programme of Change will be via a series of Commission sponsored projects which together form the EU’s MASP. Each Member State will be responsible for delivering the national element of each new system with the EU delivering common components. These are a complex set of changes but they are achievable as long as they are properly planned and managed. It is also essential that a full programme of consultation is undertaken with UK customers to ensure they are fully aware of the operational considerations and potential impact. The UK has a strong recent record of delivering complex information technology changes within EU specified timescales. A good example is the New Computerised Transit System (NCTS), which was introduced in 2003 and now has 100 per cent take up.

HMRC will submit each of the MASP projects to a robust change management lifecycle process that will identify the key risks and issues and ultimately deliver fully costed delivery options. UK trade will also be engaged in all aspects of systems development to ensure overall impact on their commercial investment paths is fully understood and catered for.

In order to progress these projects the UK needs to be in possession of full technical specifications from the EU. HMRC has made it quite clear to the Commission that we require three years from production of the requirements to full implementation. This line is supported by other Member States and provides us with sufficient time to assess the impact on the current infrastructure and identify dependencies. In particular we need to recognise the ability of the trade to invest and upgrade their systems within the same time frame.

The EU implementation timetable requires delivery of all the projects within the same, or similar, timescales. This will raise a number of capacity and cope-ability issues for HMRC which will be managed under a carefully planned programme of change which will maximise opportunities and minimise risk.

25 May 2006

Annex A

<table>
<thead>
<tr>
<th>MASP—Categories &amp; Projects</th>
<th>Estimated Costs between 2005–06 and 2012–13</th>
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<td>Auto Import System</td>
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<td>EU-wide Export Control systems:</td>
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<td>Export Control system 1</td>
<td>£10 million</td>
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<td>Export Control system 2</td>
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<td>Auto Export system</td>
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<td>EU-wide Standardisation:</td>
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<td>SAD Harmonisation</td>
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<td>Authorised Economic Operators</td>
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<td>MASP Trader Database</td>
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<td>Postal Programme</td>
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<td>EORI (TIN)</td>
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<td>EU Administrative Penalties</td>
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<td>Single Authorisation</td>
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### Economic and Financial Affairs, and International Trade (Sub-Committee A)

#### Table: Estimated Costs between MASP—Categories & Projects 2005–06 and 2012–13

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<tr>
<th>Category / Project</th>
<th>Estimated Cost 2005–06 &amp; 2012–13</th>
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<td>Improved Customer Service:</td>
<td>£11 million</td>
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<td> International Trade Single Window</td>
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<td> EU Single Access Portal</td>
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<td> EU Common Info Portal</td>
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<td> EU Single Window Link</td>
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<tr>
<td> EU Binding Decisions Extensions</td>
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<td>Community Transit System Improvements:</td>
<td>£2.5 million</td>
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<td> NCTS 3.2</td>
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<td> NCTS XML Channel</td>
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<td>Risk Management:</td>
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<td> Pre-Arrival/Pre-Departure Messages</td>
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<td> Risk Management Framework</td>
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<td>Business Process Re-engineering to Facilitate Simplified Electronic Processes:</td>
<td>£8.5 million</td>
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<td> Centralised Clearance</td>
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<td> Guarantee Changes</td>
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<td> Special Procedures</td>
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<td> Simplified Procedures Changes</td>
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<td> Residual Customs Code Changes</td>
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**TOTAL ESTIMATE** £59.5 million

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**COMMUNITY LISBON PROGRAMME: COMMON CONSOLIDATED CORPORATE TAX BASE (8231/06)**

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

Thank you very much for Explanatory Memorandum 8231/06 on a Common Consolidated Corporate Tax Base which Sub-Committee A considered at their meeting on 23 May. The Committee have decided to hold the Communication under scrutiny.

Whilst the Committee were keen to stress that they would not support the introduction of a common tax rate, they were not convinced that a common corporate tax base is as misconceived as the Explanatory Memorandum indicates. The Committee consider that there may be some advantages for companies from a common tax base and would be interested to hear what representations you have had from large corporations on this issue.

The Committee also noted that the Commission’s work aims to produce a common set of corporate tax rules to either replace or operate alongside national tax rules. Could you please clarify how such rules could operate alongside existing national rules?

Finally the Committee would appreciate more details on whether, given the current state of play, any common consolidated tax base arising from this work will be likely to give Member States the ability to add their own national obligations to it.

23 May 2006

**Letter from Rt Hon Dawn Primarolo MP to the Chairman**

I am writing in response to your letter of 23 May on Explanatory Memorandum 8231/06 on the Commission’s technical work on a Common Consolidated Corporate Tax Base (CCCTB).

I will take each of your points in turn.

Firstly, you say that the Committee would be interested to hear what representations we have had from large corporations on the issue of a common tax base.

We have received no formal representations on the technical work on a CCCTB. However, HM Treasury has regular contacts with business of course, including with large corporations, on a whole range of issues. To the extent that comments have been made on the Commission’s technical work on a common tax base, it would...
seem that such businesses would only see merit in a common consolidated tax base which was optional for companies.

Secondly, you ask for clarification as to how a common set of corporate tax rules could operate alongside existing national rules.

As far as the optional nature of such a base is concerned, the Commission appears to envisage that each tax authority of a Member State participating in a CCCTB would be required to administer in parallel two corporate tax systems (the domestic system and the common base). In COM(2006) 157, the Commission acknowledges that there are potential difficulties with the idea, saying “. . . the simultaneous operation of two corporate tax bases admittedly may raise specific issues for tax administrations.”

As noted in Explanatory Memorandum 8231/06, the technical exercise which is being undertaken by the Commission is an extremely complex one. Notwithstanding the deadline which the Commission has set itself for the completion of its work, it would appear that there has been no consideration to date in the Commission’s CCCTB Working Group as to whether and, if so, how a CCCTB which was optional for companies might actually be made to work. One obvious potential difficulty would appear to be that such an approach would seem bound to provide companies with more rather than less opportunities for tax arbitrage and tax avoidance and hence pose an increased risk to corporate tax revenues.

Thirdly, you say that the Committee would appreciate more details on whether, given the current state of play, a common consolidated tax base arising from the Commission’s work would be likely to give Member States the ability to add their own national obligations to it. I assume that what you have in mind here are national tax incentives. The issue of such incentives, including R&D, appears on the Commission’s work programme for its CCCTB Working Group. However, there has been no technical work to date and, according to COM(2006) 157, the Commission’s intention is to start technical work on tax incentives early in 2007, with a view to this being broadly completed by the end of the year. Whether and, if so, the extent to which a common consolidated tax base arising from the Commission’s technical work would leave any flexibility at national level remains unclear.

You might also be interested to know that, following on from the exchange of views on the question of a common consolidated corporate tax base at the Informal ECOFIN Council on 7–8 April, the Commission introduced its Communication (COM(2006) 157) at the ECOFIN Council meeting on 7 June. There was a further discussion, with a range of views being expressed. No conclusions were drawn.

I hope you find this information helpful.

16 June 2006

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you very much for your letter dated 16 June on EM 8231/06: progress on a Common Consolidated Corporate Tax Base. This was considered by Sub-Committee A at their meeting on 4 July when it was decided to maintain the scrutiny reserve pending clarification of some issues.

On the representations from large companies regarding a common consolidated tax base the Committee noted that you have conducted some informal discussions. However, we were concerned that no formal assessment of the views of such corporations had been conducted either by the Government or by the Commission as part of the working group. Do you consider that consultation would inform the work of the group? Do you plan to conduct any such consultation before the conclusion of the group so as to allow large corporations to contribute their opinions at an early stage in the process?

On the difficulties of administering two systems simultaneously, the Committee suspect that there will be considerable problems. We consider that it is important to address such difficulties at an early stage in working group negotiations. Do you plan to raise this issue during discussions and bilaterally with other EU tax authorities?

On the ability to add national incentives to the tax system, the Committee noted that no discussion has yet taken place and would like to be informed of the results of these discussions when they do take place.

5 July 2006
COMMUNITY LISBON PROGRAMME: FOSTERING ENTREPRENEURIAL MINDSETS THROUGH EDUCATION AND TRAINING (6505/06)

Letter from the Chairman to Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills

Thank you very much for Explanatory Memorandum 6505/06 which Sub-Committee A considered at their meeting on 28 March and decided to release from scrutiny.

The Committee broadly welcome such exercises as valuable contributions to improving the Open Method of Co-ordination which underpins the Lisbon Agenda. However, the Committee note that your Explanatory Memorandum does not demonstrate that you have analysed the policies in this area that are being pursued by other Member States. The Committee consider that an honest evaluation of national policies, informed by a review of the actions taken in other Member States, is necessary to ensure that best practice is efficiently shared across Europe. Could you please provide details of any such assessment that you have made.

I have also written to the Chancellor for further clarification of how this Communication fits into the broader Lisbon Agenda.

30 March 2006

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

As you may be aware, the Department for Education and Skills has recently deposited Explanatory Memorandum 6505/06 for scrutiny by the European Union Committees of both Houses. The Explanatory Memorandum and the Communication to which it refers were considered by Sub-Committee A of the House of Lords EU Committee on 28 March and were cleared from scrutiny. I have written to Bill Rammell MP, the Minister responsible for the Explanatory Memorandum, for clarification of some of the policy specific issues raised in the document. I am writing to you following comments made in evidence to my Committee by John Healey MP which indicated that you were responsible for co-ordinating policies designed to foster European growth and jobs.

Broadly, the Committee welcomes such contributions from the Commission as we consider that they facilitate the sharing of best practice between Member States which we consider to be vital to the successful pursuit of the Lisbon Agenda’s goals. Therefore, I am writing to you, as Minister responsible for economic policy, to ask for clarification of how this document fits into the European economic reform framework. This is the first such document we have considered. We would therefore be very grateful if you would provide details of any other Communications, either expected or already received, which seek to assess the performance of Member States in relation to specific policy areas. We would also be very grateful for information on the role you play in co-ordinating the Government’s analysis of and responses to such Communications from the Commission.

30 March 2006

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

Thank you for your letter of 30 March to the Chancellor about the Commission communication implementing the Lisbon programme. I have been asked to reply.

As you will be aware this Government is already doing much to promote an enterprise culture in our schools and universities that embraces the same principles as the European Commission’s communication on “Implementing the Community Lisbon Programme: Fostering entrepreneurial mindsets through education and learning.” The Government recognises that a more entrepreneurial culture can only be achieved through widespread engagement by individuals and organisations across the UK. This must begin with helping young people develop enterprise and business related skills. Budget 2006 reported recently on the Government’s actions in this area.

You asked about the Chancellor’s role in co-ordinating the Lisbon process. The Chancellor has overall responsibility for UK economic policy and overseeing delivery of the Government’s PSA target on Lisbon. The Lisbon agenda is wide ranging and several Departments including DTI and DWP are responsible for policy and delivery of many aspects. The Cabinet Office leads in co-ordinating policy, as in other areas of UK
Government policy. The Government is not convinced that appointing a single Lisbon Minister would further enhance the process of implementing reforms. The UK already has a very effective system of internal co-ordination, and this is reflected in our good track record on economic reform, which is one of the best in Europe.

I hope you find this response helpful.

29 May 2006

Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 30 March regarding the above Commission document. I apologise for the delay in responding to you.

You asked whether any evaluation of national policies, informed by a review of the actions taken in other Member States, has been carried out. The Government agrees that policy development should be informed by evidence and best practice and believes that it is important to learn from the experience of other Member States. In this particular case, the government has been actively involved in the production of two EU publications (Education for Entrepreneurship in Primary and Secondary Schools and Mini-Companies in Secondary Education) both of which made comparisons between Member States. These publications were made available to schools during the pathfinder phase of the Government’s enterprise education strategy.

In addition the UK will be participating in a peer learning cluster on key competencies which will provide an opportunity for policy makers from different Member States to exchange best practice with their counterparts on enterprise education. We will of course ensure that this process informs future policy development.

Undated June 2006

COMMUNITY LISBON PROGRAMME: GROWTH AND EMPLOYMENT (11618/05)

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

I am writing in response to your comments on the Commission’s work on a common Consolidated Corporate Tax Base in your letter of 14 November 20052 to John Healey.

You refer, in particular, to the Financial Times report of 25 October 2005, which gave the impression that the Commission might have in mind “a non-binding voluntary instrument”, and say that you are interested in how this might affect UK companies’ competitiveness compared to their EU counterparts.

You will since also, of course, have seen my Explanatory Memorandum of 21 November 2005 (EM 14042/05) on the Commission’s Communication on “The Contribution of Taxation and Customs Policies to the Lisbon Strategy” (COM (2005) 532 final) which also touched on the Commission’s intentions in this area.

In autumn 2004, the European Commission established a new technical working group, the Common Consolidated Corporate Tax Base Working Group (CCCTB WG) initially for a period of three years. The group’s work is being taken forward without political commitments from Member States. The CCCTB WG has met on five occasions to date and the Commission’s work on this complex, technical exercise is still at an early stage.

The UK Government remains clear that fair tax competition, not tax harmonisation, is the way forward for Europe. Moreover we consider that it is essential for discussions on corporate tax to be set in a global, and not just an EU, context. So we do not see need for the Commission’s technical work to be set in a global, and not just an EU, context. We will continue to make clear that we are sceptical about both the principles and the practicalities of the Commission’s ideas in this area and to argue for a change in approach.

In its recent Communication (COM (2005) 532), the Commission admitted that the technical work on a CCCTB was a “challenging exercise” but nonetheless reiterated its intention to present a Community legislative measure on a CCCTB by 2008.

The reference in the FT article of 25 October, however, is to the possible use at some point of the Treaty provisions on enhanced co-operation, on which the two recent Commission Communications (COM (2005) 330 and 532) are silent but which was referred to briefly in the Commission’s 2003 and 2001 company tax Communications (COM (2003) 726 and COM (2001) 582). As set out in the Treaty, an initiative for enhanced co-operation may only be launched as a “last resort where it has been established within the Council that the objectives of such co-operation cannot be attained within a reasonable period of time by applying the relevant

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provisions of the Treaties.” Enhanced co-operation is also only permissible if a number of conditions are met. Inter alia, it must not undermine the internal market nor constitute a barrier to trade or distort competition between Member States, and it must respect the competences, rights and obligations of non-participants.

In a global economy, the UK does not believe that the competitiveness of the EU would be helped by a harmonised company tax base. However, provided the process in the Treaty was followed, the use of the enhanced co-operation provisions would be a matter for those Member States that wished at some point to be involved. Member States participating in such a CCCTB would of course no longer have the same freedom to adjust corporate tax provisions in the light of national circumstances, including businesses’ needs, and in the face of global pressures and developments.

The UK will not contemplate any action at European level that could threaten jobs and the competitive position of UK business.

12 January 2006

COMMUNITY LISBON PROGRAMME: TRANSFER OF BUSINESSES (7721/06)

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 very much for Explanatory Memorandum 7721/06 on the transfer of businesses when their owners die or retire. This was considered by Sub-Committee A at their meeting on 13 June and was cleared from scrutiny.

The Committee have taken an active interest in the Lisbon Agenda for Growth and Jobs and consider Commission documents of this nature to be important in helping to promote best practice across Member States. To this end, and given your acknowledgement that “more could be done to further facilitate the successful transfer of viable, small businesses” what steps have the Government taken to assess the policies of other Member States for their benefits vis à vis those in the UK?

14 June 2006

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

Thank you for your letter of 14 June to Alun Michael, about the Explanatory Memorandum (EM) 7721/06 regarding the Commission of the European Communities Communication on business transfer. I am replying as this matter falls within my portfolio.

I am grateful to the Select Committee for clearing the EM and note its request for information on the steps the Government has taken to assess the benefits of business transfer policies of other Member States.

As indicated in the EM, in an effort to ensure a smooth succession of business ownership, the Government’s 2004 “Passing the Baton” report sought to assist the business transfer process by identifying the nature, extent and impact of succession problems affecting businesses and made recommendations for future action. The report was underpinned by research into the international evidence on business transfer issues, both in Europe and beyond.

Subsequently, the Government has been working with stakeholders in taking forward the report’s recommendations. In the EU fora, the UK has actively participated on a number of Expert Groups concerned with the business transfer agenda, particularly that for buying and selling businesses. Specifically, the UK has been reviewing the research that led to policy intervention in other Member States and any evidence that established the value of those interventions. We have found that Austria, the Netherlands and Sweden, with the UK, lead in terms of quality of their research and evidence on this subject. Other countries have tried specific policy interventions with a more limited evidence base, but the resulting interventions rarely demonstrated significant positive effects. The UK is however continuing dialogue with the more “evidence-based” Member States in order to constantly improve and refine policy direction in this area. Moreover, further detailed UK research on the workings of markets for buying and selling is due shortly. We will be sharing and discussing the implications of this research with EU colleagues.

Through existing and future research, the UK is benefiting from broader learning that has taken place on business transfer across Europe and beyond and is using it to shape UK business transfer policy and
developments. We hope that this policy will pave the way for a more vibrant business transfer market; with sellers rewarded for their efforts, buyers owning a business that has a customer base and trading history and the UK benefiting through a further boost to productivity.

1 July 2006

EC BUDGET 2006

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

As you are aware, the Council of the European Union concluded its second reading of the 2006 Draft Budget of the European Communities on 1 December, under the chairmanship of the UK Presidency. Parallel negotiations with the European Parliament on key elements of the Budget which require joint decisions began at the ECOFIN (Budget) Council on 24 November, and concluded in trilogue on 30 November.

Council’s second reading reinstated the Draft Budget in many Headings, and made modest amendments to agriculture, external actions and administration to take account of new information and adopt the Commission’s Amending Letters 1 and 2 to the 2006 Preliminary Draft Budget. Separately the Council and the Parliament agreed to increase the spending envelopes of six co-decided programmes by €100 million, to mobilise the Flexibility Instrument for €275 million (to secure full funding for Iraq, post-Tsunami reconstruction, transitional assistance to ACP countries affected by the sugar reform, and the Common Foreign and Security Policy (CFSP)), and to set payment levels at €111,969 million (or 1.0100 per cent EU GNI). Council also adopted a number of changes to the Preliminary Draft Budget (PDB) proposed by the Commission in three amending letters.

My Explanatory Memorandum of 1 June 2005 set out the Commission’s 2006 PDB proposals in detail. It was followed by two update letters: on 26 August 20051 I provided details of the Draft Budget adopted by Council on 15 July 2005; and on 14 November4 I wrote explaining the Parliament’s first reading amendments to the Draft Budget and giving details of Amending Letters 1 and 2. The Council has now concluded its second reading of the 2006 Budget and taken account of Amending Letter No 3, and has also reached an accord with the Parliament. This letter sets out both outcomes. The Parliament will examine Council’s second reading of the Draft Budget and adopt the 2006 Budget, including the joint agreement, at its plenary session in Strasbourg on 12–15 December 2005.

A. COUNCIL’S SECOND READING

— **Overall:** Council’s second reading reduced commitments by €1,156 million to €120,653 million, and payments by €4,804 million to €111,422 million (equivalent to 1.005% of EU GNI).

— **Agriculture (Heading 1):** Council accepted Amending Letter 2/2006, which reduces expenditure on Sub-Heading 1A (CAP) by €361.00 million (commitments and payments) compared to the PDB, and also reinstated the €150 million reduction in the Draft Budget. Expenditure on rural development (Sub-Heading 1B) remained unchanged. Council’s second reading therefore set total commitments at €51,050.72 million and total payments at €50,991.02 million for Heading 1, reducing the Parliament’s first reading by €399.73 million (commitments and payments) and establishing a margin of €1,567.28 million under the Financial Perspective ceiling.

— **Structural Operations (Heading 2):** Council reinstated the Draft Budget for both commitments, which it reduced by €12.00 million compared to the Parliament’s first reading, and payments, which were set at €35,489.60 million. The payments figure represents a reduction of €3,740.67 million compared to the Parliament’s first reading, in order to reflect likely implementation capacity.

— **Internal Policies (Heading 3):** Council’s second reading reverted to the Draft Budget in all areas except for some research, SME and other lines (special events and a study proposed in Amending Letter 2), leading to a reduction of €251.99 million commitments and €303.64 million payments compared to the Parliament’s first reading. Council’s second reading converted the Parliament’s negative margin of €50.74 million into a positive margin of €201.25 million.

— **External Actions (Heading 4):** Council rejected all of the Parliament’s proposed amendments, but did accept Amending Letter 1/2006, which budgets €40 million commitments and €21.2 million payments for sugar reform, assistance to the ACP countries. Council proposed to finance this from within the Draft Budget margin of €41.66 million, leaving a second reading margin of €1.66 million. Commitments and payments for Heading 4 were therefore set at €5,267.34 million and

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economic and financial affairs, and international trade (sub-committee A) 15

— Administration (Heading 5): Council partly accepted an amendment to the Commission budget (in order to take account of vacancy rates) and also accepted the Parliament’s proposed reduction of €20 million to its own budget. Council’s second reading therefore proposed a net reduction of €7.71 million (non-differentiated expenditure) compared to the Parliament’s first reading, and set total administrative expenditure at €2,451.79 million.

— Pre-accession aid (Heading 7): Council reverted to the Draft Budget for Heading 7, rejecting all of the Parliament’s amendments. Commitments were therefore set at €2,480.60 million (no change form Parliament’s first reading) and payments at €3,024.90 million (a reduction of €54.95 million).

A set of tables summarising the changes between the Parliament’s first reading and Council’s second reading is attached as Annex 1 to this letter.

B. Agreement with the European Parliament

— Overall: During conciliation, the Parliament asked the Commission to submit an Amending Letter (AL 3/2006) in order to reduce payment appropriations in the PDB by €257 million. The two arms of the Budgetary Authority were therefore able to reach an agreement on the global payment level, as required by Article 272 of the Treaty Establishing the European Union. The final payments level was set at €111,969.00 million (or 1.0100 per cent EU GNI), compared to Council’s second reading position of €111,421.88 million (or 1.0051 per cent EU GNI). The Amending Letter reflected the latest implementation rates, and would allow the Parliament Committee on Budgets to make a stronger case for a reduction in payments before the Plenary.

— Co-decided programming: The Parliament requested a total increase to co-decided programming envelopes of €217.00 million for 10 programmes, across Headings 3 (Internal Policies) and 4 (External Actions) of the Budget. During negotiations, Council agreed to exceed the co-decided reference amounts for six of these 10 programmes by a total of €100 million on the basis of a joint statement, and on the grounds of favourable implementation rates and durable needs. Council nevertheless emphasised that co-decided reference amounts should normally be regarded as maximum levels of spending, and that such increases should not set a precedent. A list of these programmes is provided at Annex 2 to this letter.

— PEACE II: During conciliation the Parliament agreed to finance the extension of the PEACE programme to 2006 from within the ceiling of Heading 2.

— Flexibility Instrument: During conciliation, Council and the Parliament agreed to mobilise the Flexibility Instrument for a total amount of €275 million in order to finance reconstruction in Iraq (€100 million) and Tsunami-affected countries (€95 million), plus €40 million for sugar reform assistance in ACP countries and a further €40 million for the CFSP.

Overall, the Government believes Council’s second reading and the agreement with the Parliament represent a Budget-disciplined outcome secured under difficult circumstances. Council ensured that total payments did not exceed 1.01 per cent of EU GNI—compared to 1.05 per cent EU GNI proposed by the Parliament, a saving of €4.8 billion—and reduced the Parliament’s initial proposal for use of the Flexibility Instrument from €493 million to €275 million. In addition, the Government secured funding for key external relations priorities such as reconstruction in Iraq and the Tsunami-affected countries, transitional assistance to ACP countries affected by the sugar reform and CFSP, and the extension of the PEACE programme for Northern Ireland to 2006 has been properly financed from within the Budget ceiling.

Exceeding the annual €200 million limit for the Flexibility Instrument was regrettable, but inevitable to secure a deal. In any case, the amount would have had to be exceeded early in 2006 when the Commission brings forward proposals for Palestine. The final figure for 2006 remains within the total amount available under the Inter-Institutional Agreement (IIA), which permits unused Flexibility Instrument from previous years to be rolled forward. According to this definition of the IIA a further €218 million remains available for the current financial perspective.

10 January 2006
### OUTCOME OF THE COUNCIL’S SECOND READING OF THE 2006 EC BUDGET

#### Annex 1

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CA = Commitment Appropriations; PA = Payment Appropriations. Figures may not add up exactly due to rounding.

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<td>51 51</td>
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<td>0 0</td>
<td>0 0</td>
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CA = Commitment Appropriations; PA = Payment Appropriations. Figures may not add up exactly due to rounding.

5 Converted at the December 2004 rate of £1 = €1.4183.
Annex 2

INCREASES TO CO-DECIDED PROGRAMMES APPROVED BY COUNCIL

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<tr>
<th>Programme name</th>
<th>Increase to reference amount (EUR million)</th>
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<td>SOCRATES</td>
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<td>LIFE</td>
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<td>Cultural organisations</td>
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Annex 3

AMENDING LETTER 3 TO THE 2006 PRELIMINARY DRAFT BUDGET

Amending Letter 3 (AL 3/2006) was presented by the Commission on 1 December 2005, following a request made by the European Parliament during trilateral negotiations on the 2006 EC Budget on 30 November. The Parliament agreed to accept Council’s proposed overall payment levels of €11,969 (exactly 1.01 per cent of EU GNI) on condition that the Commission amended their PDB estimates accordingly. Amending Letter 3 takes account of Amending Letters 1 and 2, and presents a total reduction in payment appropriations of €257 million. Payments in Headings 4 (€70 million) and 7 (€187 million) are affected. The following table sets out those Budget lines to which the reduction is applied:

<table>
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<tr>
<th>Line</th>
<th>Description</th>
<th>Heading</th>
<th>Payment Appropriations (EUR million)</th>
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<th>Reduction</th>
<th>New Amount</th>
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<td>SAPARD</td>
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<td>27.0</td>
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The Government welcomes AL 3/2006, which demonstrates that the Commission is prepared to revise its payment forecasts to reflect real needs. The Commission has stated that the reductions to payments presented in Amending Letter 3 will not have an adverse effect on the 2006 Budget.

Letter from Ivan Lewis MP to the Chairman

The European Parliament (EP) formally adopted the 2006 EC Budget on 15 December. The final outcome was in line with the agreement reached between the Council (under the UK Presidency) and the EP on 30 November, which I explained in my letter of 10 January. Overall, commitments were set at €121.19 billion—€5.24 billion/4.5 per cent higher than the €115.96 billion budgeted in 2005—and payments at €111.97 billion—€6.29 billion/5.9 per cent higher than the €105.68 billion budgeted in 2005.

6 Figures for the 2005 Adopted Budget take account of Amending Budgets numbers 1 to 8.
The tables attached as Annex 1 provide a breakdown of expenditure by heading in the 2006 Budget, and at each stage of the budget process. To briefly summarise the main changes between Council’s second reading and the adopted budget:

— **Agriculture (Heading 1):** The Agriculture heading of the budget consists predominantly of compulsory expenditure which is set by the Council. Commitments and payments were therefore unchanged from Council’s second reading at €51.05 billion and €50.99 billion respectively, leaving a margin of €1.57 billion under the Financial Perspective (FP) ceiling.

— **Structural Operations (Heading 2):** The figures agreed by the EP reflect the Commission’s initial PDB proposal of €44.56 billion for commitments (which establishes a margin of €62.00 million under the FP ceiling) and €35.63 billion for payments. Although the figure for commitments is unchanged since Council’s second reading, payments increase by €150 million. Heading 2 secures the full €60 million extension of the PEACE II programme for Ireland, which will run until the end of 2006.

— **Internal Policies (Heading 3):** The EP agreed to reduce commitments by €63.02 million compared to its first reading position—to €9.37 billion—and increased payments by €80.74 million to €8.89 billion. This represents increases of €189 million and €384 million respectively compared to Council’s second reading. At the EP’s request, Council agreed to increase reference amounts for six co-decided programmes, by a total of €100 million. A margin of €12.29 million was established under the FP ceiling for Heading 3.

— **External Actions (Heading 4):** The EP made significant reductions compared to its first reading position: commitments decreased by €140.34 million to €5.54 billion, while payments were reduced by €157.96 million to €5.37 billion. This nevertheless represents increases of €277 million and €143 million respectively compared to Council’s second reading position. The Flexibility Instrument was mobilised for a total amount of €275 million, of which €95 was attributed to post-Tsunami reconstruction, €100 million to reconstruction in Iraq, €40 million allocated to finance the consequences of sugar reform in the ACP states, and €40 million allocated to finance an increase to the CFSP budget.

— **Administration (Heading 5):** The EP increased its first reading position by €1 million for both commitments and payments, resulting in total expenditure of €6.66 billion. This represents an increase of €72 million (non-differentiated) compared to Council’s second reading. A margin of €51.63 million was established under the FP ceiling for Heading 5.

— **Pre-accession aid (Heading 7):** The EP made no change to the PDB proposal of €2.49 billion for commitments—leaving a margin of €1.09 billion under the FP ceiling—and agreed to a significant reduction compared to its first reading for payments, which were set at €2.89 billion (a decrease of €187 million). This nevertheless represents an increase of €55 million compared to Council’s second reading.

Overall, the Government believes the package represents a Budget disciplined outcome which was secured under difficult circumstances. In particular, with strong Council support the Government secured its key objective of a realistic, affordable level of payments at just 1.01 per cent EU GNI. Although deployment of the Flexibility Instrument exceeded €200 million for the first time, it was considerably less than the EP’s initial proposal of €493 million. The €275 million will secure spending on Government priorities, including a significant €40 million increase to the CFSP budget. The EP also agreed to finance the PEACE II extension within the ceiling of Heading 2.

30 January 2006
## SUMMARY OF THE ADOPTED 2006 EC BUDGET

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<td>CA (€m)</td>
<td>PA (€m)</td>
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*Figures may not add up exactly due to rounding.*
### Annex 1

**SUMMARY OF THE ADOPTED 2006 EC BUDGET (cont)**

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<th>Preliminary Draft Budget CA (£m)</th>
<th>Draft Budget CA (£m)</th>
<th>EP First Reading CA (£m)</th>
<th>Council Second Reading (C2) CA (£m)</th>
<th>2006 Budget CA (£m)</th>
<th>Change C2/2006 Budget CA (£m)</th>
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Figures may not add up exactly due to rounding.
Letter from Ivan Lewis MP to the Chairman

Preliminary Draft Amending Budget No 2 to the 2006 EC Budget (PDAB 02/2006) returns a surplus of €2.4 billion from the 2005 EC Budget to Member States. My Explanatory Memorandum (EM) of 19 April set out the detail and noted that it was regrettably not possible to take account of the Committees’ views in advance of the Council vote. This was due to the Austrian Presidency’s attempt to return the surplus as soon as possible.

The Presidency intends to secure Council approval before the European Parliament (EP) mini-plenary on 26–27 April. If the EP approves PDAB 02/2006 at the plenary, the surplus can be returned to Member States up to one month sooner than expected. This would be good news. The interest payable on the UK share is £35,000 per day, so early repayment would save the UK taxpayer up to £1.1 million.

Unfortunately, to give the Presidency the best chance of securing this windfall, the Government must agree to a written procedure (decided unanimously) and also vote in favour of PDAB 02/2006 before domestic Parliamentary scrutiny can be completed. I regret that this is necessary but, given that the return of the surplus is routine, hope that the Committees will understand my reasons for doing so.

Of course I look forward to hearing the Committees’ views on the surplus, and hope you will support the Government’s continued efforts to reduce future budget surpluses by encouraging better forecasts.

25 April 2006

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

I have pleasure in enclosing the Government’s Annual White Paper on the EC Budget—European Community Finances: Statement on the 2006 EC Budget and measures to counter fraud and financial mismanagement (not printed).

This is the 26th Annual White Paper in the series. This year’s report covers annual budgetary matters and includes details of recent developments in European Community financial management and in countering fraud against the Community Budget. It also describes the EC Budget for 2006 as adopted by the European Parliament, and details the United Kingdom’s gross and net contributions to the EC Budget for calendar years 2000 to 2006 and financial years 2000–01 to 2007–08.

I hope that you will find this report interesting and useful.

18 May 2006

EC BUDGET 2007

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

As you are probably aware the Council of the European Union formally agreed the 2007 Draft Budget (DB) of the European Communities at the ECOFIN (Budget) Council on 14 July, following conciliation with the European Parliament. The DB was based on a package put together by the Finnish Presidency following discussions of the Commission’s 2007 Preliminary Draft Budget (PDB) in the Council’s budget committee.

My Explanatory Memorandum of 23 May 2006 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, following amendments and modifications proposed by the European Parliament in its first reading in October. The main features of the DB are set out below.

— The DB proposes a total of €125,756.0 million in commitment appropriations, and €114,613.0 million in payment appropriations. This represents a reduction of €1,068.0 million (or 0.8 per cent) for commitments and €1,805.0 million (or 1.6 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 an increased margin of €2,651.0 million under the FP ceiling for Commitments. The reductions are made up of targeted reductions to the proposed increases for specific programmes reflecting the Council’s estimate of actual financing needs for 2007, reductions to increases to reflect the quality of certain Activity Statements for upcoming spending and reductions to increases in budgets of decentralised agencies to ensure these are subject to the same budget discipline as other institutions.

7 For Pound Sterling figures, please refer to the summary table in Annex 1 of this letter.
— In Heading 1a (Competitiveness for Growth and Employment), commitment appropriations were reduced by €13.9 million and payment appropriations by €176.0 million compared to the PDB, leaving a margin of €135.8 million below the FP ceiling for commitments. This reduction is mainly made up of targeted reductions in increases for specific programmes to reflect the Council’s estimate of actual financing needs during 2007. Most noteworthy are the reductions in payment appropriations proposed for:

— the Security and Space Research programme (−€50.0 million); and

— the Completion of the sixth EC framework programme (−€48.0 million).

A reduction of €29.1 million and of €22.2 million was made to commitment and payment appropriations respectively on the basis of the quality of Activity Statements. A 2 per cent reduction to the level of commitments and payments proposed for the Lifelong Learning programme make up the bulk of this reduction. The increases proposed for decentralised agencies were reduced by €8.78 million for both commitments and payments.

— In Heading 1b (Cohesion for Growth and Management), commitment appropriations were not reduced, but the massive increase in payment appropriations was trimmed by €425.0 million. This reduction is split between the completion of Structural Fund and European Regional Development Fund programmes for 2000–2006 (−€345.0 million), the completion of EQUAL programme for 2000–2006 (−€10.0 million), and the completion of specific budget lines of Structural Funds prior to 2000 (−€70 million). These cuts are designed to bring payment appropriations more closely in line with implementation capability, and thereby minimise the budget surplus.

— In Heading 2 (Preservation and Management of Natural Resources), commitment and payment appropriations for agricultural expenditure were reduced by €746.4 million and €787.6 million respectively compared to the PDB. This leaves a margin of €1879.9 million below the FP ceiling for commitments. Rural Development spending has not been affected by these reductions, the bulk of which come from:

— across the board-reduction in all budget lines dedicated to Interventions in agricultural markets, excluding lines subject to specific reductions (−€365.0 in both commitments and payments),

— accounting clearance of previous years’ accounts with regard to shared management expenditure under the EAGGF Guarantee Section and under the EAGF (−€205.0 million in both commitments and payments); and

— refunds for milk and milk products (−€150.0 million in both commitments and payments).

— In Heading 3a (Freedom, Security and Justice), commitment appropriations were reduced by €9.6 million and payment appropriations by €26.8 million compared to the PDB, leaving a total margin of €75.3 million under the FP ceiling for commitments. The overall reduction was mainly achieved through: targeted reductions to specific budget lines where the justification for increases in funding in the PDB was poor (Visa information system, European Refugee Fund and European Fund for Third Country Nationals), and a reduction to Decentralised Agencies, the European Union Agency for Fundamental Rights, Eurojust and Frontex in particular, to take account of implementation capacity.

— In Heading 3b (Citizenship), commitment appropriations were reduced by €16.4 million and payment appropriations were reduced by €31.6 million compared to the PDB, leaving a total margin of €49.4 million under the FP ceiling for commitments. This represents reductions to specific budget lines where the justification for funding was poor (Local Actions, Specific actions on priority themes, Completion of Public Health Programme and Transition Facility for new Member States), reductions to subsidies for certain agencies (in particular European Food Safety Authority), and modest reductions on the basis of poor Activity Statements (eg: Developing Cultural Co-operation in Europe).

— In Heading 4 (European Union as a Global Partner), commitment appropriations were reduced by €109.6 million and payment appropriations by €185.8 million compared to the PDB, leaving a total margin of €219.6 million below the FP ceiling for commitments. This allows for an increase of €17.5 million for assistance for the reconstruction in Iraq in 2007 compared to the PDB. The reductions were mainly achieved through horizontal top-slicing of big geographical budget lines (totalling €144.3 million for commitments and €179.0 million for payments). Reductions to increases of €5.0 million to commitments and €6.6 million to payments were also made on the basis of poor Activity Statements (International and Financial affairs and European initiative for
democracy and human rights), and a modest reduction to the increase in subsidies was applied to the European Training Foundation (decentralised agency). There was a general lack of Council consensus on priorities under this Heading. To achieve the increase in funding for the reconstruction of Iraq, the Government agreed to include the following in the horizontal reduction:

- Adjustment Support for Sugar Protocol Countries; and
- Co-operation with Developing Countries in Asia.

- In Heading 5 (Administration), the big increase in commitment and payment appropriations was reduced by €172.0 million compared to the PDB, leaving a total margin of €290.3 million below the FP ceiling for commitments. This has mainly been achieved by a proposal to delete every second post becoming vacant following the retirement of their incumbents in the period 2007–13. The reduction to the increase proposed for the administration budget is designed to ensure that appropriations for administration are based on a realistic assessment of operation needs, taking into account the increased demands resulting from enlargement while exploiting the possibilities for economies of scale and redeployment of existing staff resources.

- There were no changes to the PDB proposal for Heading 6 (Compensations).

Tables summarising the changes between the PDB and DB are set out in Annex 1 to this letter.

- The Government believes the Council’s 2007 DB goes a considerable way to meeting its key objectives. In particular the DB maintains budget discipline: it significantly reduces the level of payment appropriations in Headings 1 and 2, to reflect a more realistic forecast of implementation, it has protected increased allocations for Iraq and other UK priority areas (Adjustment Support for Sugar Protocol Countries, Co-operation with Developing Countries in Asia, Humanitarian Aid and CFSP) and it takes a rigorous approach to expenditure in Headings 3 and 5, delivering savings and increased flexibility. In addition, the 2007 DB remains fully consistent with the financial settlement agreed in December 2006 and continues to cater for the needs of enlargement in a budget-disciplined fashion. The Government will continue to pursue its key objectives in the subsequent stages of the 2007 budget process.

Amending Letter Number 1 To the Preliminary Draft Budget 2007

Amending Letter No. 1 takes account of more up-to-date Member State forecasts of their VAT and GNI bases, Agricultural and Customs Duties, and Sugar Levies (Traditional Own Resources) for 2007. The Advisory Committee on Own Resources agreed these forecasts in Brussels on 19 May 2006. This meeting (held annually) usually takes place before the Commission publishes the PDB but this year this was unable to happen as certain key figures were unavailable. As a result of the rescheduling of this meeting the European Commission was obliged to produce the PDB using old data, with the proviso that this would be amended once the Advisory Committee on Own Resources had met. Amending Letter Number 1 honours this commitment.

7 September 2006
Table 1

2007 PDB AND DRAFT EC BUDGET (EUROS)

<table>
<thead>
<tr>
<th>Heading</th>
<th>2007 PDB</th>
<th>Presidency Package 2007</th>
<th>Change PDB/DB</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Financial Framework</td>
<td>Ceiling</td>
<td>CA</td>
</tr>
<tr>
<td>1. Sustainable Growth</td>
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<tr>
<td>1a. Competitiveness for Growth and Employment</td>
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<tr>
<td>Margin</td>
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<tr>
<td>1b. Cohesion for Growth and Management</td>
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<td></td>
</tr>
<tr>
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<tr>
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<td></td>
</tr>
<tr>
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<td>5. Administration</td>
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</tr>
<tr>
<td>Margin</td>
<td>112.7</td>
<td>—</td>
<td>290.3</td>
</tr>
<tr>
<td>6. Compensation</td>
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<tr>
<td>Margin</td>
<td>0.4</td>
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<td>TOTAL</td>
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<td>Appropriations forf payment as % of GNI</td>
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</table>

CA = Commitment Appropriations; PA = Payment Appropriations.
Figures may not add up exactly because of rounding.

2 Excludes €234.5M from the Emergency Aid Reserve
Table 2
2007 PDB AND DRAFT EC BUDGET (STERLING)

<table>
<thead>
<tr>
<th>Heading</th>
<th>2007 PDB</th>
<th>Presidency Package 2007</th>
<th>Change PDB / DB</th>
</tr>
</thead>
<tbody>
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<td></td>
<td>Financial Framework</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>CA</td>
<td>PA</td>
<td>CA</td>
</tr>
<tr>
<td>1. Sustainable Growth</td>
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<td></td>
</tr>
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</tr>
<tr>
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<td>—</td>
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<td>Margin</td>
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<td>5,170</td>
<td>4,577</td>
</tr>
<tr>
<td>Margin</td>
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<td>152</td>
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<tr>
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<td>6. Compensation</td>
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</tr>
<tr>
<td>Margin</td>
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<td>—</td>
<td>0.3</td>
</tr>
<tr>
<td>TOTAL</td>
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<td>80,817</td>
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<td>Margin</td>
<td>1,094.7</td>
<td>—</td>
<td>645.6</td>
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</table>

Appropriations for payment as % of GNI

CA = Commitment Appropriations; PA = Payment Appropriations
Figures may not add up exactly because of rounding.
Conversion rate as of May 2006: £1 = €1.4405 and €1 = £0.6942
³ Excludes €234.5M from the Emergency Aid Reserve
Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman

I am pleased to enclose a copy of the UK’s response to the European Court of Auditors’ (ECA) Report on the 2004 EC Budget, including responses to specific UK references therein. These responses may be analysed in the Commission’s follow-up report on the financial year 2004. As Member State’s responses are not published in full, your committee may find it opportune to have the UK response in full at this stage.

31 January 2006

Annex A

CHAPTER 3: REVENUE

3.9–3.18 Electronic customs clearance

The Court carried out an audit in the UK from 10-14 May 2004 and notified its findings in PF 1568 dated 16 December 2004. The UK replied on 16 March 2005. The Commission followed-up the findings in BUDG 58350 dated 22 September 2005. All the points are closed except 23–27 Temporary storage and 43–45 Supporting documents missing.

On the first point, the ECA discovered 77 items for which no customs approved treatment or use had been assigned within the time limits. On the second point, the ECA discovered 7 entries for which no certificates of origin were held by Customs although preferential duty rates were applied. Customs are in the process of obtaining the additional information requested by the Commission and will reply when the details are available.

3.23 Amounts established but not vet made available to the Commission (B Accounts)

The Court carried out an audit in the UK from 1–2 February 2005 and notified its findings in PF 1809 dated 15 July 2005. The UK replied on 5 September 2005 but we have not yet received any follow-up from the Commission.

The B Accounts have been centralised and ‘significant progress has been made with the transfer of cases from the regional offices. The central site will monitor the progress of cases referred to the central Debt Management Unit. A new form has been introduced to support cancellations. Procedures for write-offs will be reviewed to ensure that they are justified in terms of own resources and that accounting action is correct and timely. Systematic checks will be introduced on the aggregation and production of the B statements. These measures should produce improvements in the accuracy and completeness of the B Accounts.

CHAPTER 4: COMMON AGRICULTURAL POLICY

Paragraph 4.20—Footnote 13

The ECA noted that the Commission intends to make corrections based on financial errors detected in a further four paying agencies (including Forestry Commission and SEERAD).

The Commission’s findings are in line with UK expectations which related to observations made by the Commission in respect of under-declared interest in the Forestry Commission’s Table 104 and unidentified corrections for SEERAD’s in the Table 105. Both observations relate to findings made by the Certifying Body during the 2004 Certification of Accounts.

For the Forestry Commission, the necessary under-declared interest has already been repaid in the February 2005 Table 105: no further financial adjustment is required. The Commission have also formally reported that the appropriate corrective action has been taken to avoid any future reoccurrence and, as such, no additional corrections are to be proposed.

For SEERAD, the Commission have proposed a financial correction of £497,130.69 (ie the full amount of the unidentified corrections included in the Table 105). As these cannot be identified against specific budget postes, it is not feasible to repay the Commission via the Table 104. The total sum concerned will therefore be included as a single correction in a future ad hoc compliance clearance decision. Again no additional systematic correction has been proposed.
CHAPTER 5: STRUCTURAL MEASURES

Paragraph 5.21—The Scottish Executive accept that the MA and PA work within the same division and that they both report to the same head of division. However the procedures for processing claims and the IT system have been developed to ensure that we have a full and proper separation of both functions. The responsibilities of each area are, we believe, fully defined in the desk instructions. Access to IT functions that relate to MA are restricted to the staff working in the MA and the same is true of PA functions. Access rights can only be changed by an IT support team based outwith the division and only if authorised by branch heads.

The Scottish Executive also accept that the unit responsible for the 5 per cent sample checks (VAC) operates within the same Division. Here again, they believe that the desk instructions can demonstrate a clear separation of the respective responsibilities. However, when the Division relocated to Glasgow in 2004 a conscious decision was taken that the VAC team should remain in Edinburgh close to internal audit services. Although they believe that the separation of duties was always clearly defined it was felt that locating the units in different locations would serve to further underline this separation and to stress the functional independence of the VAC team.

The UK would agree with the Commission’s reply for Western Scotland under paragraph 5.21, ie the view that “It considers that for the 1997–99 Western Scotland programme the structure met the minimum requirements laid down for the 1994–99 period”.

Paragraphs 5.22 to 5.30—further documentation has been produced by the government Office and they are updating internal systems and procedures including the findings of audits.

Paragraph 5.24—The control environment applied to the programme was monitored by the independent bodies throughout the period and in particular during the closure process. The independent body considered the control environment to be sufficient to comply with the requirements of the regulations applying to this programme.

Since the closure of the 94–99 programme significant enhancements have been made to the control checks being undertaken on expenditure. These have, in part, resulted from feedback from ECA and DG audits and from regular contact with the independent Article 15 body. As an example of the changes that we have made we have widened the number, scope and depth of checks pre-payment and introduced post payment checks on a sample of claims. In addition the timelines we have set for closure of the current problems will prevent the claiming of expenditure incurred after the final date allowed for this programme.

Paragraphs 5.25 and 5.29—The Scottish Executive accept that the VAC Team only visited 11 out of 345 projects but would stress that they did achieve the 5 per cent target in compliance with Regulation 2064/97. However, this analysis does not provide the full picture. The 345 projects were sponsored in total by 90 applicants, the VAC Team carried out 11 visits to individual projects/applicants with a further eight project sponsors visited on other programmes, resulting in approximately 20 per cent of project applicants being the subject of an on-the-spot inspection.

There appears to be some confusion regarding the risk analysis and the selection criteria for the West of Scotland visits. In the past the criteria was set at all projects over £1(m) but following a visit by the ECA (in March 2000) the system was reviewed and a more robust risk analysis was put in place. The 11 projects visited were all subject to the revised risk assessment and selected as appropriate. As is rightly pointed out, only projects over £1(m) were selected but this is clearly one of the restrictions of the risk analysis, especially when you are trying to ensure that foremost you achieve the 5 per cent target.

The comment that there is a need to cover a wide range of projects and you will wish to note that risk analysis for the current programme has been rationalised and now ensure that we do get a more appropriate mix of types and size of operations.

The Scottish Executive accept that the audit does not cover 100 per cent of the expenditure declared but would like to point out that although it does not carry out a sampling methodology, once it has been presented with a transaction listing it tries to cover as much of the expenditure as possible and select invoices covering all contracts and all aspects of the project. On the issue of extrapolation, it is not normal policy to count extrapolated expenditure on ERDF projects towards the 5 per cent target. However, if they do identify what would be described as a systemic error they would calculate the total error and record this in their Management Information System. This ineligible expenditure would be compared against the actual expenditure substantively checked and not the total project value when calculating the error rate.
Paragraph 5.29—sample selection was based on a mixture of risk and randomly selected checks. The use of randomly selected checks allowed the calculation of more representative error rate. The sample selection process was then audited by the Article 8 body and found to be satisfactory. On the statements selected mention is made at Section 5 that “a number of Government Offices adopted a risk-based approach” and these were not included in the error rate calculation.

In addition, the issue of sample selection should be taken in the context of the size of the programme and the level of sampling carried out. One of the programmes selected was a very small programme and 97 per cent of the programme spend was checked.

Also on paragraph 5.29, we agree with the Commission’s comment that “they had sufficient information to close the programme”.

5.3—The Scottish Executive accept that the closure process took longer than expected and a lot longer than desirable. This was caused, at least in part, by pressure of other work at MS level and at the Commission. In particular the diversion of resources to the operation of the 2000–006 Programmes meant that they were unable to respond to requests from the Commission as quickly as they would have liked. They have identified this as a risk to closing the current programmes. They have already started planning for closure of the 2000–06 programmes so that they can ensure that resources are sufficient to support an efficient closure process.

Paragraph 5.36—a guidance note on the preparation of Article 9 declaration of expenditure to the Commission is being prepared. A new directive on procurement comes into effect in January 2006 and will form part of UK guidance to Government Offices and grant applicants. The UK recently issued a guidance note on the method to be used for the calculation of overhead expenditure to projects.

Paragraph 5.36—The Scottish Executive provide guidance to all their project sponsors to ensure that the rules of state aid are fully respected. They consider charitable organisations engaged in economic activity to be analogous to public organisations, as they are neither profit making nor profit distributing. The areas targeted by such organisations are those which have suffered severe and persistent market failure and only public sector agencies are prepared to engage there. The services supplied by such organisations are vital when the market fails to address the often acute lack of economic prospects.

In respect of comment 52 to paragraph 5.36, referring to expenditure incurred outside the eligible period; the eligible period aspect was a matter of discussion at an article 48 committee which gave a verbal instruction that quite probably was interpreted differently by Member States or even regions within Member States.

GENERAL POINTS

As regards programme closures in general the closure process was hampered by the invoking of additional requirements for information above and beyond that contained in the Regulations. However, the UK have a working group to assess and try to resolve problems as quickly as possible in respect of the 1994–99 programmes. It is also working on a closure package development to aid in closing the 2000–06 programmes in a timely manner.

The Office of the Deputy Prime Minister (ODPM) accepts the general feel of the report and agree that there are still areas within the management of the fund where improvements are necessary both at the managing/paying authority level and at project level. The Government Office for the North East together with ODPM and the Government Office Audit Team have responded to the findings of the ECA visit to the NE Objective 2 ERDF programme, agreeing to some of the findings and providing additional information (which was not readily available during the visit) to clarify others. There are other areas which are under discussion with officials from the Commission, including interpretation of the publicity requirements for retrospective projects.

ODPM officials have formed similar views to the ECA from monitoring of the quarterly Article 10 reports on the 5 per cent inspection of total eligible expenditure. Further guidance notes have either been issued or are under preparation, to address the issues raised by the ECA.

The UK would ask that consideration be given, especially to avoid confusion within the media circle, to the ECA report specifying that their findings were totally about the management of the fund and recommendations were being made for improvement, rather than anything fraudulent. The current style of reporting could be damaging for the programme, the region and affect the moral of those associated with it.
Also the ECA should perhaps consider organising “open days” similar to those being organised by the Commission, or make a series of visits to Member States, explaining, for example, what they do and what they expect to see during their visits to Member States. This should include their interpretation of the regulations.

With regard to audits in general, we would like to make the following observations. While we are in agreement with many of the aspects of a roadmap, we also feel that there should be some emphasis on simplifying Regulations rather than clarifying which seems to result in additional and more complicated Regulations. In addition, if audits could be set more as system and benefit cost audits rather than transaction tracing audits this would help enormously. Transaction tracing audits bring up specific timed errors, often of minor amounts, which they extrapolated can make it look as though the whole programme is in error. These errors are also often corrected later but this is not recognised when checks take place within a specific period.

**CHAPTER 7: EXTERNAL ACTIONS**

We welcome the Court’s recognition that External Actions performance continues to improve in line with the Court’s recommendations in its 2003 report. It confirms other evidence that the Commission’s reforms are feeding through into improved practices and procedures which has greatly improved the effectiveness of the EC. However, as in previous years, the report continues to raise concerns over recurrent weaknesses in the system. Steady progress is being made by both EuropeAid and ECHO but more need to be done to improve their internal controls, adherence to contracting procedures and strengthening their monitoring and reporting standards. These are essential elements in improving accountability and transparency. EuropeAid is managing billions of Euros and pursues relations with all kinds of partners across the globe, clear and strong procedures are paramount to making sure funds are used for their intended purposes. We share the Court’s concern about getting the right level of staff and the appropriate skills mix in Delegations. We acknowledge the Commission is working on this but they are still understaffed compared to other donors, and at times lack the skills needed. On paragraphs 7.26 and 7.27 we would urge the Commission to continue action to introduce standardised documentation to tighten the implementing organisations terms of reference for external auditors in Delegations. Also, more needs to be done on the segregation of duties between the authorisation and accountancy systems (7.31 and 7.32) to provide protection against misuse of funds. We welcome the Commissions actions to take corrective steps.

With the transfer of the CARDS work to DG Enlargement, the need to look more carefully at implementing organisations are just as valid for Enlargement as for EuropeAid. We accept that much will have changed but the Court should consider, in future audits, looking at the effectiveness of expenditure in terms both of project delivery meeting project objectives and of project design reflecting Regulation goals.

**CHAPTER 8: PRE-ACCESSION AID**

Overall, we support this report. It was reassuring to see that the general conclusion of the Court findings on the supervisory and control systems for all pre-accession instruments at the level of the Commission’s central services and delegations and certifying authorities were basically sound, and worked in practice. However, paragraphs 8.9, 8.31 and 8.32 show the inconsistency in the decision to substantially increase assistance to Bulgaria and Romania for 2004 when there were reservations about the capacity to manage and implement increasing amounts of aid. According to the Commission this was a political decision and the increase is dependent on improvements. We would like to see more on how the Commission plan to help with improvements. Extended Decentralised Implementation System (EDIS) is a clear test for progress in this area. A significant part of Phare’s objectives are to increase administrative capacity in preparation for Structural funds post-accession, and a key part of this is the implementation of EDIS in candidate countries to allow them to implement their own structural and regional funds post-accession. Achievement of EDIS provides a clear benchmark for the efficiency of candidate countries in handling funds. Although of the 2004 accession countries, only Hungary achieved EDIS before accession, paragraph 8.18 notes that Romania and Bulgaria aim to have EDIS in place by 2006.

EDF

We note that the Court has issued a Statement of Assurance on Activities funded by EDFs 6–9 but that there are still a number of areas for improvements. We were concerned at the Court’s report on the lack of key information and explanations in the Commission’s financial reporting, the continuing slow pace of Stabex clearance, the persistent weaknesses in the supervisory and control systems and the non-compliance with the Court’s definition of legality and regularity. Progress on follow up activities on observations from previous
Economic and Financial Affairs, and International Trade (Sub-Committee A)

Reports has also been slow. However, we note that the Commission does not disagree with any of the Court’s findings, and we welcome actions being taken to correct some of these concerns, such as improvements in the Stabex inventory and identification of recoverable amounts. We would expect to see marked improvements in the Court’s report for 2005. The devolution of responsibilities to Delegations should further improve the Commission’s capacity to fully address the Court’s concerns. There is evidence that this is already happening.

UK Response to the European Court of Auditors’ Report on the 2004 Budget

Errors Noted by the Court in the Statement of Assurance:

Substantive Errors

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<td>04/SYS/RD/TOR.0082</td>
<td>System Weaknesses</td>
<td>Reply from Sarah Connor, HM Revenue &amp; Customs, dated 5 September 2005</td>
<td>The UK authorities have accepted the opinions expressed by the Court and changes have been implemented or will be implemented to meet the necessary requirements.</td>
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<td>N/A</td>
<td>Electronic Clearance</td>
<td>Reply from Sarah Connor, HM Revenue &amp; Customs, dated 16 March 2005</td>
<td>The UK authorities are taking steps to meet the points made by the ECA.</td>
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### Letter from the Chairman to Ivan Lewis MP

Thank you very much for your Explanatory Memorandum dated 19 December 2005 regarding the European Court of Auditors’ Annual Report for financial year 2004; and your letter of 31 January regarding references to the UK in this report. Both of these documents have been considered recently by Sub-Committee A. The Sub-Committee have decided to hold the original Explanatory Memorandum under scrutiny and to launch

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* (OJC 301, Volume 48).
an inquiry into the reasons behind a lack of a positive Statement of Assurance on the annual accounts for the last 11 years.

In due course we will be looking to arrange a mutually convenient time to meet you formally to discuss the situation. However, in advance of this session, do the Government consider that the mechanisms already suggested by the Commission to improve the management of the budget are adequate and likely to lead to a positive DAS on the accounts by the end of the tenure of the Barroso Commission? In addition, do the Government consider that the working methods, staffing and organisation of the Court of Auditors is appropriate and effective? Do you have any suggestions for improvement?

For your information I enclose a copy of the Call for Evidence (not printed) which the Committee has recently published.

8 February 2006

Letter from Ivan Lewis MP to the Chairman

Thank you for your letter of 8 February. I am pleased that Sub-Committee A has decided to launch an inquiry into the reasons behind the lack of a positive Statement of Assurance on the EU’s accounts for the last 11 years, and will be happy to meet you formally to discuss this.

You asked two questions in advance of my session. First, whether the mechanisms suggested by the Commission to improve the management of the budget are adequate, and likely to lead to a positive DAS on the accounts by the end of the tenure of the Barroso Commission. The Commission’s strategic objective to achieve a positive DAS by 2009 is indeed an ambitious and challenging target and will require considerable effort by itself and by Member States. It is encouraging that the 2004 report gives assurance on a greater proportion of the budget than ever before, because of improvements on financial management and control in key areas of expenditure, but there is still a long way to go. The Commission’s Action Plan9, in response to the November ECOFIN conclusions on the “roadmap to an integrated internal control framework”10 does offer the prospect of further progress towards the achievement of a positive DAS, perhaps most significantly through the launching of an inter-institutional dialogue between the Council and the European Parliament on the risks to be tolerated in the underlying transactions. The continuing efforts to simplify complex legislation are also likely to have a beneficial effect on the level of assurance achieved. But ultimately it is for the Court of Auditors to consider how any proposed changes impact on its approach and the level of assurance it can give. I do not think that anyone could say definitely that a 100 per cent positive DAS will be achieved by 2009, although I would be very happy to be proved wrong. But I do think that we will have made much more progress towards providing the kind of assurance that the Court is looking for.

Secondly, you asked whether the Government considers that the working methods, staffing and organisation of the Court of Auditors’ are appropriate and effective. Concerning the ECA’s organisation, I am reminded of Sub-Committee A’s earlier inquiry into this11, the findings of which played a major part in the Government’s efforts to introduce reform of the ECA during the last Inter-Governmental Conference (IGC). As you know, there was little support for the Government’s proposal that the ECA should be re-organised in the form of a 9-member Executive Board supervised by a part-time 25-member Governing Committee. The Government still considers that the ECA’s current organisation in the form of a Court of 25 members is unwieldy and inefficient, and there may be scope for reviving the reform proposal in the future.

The ECA, like other independent audit bodies, works to international auditing standards. But I am also reminded that the Committee of Public Accounts drew attention to the effectiveness of the ECA’s work in its report last year on “Financial Management of the European Union”12. They suggested (as has the European Parliament) that it should consider arranging a peer review of its approach and work to test the quality and relevance of what it does and to demonstrate its willingness to learn from others. The Government agreed that there would be benefits in carrying out a review, or in introducing systems for ongoing external review. Processes of ongoing review and feedback similar to those recently agreed for our own National Audit Office could also be considered for the ECA. The ECA has since decided to submit to a peer review, and we await the outcome.

12 18th report, Session 2004–05.
Finally, you explained that Sub-Committee A intended to keep the Explanatory Memorandum on the European Court of Auditors’ Annual Report for the 2004 financial year under scrutiny, pending its inquiry. As you know, the Council recommendation on discharge for 2004 will be considered by the ECOFIN Council on 14 March, and all Member States should have completed their Parliamentary Scrutiny of the ECA report by then. I should therefore be very grateful if the Sub-Committee would consider whether they could clear the Explanatory Memorandum in advance of the inquiry.

28 February 2006

Letter from the Chairman to Ivan Lewis MP

Thank you very much for your letter of 28 February regarding EM OJC 301, the Annual Report of the European Court of Auditors concerning financial year 2004. Sub-Committee A considered this at their meeting on 7 March.

The Sub-Committee noted your assurances that you will be happy to attend a formal evidence session in the near future as part of our inquiry into the audit and management of European funds; and, in response to your request in the penultimate paragraph of your letter, have agreed to clear the document from scrutiny.

At the same meeting, the Sub-Committee also considered EM 5509/06 on the Commission’s Action Plan towards and Integrated Internal Control Framework and decided to hold this under scrutiny pending your oral evidence session.

8 March 2006

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

Thank you very much for your Explanatory Memorandum 8630/05 on Member States’ replies to the European Court of Auditors’ 2004 Annual Report. This was considered by Sub-Committee A at their meeting on 20 June.

The Committee found this information extremely useful and valuable in relation to its current inquiry into the management and audit of EC expenditure and accounts. Therefore, we have decided to continue to hold the document under scrutiny as part of this inquiry.

22 June 2006

EUROPEAN GROUPING OF TERRITORIAL CO-OPERATION (EGTC) (7554/06)

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

The above document is a revised proposal issued by the Commission for a regulation to create a new legal entity, the European Grouping of Territorial Co-operation (EGTC), to manage cross-border co-operation activities between two or more Member States within the European Union. The revised proposal was issued after amendments were proposed by the European Parliament.

However, the original proposal has continued to proceed through negotiations in the Council and was agreed there on 5 May 2006. Therefore this document will not now form the basis of negotiations or a regulation. We expect the Commission to withdraw it accordingly, and we will inform you when this happens.

The scrutiny history of the proposal which formed the basis for negotiations and of the new regulation to create the EGTC is as follows:

EM 11689/04 on a European Grouping of Cross-Border Co-operation. The Commons European Scrutiny Committee cleared it (Report 32, Session 03/04). The Lords Select Committee on the EU sifted it to Sub-Committee A and cleared it from scrutiny (Progress of Scrutiny, 7 February 2005, Session 04/05).

25 May 2006
Letter from Rt Hon Ian McCartney MP, Minister for Trade, Investment and Foreign Affairs, 
Department of Trade and Industry/Foreign and Commonwealth Office to the Chairman

I am writing to update you on the above Commission proposal.

In May, Margaret Hodge wrote to you explaining that this revised proposal for the EGTC will not be the subject of discussion or agreement, and that we expected the Commission to withdraw it. The proposal was superseded by the initial proposal, which continued to form the basis of negotiations and was agreed by the Council.

The Commission has informed my officials that there is no requirement for it formally to withdraw redundant proposals like this one. It has periodically withdrawn some redundant proposals for administrative clarity, but this is not mandatory and at present there are no current plans to withdraw this one. However, Commission officials emphasise that this does not affect the redundancy of the proposal. It has been superseded by agreement on the initial proposal. It does not stand, there will be no further action to take it forward, and we can consider it closed.

I hope that this clarifies the status of this proposal for your records.

11 August 2006

EUROPEAN STRUCTURAL FUNDS 2007–13 (7177/06, 8216/06, 8218/06)

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

Thank you very much for your Explanatory Memorandum of 11 April dealing with 8216/06, 7177/06 and 8218/06 which was considered by Sub-Committee A at their meeting on 25 April.

Whilst the Committee appreciate the fast moving nature of these negotiations, there was some concern that the timing of your Explanatory Memorandum would not have allowed for proper Parliamentary scrutiny of these Proposals had they been considered, as you indicate, on 25 April. As a result, we were pleased to receive information from your officials that Council consideration had been delayed.

On the distribution of Structural Funds between rich and poor Member States, the Committee were pleased to see the large increase in funding for the 10 new States plus the two applicant countries. We note with satisfaction that the government continued to push for such an allocation of the Funds.

On the management of the Structural Funds, you describe some simplifications which have been achieved. We note that you did not support, and the Council has not accepted, the Commissions’s proposal that, in order to improve financial control it should be given increased discretion to withhold funds in cases of doubt or suspicion. We would appreciate a fuller explanation of your rejection of tighter controls, along the lines proposed by the Commission.

The Committee noted the dates mentioned in paragraph 44 of your Explanatory Memorandum. We assume that they are the result of an administrative oversight.

26 April 2006

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

I am writing in reply to your letter to Malcolm Wicks dated 26 April referring to the Explanatory Memorandum on the new Regulations to govern European Structural Funds over the next Financial Perspective, 2007–2013. I am most grateful for the effort made by the Committee in being able to consider the Regulations to co-ordinate with the tight negotiation scheduling. The timing of the EM was determined by the Inter-Institutional Agreement and the issue of new versions of the regulations, representing close-to-final texts.

In your letter you ask why the UK did not support the Commission’s proposal that, in order to improve financial control, the Commission should be given increased discretion to withhold funds in cases of doubt and suspicion.

Throughout the negotiations the UK has pushed for provisions encouraging better financial management. On this point, we preferred a text that required Commission officials to identify “evidence to suggest
shortcomings” before interrupting payments, rather than a text that would allow them to do so on the less substantial basis of doubts or suspicions. We do not believe that this represents a rejection of more effective controls. We and other Member States believe that basing interruption of payments on doubts and suspicions, rather than on evidence, would be arbitrary. We wish to minimise the danger of unnecessary interruption to the payment process and we believe that the agreed text establishes more appropriate and effective controls.

You pointed out that there was an error on dates in the section of the EM on Consultation. The text erroneously confused two consultations, which was an oversight. A correction will be issued.

I am glad to say that further progress in negotiations means there will be few further significant changes to the texts as you considered them. We will, of course, update your Committee on these changes.

9 May 2006

Letter from Rt Hon Margaret Hodge MP to the Chairman

I am writing to update you on developments in the negotiations on the regulations to govern the European Structural Funds over the next budgetary period, 2007–2013.

On Friday 5 May the Council approved political agreement on the Presidency compromise texts of the Structural and Cohesion Fund regulations. The Austrian Presidency now expects that the Parliament will adopt the Regulations in its plenary session in July, prior to formal Council approval, publication and entry into force of the Regulations later in the month.

At Coreper on 26 April, after we submitted texts of the draft regulations to you, the Austrian Presidency proposed possible amendments in the General Regulation in order to secure the agreement of the European Parliament. Drafting on these points was agreed by Member States in Coreper on 3 May. These were the amendments:

— Article 10 now specifies the types of organisations with which partnership should be organised (where appropriate).
— Article 14 now gives a specific prominence throughout implementation to accessibility to Structural Funding for people with disabilities.
— A new Article (14 bis) makes reference to the over-arching importance of sustainable development, and of protecting and improving the environment.
— In Article 18 of the General Regulation a further €250 million has been added to the Structural Funds budget, to be allocated to transnational and inter-regional co-operation. There has also been some reallocation of funds within the Co-operation Objective.

The UK has consistently sought to raise the importance of environmental considerations, so we welcome that development.

I attach the new texts of the regulations (not printed). We expect the regulations to be published and enter into force by the end of July.

25 May 2006

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

I am writing to update you on progress in the adoption of the regulations to govern the EU Structural Funds 2007–2013.

As Margaret Hodge wrote to you on 25 May the Council had then agreed minor changes to the Regulations in order to meet the concerns of the European Parliament and to anticipate the Parliament’s second reading. This proved to be successful, and at second reading the Parliament adopted the package of regulations on 5 July, by a very large majority. We expect the regulations to be published shortly.

11 August 2006
EUROPEAN UNION SOLIDARITY FUND (8323/05)

Letter from Ed Miliband MP, Parliamentary Secretary, Cabinet Office to the Chairman

I am writing to update your Committee on progress on the Explanatory Memorandum submitted on 18 July 2005 by Mr John Hutton, then Minister for the Cabinet Office and Chancellor for the Duchy of Lancaster, on the Solidarity Fund—document 8323/05 COM(05) 108: Draft Regulation establishing the European Union Solidarity Fund + ADD 1 (Commission staff working paper: impact assessment).

The current Solidarity Fund was introduced in December 2002 with the aim of providing support in a spirit of solidarity to member states and candidate countries in the event of major natural disasters that have serious effects on living conditions, the natural environment or the economy. The current Regulation sets a high threshold for claims of damage at either over €3 billion (£2.058 billion) or 0.6 per cent of Gross National Income for uninsured losses. There is also an exception to allow claims if a region is affected by an extraordinary disaster affecting a major population in that region with serious lasting effects.

The new Proposal from the Commission would lower the threshold to €1 billion (£0.686 billion) or 0.5 per cent of gross national income and remove the exception for regions. It would also widen the scope from natural disasters to include technological and industrial disasters, marine pollution, public health threats and acts of terrorism.

During the UK and Austrian Presidencies this proposal has been discussed at seven meetings of Financial Counsellors. Approval of the proposals would require a Qualified Majority Voting in the Council and it has become clear during the discussions that there is no majority for the changes sought by the Commission. Some member states want no change; some would like to widen the scope but leave the ceilings unchanged; others would want the ceilings changed to reflect their specific national concerns. The European Parliament for its part has delivered a largely positive Opinion.

On the question of widening the scope, there have been some initial exchanges but since the Commission and some Member States have so far insisted that the ceilings and scope must be taken as a package the discussions have been brief.

In the discussions, the UK has taken the line that there is a clear need for a reasonably high ceiling to ensure there is no incentive for countries not to invest in measures to respond to and reduce the impact of disasters, including taking steps to insure against their effects. The present Solidarity Fund works well in assisting smaller and poorer countries whilst ensuring that larger and better off member states will normally fall below the threshold. On the issue of extending the scope of the Solidarity Fund beyond natural disasters to include industrial or technological disasters, the UK has also noted that the Solidarity Fund should not be extended to areas that undermine the incentives to undertake preventive action and contingency planning or lead to under-insurance.

Under the recently signed Inter Institutional Agreement on the EU budget it was agreed that the Solidarity Fund will continue as now to be financed “off budget” by one-off agreements of the budgetary authority rather than be allocated a budget as the Commission had wished.

The latest position, therefore, is that in the absence of a qualified majority the current Solidarity Fund Regulation which has no expiry date will continue as early impressions are that the Solidarity Fund will not be one of their priorities. Should there continue to be no qualified majority, the current Solidarity Fund Regulation will remain unchanged for the new Financial Perspective 2007–13.

I hope your Committee finds this update helpful. Should there be further developments I shall, of course, write to you.

13 July 2006

Letter from the Chairman to Ed Miliband MP

Thank you very much for your letter of 13 July updating the Committee on Explanatory Memorandum 8323/05 on the Solidarity Fund. This was considered by Sub-Committee A at their meeting on 25 July. The Sub-Committee noted your belief that negotiations were deadlocked and decided to maintain the scrutiny reserve.

I enclose a copy of a letter I sent to you on 25 October 200513 (not printed) on this dossier to which I have not received a reply. May I draw your attention to the following in this letter to which the Committee would appreciate your response.

Firstly, the Committee were concerned to know whether the Solidarity Fund has demonstrated any added value since the initial payments were made in the aftermath of the flooding in central Europe in 2002.

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Secondly, we asked where the money allocated to the Fund but not spent has gone. Finally, we expressed our view that there was some justification in extending the Fund to include public health threats. What is your analysis of the proposals to expand the Fund?

25 July 2006

FINANCIAL PERSPECTIVE 2007–2013 (11734/05, 5834/06, 5835/06, 5836/06, 5837/06, 6297/06)

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

I am writing to update you on the latest developments in the negotiation for a new Inter-institutional Agreement (IIA) for the 2007–13 Financial Perspective.

At a trilogue on 4 April, the Austrian Presidency agreed a framework for a new Inter-institutional Agreement with the Commission and the European Parliament. The Presidency circulated a detailed draft IIA text on 11 April on the basis of this framework, and which I attach for your information.

The main elements of the draft text include:

— An overall Financial Perspective expenditure ceiling of €864.3 billion, €2 billion more than the agreement reached by the European Council in December. A further €2 billion of expenditure will be possible outside the Financial Perspective (including the €1.5 billion Emergency Aid Reserve, called up from Member States when needed);

— No change to the existing financial amounts allocated to the flexibility mechanisms, including the Solidarity Fund, the annual flexibility instrument (though funds could now be rolled over for up to two years), the Emergency Aid Reserve, or the 5 per cent reference amount in individual regulations. No change to the existing decision making procedures to activate these instruments. In addition, the Globalisation Adjustment Fund is established;

— The inclusion of text on various non-financial issues (including the Financial Regulation, the creation of EU agencies, certification of Member State spending, financial programming) and a separate declaration on the 2008–09 review of the budget. None of this text changes the fundamental institutional balance between the arms of the budgetary authority. Some of it, such as the text on certification, should lead to an improvement in the EU’s financial management.

Member States indicated at Coreper on 12 April that they were content with the final text agreed with the EP. The UK joined this consensus, reflecting the Government’s view that this text maintains the essential elements of the agreement reached by the European Council in December. The Presidency will now formally ask the Council to adopt the IIA text. We expect this to be either by written procedure or as an A-point at a forthcoming Council. The text would also be adopted by the EP at its mid-May Plenary.

As you know, two Community documents related to the IIA are currently under scrutiny:

— 5973/06 Commission working document: Revised proposal for renewal of the Inter-institutional Agreement on budgetary discipline and improvement of the budgetary procedure; and

— 6426/06 Commission contribution to the inter-institutional negotiations on the proposal for renewal of the Inter-institutional Agreement on budgetary discipline and improvement of the budgetary procedure.

I stand ready to take forward whatever scrutiny measures the committee deems necessary after the recess.

13 April 2006

Letter from Rt Hon Hilary Benn MP, Secretary of State for International Development, Department for International Development to the Chairman

On 16 March 2006, your Committee discussed the Communication on External Actions through Thematic Programmes under the Future Financial Perspectives 2007–13 (FP) and the five specific thematic Communications as per above. Your Committee cleared all Communications for scrutiny on the basis that I
press for more clarity on the issues raised in my EM. Similarly, you asked me to inform you of the budget allocations for each programme once decided.

There has been some development since I last wrote. On 16 February, Council decided in Coreper to pursue a line of negotiations with the European Parliament based on including all current geographic and thematic regulations into the DCECI—the new Development Instrument. Promoting simplicity and effectiveness in the management of EC external spend underpinned this decision. We supported this line.

Following this, the Austrian Presidency prepared procedural Council Conclusions on the seven specific thematic Communications plus the global one. These Conclusions simply took note of the respective Communications and invited the Commission and Member States to integrate these as appropriate into the new external action instruments, including the DCECI. The Conclusions were adopted by the Environment Council on 9 March. A copy of the Conclusions is attached.

The Presidency then brought forward proposals on how to include these regulations into the DCECI. They were briefly discussed in Council working groups. It is our understanding that discussions on the Communications as part of the DCECI will replace any discussions and adoption of the specific thematic Communications in Council. We plan to raise concerns spelled out in our respective EMs in the context of these discussions.

The EP Development Committee adopted their report on the DCECI on March 21. They rejected the approach adopted by the Council for the thematic regulations. We anticipate that high-level political negotiations will be needed to move this dossier further.

We will write again once there is more progress. It is our wish to keep you as informed as possible, but I hope you share my view that this is a complex process where the outcome is sometimes difficult to anticipate.

24 April 2006

FINANCIAL REGULATION (9628/06)

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

Thank you for your Explanatory Memorandum dated 18 June 2006 which Sub-Committee A considered at their meeting on 18 July. The Committee have decided to hold this document under scrutiny as part of their inquiry into EU financial management.

18 July 2006

FISCAL FRAUD (10054/06)

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

Thank you for your Explanatory Memorandum dated 20 June 2006 which sub-Committee A considered at its meeting on 18 July 2006.

The Committee have decided to hold this document under scrutiny and intend to conduct an inquiry into this area. The Committee plan to hold oral evidence sessions as part of this inquiry and hope that you are able to attend at your earliest convenience.

18 July 2006

IMPORTS FROM THIRD COUNTRIES: INDICATION OF COUNTRY OF ORIGIN (5091/06)

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

Thank you very much for Explanatory Memorandum 5091/06 which Sub-Committee A considered at their meeting on 7 March.

The Sub-Committee have noted the concerns raised during the consultations on this Proposal and the reservations you express. We hope, therefore that you will continue to oppose the Proposal and have decided to hold it under scrutiny. We would be grateful for more information when the 133 Committee next considers it.

8 March 2006
INDIRECT TAX (16112/05)

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

Thank you for your letter of 31 January updating the Committee on progress made on indirect taxation dossiers during the UK Presidency. Sub-Committee A considered this at their meeting on 14 March together with your Supplementary Explanatory Memorandum 16112/05 dated 10 January.

15 March 2006

Letter from the Rt Hon Dawn Primarolo MP to the Chairman

On 31 January 2006, I provided you with updates on progress made on indirect tax dossiers during the UK Presidency. This included a brief update on the 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). Your reply of 15 March let me know that the scrutiny reserve had been lifted, but also asked that you be kept up to date on the progress of this dossier.

You will recall that the package as a whole consists of Proposals for two Council Directives and a Council Regulation (which covers the administrative arrangements for the two Directives).

The Austrian Presidency has now held five Working Group meetings on the package (with two of those meetings covering two days). The two most recent meetings have focused solely on the proposed Council Directive to reform the cross-border refund procedure. Technical work on that Proposal is more advanced than is the case with the Proposal for Council Directive to simplify value added tax obligations.

The Presidency has now schedule the package as a whole for discussion at ECOFIN on 5 May. The Presidency will suggest splitting the package up to make it more manageable and to enable reform of the cross-border refund procedure to go ahead to a slightly quicker timescale, if at all possible. The Austrian Presidency hopes that the legislative technical discussions on that part of the package could be concluded either during its term, or during the Finnish Presidency. In principle, that would then enable the legislative text for that Proposal to be agreed separately and earlier than the Proposal for a Council Directive to simplify value added tax obligations. Work on the Proposal for a Council Directive to simplify value added tax obligations would continue in parallel, but that work is likely to take longer to conclude.

The Government would not object to such an approach if raised at ECOFIN. It would enable work on both Proposals to continue in parallel, but would also allow for the possibility of completing the work and reaching agreement on the refund procedure in quicker time. Indeed, UK businesses have been pressing for genuine improvements to the current system, which the proposed electronic system would offer. I will keep you informed of progress on these issues.

I hope you find this information helpful.

Undated: May 2006

INTER-INSTITUTIONAL AGREEMENT ON BUDGETARY DISCIPLINE AND IMPROVEMENT OF THE BUDGETARY PROCEDURE (5973/06, 6426/06)

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

Thank you for Explanatory Memorandum 5973/06 which Sub-Committee A considered at their meeting on 14 March and decided to hold under scrutiny.

The Committee share your concern over the proposal to increase the funding available for the Flexibility Instrument from €200 million to €700 million. We do not consider that the Commission’s document makes the case for this change and would like to be kept updated on negotiations. The Committee note that your EM does not indicate the Government’s position on the new Globalisation Adjustment Fund. Whilst we understand that this results from the December Council agreement, we would appreciate details of your analysis of it.

15 March 2006

14 Correspondence with Minister, 45th Report of Session 2005—06, HL Paper 243, p 83
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 15 March, in which you ask for details of the Government’s analysis of the Globalisation Adjustment Fund.

The December European Council agreed to establish a Globalisation Adjustment Fund of up to €500 million a year, financed through underspends in the budget. The purpose of the Fund is to provide support for workers made redundant as a result of major structural changes in world trade patterns. This will not be a fund that protects companies that need to restructure; it will be a fund that helps people to retrain, reskill and find new jobs. This Government believes that the Fund could play a useful role in helping the EU respond to the challenges of globalisation.

On 1 March, the European Commission published a formal proposal (COM (2006) 91 final) for a Regulation of the European Parliament and the European Council establishing the Fund. This Government will deposit an Explanatory Memorandum setting out its position on the proposal in Parliament on 29 March.

At present, I have nothing further to report with regard to the renewal of the Interinstitutional Agreement on budgetary discipline and improvement of the budget procedure. However, I shall keep you updated on the negotiations as requested.

28 March 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you very much for your Explanatory Memorandum 6426/06 which Sub-Committee A considered at their meeting on 28 March. The Sub-Committee have decided to hold the document under scrutiny and would like to be kept updated on future negotiations.

30 March 2006

INTERNAL AUDITS: ANNUAL REPORT TO DISCHARGE AUTHORITY (10480/06)

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

Thank you very much for your Explanatory Memorandum 10480/06 on the Commission’s report on the activities undertaken by its Internal Audit Service in 2005. This was considered by Sub-Committee A at its meeting on 25 July. The Committee welcome the publication of these reports from the Commission, however we have decided to hold the document under scrutiny as part of our wider inquiry into European financial management.

The Committee noted your broad approval for the Commission’s activities in taking on board the comments made by the Internal Audit Service. However, we would appreciate a fuller exposition of your view on each of the recommendations made by the Internal Audit Service, together with details of whether you consider the Commission’s response to each recommendation is both appropriate and sufficient to remedy the problems identified.

25 July 2006

Letter from Ed Balls MP to the Chairman

Thank you for your letter of 25 July 2006.

I am responding to the European Select Committee’s comments at its meeting on 25 July 2006.

In general, as we are not aware of the precise evidence that forms the basis for the IAS’ conclusions, we can only comment on how they appear to us based on our own knowledge of the Commission’s work.

On conclusion 1, we welcome the proposal to move from formal compliance to a more efficient approach. We consider the Commission’s response to be appropriate. We are aware of the work the Commission has undertaken already to assess the gaps 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” in the “single audit” opinion no. 2/2004.

On conclusion 2, we support the proposal, and the Commission’s response, to ensure that assurances accompanying annual reports are underpinned by appropriate internal control systems. We also welcome the Commission’s commitment to an integrated internal control framework.
We are not able to comment on conclusions, 3 and 4 which concern internal processes within the Commission on which we have no direct knowledge.

4 September 2006

INTERNATIONAL TIMBER TRADE AGREEMENT (ITTA)

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

Hilary Benn wrote to you in May 2004 to inform you of the Council Decision to open negotiations on the International Timber Trade Agreement, (ITTA). This is the treaty that governs the International Tropical Timber Organisation, (ITTO). ITTO was created in 1983 and aims to conserve tropical forests. ITTA is renegotiated periodically to take into account changes in global forest policies and the world timber trade.

Hilary’s letter outlined the areas of the Agreement identified for review and possible amendment. I am writing to you now, to update you on the negotiations which reached a conclusion in January 2006. The main changes to the Agreement concern its scope and funding.

The scope of the Agreement remains clearly focused on the tropical timber trade while noting the value of environmental services, the potential for poverty alleviation and the importance of sound governance, law enforcement and control of trade in illegally harvested timber. The contribution of members remains, as for other commodity agreements, a 50/50 split between Consumer and Producer members.

A supplementary contribution to provide guaranteed funding for policy work will be split 80 per cent for Consumers and 20 per cent for Producers and will not exceed 30 per cent of the overall total contribution:

A “Thematic Programmes Account” was agreed that will provide opportunity for interested donors to make funding available in ways consistent with current aid practices. It is likely to focus on issues such as governance, poverty and livelihoods.

The votes allocated to each member remain the same. It consists of two parts: an Initial Vote allocation of 10 and an additional element based on the volume of trade. It was agreed that exclusive competence by the European Commission could be accommodated if agreed by Member States.

The ITTA 2006 is expected to come into force in 2008 and will operate for 10 years, with the possibility of extensions of up to eight years. ITTO will continue to function under the 1994 ITTA until the new Agreement is ratified.

Overall, UK interests have been met in the new Agreement. The primary focus remains the international tropical timber trade but with recognition of important issues such as governance, poverty and livelihoods.

The contribution for UK in 2006 is US$ 105,480 (£60,548)*. The figure under the new Agreement is estimated at US$ 130,741 (£75,100).

The estimated increase in contribution for the UK of US $25,000 (£14,360) compares with increases of US $208,000 (£119,479) for Japan and US $211,000 (£121,202) for China, reflecting the importance of the tropical timber trade to these countries.

Although the new Agreement provides for exclusive competence by the European Commission, the views on partners’ level of competence are not yet clear. Some parts of the Commission and some Member States want exclusive competence while other parts of the Commission and the larger Member States want the mixed competency that currently prevails in practice.

Exclusive competence would make administration related to the Agreement easier for the Commission. The new Member States, most of whom have little interest in tropical timber or forestry development, all appear to prefer exclusive competence as this would mean that the costs of membership would not be borne out of national budgets. The larger Member States, and Finland, France, Germany, Netherlands, and Spain in particular, are implacably opposed to exclusive competence. They see the new Agreement as a positive instrument for future forestry development in which they want to have a say. This is an argument the UK should support. These Member States are also reluctant, in general to cede exclusive competence to the Commission. DG Environment recognises that this commodity agreement is also concerned with environment and development matters and appears to be in favour of mixed competence.

The next step is for the Commission to present a decision for signature and ratification by the European Community, together with a proposal for a Declaration stating the nature and extent of Community competence in matters governed by the ITTA. This will then be considered by the European Council. A timetable should be announced by the Commission’s Legal Service at a forthcoming meeting of the Council.
Working Party (Proba). It is possible that discussion of competency could be protracted and I will write to the Committee again once the Commission’s Declaration has been made and the Council’s initial response is known.

*FT exchange rate US$ 1 = £0.574 (8 February 2006)

15 February 2006

PASSENGER CAR RELATED TAXES (11067/05)

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

On EM 11067/05, the Sub-Committee have decided to continue to hold the Proposal under scrutiny and await correspondence from you when any further negotiations are held.

15 March 2006

REPEAL OF COUNCIL REGULATION (EC) NO 171/2005 (15892/04)

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

I am writing to inform you that the UK Government intends to agree to the adoption of a European Commission proposal to repeal Council Regulation (EC) No 171/2005. The Council of Ministers may be asked to adopt this proposal as early as Friday 19 May 2006, which would prevent Parliamentary scrutiny in the usual way.


However, the Regulation contains provision for the automatic reimposition of retaliatory measures by means of an increase in duty of 14 per cent on imports into the Community of an identified list of products of US-origin, to start 60 days following the adoption of any WTO ruling that the US continues to be in breach of its WTO commitments. The WTO ruled on 13 February 2006 that the US is still in breach of its commitments, and retaliation is therefore set to be reintroduced on Tuesday 16 May.

In a welcome turn of events, the US Congress has taken further steps to repeal the most contentious residual benefits of the FSC regime, meeting EU concerns. As a consequence, the Commission has put forward as a matter of urgency a proposal to withdraw the implementation of the tariff duty increases against the US which were due to come into effect on 16 May. No draft text has yet been submitted by the Commission.

I trust you will understand why I am not keeping to the Parliamentary Scrutiny procedures in this instance and would like to give you my assurance that this action is not taken lightly. My Department will send to you the appropriate Explanatory Memorandum for your approval as soon as the Commission issues its written proposal.

17 May 2006

SHAREHOLDERS VOTING RIGHTS (5217/06)

Letter from the Chairman to Gerry Sutcliffe MP, Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs, Department of Trade and Industry

Thank you very much for your Explanatory Memorandum 5217/06 on voting rights for shareholders which Sub-Committee A considered at its meeting on 7 March. Whilst the Committee welcomes the general thrust of the Proposal to improve corporate governance in the Union, and notes the prominent role the UK should play in arguing for such measures, we have decided to hold the document under scrutiny pending clarification of a number of issues. We consider that such a proposal must focus only on what is necessary to create a working single market and not go further.

We note the specific concerns you raise about the potential for the Proposal to obstruct overall rights enjoyed by shareholders. On the notice periods for meetings (Article 5 of the Proposal) we share your concerns and are pleased that you will be seeking to amend the Article. We consider that a mandatory 30 day notice period
would be unworkable in many situations. Would you please provide details of the amendments you will be suggesting and whether these amendments are agreed.

On the right of shareholders to ask questions, you write that you are seeking clarification of whether companies will be required to respond to all questions in writing. Please provide details of this clarification and, if there is to be a requirement for a written response, please indicate the likely costs to business and whether you will be opposing it.

On the ability to impose more stringent national requirements you write that it is unclear what this would mean in all cases. Although you have helpfully provided some examples, we would appreciate a fuller analysis of the requirements you consider may be implemented by other Member States and any effects this would have on shareholders and business.

Finally, we note your comments on the use of Article 95 as the legal basis for the Proposal. Please provide us with the results of your correspondence with the Commission on this, together with your analysis of the potential implications should Article 95 remain the legal basis.

9 March 2006

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 9 March in response to the Explanatory Memorandum. We concur with your assessment that this proposal must focus only on what is necessary to create a working single market and not go further. This is the position we have been taking in the negotiations: it reflects the original guiding political criteria established in the EU Company Law and Corporate Governance Action Plan, that measure should be “firm in the principle, flexible in the application”.

Negotiations on this dossier are continuing in the Council and I should like to update you on progress and answer—in so far as is possible at this stage—the questions posed in your letter.

Notice Periods for Meetings (30 Days)

I am pleased to report that the Commission has indicated that it is prepared to be flexible on this point, and that shorter notice periods should be permitted for Extraordinary General Meetings (EGMs). We would prefer that the Commission were to permit Member States and companies to decide in which circumstances EGMs should take place on shorter notice, and have suggested that following drafting for Article 5 of the Directive:

Article 5

General meeting notice periods
1. Without prejudice to Article 9(4) of Directive 2004/25/EC of the European Parliament and of the Council, and subject to paragraph 2, general meetings may not be called on less than [XX] calendar days notice.
2. A general meeting may be called on at least [14] calendar days notice if:
   (a) the laws of the issuer’s home Member State and its statutes so permit; and
   (b) the meeting is not an annual general meeting.

It is more likely, however, that the Commission will seek to define more precisely the circumstances for EGMs (there is already a carve-out for 14 days in some takeover situations). We will need to study any Commission proposals in order to understand how workable they might be in practice.

Questions at meetings

Many Member States have expressed their concerns about the potential for lengthy and costly meetings and other burdens on business if there is an unrestricted right to ask questions. At the most recent Council Working Group, a wide range of opinions was expressed as to whether, and when, the questions asked in writing should have to be answered. We have recommended that Member States should be permitted to allow companies to place constraints on the asking and answering of questions:

   (a) which do not appear to have any reasonable connection with any resolution to be proposed at the general meeting at or in anticipation of which they are asked, or which appear otherwise to be unrelated to the business of that meeting;
(b) which appear to be frivolous or vexatious; or
(c) the asking of which would be likely to prejudice the legitimate interests of the company or other shareholders, or the efficient conduct of the business of the general meeting at or in anticipation of which they are asked.

We are currently studying the Commission’s Impact Assessment and will be consulting our stakeholders about the costs to business of an unrestricted right to ask—and have answered—oral and written questions in relation to company meetings.

More stringent national requirements (Article 3)

The issue, and the precise meaning of “minimum harmonisation” as defined in paragraph 2.1.3 of the Commission’s Explanatory Memorandum, was acknowledged by the Commission early in the negotiations as one which required more clarity throughout the directive. The Commission’s Explanatory Memorandum says that the implication of minimum harmonisation is that “Member States are left free to maintain or introduce provisions which are more favourable to shareholders.”

In order to test this, we asked the Commission, specifically in relation to the restriction in Article 10 (which states that shareholders may appoint one proxy only—as opposed to one proxy per share in the UK), whether this meant that Member States could allow shareholders to appoint more than one proxy. This would seem to us to be an extension of shareholders rights and “more favourable to shareholders”. The Commission were clear that Article 3 prevented this. This led to considerable discussion amongst Member States about the exact meaning of Article 3 in relation to the other articles in the directive.

The Commission have said that whilst Article 3 will remain in the directive, the Commission will make clear what Article 3 means in respect of each other article. When we have sight of what it proposes, we will be in a better position to make an informed assessment of what other Member States reactions might be, what requirements they might implement as a result, and what the effects of this would be on shareholders and business.

Legal Base

We are currently consulting the Commission on this issue. Our initial conclusion is that Article 95(1) would seem to be the correct treaty base.

In ECJ case C217/04 United Kingdom v Parliament and Council, the Advocate General delivered his opinion in favour of the United Kingdom, saying, at paragraph 18:

“18. Measures on the basis of Article 95(1) EC are intended to improve the conditions for the establishment and functioning of the internal market, but that provision does not confer on the Community legislature any general power to regulate the internal market. The Court has also stated that measures under Article 95(1) EC ‘must genuinely have that object, actually contributing to the elimination of obstacles to . . . free movement’.”

In the case of this directive, the conditions set out by the Advocate General seem to be satisfied. Nevertheless, we are also taking advice from Cabinet Office Legal Advisors on this point.

Update

Following three Council Working Groups, the Presidency has said that it will be shortly in a position to issue a compromise text, which will be discussed at a meeting on 18 and 19 May. We do not, however, expect Member States to reach an agreed position before the Summer, and expect that negotiations will continue in the Council well into the next (Finnish) Presidency.

I have attempted to answer your questions as fully as possible given the current stage of the negotiations. If there are any matters which you feel require clarification I am, of course, happy to provide further explanation.

19 April 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you very much for your letter dated 19 April regarding EM 5217/06 which Sub-Committee A considered at their meeting on 25 April. The Committee have decided to continue to hold the document under scrutiny.
The Committee remains in favour of the proposed Directive and welcomes the general thrust of the Proposal to improve corporate governance in the Union.

On notice periods for general meetings, the Committee were pleased to see that the Commission has indicated its willingness to be flexible. We consider that the agreed Directive should be sufficiently flexible to allow EGMs to be called at short notice as is currently the case in the UK. Please provide details of the Commission’s future proposals in this area.

On the right to ask and have answered all questions at company meetings we are glad to see that concerns over the possible burden to business are widely shared by Member States. We support the general thrust of your proposed amendment to this Article and would like to be kept updated on negotiations.

On the ability of Member States to impose more stringent requirements than the Proposal itself does, whilst we are sympathetic to this in principle, we are unable to judge effectively what this might mean in practice. We would therefore like to have details of the Commission’s promised clarification when this becomes available.

We assume the stakeholder consultation exercise to which you refer in your original Explanatory Memorandum elicited a positive response and would appreciate details of it as well as of the proposed public consultation.

Finally, on the question of the legal base, we note that you are consulting Cabinet Office legal advisors and we would be interested to learn the outcome of that exercise.

26 April 2006

Letter from Jim Fitzpatrick MP, Parliamentary Under-Secretary of State, Department of Trade and Industry to the Chairman

Thank you for your letter of 26 April to Gerry Sutcliffe, about the above. The matter you have raised now falls within Margaret Hodge’s portfolio and I am replying on her behalf as Duty Minister.

We should like to update you on the progress of negotiations on this directive. You last wrote to the DTI about this on 26 April. I am sorry for the delay, but we have been pursuing certain negotiating objectives and have awaited developments before reporting back to you. DTI officials have been in touch with the Clerks in the intervening period.

Notice Periods for Meetings

The Commission’s first compromise proposal in response to requests for differentiating between notice periods for AGMs and EGMs, was to propose a period of 21 days for both. Nevertheless, there remains a good deal of support for differentiation, and both the rapporteurs for the European Parliament Committees (ECON and JURI) which are considering the directive have proposed amendments in favour of differentiation and the UK has supported these. We hope that the Commission will take this into account in future proposals.

Questions at Meetings

In our previous letter, we included a proposed amendment the purpose of which was to allow companies to place certain constraints on the asking and answering of questions and so reduce administrative and cost burdens. We now consider that we have reached an appropriate compromise text which achieves this—as follows:

The right to ask questions and the obligation to answer are subject to the measures which the Member State may take, or allow companies to take, to ensure the identification of the shareholder, the orderly preparation of the general meeting and the protection of confidentiality and business interests of the company. The Member State may provide that the company shall not be obliged to respond individually to a question if the requested information has already been available in a question and answer format on the Internet site of the company.

More Stringent National Requirements

Here, again, we believe that we have reached an appropriate compromise text as follows:

This Directive does not prevent Member States from imposing further obligations on companies or from otherwise taking further measures to facilitate the exercise by shareholders of the rights referred to in this Directive.
The important difference with this wording is the omission of “more stringent national requirements” and the positive reference to “measures to facilitate the exercise by shareholders of the rights referred to”. The inclusion of a description of what “more stringent” means for each article has been rejected as impractical by all parties.

**LEGAL BASE**

We are pleased to report that the Commission has accepted that Article 44 EC is a relevant treaty base, given that it has been used to adopt other company law measures. The Commission has recommended that Article 44 EC is used jointly as a treaty base, along with Article 95 EC. We are inclined to accept this compromise.

**PUBLIC CONSULTATION**

The clearance process is now underway and we intend to issue the consultation document in mid-October. In addition, we will be holding a public meeting.

**PROGRESS OF NEGOTIATIONS**

We are still waiting to hear from the Presidency whether there will be further negotiations in the Council. Political agreement is still scheduled for the Competitiveness Council in December, but discussions in the European Parliament Committees have now been postponed twice, so there is some doubt over whether this timetable can be achieved.

*21 September 2006*

**SIXTH VAT DIRECTIVE (13394/04)**

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

During the course of Parliamentary scrutiny of this Proposal, you requested that I let you know once agreement had been reached in Brussels and to provide you with a copy of the final text.

This Proposal was adopted by the Council on 17 October 2005. A copy of the agreed text is enclosed (not printed).

*10 January 2006*

**SUPPLY OF SERVICES (11439/05)**

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

Please find attached a supplementary Explanatory Memorandum (not printed) covering a Presidency Compromise text on Commission proposal as regards the place of supply of services. This supplementary Explanatory Memorandum updates the Explanatory Memorandum submitted on 30 September 2005 (Council document 11439/05; Com (2005)334 final).

*10 January 2006*

**Letter from the Chairman to Rt Hon Dawn Primarolo MP**

On SEM 11439/05, the Sub-Committee are pleased to note the changes that have been made and have decided to lift the scrutiny reserve.

*15 March 2006*

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

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

Thank you for your Explanatory Memoranda EM 9500/06 and EM 9609/06 dated 6 and 8 June 2006 which Sub-Committee A (Economic and Financial Affairs and International Trade) considered at their meeting on 18 July 2006. The Committee decided to clear this document from scrutiny.
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A) 47

On the legal base, we are puzzled by your view that tax legislation should be handled using a legal base which requires unanimity in the Council. We would appreciate more details of your analysis of the use of Article 95 together with your reasons for requiring unanimity voting on programmes designed to further administrative co-operation.

18 July 2006

TRADE AGREEMENTS IN SERVICES OTHER THAN TRANSPORT (11641/05)

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

Thank you for your letter dated 8 November 2005 on EM 11641/05. I apologise for the delay in responding to that letter. It appears that our Response Unit did not receive it in November. We noted its existence on the Progress of Scrutiny and have obtained an unsigned copy from your Clerk. It is to this version that we are now responding.

May I assure you that your Committee’s ability to scrutinise this proposal has not in any way been prejudiced, as there has not been any substantive discussion on the proposal within the Article 133 (Services) Committee. In your letter, you raised a number of detailed questions that I will endeavour to respond to as best that I can at this stage. Please be assured that as these issues are clarified further during the course of the negotiations my officials and I will keep you informed of developments.

The Scope of the Proposal and the Meaning of the Term “Agreements on Trade in Services”

There has, as yet, been no discussion as to the precise scope of the proposal. The United Kingdom and other Member States consider that a clear determination of the scope of the proposal is fundamental and will press for clarity in the negotiations.

I can, however, at this stage, tell you that the Commission asserts that the scope of the draft Regulation is set by reference to Article 133(5) of the EC Treaty that refers to ‘agreements in the field of trade in services’. Furthermore, the Commission, whilst noting that the Regulation cannot prejudge which agreements are “in the field of” trade in services, has commented that:

There is a definition of “trade in services” in The World Trade Organisation’s (WTO) General Agreement on Trade in Services (GATS) at Article 1.2.

This provision, which is the only multilateral agreement that defines trade in services, distinguishes trade in services by reference to four distinct modes of supply. It defines trade in services as the supply of a service:

- From the territory of one [WTO] Member into the territory of any other Member (cross-border supply of a service);
- In the territory of one Member to the service consumer of any other Member (consumption abroad);
- By a service supplier of one Member, through commercial presence in the territory of any other Member (commercial presence); and
- By a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member (presence of a natural person).

The term “international agreement” should be interpreted, in the view of the Commission, as being equivalent to “treaty” within the meaning of the Vienna Convention on the Law of Treaties (VCLT). Article 2(1)(a) of the VCLT defines the term “treaty” as meaning: “—

—an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

This would mean that an agreement between a professional body (such as the Law Society) in a Member State and an equivalent body in a third country should not fall within the ambit of the Regulation.

To the extent that their scope of application includes services sectors, the Regulation would capture, bilateral investment agreements (which could cover agreements relating to foreign direct investment) and mutual recognition agreements in the field of trade in services. Similarly, preferential immigration agreements might be caught if they include provisions on the supply of services through the presence of natural persons as defined in GATS Article 1.2 as further qualified by the GATS Annex on the movement of natural persons. In addition,
co-operation agreements with an impact on the supply of services between the parties (for example a co-production agreement) would, in the view of the Commission, fall within the scope of the proposal.

The Commission has not indicated that it considers the proposed Regulation to include agreements relating to intellectual property. Our initial view is that this should not be the case insofar as it relates to intellectual property rights. Nevertheless, the proposed Regulation would catch an agreement between a Member State and a third country addressing market access rights for patents agents as this would relate to trade in services. Furthermore, we will wish to consider whether we would be prepared to accept that the proposal is capable of capturing bilateral investment treaties or the other types of agreement referred to above. For completeness, I should point out that the proposal does not only capture existing or proposed agreements but will apply also to proposals for amendment of such agreements.

**LEGAL BASE**

I note your comment that the proposed legal base requires careful examination. Although the Commission continues to assert that the proposal falls solely within the scope of Article 133 EC Treaty we remain to be persuaded that this is correct.

**Subsidiarity**

I note with interest your comments on the application of the principle of subsidiarity to the provisions of Article 133 EC Treaty relating to trade in services. Having carefully considered the points you make in your letter my officials advise me that they agree with your view that subsidiarity is only removed where the Community has exclusive competence and that Article 133 EC Treaty now extends to matters which are not within the exclusive competence of the Community.

In support of your view we note that Article 5 EC Treaty expressly provides:

"... In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community."

Protocol No.30. on Subsidiarity and Proportionality (annexed by the Treaty of Amsterdam to the EC Treaty) states that the criteria referred to in the second paragraph of Article 5 shall relate to areas for which the Community does not have exclusive competence.

In respect of the draft Regulation it is noteworthy that Recital (9) provides:

"Since the objectives of this Regulation...cannot be sufficiently achieved by the Member States and can, therefore, by reason of the Community-wide scope of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty."

This provides an indication that the Commission shares the view that Article 133 EC Treaty now extends to matters that are not within the exclusive competence of the Treaty. If this were not the case, there would be no need to justify action under this proposal with reference to subsidiarity. Accordingly, we agree with your assessment that the principle of subsidiarity is engaged by the proposed Regulation.

You ask whether the UK considers whether this proposal complies with the principle of subsidiarity. Our view is that a transparency and information gathering proposal is capable of satisfying the principle of subsidiarity. This is particularly so in the area of the Common Commercial Policy where there is a presumption of exclusive Community competence save in respect of the residual matters reserved for Member States expressly referred to in the text of Article 133 EC Treaty. We accept that it is desirable that there are mechanisms in place to ensure coherence between the Community and Member State actions in the trade field and to avoid potential conflicts arising between the provisions of Community and Member State level agreements with third countries. That said, however, we do not accept that the proposal as drafted, and in particular the standstill provisions in Article 3 thereof, comply with the principle of subsidiarity. In our view, these provisions exceed what is necessary to ensure the pursuit of a coherent policy on trade in services within the EU and are capable of fettering Member States’ ability to pursue their policy objectives in areas where no potential conflict with EC law is likely to arise (particularly where the Community has yet to act). Accordingly, we consider this proposal to be disproportionate in its scope.
Breach of Notification Obligation

You ask what would be the consequence of entering into an agreement in breach of the notification obligation in the proposed Regulation and what would be the status of the agreement (a) in international law, and (b) in Community law. We will wish to explore this issue with the Commission and other Member States during the course of the negotiations. However our preliminary views on this issue is that, as regards, international law, breach of the notification obligation by a Member State would not prejudice the rights of the other party to rely upon the agreement against that Member State. From a Community law perspective, if a Member State were to proceed to conclude an agreement that it had failed to notify it would be acting in breach of its Community law obligations and liable to infraction proceedings.

11 April 2006

Letter from the Chairman to Ian Pearson MP

Thank you very much for your letter of 11 April regarding Explanatory Memorandum 11641/05 on agreements on trade in services. This was considered by Sub-Committee A at their meeting on 13 June. The Committee very much appreciated the full nature of your answers and have decided to continue to hold the document under scrutiny.

On the scope of the Proposal, the Committee noted the Commission’s assertions detailed on the second page of your letter. Would you please keep the Committee updated on whether and how these assertions are incorporated into the Draft Regulation.

On the legal base, the Committee noted that you remain to be persuaded by the Commission’s view that the Proposal falls solely within the scope of Article 133 EC Treaty. We would appreciate a fuller exposition of your thinking in this area, together with details of the submissions you will be make to the Commission.

On the subsidiarity issue, the Committee noted that you conclude that the “provisions exceed what is necessary to ensure the pursuit of a coherent policy on trade in services within the EU” and that the “proposal [is] disproportionate in its scope”. As a result of this we would appreciate details of how you will proceed in the negotiations.

On the consequences of breach of the notification obligation, the Committee appreciated your provisional views and would like to be kept updated on any developments.

14 June 2006

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

Thank you for your letter dated 14 June in relation to the above matter.

Before addressing your specific query on the proposed legal base of the draft Council Regulation, I would like to update you on where matters currently stand on this proposal.

The proposal was last considered at the Article 133 (Services) Committee held on 10 May 2006. At that meeting the overwhelming majority of Member States, including the UK, commented that the Commission had failed to demonstrate that there were shortcomings in existing procedures that needed to be addressed. Accordingly, Member States remain to be persuaded that there is a need for this proposal. The Austrian Presidency concluded the discussion at 10 May meeting by noting that, in light of the views expressed by Member States and the heavy workload currently before the 133 (Services) Committee, it did not propose to take this matter further during its term in office. It would hand the brief over to the Finnish Presidency to take forward. We anticipate that the Finnish Presidency, faced with the considerable task of progressing the GATS services negotiations as well as several on-going EU bilateral negotiations, will not accord priority to this matter. Hence, for the moment further negotiations on this proposal remain in abeyance.

The UK remains opposed to this proposal in its present form. In addition to our concerns about the proposed legal base, we consider that the Commission has failed to clarify the scope of the Regulation with sufficient precision and clarity. Furthermore, we consider that the Commission has proposed a burdensome and restrictive mechanism that it has failed to justify is needed to address real shortcomings in existing procedures.

You have asked for further information on why the Government considers that this proposal does not fall solely within the scope of Article 133 EC Treaty. The Court of Justice in Opinion 1/94 (15 November 1994, ECR 1994, p. 1-5267) held that whilst Article 133 EC Treaty could cover the cross-border supply of services (so called GATES Mode I services), it did not cover the other three modes of supply of services covered by the WTO Agreement on Trade in Services (GCATS). Although the Nice Treaty amended the text of Article
133 by adding in specific provisions on trade in services, the Government notes that these provisions are expressly limited to the negotiation and conclusion of agreements in the field of trade in services. Therefore, in the Government’s view the text of Article 133 EC Treaty, does not provide the Community with competence to bring forward proposals for autonomous/internal measures related to trades in services that cover all modes of supply such as the present proposal. Accordingly, in the view of the UK government, the use of Article 133 is an insufficient legal base for this proposal.

We note that the Council has already adopted a Decision (74/393/EEC) [OJ L208, 30.7.1974] establishing a consultation procedure for co-operation agreements between Member States and third countries on the basis of Articles 133 (ex Article 113) and 308 (ex Article 235) of the EC Treaty. That Decision established a consultation procedure under which Member States inform the Commission and the other Member States of agreements relating to the economic and industrial co-operation measures they are planning to negotiate or renew with third countries. The Decision has also set up a consultation procedure within a committee comprising representatives from each Member State and from the Commission. The procedure is similar to the one set out in the current Commission proposal. We understand that, at the time of its adoption, Article 133 EC Treaty was not considered to be a sufficient legal base for the above Decision and that Article 308 EC Treaty was added to cover aspects falling outside the scope of Article 133 EC Treaty. Subject to our overall reservations about the desirability and need for the current proposal the Government considers that a similar combination of Article 133 and Article 308 EC Treaty would be a more appropriate legal base for the current proposal than Article 133 alone.

30 June 2006

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you very much for your letter dated 30 June regarding Explanatory Memorandum 11641/05 on agreements on trade in services. This was considered by Sub-Committee A at their meeting on 25 July. In the light of this consideration the Committee have decided to maintain the scrutiny reserve pending more information.

The Committee were thankful for your detailed analysis of the proposed use of Article 133 as the sole legal base. We agree with your conclusion that a combination of Article 133 and Article 308 would be appropriate.

The Committee also noted that the Government, together with other Member States, registered an objection to the Proposal on the basis that the Commission has failed to demonstrate that it is necessary to update the existing regulations. Given the concerns we have raised with you over the scope of the Proposal we are pleased to hear of these objections and assume that you will continue with this line.

As noted in my previous letter to Ian Pearson of 14 June, we await further information on how the scope of the Proposal is defined during negotiations; together with details of negotiations on the breach of notification provisions.

25 July 2006

UK ABATEMENT

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

Following my Evidence Session before the Committee on 13 July, I promised to respond in writing on the following question.

Recent press reports have indicated that the Chancellor is raising questions over whether the UK should be required to contribute to the reductions in GNI and VAT resources to the Budget agreed by the December council meeting under the UK Presidency.

(i) What is the definitive Government position on whether the UK should be required to help finance these reductions in the contributions granted to other Member States?

(ii) Can you give us figures which will enable us to compare the expected contributions from the UK, France and Italy to the EU over the period of the next Financial Perspective?

(i) Discussions on the Own Resources Directive are on track. We are looking at the draft text carefully to make sure it properly reflects the December deal. We are confident that an agreement will be reached in good time to come into force in January 2009.
The December deal specifically states that “the UK abatement shall remain”. The only areas where the abatement is “disapplied” is in expenditure on economic development in the new Member States. The UK has always been a strong supporter of enlargement and accepts the additional financial burden that this places on the more wealthy Member States.

(ii) UK contributions will be published in the budget in the usual way. The Government does not generally publish forecasts of other Member States’ contributions, which are a matter for the Member States in question. But we (and the Commission) expect that, expressed as a proportion of Gross National Income, the total net contributions over the period 2007–13 of the UK, France and Italy will be closely similar. In contrast, on the same basis over the period 1984–2004, the UK has paid on average nearly two and a half times as much as France and three and a half times as much as Italy.

20 July 2006

UK PRESIDENCY: THE TREASURY’S UPDATE

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

I would like to take this opportunity to follow up my letter to you of 19 July 2005\(^{16}\) by providing an overview of progress against the Treasury’s priorities during the UK’s Presidency of the EU. The Paymaster General has written separately on tax and customs policy, so I will not cover those here.

On Budgetary issues, the UK Presidency managed to reach agreement on both the 2006 annual EC Budget and the 2007–13 Financial Perspective, both of which represent a good outcome for the UK. I wrote to you recently with full details of the 2006 EC Budget deal, and separately concerning Council’s agreement on the Future Financing negotiations. You are also aware of the very positive work done under the UK Presidency on the Commission’s proposals for a “roadmap towards an integrated internal control framework” for the EC budget (my letter of 5 December refers), and I know that sub-committee A will be looking more closely at those issues in its forthcoming inquiry.

On our broader Presidency priorities, you will recall that our work programme for the ECOFIN Council identified five key themes. We were able to make good progress in each of these priority areas over the course of the UK Presidency, as follows.

ECONOMIC REFORM

At the Manchester ECOFIN Informal meeting in September, Finance Ministers and Business leaders reached consensus on the reforms needed to deliver stronger economic growth and social justice in Europe in the face of rapid global economic change. Subsequently, in October the Chancellor published his report “Global Europe: Full Employment Europe” setting out proposals for major reforms to enable Europe to grow faster and tackle unemployment, and Member States also published the first Lisbon National Reform Programmes (NRPs) as part of the re-launched Lisbon Strategy.

In December, ECOFIN reviewed the Lisbon NRPs and concluded that implementation of national reforms is key for Europe’s long-term economic success, and the Council would continue to monitor and evaluate rigorously Member States’ progress on reform. In parallel, the Council also welcomed a report on globalisation and agreed, for the first time, Conclusions setting out the reforms necessary for Europe to respond successfully to the opportunities and challenges of globalisation. ECOFIN confirmed that globalisation represents opportunities for Europe provided we put in place the policies needed to realise these, and that labour market reform is key, but policies need to reflect the different social models in Member States.

BETTER REGULATION

Regulatory reform was at the heart of our Presidency programme, and we made good progress on several fronts, including a. commitment to test to the competitiveness impact of all new EU regulations in impact assessments, and a commitment for administrative burdens to be measured in all EU proposals. We are working closely with our successors the Austrian and Finnish Presidencies to agree a forward work programme on better regulation, with a focus on risk-based regulation and business consultation.

\(^{16}\) Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, pp 81–82.
Financial Services

The UK Presidency set the shape of financial services policy in the European Union for the medium term, with ECOFIN endorsing the approach set out in the Commission’s Green Paper on financial services policy 2005–10. My Explanatory Memorandum on the subsequent Commission White Paper (15345/05) has been recommended for debate in Standing Committee B, and I hope the Committee will agree that the approach it outlines—which includes a strong focus on implementing and enforcing existing measures, ensuring the better regulation agenda is rigorously applied and recognising the importance of European financial services remain globally competitive—is very much in line with the UK’s priorities in this area and is therefore to be welcomed. The Chairs of the Lamfalussy Committees also reported to ECOFIN in October on how they plan to cooperate more effectively to reduce burdens on business.

As highlighted in my letter of 19 July, we continued to press during the UK Presidency for the full and rapid implementation of the EU’s Counter-Terrorism Action Plan. In this context finance ministers agreed to work together proactively in support of further action in Europe to freeze terrorist assets.

We achieved a first-reading deal with the European Parliament on the Capital Requirements Directive, which introduces modern risk-based capital rules for EU banks and investment firms. We also completed work on the Third Money Laundering Directive and reached a Council common position on the Funds Transfers Regulation, both of which apply a risk-based approach to combating terrorist financing and financial crime.

Financing for Development

As part of our commitment to a more outward-looking Europe, Finance Ministers agreed an EU package on financing for development ahead of the UN Millennium Development Summit in September, including a doubling of annual aid from 2004 to 2010. On 9 September, with the participation of the UK, France, Italy, Spain and Sweden, we launched the pilot International Finance Facility for Immunisation, which could save 5 million children’s lives by 2015.

Finance Ministers also emphasised the need for an ambitious outcome to the present round of WTO trade talks. While it was disappointing that greater progress could not be made in Hong Kong in December the UK will continue to work for an ambitious and pro-development outcome to the Doha round in 2006.

Working with Global Partners

The UK Presidency worked to develop real engagement with Europe’s international partners on a number of fronts. The inaugural EU-US economic ministerial in November agreed an action plan on all areas of transatlantic economic cooperation, including agreement to hold the first regulatory cooperation forum, and we brokered in December a joint EU-US statement agreeing future priorities for the Financial Markets Regulatory Dialogue. We are pleased that this work will now be taken forward under successive Presidencies, with “EU-US dialogue” provisionally tabled for another ECOFIN discussion under the Austrian Presidency in June.

The Commission has also identified an EU-India financial services dialogue as a priority for 2005–10. And, the UK Presidency worked through the EU to build support for economic regeneration in the West Bank and Gaza Strip, in support of the Middle East Peace Process.

I hope the above gives you an overview of the key achievements of what was a very successful UK Presidency. We are now working closely with the Austrians and Finns to ensure that progress on UK priorities continues into 2006, and look forward to continued engagement with your committee as we do so.

6 March 2006

VAT AND EXCISE DUTY EXEMPTIONS ON GOODS IMPORTED BY PERSONS TRAVELLING FROM THIRD COUNTRIES (6746/06)

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

Thank you very much for your Explanatory Memorandum 6746/06 dated 14 March 2006. Sub-Committee A considered this at their meeting on 25 April and decided to clear it from scrutiny. However, the Committee would like some more information.
The Committee noted that the Proposal seeks to make provision for a higher limit for travellers arriving in the EU by air. Could you please explain the thinking behind this. The Committee would also be glad to know the effect your analysis indicates this will have on other sectors of the transport market (for example, rail, sea and road) given the incentive this will provide to choose air travel.

26 April 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter of 26 April regarding the Explanatory Memorandum for the above proposal. The Committee asked for further information on the provision in the proposal for a higher limit for travellers arriving in the EU by air.

I understand that the Commission has proposed a distinction between air travellers (€500) and land/sea travellers (€220) to prevent potential problems Member States with third country land borders might have in increasing the existing limit. They have expressed concerns that a significantly higher limit would enable their residents to easily import large quantities of non-EU goods from countries where there are significantly lower price levels, potentially distorting the internal market. On the other hand, those Member States, such as the UK, where third country travellers are primarily air passengers could benefit from the higher threshold for air travellers.

In terms of the possible effect on other sectors of the transport market, I do not consider that there would be a significant effect on these sectors if the proposal were adopted as it presently stands. In the vast majority of cases, third country travellers would not choose their mode of transport based on the extent of the tax-free allowance they could receive. Rather, consumers will base their decision on the price and convenience of a certain mode of transport for the particular journey they intend to make. Indeed, the tax saving that would be made with the limits proposed would be unlikely to compensate for the likely higher cost of air travel in most cases.

I should, of course, reiterate as explained in the EM, that the Government considers that the travellers’ allowance should be raised to £1,000 and apply to all travellers.

5 June 2006

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

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

Please find attached an Explanatory Memorandum (not printed) concerning a recent Commission Proposal to extend Directive 2002/38/EC, which concerns the VAT treatment of e-services and certain broadcasting services.

This Proposal was only received on 19 May 2006 and I am told that the Austrian Presidency is seeking agreement at ECOFIN on 7 June. This is necessary because the provisions in Directive 2002/38/EC, which prevent non-EU businesses from being able to provide certain services VAT free to EU consumers, expire on 30 June 2006. It will not be necessary for any changes to be made to UK legislation in respect of this Proposal.

I am aware that your Committee does not meet before ECOFIN and, you should be aware therefore that the Government may be asked to agree this proposal before it has cleared scrutiny. Although regrettable I hope you will understand this is unavoidable in the circumstances.

5 June 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

I recently submitted an Explanatory Memorandum (EM 9405/06) concerning a Commission Proposal to extend Directive 2002/38/EC, which concerns the VAT treatment of radio and television broadcasting services and certain electronically supplied services.

The provisions of Directive 2002/38/EC mainly relate to the place of supply for such services, so that they are subject to VAT when supplied by businesses established outside the EU to private consumers within the EU, and they are not subject to VAT when exported by EU businesses. They also provide for a special VAT registration and declaration scheme for non-EU businesses.

As advised in my letter of 5 June, although the Commission Proposal was only received on 19 May 2006, the Austrian Presidency was likely to seek agreement to it at ECOFIN on 7 June. This was because the provisions of Directive 2002/38/EC would otherwise expire on 30 June 2006.
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

The Austrian Presidency did indeed seek agreement to this Proposal at the June ECOFIN, but with an amendment to the period of extension. The suggested period was limited to 6 months only, to 31 December 2006, rather than to 31 December 2008 as in the original Commission Proposal.

This was because the technical work on the Proposal on the place of supply of services (EM 5051/04 and 11439/05) is more or less concluded and the technical work on the Proposal on simplification of VAT obligations (EM 14248/04) is to continue under the forthcoming Finnish Presidency. All these issues are then likely to return to Council towards the end of this year.

The Government did therefore exceptionally agree in principle at June ECOFIN, to a limited extension of Directive 2002/38/EC for a period of six months only, while work on these other dossiers continues as a matter of urgency. Although this is regrettable, I hope you understand it was unavoidable in the circumstances.

In terms of process, I am told that the revised Proposal will probably now go to another Council for adoption before 30 June 2006 (possibly the Environmental Council on 27 June). As I indicated in my last letter, it will not be necessary for any changes to be made to UK legislation. This is because our domestic legislation, which originally implemented Directive 2002/38/EC, is not time limited and so no further legislation is necessary to give effect to the extension.

15 June 2006

VAT REDUCED RATES (9125/05)

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

Following my letter of 22 November 2005, I am writing to inform you of the outcome of the negotiations on the VAT Reduced Rates dossier.

At the meeting of ECOFIN on 24 January 2006, 22 Member States were able to agree to a compromise proposal presented by the Austrian Presidency, while Poland, the Czech Republic and Cyprus were given extra time to present their final position. The Presidency proposed a minimalist package which, if agreed, would extend until 2010 the labour-intensive services rates that had expired on 31 December 2005 and allow all Member States to apply to use these rates. In addition, the package envisaged a report, to be delivered by the end of June 2007, examining the impact of reduced rates on locally-delivered services, particularly focusing on job creation, economic growth and the internal market. Finally, a technical amendment would add a reduced rate for district heating, alongside the existing permitted reduced rates for gas and electricity.

On 28 January, the Czech Republic and Cyprus confirmed that they agreed to the compromise, and, on 1 February, Poland also confirmed its acceptance of the package.

As I have explained in my previous correspondence to you of 22 November and 28 September, this has been a dossier which has aroused strongly-held opinions on all sides of the debate. You will recall that while some Member States, such as the UK, argued for greater flexibility, others preferred a more harmonised approach. Member States were not, therefore, able to agree to any additional reduced rates. The reduced rate for district heating is, as I have mentioned above, a technical amendment that ensures that all Member States are able to apply a reduced rate for the main sources of domestic heat and power.

The Government’s priority in this review has always been to preserve our much-valued zero rates. I am pleased to say that we have achieved this objective.

15 February 2006

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you very much for your letter of 15 February regarding Explanatory Memorandum 9125/05 which Sub-Committee A considered at their meeting on 28 March.

The Sub-Committee are pleased to note that Finance Ministers agreed to give Member States the option to introduce a reduced rate of VAT on the labour component of repairs to older private dwellings and would be very pleased to know whether you intend to make use of these reduced rates.

30 March 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter of 30 March 2006, in which you ask whether the Government intends to take up the option of applying a reduced rate of VAT on repairs to private dwellings.

17 Correspondence with Ministers, 45th Report of Session 2005–06, HL paper 243, pp 69–70.
This particular reduced rate was introduced into EU law as part of the labour-intensive services experiment, the objectives of which were to increase employment and reduce the shadow economy. The Government continues to take the view that our employment objectives are more effectively delivered through other means, such as the New Deal, and that a reduced rate of VAT would not have a decisive impact on the shadow economy.

The Government has only introduced reduced rates where we are convinced that they offer the best-targeted and most efficient support for our key social objectives. It is our assessment that a reduced rate for repairs to private dwellings would not meet this test.

23 May 2006

VAT SIMPLIFICATION (14248/04)

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

On 28 September 2005\(^\text{18}\), 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, though as I indicated in September, this is an ambitious and comprehensive package which will take up considerable discussion time. Indeed, this has already proved to be the case. The UK Presidency scheduled a number of Working Group meetings on the package of measures during its term, both to bring Member States to a common understanding of what is being proposed and to begin work on the technical detail. Although good progress has been made, more remains to be done.

The Austrian Presidency has indicated that it will continue to prioritise the work during the first half of 2006 and has already held its first meeting on the dossier, which took place on 11 and 12 January 2006.

I hope you find this information helpful.

9 February 2006

Letter from the Chairman to Dawn Primarolo MP

On EM 14248/04, the Sub-Committee have noted the favourable response given by businesses during the consultation process and have therefore decided to lift the scrutiny reserve. However, we would like to be kept updated on the progress of this dossier.

15 March 2006

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\(^{18}\) Correspondence with Ministers, 45th Report of Session 2005-06, HL Paper 243.
Internal Market (Sub-Committee B)

AIR TRAFFIC MANAGEMENT SYSTEM, SESAR (15143/05)

Letter from the Chairman to Karen Buck MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Sub-Committee B considered your Explanatory Memorandum at its meeting on 16 January 2006.

We noted, from paragraph 27 of your Explanatory Memorandum, that the Commission is hoping to secure agreement by May 2006 and that the co-decision process will not be used. Will this course of action nonetheless allow for full consultation ahead of the deadline? We are concerned that the May deadline might be hopelessly optimistic if full consultation is to be carried out.

Members were also somewhat confused as to the role the United Kingdom Government envisages for Eurocontrol in this project: your Explanatory Memorandum seemed to be self-contradictory on this point. In paragraph 21vi you suggest that alternatives to the Joint Undertaking exist, for instance using Eurocontrol. In paragraph 21ix you suggest that, due to a lack of industry confidence in it, Eurocontrol should have no voting powers on the Joint Undertaking. This latter point also seems somewhat odd in light of your expectation, expressed in paragraph 24 of your Explanatory Memorandum, that Eurocontrol should contribute money to this project.

I trust that you will ensure that the Sub-Committee will be notified of the outcome of the forthcoming negotiations on SESAR. We are maintaining scrutiny pending receipt of a Regulatory Impact Assessment on these documents and answers to the queries explained in this letter.

18 January 2006

Letter from Karen Buck MP to the Chairman

Thank you for your letter of 18 January in which you asked for clarification on two points arising from your Committee’s consideration of my Explanatory Memorandum (15143/05) on the proposal for the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) which I submitted to Parliament in December 2005.

Your first point concerned the ability to carry out full consultation ahead of the Commission’s estimated deadline for reaching agreement on this proposal. At the first Working Group discussion of the dossier, my officials sought clarification from the Commission as to the likely timetable for progressing it. The Commission recognise that SESAR is a complex project and, while Member States are generally supportive of the project, it is clear that there are a number of issues which will need to be resolved before agreement can be reached. The current view of the Commission and Member States is that agreement should be possible by the end of this year. This more relaxed timetable will provide ample time to conduct a consultation on the proposal and you will wish to know that a formal consultation on SESAR will be launched on 13 February with a closing date of 8 May. A copy of the partial Regulatory Impact Assessment that will accompany this exercise is attached.

Your second point concerned an apparent confusion over the role the Government envisages for Eurocontrol in this project. As I said in the EM, the Government considers that Eurocontrol should play an important role in SESAR, but the exact terms of its participation need to be considered carefully. The Government considers that the role of Eurocontrol is not adequately defined in the draft regulation which may lead to conflicts of interest, for example when the Administrative Board votes on the work programme. It is for this reason that we have suggested that the voting rights need to be adjusted to better reflect the role of industry in this project. The precise role of Eurocontrol is still being discussed and will inevitably be influenced by the outcome of the current negotiations in the Aviation Working Group, but it is likely to be some time before we have a definitive view on the role of this organisation.

I will, of course, keep you updated as the negotiations progress.

14 February 2006
Letter from the Chairman to Karen Buck MP
Thank you for your letter of 14 February 2006, including a partial Regulatory Impact Assessment on the establishment of SESAR, which Sub-Committee B considered at its meeting on 6 March 2006.

We are satisfied that the more relaxed timetable of the end of 2006 rather than May of this year will allow for proper consultation. However as the role of Eurocontrol is not yet clear, and this is an area of apparent concern to UK industry, we will maintain scrutiny on the proposal for SESAR, until a definitive view is available.

Sub-Committee B appreciates the Government’s continuing work on this issue, and looks forward to hearing of any developments in negotiations in the coming months.

8 March 2006

Letter from Derek Twigg MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman
Thank you for your letter of 8 March to Karen Buck, in which you maintained the scrutiny reserve, while stating that you are satisfied with the more relaxed timetable for the joint undertaking.

I will write to the Committee again following the completion of our formal consultation in May, and once the negotiations have made further progress and the terms of Eurocontrol’s involvement in SESAR become clearer, I will be in a position to provide your Committee with further information on this issue also.

7 April 2006

Letter from the Chairman to Derek Twigg MP
Thank you for your letter of 7 April 2006 replying, to my letter of 8 March 2006, which Sub-Committee B considered at its meeting on 24 April 2006.

We look forward to receiving an update from you on the Government’s consultation process and the ongoing negotiations over SESAR. We will continue to maintain scrutiny on the proposal.

25 April 2006

Letter from Gillian Merron MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman
I am writing to you to bring your Committee up to date with progress that has been made in the negotiation of the draft Regulation establishing the SESAR Joint Undertaking (JU). A copy of the most recent draft of the Regulation is attached for your information, (not printed).

The Government’s eight week consultation exercise closed on 15 May. Although we have not yet had time to analyse the responses in depth they appear to reveal broad support for the overriding principle of the SESAR project. A general consensus that the creation of a Joint Undertaking is appropriate as the governance structure also seems to have emerged, although a number of respondents queried whether the Commission had given proper consideration to any other options.

Negotiations in Council Working Group have progressed since Karen Buck wrote to you in February and I am pleased to be able to report that we have managed to secure a number of improvements to the text, in particular concerning the role of Member States in the Joint Undertaking. Article 5 of the draft Regulation now affords Member States some influence over the Commission’s role on the Administrative Board through the Single Sky Committee. The Commission has circulated a unilateral Statement which sets out how this would work. It envisages SESAR being discussed at meetings of the Single Sky Committee and the Commission taking account of the opinions delivered by the Committee ahead of any decisions taken in the Administrative Board of the JU. This is a welcome development, although we and other Member States would prefer for it to be formalised in the text of the Regulation and its Recitals.

There has also been some progress on the issue of Eurocontrol’s role in SESAR. You will recall that, whilst we recognise that Eurocontrol should play a significant role in the SESAR project, we felt strongly that the terms of its participation as set out in the Commission’s original draft needed to be considered. We were also of the opinion that allowing it 30 per cent of the voting rights on the JU Administrative Board was excessive and would significantly minimise the voting powers of other JU Members. The Regulation as currently drafted reduces Eurocontrol’s share of the vote to 25 per cent. Whilst this is still higher than we would have liked there was strong opposition to reducing its share still further from a number of other Member States.
The Presidency has also sought to address concerns over the conflict of interest that could have arisen from Eurocontrol being both a contractor and the contract manager for SESAR’s research and development activities by introducing a new provision (in Article 5bis of the Statutes) on the avoidance of conflicts of interest. This is a positive development, but we would like to see more detail in the text setting out the exact nature of Eurocontrol’s role so as to prevent such conflicts of interest from arising.

The draft Regulation will be discussed at the forthcoming Transport Council on 8 June when the Presidency will be seeking a General Approach. To this end, the Presidency has circulated a draft Council Statement on the general principles of SESAR which it will ask Ministers to endorse. A copy of this draft statement is attached.

We understand that the European Parliament will consider the proposal in October, and that agreement on the text of the draft Regulation will be sought later in the year. I will, of course, write to your Committee ahead of that meeting to ensure you are kept up to date.

22 May 2006

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 22 May. Sub-Committee B considered your letter at its meeting on 12 June.

We welcome the progress made in achieving consensus on this project. We nevertheless share your desire for more detail in the text of the role of Eurocontrol, and will maintain scrutiny on the proposal as some uncertainty still remains. We look forward to receiving an update from you before the European Parliament considers the proposal.

15 June 2006

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 15 June in response to mine of 22 May. As expected the SESAR proposal was discussed at the Transport Council on 9 June and a General Approach was reached on the text. The UK supported the General Approach, but set out our concerns about the need for Air Navigation Service Providers to be given specified voting rights in the Administrative Board. This was supported by Portugal and it was agreed that the Council would return to this issue in the review of the Joint Undertaking that will be carried out in accordance with Article 1 of the Regulation.

I will of course continue to keep your Committee informed as negotiations progress and will be happy to write to you again ahead of the European Parliament’s consideration of the SESAR proposal. I understand that this is not expected to take place until October 2006 at the earliest.

12 July 2006

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 12 July, replying to my letter of 15 June. Sub-Committee B considered your letter at its meeting on 24 July.

We are grateful to you for your update following the Transport Council on 9 June, and look forward to receiving a further update from you ahead of the European Parliament’s consideration of the proposal in the Autumn.

We will maintain the scrutiny reserve at this stage.

25 July 2006

BRIDGING THE BROADBAND GAP (7622/06)

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 3 May 2006.

You mention in your Explanatory Memorandum that your Department will be co-ordinating the consultation process through the remainder of 2006, with a report to be compiled at the end of the year. We would of course be grateful for a copy of this report as soon as it is available.
We are content to clear this document from scrutiny, but will continue to monitor developments in this important dossier and will return to it as and when concrete proposals emerge.

4 May 2006

CIVIL AVIATION SECURITY (12588/05)

Letter from the Chairman to Karen Buck MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Thank you for your letter of 20 December 20051 in reply to mine of 9 November 2005 which Sub-Committee B considered at its meeting on 23 January 2006.

Members noted your explanation as to why a Regulatory Impact Assessment on this document was not necessary or appropriate.

We note that discussions on this document are on-going and that the European Parliament’s First Reading is due to take place in April 2006. We are maintaining the scrutiny reserve but will review this after the First Reading and when we have received a further report from you on progress on the various issues of concerns that you raise in your letter.

25 January 2006

Letter from Derek Twigg MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

Thank you for your letter of 25 January to Karen Buck in respect of Explanatory Memorandum (EM) 12588/05. I am writing to update you on developments.

The proposed Regulation has now been discussed in a number of Council working group meetings, by the European Parliament’s Transport and Tourism Committee and by the Economic and Social Committee. Good progress has been made in recent negotiations and the Transport Council was therefore able to reach a General Approach on 27 March. The Parliament has not yet considered the document, but it is thought that they may accept the proposal at First Reading, currently scheduled for April.

As regards the issues of the proposal on which the Government had some difficulties:

— on Article 5, more stringent measures, there have been no further developments since Karen Buck’s letter of 20 December 2005. The Commission retains its scrutiny reserve on the Council Working Group’s proposed amendment but Member States including the UK stand firm in opposing the text as first advanced;

— on Article 6, more stringent measures requested by third countries, the Working Group has agreed an amendment to the effect that the Commission will “draw up”, after consultation with the regulatory committee, an appropriate response to any such third countries’ requests. The Commission and Member States are content with this;

— the proposed Article 17, agreements with third countries, has now been deleted. It was identified as being unnecessary, as a Council mandate would in any case be required before any Community negotiations with a third country could begin;

— Chapter 10, on in-flight measures, has now been further simplified and brought closer into line with existing International Civil Aviation Organisation (ICAO) requirements. The Commission appears content that this will achieve its stated objective of providing for the management of the interface between in-flight and ground security measures, particularly in respect of the carriage of weapons, without straying into areas of national competence. We are also content, while remaining aware that it will be necessary to closely monitor future developments in implementing legislation;

— the use of the term “entities” has now been more closely tied to bodies actually implementing security measures, rather than those simply abiding by them. This is an improvement, but there may still be a need to seek specific derogations in the implementing legislation; and

— on cargo exemptions, the Commission takes the view that if the framework legislation were to contain provisions paralleling those for transfer passengers and baggage, other types of cargo exemptions would not be possible. The UK is of the view that options other than establishing “equivalency” (the intended basis for exemptions for transfer passengers and baggage) might be appropriate, in particular for all-cargo flights. We can therefore accept the text as it stands.

The **Gibraltar** provision was also of interest to the Committee. The UK Government is currently involved in positive and constructive trilateral discussions with the Spanish and the Government of Gibraltar on a number of Gibraltar topics, including the airport. In the meantime, we are confident that the relationship we have with the Spanish intelligence community is such as to ensure that were any information about possible threats to Gibraltar airport to come to them, they would share it with us.

Other Member States have voiced a number of concerns about the proposed regulation. These have usually been on points of detail, but discussions have particularly focused on two issues, **derogations** and **mail**:

— **on derogations**, Member States have been much exercised about possible consequences for small or specialised operations, which might be disproportionately affected if bound by all the provisions of this Community legislation. Our view has been that the Regulation should concentrate on more typical operations, and not build the text around exceptions. We have also contended that information about derogations—which might be exploited by terrorists—should not be put in the public arena. There now appears to be general agreement amongst Member States and the Commission that an Article allowing for derogations “justified by reasons relating to the size of the aircraft, or by reasons relating to the nature, scale or frequency of operations or of other relevant activities” will provide a sufficient basis for implementing legislation on any exemptions required. We are content with this;

— **on mail**, some Member States where a high proportion of mail is carried by air have argued for the retention of current exemptions from security controls for intra Community mail. The Commission is sympathetic, but we would prefer to see the Community adopting the UK practice of screening all mail above a certain weight and thickness, especially if it is carried on passenger flights. In any case, we see the matter as one for implementing legislation rather than this framework regulation. We shall be arguing thus in the further development of the draft.

The **European Parliament** has responded positively to the proposal, accepting the security arguments for transferring much of the detail to the implementing legislation, which is subject to comitology rather than codecision. Most of the amendments they have so far put forward are in line with those suggested by the Council Working Group, and two of the exceptions—an obligation to involve stakeholders in any amendment process, and the continuance of the requirement for the Commission to produce an annual report—would cause us no difficulty.

The Parliament has also raised the issue of the funding of aviation security measures. MEPs have expressed an interest in seeing Member States obliged to fund any measures they require which are above those set out in the legislation (“more stringent measures”). This would be counter to the UK’s long-established “user pays” approach and may not be legally possible within the constraints of the Regulation. A Commission Communication on the funding of transport security is expected at Easter.

The **Economic and Social Committee’s** (ESC) study group on civil aviation security has also expressed general support for the text, while raising a small number of issues, such as provisions for disabled passengers, which may not be judged appropriate for a framework regulation on security. It too has voiced support for some state funding.

I hope that you find this additional information helpful. I will, of course, write again when the outcome of the European Parliament’s First Reading is known.

27 March 2006

**Letter from the Chairman to Derek Twigg MP**

Thank you for your letter of 27 March 2006, replying to my letter to Karen Buck of 25 January 2006. Sub-Committee B considered your letter at its meeting on 24 April 2006.

We are grateful to you for your full account of the negotiations on the proposed Regulation. We are pleased that much progress appears to have been made, although concerned at the continued presence of “more stringent measures” in Article 5 despite the ongoing opposition from Member States including the UK. We will maintain scrutiny on the proposal, and review this after your report on the First Reading in the European Parliament. Can you further explain your view that the European Parliament’s approach to funding “might not be legally possible”? 

Furthermore, you mention a Commission Communication “expected at Easter”; can you inform us whether this has been produced?

25 April 2006

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

Thank you for your letter of 25 April to Derek Twigg in respect of Explanatory Memorandum (EM) 12588/05. I am responding to the queries you raised regarding security funding and more stringent measures.

When he wrote to you on 27 March, Derek Twigg noted that it might not be legally possible to include stipulations on funding in a European Regulation. This view was based on opinions expressed by the Commission during the negotiations on the current aviation security Regulation, 2320/02, and also on the fact that, as far as we are aware, no precedent exists for imposing such a requirement on Member States. We are presently consulting further on the issue.

The publication of the Commission’s Communication on funding—initially set for last December, then for Easter—has been further delayed, apparently to allow for the completion of a costs analysis. The Communication is now promised for the summer, but this also may prove optimistic.

As regards the more stringent measures issue, you will wish to be aware that the European Parliament’s Transport and Tourism Committee has voted against a proposed amendment, put forward by a UK MEP, which would have removed the text limiting Member States’ freedom to act in this area without Community approval. My officials will provide more detailed briefing for MEPs ahead of the plenary vote, once we have received further legal advice, and will again stress the fundamental importance of this issue for the UK.

I hope that you find this helpful. I will write again after the European Parliament has held its First Reading on the proposal, now scheduled for mid June, and will include any new information about the funding Communication and the wider financing question.

31 May 2006

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 31 May 2006, replying to my letter to Derek Twigg of 25 April. Sub-Committee B considered your letter at its meeting on 12 June 2006.

We would welcome an update from you following the First Reading in the European Parliament, which you expect in the middle of June. We would also be grateful to hear of the Government’s final view on the legality of the stipulations on funding and on the issue of “more stringent measures”, when it has been formed. We will maintain scrutiny on this proposal.

15 June 2006

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 15 June regarding the proposed EC Regulation on civil aviation security. I am writing in response to the specific queries you raised on funding and more stringent measures and also to provide you with an update on progress following the European Parliament’s First Reading earlier this month. There has been no further news on the Commission’s Communication on funding, which is still expected before the summer recess.

The First Reading took place on 15 June, with MEPs voting to accept all the amendments agreed by the Transport and Tourism Committee, the majority of which the UK can also support. The amendments do however include the funding provision, requiring Member States to finance themselves any measures they elect to implement which are above the baseline set out in the EU legislation.

As you are aware, the government’s initial reaction to the Parliament’s suggested amendments on funding was to doubt that such requirements could, legally, be incorporated in a technical Regulation. This was also the initial view of the European Commission. Further investigation has, however, revealed that this is incorrect and the Commission has now informed Member States that precedents already exist.
This finding does not, of course, alter the fact that the Commission and a number of Member States, including the UK, remain very much opposed to the inclusion of any measures on funding in the proposed Regulation. In an effort to convince the Parliament, we are preparing additional briefing material and are also seeking support from industry representatives. We believe that there are solid practical reasons for maintaining the “user pays” system—not least the considerable difficulties involved for industry in costing more stringent measures and for Member States in evaluating the calculations, along with the closely related issue of possible illegal state aids payments.

We will also be alerting MEPs to the very real risk of losing the proposal altogether if the amendments on funding remain, through a negative Council vote. Many measures designed to better protect the travelling public would then be forfeit.

As regards more stringent measures, we do not anticipate the same degree of divergence between our views and those of the Parliament. This is despite the fact that the First Reading vote rejected an amendment put forward by a UK MEP which would have restored the status quo, allowing Member States the continued freedom to introduce requirements over and above those set out in the Regulation. MEPs—and the rapporteur from the Transport and Tourism Committee—have generally made far fewer pronouncements on this issue and, where opinions are held, they are more divergent. We have hopes of a satisfactory resolution in the conciliation process, if not before.

I will turn now to the small number of other amendments proposed by the Parliament which we could not support. These relate to:

— the involvement of the European Aviation Safety Agency (EASA) in aviation security—EASA is a relatively newly-established body and is not yet fully able to meet the demands of its safety remit. No case has been made for the extension of that remit to include security issues, which are dealt with separately by most Member States;

— a greater role for the Commission in approving Member States’ decisions on derogations—Member States have the relevant local knowledge and may well have valid reasons for wishing to restrict circulation of the reasons behind such decisions (eg intelligence); and

— over-generous exemptions for mail—the existing legislation includes relatively generous exemptions for mail which some MEPS would like to see continued, contending that any additional measures would have a detrimental effect on postal deliveries. We do not support this view and believe on the contrary that controls should be tightened. The more stringent controls already in place in the UK have had no negative impact on the service. Retaining the exemptions is also likely to distort competition between postal agencies and other sectors of the industry.

The Commission itself does not support the first two of these proposals but appears equivocal about (and inclined to support) the third.

Generally, I do have to say that we are concerned by the apparent confusion in the Parliament between safety and security issues. This has led to an apparent lack of appreciation of the sensitive nature of security (meaning counter terrorism) matters and the need to restrict access to information, as well as proposals to include measures which have nothing to do with security. To give some examples:

— MEPS are seeking a greater role for the Parliament in approving implementing legislation and greater public access to issues discussed by the Regulatory Committee constituted under the framework legislation; and

— MEPS support a proposal to include provisions for dealing with passengers whose behaviour is “abnormal”.

Further briefing to point out the fundamental distinction between safety and security may be required.

As regards Gibraltar, a subject of previous correspondence with your Committee, MEPS are now opposing amendments which would maintain the current position, which is that Gibraltar is not covered by the legislation, but is anyway protected in accordance with stricter UK requirements. This does not in itself present us with any problems, but might jeopardise the delicate tripartite negotiations currently being conducted between the Spanish, the Gibraltarians and ourselves.
It is not expected that the Commission will issue an amended proposal; however I attach a paper issued by the Commission, giving further details of MEPs’ views and the Commission’s response (not printed). I hope that you find this, and the information I have provided above, helpful. If any further relevant information comes to hand in the near future, I will ensure that it is passed on to you as quickly as possible.

12 July 2006

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 12 July, replying to my letter of 15 June. Sub-Committee B considered your letter at its meeting on 24 July.

We are grateful to you for your update. The Committee shares your clearly expressed concerns over the apparent confusion between the concepts of security and safety in the debates over this Regulation, and the potential for harmful consequences to the UK’s civil aviation security should it become law as amended. We would be grateful to you for a further update when negotiations have progressed and for your views on how each of the individual concerns you set out over the other proposed amendments has been addressed.

We will continue to hold this proposal under scrutiny.

25 July 2006

CLEAN ROAD TRANSPORT VEHICLES (5130/06)

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

Sub-Committee B considered this document at its meeting on 13 February 2005 and decided to maintain the scrutiny reserve.

We are greatly concerned about the subsidiarity issue connected with this document. We would like the Government to set out its own views on the subsidiarity issue. What legal advice have you received on this point?

As you are aware, subsidiarity is an issue in its own right and is not to do with whether the Government or this Committee agree with a policy. It would seem that that distinction is being blurred.

Your Explanatory Memorandum does not deal with proportionality. What is the Government’s view on the proportionality of this Proposal?

We noted that the UK Government plans to consult in detail with the public sector and with engine and vehicle manufacturers on the appropriateness of the proposals and how the Directive might best be implemented. We think this consultation should not take place until the subsidiarity issue has been resolved—what is your view on this?

15 February 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 15 February.

I am sorry that the Explanatory Memorandum appeared to blur the distinction between the Government’s view on the policy and the issue of subsidiarity in its own right; that was not my intention.

Since the Explanatory Memorandum was prepared we have been able to give more consideration to the subsidiarity issue. We have concluded that the Directive proposal may be compliant with the principle of subsidiarity. However this conclusion does depend on the Commission providing us with convincing analysis on how the proposal would create a “critical mass” for demand for EEV vehicles that would not occur if Member States acted alone.

In order to show that this proposal is not compliant with the principle of subsidiarity, it would be necessary to show that the objectives of the proposal could be sufficiently achieved by Member States or that these objectives could not be better achieved by the EC by reason of the scale or effect of the proposed action.

The Treaty of Amsterdam gives further guidance on the application of the principle of subsidiarity. In particular, the following guidelines should be used in examining whether the condition above is fulfilled:

(a) the proposed legislation has transnational aspects which cannot be satisfactorily regulated by action by Member States;
(b) action by Member States alone, or lack of Community action, would either conflict with the objectives of the Treaty or otherwise significantly damage Member States’ interests; and

(c) action at Community level would produce clear benefit by reason of its scale or effects compared with action at the level of Member States.

Regarding “a” above, the proposed legislation does have transnational aspects, in that the vehicle market is pan-European. As the proposal would affect the public procurement of vehicles, a further transnational aspect is that procurement law is set at a European level in order to enhance and maintain the internal market, and any action undertaken on procurement must be consistent with EU procurement rules.

Turning to “b” above it is doubtful that action at member state level alone would conflict with the Treaty’s objectives or significantly damage member state’s interests. This could go to show that the proposal does not fulfil the principle of subsidiarity. However, the Commission has argued that the specific objective of creating a market for cleaner vehicles (ie of the EEV standard) requires the economies of scale that could come only from a mass market—the sort that might result from mandatory purchasing of such vehicles by the combined public sectors of the EU. It has explained, in its own Explanatory Memorandum that, in its opinion, action at Member State level would not create a sufficient “critical mass” for industry to invest in cleaner technologies. So according to the Commission the measure could produce clear benefit by reason of scale and effect compared with action at the level of Member States, in compliance with the guideline at “c” above.

For all that the Commission may have a point here, I think that it is dependent upon its producing very clear analysis in support. The Commission explains that it set the requirement at the minimum level necessary to achieve the objective yet there seems to be no clear justification for fixing at 25 per cent the quota of EEV vehicles that the public sector is to be required by the Directive’s provisions to purchase or lease. Nor is there any opportunity cost analysis comparing any expenditure required to implement the directive with other possibly more effective uses. On the other hand, should the Commission back its view up with adequate research data, it seems to me that it could reasonably be argued that the proposal is compliant with the principle of subsidiarity.

You are right to ask about the proportionality of the measure. My initial view is that the measure may not be proportionate. The Explanatory Memorandum has already identified our concerns that the Proposal might be overtaken by events, given that “Euro V” standards will become mandatory anyway in 2009 and that we hope to be considering proposals from the Commission for “Euro VI” within a year. But at the moment we have a real difficulty in assessing the costs and benefits of the Proposal because of the lack of data on the number and types of vehicle that might be affected in the UK.

For this reason I intend to start detailed consultation with those that have an interest as soon as possible, informing them of our view on subsidiarity and gathering the information needed to make a proper judgement on overall costs and effectiveness. I will, of course, keep the Committees informed of progress in this matter.

13 March 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 13 March, replying to my letter of 15 February, which Sub-Committee B considered at its meeting on 27 March 2006.

We are grateful to you for fully explaining the distinction between the application of the subsidiarity principle and the Government’s view as to the desirability of the Clean Vehicles Transport Directive. We note and share your concerns as to the proportionality of this measure. We look forward to hearing of the results of the consultation process when they are available.

29 March 2006

COMMUNITY VESSEL TRAFFIC MONITORING AND INFORMATION SYSTEM (5171/06)

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

Sub-Committee B considered this document at its meeting on 13 February 2006.

We noted your concerns, and were reassured that you would seek to amend this document during the course of your negotiations. We also understand that the industry is being consulted and that in due course a Regulatory Impact Assessment will be produced.

Is the Government raising the question of whether whole or part of this Proposal falls foul of the subsidiarity principle? Is this one of the areas of concern referred to in paragraph 17?
We noted that your Explanatory Memorandum did not have a separate paragraph dealing with proportionality. However, it appears from paragraph 18 that there are issues of proportionality. We would be grateful if you could explain this in more detail. What steps are you taking to address this?

We are maintaining scrutiny on this document.

15 February 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 15 February, in which you asked for additional information particularly in relation to the questions of subsidiarity and proportionality.

It is not possible for me to respond in full to the Committee’s concerns at this time. I understand that the Commission is to produce a paper concerning the costs of the Automatic Identification Systems (AIS) on fishing vessels, which I anticipate being discussed at a Council Working Group in mid-March. Following the publication of the paper and the discussions at Working Group I will be in a better position, in March or April to reply to your questions that you have raised in your letter.

I expect the Regulatory Impact Assessment be available by May.

28 February 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 28 February, replying to my letter of 15 February 2006. Sub-Committee B considered your letter at its meeting on 13 March 2006.

The Sub-Committee were surprised that you felt unable at this stage to respond to the four specific questions asked in our letter and would be grateful if you could revisit the correspondence. The expected paper from the Commission on the costs of Automated Identification Systems, which your letter mentions, does not appear to relate to these questions.

15 March 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 15 March. In your letter, you refer to your earlier letter of 15 February and to my interim reply of 28 February.

The proposed Directive has, until recently, been under discussion in the relevant Council Working Group, and some issues—notably the question of the mandatory carriage of Automatic Identification System (AIS) on fishing vessels—are still to be resolved. I believe that the issue of AIS on fishing vessels is likely to be resolved at a forthcoming meeting of the Committee of Permanent Representatives (COREPER). I had anticipated being able to write to you taking into account the outcome of the COREPER discussion. However, as that discussion has been put back to 24 May, and in view of the timing of the Whitsun Recess, I thought it best to give you an update now on the draft Directive before it is discussed at the Transport, Telecommunications and Energy Council on 9 June, at which the Austrian Presidency hope to be able to reach a “general approach” on this item.

Turning to the points raised in your letter of 15 February, you asked whether the Government was raising the issue of whether the whole or part of the Commission’s proposal would fall foul of the subsidiarity principle, and whether this was one of the areas of concern referred to in paragraph 17 of the Explanatory Memorandum dated 2 February.

The answer is that the Government does not consider that the Commission’s proposal falls foul of the subsidiarity principle. Of course, shipping is an international business, and the best place to develop regulatory standards for international shipping is the International Maritime Organization. Nonetheless the subjects covered by the Directive—notably information interchange (in the context of the SafeSeaNet system), carriage of Automatic Identification System equipment, information interchange (in the context of the SafeSeaNet system), declarations concerning the carriage of dangerous or polluting goods, provision of places of refuge, and sea conditions in which ships may be allowed into or out of port—are all broad areas where there is already regional (ie European Community) legislation and this amending Directive does not appear to significantly push the boundary further. Consequently, this is not one of the areas of concern referred to in paragraph 17 of the Explanatory Memorandum. The areas of concern are those described in the Explanatory Memorandum’s paragraphs 18–23 inclusive.
Your letter of 15 February went on to address the issue of proportionality. You noted that paragraph 18 of the Explanatory Memorandum mentioned issues of proportionality and asked for a more detailed explanation. The answer is that our concern relates to the proportionality of the proposal for carriage of AIS on fishing vessels. As stated in the Explanatory Memorandum, the proposal has been prompted by a number of unfortunate collisions between merchant ships and fishing vessels, especially in busy sea areas, which have resulted in the sinking of the latter with loss of life. While the UK recognises there is a problem to be addressed, we have questioned whether the proposed response is the right one. In particular, we have expressed the view that the cost burden which the proposal for carriage of AIS on fishing vessels would impose is disproportionate to the likely safety benefit in terms of reducing the number of collisions. Although the issue has yet to be resolved at COREPER, I understand that the majority of EC Member States do not share the UK’s view and that it is likely that the text of the Directive which goes forward for consideration by Council on 9 June will contain a provision relating to AIS on fishing vessels.

Accordingly, in order to reduce the cost impact on the fishing industry (estimated at £1.2 million) we are now working with like-minded EC Member States to ensure that the requirement to carry AIS equipment is phased in over a number of years after the Directive comes into force. There is still a debate to be had over the length of the phase-in period, but it is likely the outcome will be four or five years, starting with the larger vessels (where the cost will be proportionately less in terms of the other costs of operating and maintaining the vessel) working down to the smaller boats (where the costs of fitting AIS would be proportionately higher). The annual cost impact on the industry if a five year phase-in period agreed will be of the order of £240,000. Vessels built after the Directive comes into force will be required to be AIS equipped, the cost of the AIS equipment being de minimis in terms of the building and fitting-out costs of fishing vessels of 15 metres or more.

While the current average cost of the necessary equipment is in the order of £1,400, we expect that the price of the equipment will fall in real terms over the period of the phase-in given the increased volume of units required and technological advances.

The positions in respect of the other issues highlighted as areas of concern in the Explanatory Memorandum are as follows:

— The UK and a number of other Member States continue to argue strongly against an explicit reference to the draft Directive on Civil liability and financial securities of shipowners. One of the paragraphs which was to include such a reference has now been deleted from the Presidency text, and the UK and likeminded Member States favour a straightforward deletion of the other reference. A small minority of Member States still wish to retain the reference, either with or without square brackets, on the grounds that the civil liability dossier may yet be taken up by a Presidency before the Vessel traffic monitoring amending Directive is adopted. Some Member States have yet to commit themselves to a position.

— Whereas the UK was broadly content with the draft Directive’s text in respect of places of refuge (although we noted that there were areas where clarification was required), that text has met with severe opposition from some Member States who considered that it would impose obligations on them which they were reluctant to accept. The Presidency text on places of refuge has been modified to take account of these concerns. The reference to “an independent competent authority” has now been removed, and we anticipate that the reference to meetings of Member States’ authorities being held at the initiative of the Commission will also be removed.

— As regards the provision on measures in ice conditions, the UK and one other Member State pressed for the inclusion of wording, analogous to that in Article 18(2) of Directive 2002/59/EC, which would reaffirm the decision-making role of the master in the context of the Safety of Life At Sea Convention. Forms of words have been developed, for inclusion in the operative article and in a recital, which go a substantial way towards the wording which we envisaged. Both the other Member State and the UK recognise that what we have achieved is sufficient.

I still expect that a “general approach” on the proposal will be achieved at the June Council.

This Department will be producing an RIA after we know the outcome of the discussion in COREPER and will submit this to you shortly. We will, of course, keep your Committee informed of the progress of the negotiations, including the European Parliament’s First Reading of the proposal, currently scheduled for November.

18 May 2006
Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 18 May, which Sub-Committee B considered at its meeting on 5 June.

We were grateful to you for your responses to our concerns over the proposals conformity with the important principles of subsidiarity and proportionality. We are satisfied that the proposal is consistent with the principle of subsidiarity. We note and share your concerns over the potentially disproportionate costs to the fishing industry of the mandatory installation of Automated Identification Systems, and support your efforts to ensure that, if included in the text presented to the June Council, it is to be phased in over several years rather than be instantly required. We would be grateful for a report on the outcome of the Council meeting.

We are content to lift scrutiny on this document at this stage.

6 June 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 6 June, which indicated that you are content to lift scrutiny on the above document. I am writing because you also asked for a report of the outcome of the Transport, Telecommunications and Energy Council on 9 June in respect of this proposed Directive.

At Council on 9 June, a majority of Member States supported the Presidency’s text; in view of that, the Chair concluded that a “general approach” had been reached for the Vessel Traffic Monitoring Amending Directive. Discussion of this item was relatively brief, and the main area of concern for the UK remained the fitting of AIS (Automatic Identification System) to fishing vessels. The UK and others accepted the Commission’s proposed 15 metre threshold for vessels to have the equipment fitted. A clear majority around the table supported the phase in periods proposed by the Presidency, that existing vessels of 24 metres will need to come into line within three years of entry into force of the Directive. For smaller vessels there will be a longer timescale: four years for 18–24 metres and five years for 15–18 metres. New built fishing vessels of more than 15 metres will be subject to the carrying AIS 18 months after the entry into force of the Directive.

Although the Commission expressed concern over what it perceived as the dilution of the proposals on places of refuge, Member States unanimously supported the Presidency text. This was an acceptable result for the UK.

I will, of course, continue to keep your Committee informed of progress on this dossier, and will be submitting the RIA to you shortly.

5 July 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 5 July, replying to my letter of 6 June. Sub-Committee B considered your letter at its meeting on 17 July.

We were grateful to you for your report on the outcome of discussions on the proposed Directive in the June Transport Council. We are reassured that the general approach agreed is “an acceptable result for the UK” and look forward to receiving an RIA and further updates in due course.

19 July 2006

COMPETITIVENESS AND INNOVATION FRAMEWORK PROGRAMME 2007–2013 (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

Thank you for your letter of 19 December 2005 in response to mine of 22 June 2005 which Sub-Committee B considered at its meeting on 23 January 2006.

Members found your answers to their queries helpful and we are therefore content to lift scrutiny on this document. We noted with concern that your letter of 19 December 2005 was in reply to mine of 22 June 2005 and I would be grateful if you could explain this extraordinarily long gap.

25 January 2006

Letter from Rt Hon Alun Michael MP to the Chairman

I am grateful for your letter of 25 January in which you lifted scrutiny on this document.

I regret that the further information you requested in your letter of 22 June 2005 was not supplied until 19 December 2005. It seems that your letter of 22 June was correctly addressed to me but to the ministerial title of my colleague, Ian Pearson, the “Minister of Trade, Investment and Foreign Affairs” at his King Charles Street address. This may account for it not reaching this department’s correspondence system until December.

Since last June, the Department has undertaken to ensure that all parliamentary scrutiny correspondence is replied to within 10 days so our intention is clear and we have put in place mechanisms which reflect this intention.

27 February 2006

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter of 27 February 2006, replying to my letter of 25 January. Sub-Committee B considered this letter at its meeting on 13 March 2006.

The Sub-Committee was grateful for your explanation for the delay in responding to the letter of 22 June, and we thank you for putting in place mechanisms to ensure that future correspondence is replied to within 10 days. We apologise for any part we may have played in this delay.

15 March 2006

COMPETITIVENESS COUNCIL

Letter from Barry Gardiner MP, Parliamentary Under-Secretary of State for Competitiveness, 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 13 March 2006 in Brussels.

6 March 2006

WRITTEN STATEMENT

I will be attending the Competitiveness Council in Brussels on 13 March. Martin Bartenstein, Austrian Minister for Economics and Labour, will chair the Council in the morning and Elisabeth Gehrer, Austrian Minister for Education, Research and Culture, in the afternoon.

The first item on the agenda will be the Lisbon Process and preparation for the Spring European Council. The Austrian Presidency have prepared a Key Issues Paper (KIP), based on the Commission’s 2006 Annual Progress Report on Lisbon. The aim is to hold an exchange of views on the KIP, and adopt it as the Competitiveness Council’s contribution to the Spring European Council.

The next item on the agenda is on small and medium-sized enterprises. Council Conclusions on this item have been prepared in respect of the following:

— Commission Communication on “Implementing the Community Lisbon Programme—Modern SME Policy for Growth and Employment”.
— Commission Communication on “Implementing the Community Lisbon Programme—Fostering entrepreneurial mindsets through education and learning”.

There will be an exchange of views based on questions set by the Presidency, and adoption of the Council Conclusions.

A debate on the Competitiveness and Innovation Programme (CIP) will then follow, with the aim of agreeing a partial general approach. As there has been broad agreement in working group, the Presidency believes that the Council will be able to reach a partial general approach.

The next item on the agenda is the Services Directive. This item will also be discussed over dinner the night before the Council on Sunday 12 March. The Presidency want to have an exchange of views in the light of the recent vote in the European Parliament. The Presidency is likely to provide a summary of the discussion to the Council the next day.
The final item to be taken before lunch will be the Regulation laying down the Community Customs Code (Modernized Customs Code). The Commission will give a presentation on this item, but a discussion is not expected.

After lunch the Council will discuss the Specific Programmes implementing the Seventh Framework Programme (FP7) on Research and Development. The Presidency will provide a progress report on the work done in working group. There will then be an exchange of views relating to the “Cooperation”, “Ideas”, “JRC” and “Euratom” sections of FP7. The Presidency has indicated that they want the Council to focus on two issues: governance of the Programme and stem cell research.

Next, the Presidency will provide a progress report on the Regulation laying down rules for participation under the 7th Framework Programme (FP7), which will be followed by an exchange of views based on a note prepared by the Presidency.

Finally, two items will be taken under Any Other Business. There is not likely to be any debate on these items:

(i) Preparation of EU and Latin America/Caribbean (LAC) Summit (Report from the Presidency).
(ii) Regulation on type approval of motor vehicles with respect to emissions and on access to vehicle repair information, amending Directive 72/306/EEC (Euro 5) (Requested by the German delegation).

Letter from Barry Gardiner MP to the Chairman

I am pleased to enclose a copy of my written Statement to Parliament providing a summary of the Competitiveness Council on 13 March in Brussels.

15 March 2006

WRITTEN STATEMENT

I attended the Competitiveness Council in Brussels on 13 March. Martin Bartenstein, Austrian Minister for Economics and Labour, chaired the Council in the morning and Elisabeth Gehrer, Austrian Minister for Education, Research and Culture, in the afternoon.

The Council exchanged views on the state of play on the Lisbon Strategy on the basis of the Commission’s annual progress report. In relation to this, we also discussed the Key Issues Paper prepared by the Austrian Presidency, and agreed this as the Competitiveness Council’s contribution to the Spring European Council. I supported the text of the Key Issues Paper.

For the agenda item on Small and Medium Sized Enterprises, the Commission presented their Communications on “Implementing the Community Lisbon Programme—Modern SME Policy for Growth and Employment” and “Implementing the Community Lisbon Programme—Fostering entrepreneurial mindsets through education and learning”. There was a discussion based on two questions set by the Presidency. These related to integrating the ‘Think Small First principle into European policy, and the application of the “One Stop Shop” principle to simplify administrative procedures for businesses starting up. Council Conclusions on SME Policy for Growth and Employment were also agreed. I supported the Council Conclusions, encouraging the Commission to consider adopting mandatory Small Firms Impact Tests and extending their consultation periods from 8 to 12 weeks.

The Council reached a unanimous agreement on the general approach text on the Competitiveness and Innovation Programme (CIP) without discussion. This is pending the opinion of the European Parliament and the final agreement on the future financial perspectives.

The Council took note of an oral summary by the Presidency of the informal debate held by Ministers on the Services Directive over dinner on 12 March. The discussion was in the light of the recent vote in the European Parliament. The Presidency reported that there had been a constructive debate, and that the Commission is expected to produce a revised proposal in April. The Council will then re-examine the proposal with a view to reaching an agreement on a common position.

The Council took note of the Commission’s presentation on a draft Regulation aimed at modernising the Community Customs Code.

For one of the items under Any Other Business, the Council took note of information from the German delegation on the draft Regulation on type approval of motor vehicles with respect to emissions and on access to vehicle repair information (Euro 5). There was broad support in the Council for Germany’s request that the Competitiveness Council should be updated on progress on this Regulation. Ministers in the Environment Council had a policy debate on this on 9 March.
After lunch the Council had a debate on five of the seven Specific Programmes implementing the Seventh Framework Programme (FP7) on Research and Development: “Cooperation”; “Ideas”; “Euratom”; and two programmes relating to the “Joint Research Council”, and on the Regulation laying down rules for participation under FP7. Relating to the Specific Programmes, the Presidency encouraged Member States to focus their interventions on governance of the Programme (“Programme Management”), and the ethical principles that apply in respect of the eligibility of projects to be funded under FP7. I contributed to the debate by highlighting that, according to the principle of subsidiarity, the UK believes that ethical issues should be legislated for at national level given the cultural and religious diversity of Europe. Therefore, the UK opposes restrictions at Community level and will enter a joint declaration to the Council minutes to this effect along with Sweden, Belgium, Czech Republic, Spain and Portugal.

Finally, under Any Other Business the Council took note of a report by the Presidency on the preparation of the 4th EU and Latin America/Caribbean (LAC) Summit with regard to cooperation on science and technology. The Summit will take place in Vienna on 11–12 May 2006.

The Council adopted a Council Resolution on a customs response to latest trends in counterfeiting and piracy without discussion.

Letter from the Chairman to Barry Gardiner MP

Thank you for your letter of 15 March 2006 enclosing your Written Statement to Parliament on the Competitiveness Council on 13 March. Sub-Committee B considered this document at its meeting of 19 April 2006.

In your Statement, you write on the Services Directive that “The Council will then re-examine the proposal with a view to reaching agreement on a common position”. Following the Commission’s publication of the revised draft Directive earlier this month, can you now give us an idea of the Council’s timetable for the Directive? Will the common position be sought at the Competitiveness Council on 29 June 2006 or at an earlier meeting?

24 April 2006

Letter from Barry Gardiner MP to the Chairman

I am pleased to enclose a copy of my written Statement to Parliament providing a summary of the informal meeting of the Competitiveness Council on 21–22 April in Graz.

24 April 2006

WRITTEN STATEMENT

I attended the informal meeting of the Competitiveness Council on Saturday 22 April, hosted by the Austrian Presidency in Graz. My Ministerial colleague, Lord Sainsbury attended the Council on Friday 21 April.

At the morning session on 21 April, Austrian Minister for Education, Science and Culture, Elisabeth Gehrer, chaired a discussion on the breakdown for the EU’s research budget for the Seventh Framework Programme 2007–2013 (FP7).

Commissioner Potocnik presented the principles behind the Commission’s revised breakdown for the budget for 2007–2013 following agreement on the overall EU budget. The budget for FP7 would see a 60 per cent increase over current levels to an average of €7.8 billion per annum as opposed to €4.8 billion per annum under the Sixth Framework Programme, but this was still a reduction on the Commission’s original proposal in 2005. Ministers were unanimous in stating that the Commission’s revised breakdown represented a good basis for negotiations, but all put forward suggestions for changes.

The Presidency hoped that this discussion would allow the Competitiveness Council to agree a General Approach on FP7 on 29–30 May 2006. This would give them the basis with which to negotiate with the European Parliament, which expects to complete its first reading of FP7 in June.

The afternoon session on 21 April was on “The Opportunities of Globalisation”. There were presentations from Vice President Verheugen on Competitiveness through Innovation; Commissioner Kroes on Less and Better State Aid for Growth and Jobs; French Minister Francois Loos on Competitiveness Clusters; and Helmut List, CEO AVL List, on Centres of Competence.

Ministers showed general support for clusters as useful initiatives. Some Member States thought EU cooperation on clusters was important, and a number have drawn up a national map of clusters. There was general support for Commissioner Kroes’s plans to introduce some additional flexibility to EU.
INTERNAL MARKET (SUB-COMMITTEE B) 71

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

Thank you for your letter of 24 April 2006 to Barry Gardiner concerning the expected date for political agreement on the Services Directive. I am replying as the Minister with responsibility for this dossier.

The Austrian Presidency is pressing ahead with the aim of reaching a common position by the end of their Presidency in June. All Member States have accepted the Commission’s revised proposal of 4 April (largely based on the European Parliament’s text) as a basis for going forward. The Services Directive is now on the draft agenda for political agreement at the 29 May Competitiveness Council, but it is possible that due to the number of outstanding issues between all Member States this could be moved to the June Council. The UK supports an agreement during the Austrian Presidency.

I am sure you will already be aware that the Commission’s revised proposal was debated in the European Standing Committee on 16 May, and before Sub-Committee B on 17 May.

24 May 2006

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 pleased to enclose a copy of my written Statement to Parliament providing a summary of the Competitiveness Council on 29–30 May in Brussels.

5 June 2006

Annex A

WRITTEN STATEMENT

I attended the Competitiveness Council in Brussels on 29–30 May. The first day was chaired by Martin Bartenstein, Austrian Minister for Economics and Labour, with Ursula Haubner, Austrian Minister for Social Security and Consumer Protection chairing the consumer items.

DAY 1 MONDAY 29 MAY

The first day was dominated by negotiations on the Services Directive, which started over lunch and continued into the evening. The other main items on Monday were discussions on Consumer Credit, Sustainable Development and Better Regulation.

Services Directive

The Council reached a political agreement on the Draft Services Directive, with the UK voting in favour. Lithuania and Belgium abstained. The Commission’s amended proposal was based largely on the European Parliament’s first reading opinion, modified to take account of Member States’ views, in particular on the scope of the Directive and on the strength of certain provisions. The negotiations were successful, resulting in a good outcome for the UK. Attempts to reduce the scope were largely avoided, and the agreed proposal now contains stronger screening mechanisms, which oblige Member States to review their legislation against the ‘better regulation’ criteria in the Directive.

Better Regulation

The Council took note of a Presidency progress report on Better Regulation. The report gave a short account of work in progress under the Austrian Presidency as regards impact assessments, simplification of legislation, screening of pending legislative proposals and assessing and reducing administrative costs. I welcomed the progress made by the Commission and the Presidency in taking forward this important agenda and I led Member State interventions by stressing the need to match rhetoric with action, in particular on special provisions for SMEs and setting targets for reducing burdens. A number of other member States also emphasised the importance of driving forward the Better Regulation Agenda.
**Sustainable Development**

The Council held a policy debate on the review of the EU Sustainable Development Strategy. The strategy is being discussed in a number of formations of the Council, including the Energy and Environment Councils, with a view to reaching agreement at the European Council meeting on 15 and 16 June. The Presidency had circulated a set of questions in advance of the Council to which Member States responded in writing. The Presidency provided a summary of these responses in the Council meeting.

**Consumer Credit**

The Council held a policy debate on a draft Directive on Consumer Credit. Again, the Presidency had circulated a number of questions in advance of the Council to which Member States responded in writing. The questions were on harmonisation, early repayment and cross-border comparability of consumer credit agreements. The discussion in the Council focused primarily on the central question of maximum harmonisation and mutual recognition within the directive. I welcomed the objective of opening up the single market in consumer credit, but emphasised that any Directive would have to maintain levels of consumer protection, and should be based on a rigorous analysis of costs and benefits.

**AOB agenda items:**

The Council took note of information from the Polish delegation on EU import duties on primary aluminium; requesting the Commission to suspend import duties on raw aluminium. I supported this request along with a number of other Member States.

On Euro V, the Council took note of information from the French delegation concerning the proposal for a Regulation aimed at limiting emissions from light vehicles. Several delegations intervened in support of the French delegation.

On Public Procurement, the Council took note of the information provided by Germany (along with France and Austria) asking the Commission to withdraw its draft interpretative communication on regimes for below-threshold procurements. I supported this request, along with a number of other Member States.

The Presidency gave short reports about conferences on REACH (Registration, Evaluation and Authorisation of Chemicals), Consumer Protection and Tourism. It also noted presentations by the Presidency on Clusters, and by Commission Vice President Günter Verheugen on the communication “A new tourism policy: towards a stronger partnership for European tourism”.

**Day 2 Tuesday 30 May**

The second day was devoted to Research and Space business. Elisabeth Gehrer, Austrian Minister for Education, Research and Culture chaired the Seventh Framework Programme (FP7) items. Hubert Gorbach, Austrian Vice Chancellor and Federal Minister for Transport, Innovation and Technology chaired the Space item.

A General Approach was agreed on the draft Regulation laying down the Rules of Participation for the FP7. The UK voted in favour.

The Council also reached agreement on a general approach on the FP7 for research and technology development. The UK voted in favour. The Council also considered the Euratom framework programme, but did not reach agreement.

**Lunch and other AOB items**

The Council took note of information from the Commission on its recent communication on modernising universities and on ITER but there was no discussion.

On Space Policy, the Council took note of information by the Presidency on the main results of a conference on GMES (Global Monitoring for Environment and Security System) which was held in Graz on 19–20 April, as an input for the future elaboration of the European Space Programme. The Council also took note of information by the Commission on the state of play concerning developments towards European space policy and the roadmap foreseen for future developments in this area.
Letter from Lord Sainsbury of Turville to the Chairman

I am pleased to enclose a copy of my written Statement to Parliament providing a summary of the informal meeting of the Competitiveness Council on 10–11 July in Jyväskylä.

18 July 2006

WRITTEN STATEMENT

I attended the informal meeting of the Competitiveness Council on 10–11 July, hosted by the Finnish Presidency in Jyväskylä. The meeting focused on innovation policy, with discussion of the Seventh Framework Programme for research and development over lunch on the first day.

On the morning of 10 July, a number of speakers gave presentations on their views of the challenges for European Innovation policy. Presentations were given by:

— Jorma Ollila—Chairman of the Board of Nokia;
— Michael Worley—President of the GEEF, a group representing family-run businesses in Europe;
— Juliana Garaizar—Managing Director of IFEX;
— Gordon Murray—Professor at the School of Business and Economics, University of Exeter; and
— Esko Aho—former Finnish Prime Minister and President of the Finnish National Fund for Research and Development.

Commissioners McCreevy and Verheugen both welcomed the Presidency’s focus on innovation policy, and stressed the importance of better regulation, an effective intellectual property regime, public procurement, R&D, structural funds, cluster policy, dialogue with industry, and modern financing instruments in promoting innovation.

Over lunch, Commissioner Potocnic updated Ministers on the current state of play of the Seventh Framework Programme for Research and Development. An additional Competitiveness Council has been called on 24 July, at which it is hoped that political agreement on a common position can be reached.

In the afternoon, Ministers split into breakout groups to discuss a number of questions about innovation policy posed by the Finnish Presidency. I chaired one of the groups. We reported back on our discussions in a plenary session on Tuesday morning.

All Ministers supported the Presidency’s paper on a broad based innovation strategy and its focus on demand-side policies. I emphasised the need for development of the intellectual property and state aid regimes, outcome-focused regulation, innovation-oriented public services and public procurement, and support for research and entrepreneurship. There was scope for EU action in some areas, but Member States must take the lead in others, with the EU ensuring that it did not discourage national or private initiatives.

The Commission welcomed Member States’ comments and the Presidency’s work, and confirmed their intention to produce a communication on innovation policy in September, in advance of the Informal Summit in Lahti in October.

Annex A

Letter from Lord Sainsbury of Turville to the Chairman

I am pleased to enclose a copy of my written Statement to Parliament providing a summary of the extraordinary Competitiveness Council on 24 July in Brussels.

20 July 2006
WRITTEN STATEMENT

I will be attending the extraordinary Competitiveness Council on 24 July, where the Finnish Presidency aim to reach Political Agreement on the EU’s 7th Framework Programme (FP7) for Research and Technological Development and Demonstration (2007–2013), and on the Seventh Framework Programme of the European Atomic Energy Community (Euratom) (2007–2011).

Political Agreement on the whole FP7 package would enable a timely Second Reading deal to be achieved with the European Parliament and aid in FP7 being launched as planned on 1 January 2007.

Letter from Lord Sainsbury of Turville to the Chairman

I am pleased to enclose a copy of my written Statement to Parliament providing a summary of the extraordinary meeting of the Competitiveness Council on 24 July.

27 July 2006

WRITTEN STATEMENT

I attended the extraordinary Competitiveness Council on 24 July. The meeting had been called by the Finnish Presidency with the aim of reaching Political Agreement on the EC 7th Framework Programme for Research and Technological Development and Demonstration (2007–13), and on the 7th Framework Programme of the European Atomic Energy Community (Euratom) (2007–11).

The two outstanding issues were the conditions under which the 7th Framework Programme would fund human embryonic stem cell (HESC) research and Austrian concerns over the Commission Joint Research Centre’s (JRC) role in nuclear research under the Euratom Treaty.

On HESC research a number of Member States pushed for further restrictions to be added. I argued strongly against this and stated that the position adopted during the 6th Framework Programme should be maintained. Slovenia withdrew their reservation on Article 6 in their first intervention. After some debate, Italy, Germany and Luxembourg also dropped their objections in return for a Commission Declaration clarifying that the existing informal practise of not funding the initial step of HESC research (ie the destruction of embryos) would continue under the 7 Framework Programme. The exclusion of funding of this step of research will not prevent Community funding of subsequent steps involving human embryonic stem cells. Poland, Austria, Slovakia, Lithuania and Malta voted against.

On the Euratom Programme Austria were able to agree a compromise text on the exact nature of the Commission JRC’s contribution to the work of the Generation IV International Forum (GIF) which collaborates on new nuclear reactor designs. This part of the text, which requires unanimous agreement, moved in their direction while allowing enough flexibility for the JRC to collaborate in the full range of GIF activities.

I am pleased to have gained Political Agreement on the whole package of the 7th Framework Programme. The text we have agreed will now go to the European Parliament for consideration, and I am confident that this will enable a timely launch of the 7th Framework Programme in January 2007.

Letter from Rt Hon Ian McCartney MP 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 25 September 2006 in Brussels.

18 September 2006

WRITTEN STATEMENT

The following statement provides information on the Competitiveness Council in Brussels on 25 September 2006, at which the UK will be represented by Anne Lambert, Deputy Permanent Representative UKRep.

The first agenda item will be a public debate on Innovation Policy and Competitiveness. The Presidency has set Member States questions in order to identify their priorities for future EU innovation policy. As a result of the discussion, the Presidency will draw up draft Conclusions on the way ahead for EU innovation policy, which will be put to the next Competitiveness Council (4–5 December) for agreement.
The next agenda item is on nominal quantities for pre-packed products, on which there will be a public debate. The Presidency is hoping to achieve political agreement on this amending Directive, which would end most of the existing “specified quantities” on pre-packed products in EU legislation.

Following this, there will be an orientation debate on Single Market Policy. The discussion will be structured around Presidency questions about the kind of Single Market that can best meet the challenges of the future, including enlargement, and how to improve the implementation and enforcement and efficient functioning of the Single Market. In the light of this discussion, the Presidency will draft Conclusions which they will put to the Competitiveness Council for agreement in December, and which will feed in to the Commission’s Single Market review.

The Commission will also present the results of the latest Internal Market Scoreboard, which is used to monitor the timely implementation of Internal Market Directives by Member States. The UK performed well in the last scoreboard, meeting the Commission’s targets, and being ranked 6th out of 25 Member States.

There will be a public debate on the Consumer Protection Action Programme, where the Presidency is hoping to achieve political agreement. This programme sets out the EU’s objectives for consumer policy and details the actions that will require financing. The UK has no outstanding concerns with the proposal.

In addition, there will be five further items taken under “Any Other Business”:

(a) Progress report on the 7th research Framework programme (EC and Euratom) legislative package. Following political agreement which was reached at the Competitiveness Council in July, the Presidency hopes that the Common Position can be adopted without further discussion at this Council. The Presidency will give an oral progress report.

(b) Implementation report by the Commission on retaining and attracting researchers to the European Research Area (ERA). The Commission will provide updated information.

(c) 6th Euro-Mediterranean Ministerial Conference on Industry (21/22 September 2006)—The Presidency will provide information on this conference.

(d) Communication on Biodiversity—The Commission will present their recent Communication.

(e) State of implementation of the Consumer Protection Cooperation Regulation. The Commission will provide an update.

There will be a lunchtime discussion of state aid reform with Commissioner Kroes. Last year, the Commission undertook to revise all state aid frameworks and guidelines and made some proposals for procedural change. The lunchtime debate is likely to be wide-ranging, but given the thrust of the rest of the agenda is likely to focus on Research, Development and Innovation (RD&I).

CROSS BORDER SERVICES (8473/00)

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

DTI submitted EM 8473/00 on the drafts of two Directives on the posting of workers who are third country nationals on 15 June 2000. Your committee cleared it from scrutiny (Progress of Scrutiny 21 July 2000, Session 99/00).

I am writing now to inform you that the Commission withdrew these proposals on 24 March 2005. A full scrutiny history can be found at:

http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=142182

23 April 2006

DIGITAL BROADCASTING (9411/05)

Letter from Rt Hon Alistair Darling MP, Secretary of State for Trade and Industry, Department of Trade and Industry to the Chairman

On 9 December 2005, my predecessor Alan Johnson wrote to you explaining the late depositing of the regulatory impact assessment for digital switchover in the House Libraries. I hope that this has addressed your questions and that your Committee will now be able to lift the scrutiny reserve on this proposal.

26 June 2006

Letter from the Chairman to Rt Hon Alistair Darling MP

Thank you for your letter of 26 June, which Sub-Committee B considered at its meeting on 3 July.

We are grateful to you for your explanation of the late depositing of the Regulatory Impact Assessment on this proposal and are satisfied that our earlier concerns over the percentage of the population required for the handover have been addressed.

Therefore we are content to lift the scrutiny reserve on this proposal. We apologise for the delay in clearing the dossier from scrutiny.

5 July 2006

DOUBLE-HULL TANKERS & COMPLIANCE WITH FLAG STATE REQUIREMENTS

(8010/06)

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

I am enclosing the above noted Explanatory Memoranda (not printed). I apologise for their delayed submission to the committee.

The flag state proposal, which has yet to be discussed at either the Council or the European Parliament, raises a number of issues about the extent to which there might be a transfer of competence to the Community, which it has taken rather longer than we would have liked to resolve.

The Government’s view is that the proposed Directive goes beyond simply levering up flag State performance, as it would also bring into Community law a range of flag State responsibilities covered under international Conventions and thus transfer the competence in these areas from Member States to the Community. This is, of course, a matter for serious concern which I know your Committee will share, and we needed to thoroughly examine the extent of the competence issues raised by the proposal; and to consider, not least with lawyers, what implications it might have on the UK’s influence within the International Maritime Organisation (IMO).

We have made our concerns known to the Commission. Discussions of this issue with the Commission have been a little sensitive; in brief, the Commission took the view that our concerns were based on a misunderstanding of the proposal, which they felt would have very little impact on competence. Although we felt in little doubt on the matter, in the interest of good relations we accordingly undertook to re-examine our position to ensure that our view was based on a thorough and proper understanding of the proposals and assured the Commission that we would withdraw our opposition if it proved to be unfounded. We have now completed our re-examination and remain of the same opinion. This period of consideration did, however, contribute to the delay in submitting the EM, since we naturally needed to be clear in the EM about the nature of our objections to the proposal.

As currently presented, the proposal could limit the EU Member States’ ability to work independently as flag States in IMO to enhance safety, security and protection of the marine environment. By bringing flag State responsibilities under SOLAS, MARPOL and other IMO Conventions into Community law there is a risk that individual Member States would no longer be free to speak with a national voice on those issues at IMO. The UK delegation commands a high level of respect throughout the IMO Committees, putting us in a strong position to work independently to help influence and broker agreements that satisfy both EU and influential non-EU IMO Member States, so advancing the cause of enhancing global maritime safety and environmental protection. This ability might be compromised were the proposal to be agreed in its current form.

The period of time it has taken to clarify these issues has been further prolonged as a result of the absence of key staff on extended sick leave. This has also led to a delay in the submission of EM No. 8010/06 on the Proposal for a regulation amending Regulation (EC) No 417/2002 on the accelerated phasing in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94. In expressing my regret for the fact that the EMs are being submitted so late, I would like to assure your Committee that this is not a situation that is expected to recur, and that the Department continues to be committed to effective scrutiny.

29 June 2006
INTERNAL MARKET (SUB-COMMITTEE B) 77

DRIVING LICENCES (15820/03)

Letter from the Chairman to Rt Hon Alistair Darling MP, Secretary of State, Department for Transport

Thank you for your letter of 17 January 2006 providing your assessment of the transport aspects of the UK’s Presidency of the EU.

Sub-Committee B considered this report at its meeting on 30 January 2006 and found it most helpful.

In the letter you referred to political difficulties in other Member States which had made it impossible to reach an agreement in Council on the Driver Licences proposal (15820/03). We would be grateful for an explanation of what these political differences were.

1 February 2006

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

Thank you for your letter of 1 February 2006 to Alistair Darling, responding to his letter of 17 January 2006 assessing the transport aspects of the UK’s Presidency of the EU.

In the letter you requested an explanation of the political differences that made it impossible to reach an agreement in Council on the Driver Licences proposal (15820/03).

The delay in the Council reaching an agreement has been caused by some Member States having domestic difficulties with the proposal. These difficulties related to worries about the proposals for the withdrawal and replacement of old licences. There were particular concerns about elderly drivers who feared that the obligation to get a new licence might be linked to new checks, for example health checks. As a result agreement was not possible at the December Transport Council.

The Austrian Presidency has indicated no intention to include this dossier on the agenda for the Council meetings during their term of office.

22 February 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 22 February, in response to my letter of 1 February, which Sub-Committee B considered at its meeting on 6 March 2006.

We are grateful for your helpful explanation of the reasons behind the delay in the Council reaching agreement on the Drivers Licence proposal.

We note that the Austrian Presidency has not indicated that it will pursue this dossier, but trust that you will keep us informed of any future developments as and when they occur.

8 March 2006

Letter from Stephen Ladyman MP to the Chairman

This is to update you on developments following Alistair Darling’s letter dated 17 January 2006 and my letter dated 22 February, and to inform you of the line I propose to take on this dossier in the Transport Council meeting scheduled for 27 March 2006.

As I explained in my letter of 22 February, the Austrian Presidency had indicated that they had no intention of including this dossier on the agenda for the Council meetings during their term of office. Nevertheless, during March they embarked on rapid negotiations in order to reach an agreement. It is now confirmed that the proposed Directive on driving licences will be taken as an “A” item in the forthcoming Transport Council meeting of 27 March. The text remains unchanged from that on which we sought to secure political agreement at the December 2005 Council, with one exception. A small change is proposed by the Presidency to help address the concerns of some other Member States about the withdrawal and replacement of old model licences. It is proposed that licences to drive cars, light vans and motorcycles should retain their validity period of 10 years, but with the possibility of national extension to a validity period of up to 15 years. This will have no impact on UK practice, and it is a better outcome than allowing those countries to continue to use their old licences indefinitely.

The Government supports much of what is included in the text. But it is concerned about the proposals on staged access for the younger riders to the larger motorcycles. The Government considers that the system of “motorcycle staging” as proposed will create significant difficulty for our motorcyclists with no tangible benefit for road safety in the United Kingdom. I therefore intend to abstain from the vote on this item and to enter a minutes statement along the lines of:

The UK abstains. It continues to believe that the measures proposed for staged access to motorcycles for younger riders are too complex and too rigid, and that they are likely to achieve little if any improvement in road safety. The UK therefore has proposed amendments to reduce the complexity and increase the flexibility of these measures at key points. It expresses disappointment that the Council has found it impossible to reach agreement on such amendments.

23 March 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 23 March 2006, replying to my letter of 8 March 2006. Sub-Committee B considered your letter at its meeting on 19 April 2006.

We were surprised that the Austrian Presidency has sought to secure agreement on this Directive, having given no previous indication of such intent. You mention in your letter that the UK Government would abstain from the vote over the proposed system of motorcycle staging. Can you inform us whether the Government did abstain, and whether any outstanding issues remain?

24 April 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter dated 24 April 2006.

You ask why, in transport Council on 27 March this year, the Austrian Presidency sought to ensure agreement on this Directive, having given no previous indication of such intent. Jimmy Hood MP has also written to me asking why the Government chose to abstain from the vote on the text of the proposed Directive, rather than voting against it.

The Austrian Presidency indicated at an informal meeting in Bregenz on 2–3 March its intention to secure agreement to a text in the 27 March Council. The changed intention of the Austrian Presidency was because it had unexpectedly found a new basis for agreement with those Member States which had expressed concern over the requirement to withdraw old model licences. That new basis was to make small changes to relax the permitted period of validity of the driving licence, to enable Member States if they wished to extend this validity period from 10 years up to 15 years. That is the sole amendment incorporated into the agreed text. As I explained in my previous letter, this amendment will have no impact on UK practice. Following the Bregenz meeting we made further strenuous efforts to secure support for a better deal on staged access for young motorcyclists to the larger machines, but were unsuccessful. Other Member States would also have liked to re-open discussions on different aspects of the proposal, and the Presidency were unwilling at this point to accept further changes as this could have unravelled the hard-won basis for an agreement.

The UK announced our intention to abstain because we are, nonetheless, disappointed that it has been impossible to secure amendments to achieve better and more flexible arrangements for staged access by young motorcycle riders to the larger machines.

— Despite clear consensus in Europe in favour of staged access for young motorcyclists to the larger machines, the Government has consistently sought amendment to these particular proposals. After full consideration of all aspects, the Government does not believe that it could support measures so complex and rigid as those proposed without evidence that they would lead to improvements in road safety.

— We believe that our present practice on licensing motorcycle riders, which insists on Compulsory Basic Training and testing for all, is effective. We shall seek to work with motorcycle and road safety interests to devise as good as possible a way of retaining its benefits within the new EU framework.

The UK requested a minutes statement, which was entered as follows: “The United Kingdom believes that the measures proposed for staged access to motorcycles for younger riders are too complex and too rigid, and that they are unlikely to achieve an improvement in road safety. The UK had therefore proposed amendments to reduce the complexity, and increase the flexibility, of these measures at key points. It expresses disappointment that the Council found it impossible to reach agreement on these amendments.”
Although the Government abstained because of its disappointment over staged access to motorcycles for young riders, it did not oppose because it welcomes most of the remainder of the agreed text.

— The Government welcomes the proposed new measures to tighten up the overall security of the driver licensing system, including the establishment of a limited period of validity for the licence. Much of what is proposed is already established practice in the United Kingdom (UK).

— The new security measures are welcome, because they will bring the rest of Europe largely into step with current UK practice on photocard driving licences. UK photocard licences currently remain valid for 10 years, at the end of which a new licence, with an up-to-date photograph, has to be issued.

— There is no suggestion that any entitlements to drive will lapse, nor that a new test will have to be taken, at the end of the validity period. Existing drivers’ entitlements continue to be respected.

— Continued compliance with the required standards of physical and mental fitness will be required on renewal of the licence at the end of its period of validity, but we believe that is fully in accordance with the long-established practice of self-declaration in the UK.

— The new Directive will oblige the withdrawal of all pre-photocard licences and their replacement with photcards, by about the year 2032. The Government expects in any case to address this matter long before that date in order to improve the security against fraud of the UK driver licensing system.

— The Directive will permit the UK, should we decide to do so, to include a computer chip on our photocard licences, further to improve the security of our driving licences against fraud.

— The Government welcomes the emphasis placed on driving examiner competences. This will also encourage practice across Europe to be in accordance with our UK priorities for present and future action.

— The Government welcomes the proposals in support of “one person, one licence”. These will make it more difficult for a driver already holding a driving licence or disqualified from driving in one Member State to acquire simultaneously a further licence in another Member State. We believe that the system for international checking will need to be designed with care so as to focus the use of Member State resources effectively on tackling the real miscreants.

— The Government is pleased that many amendments have been made since the original proposals were presented, so that in numerous areas the measures can now be expected to lead to real benefit commensurate with their costs. Numerous proposals which would have imposed costs out of all proportion to any road safety (or other) benefit have been negotiated out of the draft Directive.

— There is now no obligation to limit entitlements to drive to age 65.

— Although the truck and bus driving licence will be renewable five yearly at ages under 45 as well as at 45 and over, we have no plans to introduce medical checks at ages under 45.

— The maximum vehicle weight at which a medium goods vehicle licence would apply remains at 7.5 tonnes.

— For vehicles towing trailers, a clearer and more consistent set of rules eliminates loopholes which have encouraged the use of freak vehicles. The text of the proposed Directive as it stands will allow a “tractor unit” and trailer combination to be driven on a category B driving licence, so long as together tractor unit and trailer weigh no more than 4,250 kg. Only if the trailer weighs over 750 kg and the combination weighs over 3,500 kg will any supplementary training or testing have to be undertaken. This is a simpler and clearer rule than the present one. It is at the discretion of the Member State to determine on national implementation whether the requirement imposed should be for training, for testing, or for a combination of both. The United Kingdom authorities will wish to address this requirement with a light, if effective, touch.

10 May 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 10 May, which Sub-Committee B considered at its meeting on 22 May.

We were most grateful to you for your full account of why in your view the Austrian Presidency had sought agreement on the Directive, and for your detailed explanation of the Government’s stance.

23 May 2006
ELECTRICITY FROM RENEWABLE ENERGY SOURCES (15745/05)

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 23 January 2006 and agreed to maintain the scrutiny reserve.

We note that in your Explanatory Memorandum you express concerns over “actions and initiatives which might flow from (the Communication) and have implications in future”. We would be grateful if you could clarify what possible actions and initiatives you have in mind. Furthermore, what steps will the Government take to ensure that an undesirable harmonisation of renewable energy support systems does not take place?

25 January 2006

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 25 January. In response to your queries, the Communication itself has no direct implications, but actions and initiatives that may flow from it could have implications in the future. The Government agrees with the Commissions’ conclusion that it would not be sensible to try and harmonise renewable energy support schemes at the present time. Moreover, given the great diversity of the different schemes operating across Europe, and the long term certainty that investors require to develop renewable energy schemes, the Government also doubts whether a harmonised approach is either necessary or viable over the longer term.

This comment was merely an acknowledgement of the possibility that at some future date the Commission might bring forward some proposals for harmonisation which we consider undesirable, difficult to implement or inconsistent with existing UK policy and legislation. I should stress that at this stage we are not aware of any Commission proposals or plans, which give rise to such concerns.

With regard to the steps that the UK Government is taking to ensure that an undesirable harmonisation of renewable energy support system does not take place, we will be closely watching other EU energy initiatives and ideas which arise in the next few years which may give us an indication of the Commission’s preference in terms of a support scheme. We will work to influence those decisions but as the Commission communication acknowledges the difficulties of a harmonised scheme, we doubt that they would choose a particular route without considerable consultation, which we would of course, actively contribute to and ensure that our interests are represented.

13 February 2006

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 13 February 2006 in response to mine of 25 January which Sub-Committee B considered at its meeting on 6 March 2006.

Members were reassured by your assurance that you are not aware of any Commission proposals or plans which would bring forward proposals for undesirable harmonisation in this area. We are therefore content to lift scrutiny at this stage, and would be grateful to hear of any future developments.

8 March 2006

ENERGY COUNCIL

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 14 March in Brussels.

8 March 2006
Annex A

WRITTEN STATEMENT

I will be representing the UK at the Energy Council in Brussels in the morning of 14 March 2006.

This Austrian Presidency has organised this extra Council, in addition to the normal Energy Council scheduled to take place in Luxembourg on 8 or 9 June, to enable Energy Ministers to discuss progress on developing an EU energy policy. The need for a new European Energy policy was one of the key agreed outcomes from discussion between EU heads of government at Hampton Court last October during the UK’s Presidency of the EU.

Accordingly, the main substantive item on the agenda will be discussion of the Commission’s Green Paper, “A European Strategy for Sustainable, Competitive and Secure Energy”, published on 8 March. I attach a copy of this and will provide an Explanatory Memorandum in due course. The Green Paper outlines priorities and a broad range of possible actions, which together could provide a solution to the challenges facing the Community’s energy policy, in particular the need to secure the energy supply and the competitiveness of European industry. Following a presentation by the Commission, Ministers will have a policy debate on the key issues. The Presidency has prepared questions to guide the debate. In particular, these will give Ministers the opportunity to comment on the Commission’s analysis, to suggest other dimensions of energy policy that might not have been addressed by the Commission, and to highlight their main energy policy concerns and preferred solutions. This item will take up the bulk of the Council’s time.

Under Any Other Business, the Austrian Presidency will provide information on the Agriculture Council’s ongoing work on bioenergy.

Letter from Malcolm Wicks MP to the Chairman

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 14 March.

15 March 2006

Annex A

WRITTEN STATEMENT


Commissioner Piebalgs described the Green Paper as a comprehensive and balanced response to the Hampton Court agenda. The Commission envisaged a six month consultation period before taking a view on any additional measures, although some actions could be taken more quickly.

For the UK, I recognised the scale of the challenge and need for prompt action. I emphasised the priority of completing the internal energy market, promoting both transparency and regulatory consistency, and supporting the DG Competition sectoral inquiry. Externally, I underlined the need for a coherent strategy to engage key providers, transit countries and consumers, but particularly Russia and neighbouring countries. I also advocated an ambitious but realistic approach to promoting energy efficiency and renewable energy sources. I drew attention to the UK paper identifying priority actions that the Spring European Council might endorse.

Other Member States indicated broad support for the Commission’s analysis, agenda and level of ambition. They welcomed the focus on open and competitive markets, though one warned against further legislation now, while another questioned how competitive markets could be consistent with ensuring energy security. Other issues to attract comment were support for energy efficiency, a long-term renewables strategy, developing interconnections, and new external initiatives with Russia and Euromed countries. Many Member States emphasised national sovereignty over energy mix. One explicitly supported the UK paper while others touched on many of the actions proposed there.

Commissioner Kroes warned that the Commission would act against mergers or acquisitions that were anti-competitive, but noted that cross-border activity in this area was often a positive sign of the operation of an open and competitive market.

The Presidency concluded that the Energy Council would return to the Green Paper in June.

In two other brief items, the Energy Council is expected to adopt its own conclusions in June on the Agriculture Council conclusions on the Biomass Action Plan; and Poland made a presentation of its idea for an energy security treaty outside the EU framework.

Letter from Malcolm Wicks MP 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 8 June in Luxembourg.

6 June 2006

WRITTEN STATEMENT

There is an Energy Council in Luxembourg in the morning of 8 June, at which the UK will be represented.

Informal discussion at the pre-Council dinner on 7 June will cover the European Commission’s Green Paper, “A European Strategy for Sustainable, Competitive and Secure Energy”, published on 8 March. The need for a new European Energy policy was one of the main agreed outcomes from discussion between EU Heads of Government at Hampton Court last October during the UK’s Presidency of the EU. Before the Council, the UK intends to submit its initial written response to the Green Paper. The UK’s final response to the Green Paper will await the conclusions of the UK’s domestic Energy Review.

The main substantive item on the main Council agenda will be the Internal Energy (electricity and gas) Market, on which Ministers will have a policy debate. The Presidency has prepared questions to guide the debate and Ministers will be asked to agree Council conclusions on progress on the single market’s implementation. The proper functioning of the single market in electricity and gas is a high priority for the UK. This item is expected to take up the bulk of the Council’s time.

Under the agenda item of sustainable energy production and consumption, Ministers will be asked to agree Council conclusions on the Commission’s Biomass Action Plan. Under the same heading, the Commission will provide information to the Council on two Energy Efficiency initiatives: the consultation process on the Commission’s Energy Efficiency Green Paper and negotiations for an agreement between the US and European Community on the coordination of energy: efficient labelling programmes for office equipment (Energy Star II).

The Presidency or Commission will also provide information on International Relations in the field of Energy, encompassing the conclusion of the Energy Community Treaty and the EU’s relations with OPEC and with Russia.

Letter from Malcolm Wicks MP to the Chairman

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 8 June.

14 June 2006

WRITTEN STATEMENT

Anne Lambert, Deputy Permanent Representative, UKREP, represented the UK at the Energy Council in Luxembourg on 8 June. Discussion focused on the EU’s international relations, the Internal Energy Market and sustainable energy.

On international relations, Commissioner Piebalgs summarised the EU’s external energy priorities as a comprehensive energy agreement with Russia and coherent, systematic dialogues with key supplier, transit and consumer countries. He said that multilateral action would be most effective, citing the need for working together within the International Energy Agency and on an international agreement on energy efficiency. He provided updates on the Energy Community Treaty for South East Europe, on the EU-OPEC dialogue and
on EU relations with Russia. On Russia, he said that the EU should develop a partnership of mutual self-interest covering investment, diversification, a reliability of supply and demand, third party access and non-discrimination; and that the Commission were considering a comprehensive energy agreement as part of the post-PCA relationship.

In welcoming the Commission’s work, some Member States emphasised that energy remained a national competence and that Energy Ministers should be informed and involved in agreeing Commission activity in advance. One Member State emphasised that progress with Russia depended on establishing a relationship based on trust. Another Member State stated that the relationship must be reciprocal and based on the Energy Charter Treaty principles, ensuring that EU companies can operate freely in Russia.

The Council adopted conclusions on the Internal Market. The Internal Market had been on the agenda at the informal dinner on the eve of the Council, during which Commissioner Piebalgs detailed the next steps on the Green Paper:

— a hearing on 21 September prior to consultation closing on 24 September;
— a meeting of Member States’ Energy Directors General in September;
— a document summarising the consultation to be issued in October for discussion at the November Energy Council; and
— on 13 December, consideration by the Commission of the Strategic Energy Review, the DG TREN Internal Market report and the final results of the DG COMP enquiry.

Other documents to issue between now and then would be the Energy Efficient Action Plan, communications on clean coal and nuclear, and the Renewables Action Plan.

Discussion of the Internal Market during the formal Council focused on the role of regional markets, on steps needed to complete the market and on diversification. The Commission supported regional initiatives, while warning that these should not undermine the overall objective of a single energy market. The Commission said that it would continue to monitor and assess progress, reporting at the end of the year. Co-ordinated diversification of supply sources, relevant infrastructure and new technologies were also crucial. The Strategic Energy Review would bring all this together.

All Ministers supported, regional markets as a building block to developing a single market. Two Ministers said that existing regional markets could be extended to other Member States and explicitly invited the UK to join the North West market, which now involves Germany, France, Netherlands, Belgium and Luxembourg. Many Ministers emphasised the need to harmonise regional markets to ensure the development of the main objective of a fully functioning internal market.

The UK advocated political engagement in the development of regional markets and in effective unbundling and market transparency. Several Member States supported the UK, though one viewed further unbundling requirements as unnecessary.

On diversification, many Member States identified increased interconnection, development of renewables and energy efficiency technologies as the key drivers. Some Member States pressed for the development of indigenous sources of supply, including nuclear power. Others wanted a common approach to diversification, but some noted that responses related to Member States’ individual circumstances.

One Member State questioned the effectiveness of the EU Emissions Trading Scheme Carbon pricing policy, noting its significant impact on electricity prices. The Commission thought that the ETS fundamentally worked, though it needed refining before the next stage. Another Member State thought security of supply more important than liberalisation, while another noted that it was developing security of supply indicators with the UK and Commission.

On Sustainable Energy, the Council adopted conclusions on a Biomass Action Plan. The Commission said that, in implementing this, priority would be given to a proposal on renewable heating and cooling and to the strengthening of the Biofuels Directive. The Energy Efficiency Action Plan would emphasise implementation and enforcement of existing legislation, measures to address energy consumption and financial incentives. The Energy star negotiation with the US had concluded with agreement on significant improvements in standards and coverage. The Commission hoped other key consumer countries would join. Some Member States emphasised the importance of updating labelling legislation.

In conclusion, Finland, the incoming Presidency, identified its energy priorities as:

— developing European energy policy, particularly renewables and energy efficiency—the Internal Market; and
— Russia.
The next Energy Council is scheduled for 23 November 2006.

ENERGY: EUROPEAN STRATEGY (7070/06)

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 3 May 2006.

As the Sub-Committee have just commenced an inquiry into the Green Paper, we will maintain scrutiny on this proposal at this stage, and look forward to hearing your views in an oral evidence session on 5 June 2006.

4 May 2006

Letter from Malcolm Wicks MP to the Chairman

Following my appearance before your committee on 5 June 2006, I have pleasure in attaching copies of the UK’s interim response to the European Commission on its Energy Green Paper (not printed) (“A European Strategy for Sustainable, Competitive and Secure Energy”). The response comprises a covering letter, a 6-page summary and a 30-page response. As noted in the covering letter to DG TREN of 23 June, the UK will provide a supplemental response in September after the Energy Review has reported, but before the end of the Commission’s consultation process.

Copies of the UK’s interim response have already been sent to Jimmy Hood MP and to the individual members of the House Commons European Scrutiny Committee following my participation in the European Standing Committee C debate of 27 June.

4 July 2006

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 4 July, which Sub-Committee B considered at its meeting on 10 July.

We are grateful to you for providing us with a copy of the UK Government’s response to the Commission’s Green Paper: “A European Strategy for Sustainable, Competitive and Secure Energy”, which we will read with interest.

As you will be aware, the Committee has just completed an inquiry into the Green Paper, and will publish our report before the Summer Recess.

12 July 2006

EU SPECTRUM POLICY (12393/05, 12817/05)

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

Thank you for your letter of 9 November 2005, requesting further information on EM 12817/05. I am sorry that it has taken some time to assemble the authoritative response that your queries deserve.

I had made it clear that the proposal raises no new issues of subsidiarity, and you responded by asking whether the communication raises any existing issues of subsidiarity. I think it is inevitable that some familiar issues of subsidiarity will arise in relation to any proposal to harmonise the use of spectrum, including what the communication refers to as the “spectrum dividend”. This concerns the balance between national spectrum management and European coordination. The way in which this balance is struck involves consideration of whether the objectives of the proposed harmonisation measure can be sufficiently achieved by the Member States or whether they can only be achieved by the Community, for example because of the desirability of avoiding distortions in markets that are underpinned by spectrum availability. Our approach is to argue for such matters to be left to the individual nation state unless it is clear that there are manifest benefits to be gained from a community-wide approach. I hope that this explanation fully clarifies the statement in the Explanatory Memorandum.

19 April 2006


Letter from Rt Hon Alun Michael MP to the Chairman

Thank you for your letter of 26 October 2005 requesting further information on EM 12393/05. I am sorry that it has taken some time to assemble the authoritative response that your queries deserve.

The UK supports the market-based approach to spectrum management and in your letter you indicated that your committee both shares that approach and share our concerns to avoid stifling national innovation. Those players directly engaged in the market have the best understanding of the benefit and development of competing technologies. In general, market mechanisms are more likely to lead to dynamic adjustment of spectrum assignments than regulation. The accelerating pace of convergence makes this especially important for European competitiveness.

You asked me about Ofcom’s views on such matters. These were set out in Ofcom’s Spectrum Framework Review, published on 28 June 2005. In addition, Ofcom’s response to the European Commission’s request for comment on proposed harmonisation in the 2.6 GHz band, published on 15 September 2005, sets out in detail Ofcom’s view of these issues in relation to a specific harmonisation proposal. Both documents are available on Ofcom’s website, www.ofcom.org.uk.

As you will appreciate, Ofcom is accountable to Parliament rather than to Ministers, but at DTI we do take the views of Ofcom as the independent regulator very seriously indeed in seeking to develop our approach.

In my Explanatory Memorandum I said the communication did not raise any new issues of subsidiarity and you also ask whether the communication raises any existing issues of subsidiarity. Certainly there are existing issues, and I believe there will always be a tension to be resolved, so the Commission’s communication describes the balance between national spectrum management and international coordination including European coordination. The way in which this balance is struck at the European level involves consideration of whether the objectives of a proposed spectrum harmonisation measure can be sufficiently achieved by the Member States or whether they need to be coordinated by the Community, for example because of the desirability of promoting international roaming or securing economies of scale. As stated by the communication, harmonisation can be achieved through market mechanisms on a de facto basis where spectrum markets have been introduced. Our approach is to press for subsidiarity except where it is clear that there is manifest benefit from an EC wide approach.

19 April 2006

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letters of 19 April 2006, replying to my letters of 26 October 2005 and 9 November 2005. Sub-Committee B considered both letters at its meeting on 3 May 2006.

We were reassured to learn that the Government will be pressing the case for subsidiarity except where there is “manifest benefit” to Community coordination of market harmonisation. We are content to lift scrutiny on the two documents at this stage, but because of the potential importance of these measures for the UK market, we will return to it as concrete proposals emerge. In the meantime we would be grateful for news of any developments in the important area of EU Spectrum Policy.

4 May 2006

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

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 19 June 2006.

We note and share the Government’s clear opposition to this proposal, which raises important issues over the respective competencies of Member States and Euratom. You report that no Member States have “shown positive support” to the proposal. Can you confirm whether the Government have any concerns as to the

consistency of this agreement with the principle of subsidiarity? We would of course be grateful to you for an update should any progress be made on negotiations on the agreement.

We will hold this proposal under scrutiny at this stage.

20 June 2006

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 20 June, about the above draft inter-institutional agreement.

The principle of subsidiarity is just one of many issues surrounding the draft inter-institutional agreement on which there are concerns. In addition to the UK a number of other Member States have now expressed concerns about issues relating to the agreement, and there has been significant opposition to the European Commission’s proposals from, among others, Germany, France, Czech Republic, Netherlands, Belgium and Spain. It is therefore unlikely that the Commission’s proposals will succeed. However the UK may be able to at least consider some non-binding guidelines which are consistent with Treaty obligations and we shall be in close contact with the Finnish Presidency as they consider the best way forward. Any initiative is, however, unlikely to be developed until the autumn.

12 July 2006

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 12 July, replying to my letter of 20 June. Sub-Committee B considered your letter at its meeting on 24 July.

We note that the Government hold concerns over “many issues” surrounding the draft agreement in addition to those over its consistency with the subsidiarity principle. We would be grateful to you for clarification on what these other concerns relate to.

We look forward to receiving an update from you on the possibilities for considering non-binding guidelines as an alternative.

We will maintain the scrutiny reserve on this proposal at this stage.

25 July 2006

Letter from Malcolm Wicks MP to the Chairman

Thank you for your further letter of 25 July, requesting clarification on behalf of Sub Committee B on what the “other concerns” are which I referred to in my letter of 12 July on the draft agreement.

The UK has raised the following concerns with other Member States:

— We feel that it is unclear what problem the draft proposal is trying to solve. Co-ordination already takes place through regular meetings chaired by the Presidency.

— The Commission refers to principles. This is a strong term to use, suggesting an overriding legal requirement on Member States. Article 192 of the Euratom Treaty already enshrines the issue of solidarity in law under the so-called duty of loyal co-operation. In the UK’s view the draft proposal has not made out a case why this is insufficient.

— There is a reference in the proposal that Community reports should only be discussed within the Council, and not in other fora. The UK is concerned that this could be a mechanism for trying to stifle dissent and discourage Member States from expressing different views at international meetings. There should be no restriction on comments only at the Council stage in Brussels.

— The UK wonders if the Proposal could also be linked to the Commission’s plans for a greater role in the International Atomic Energy Agency (IAEA) which could lead to the Commission seeking a greater role in other matters.

— There should be no obligation to secure a common position. In areas of Member State competence the European Court of Justice has held that Member States must use best endeavors to reach a common position; if this cannot be secured, Member States are free to go their own ways.

— The suggestion that The Commission and Council present things jointly when matters fall within both Community and Member State competence is odd.—The Presidency usually performs this role.
Inter Institutional agreements are usually agreed between all three Community Institutions but here it does not appear that the European Parliament will be involved. Such arrangements are usually framed as a note or procedural framework agreed in the working group and Coreper under the procedural framework agreed last year for IMO related issues.

I note your request for an update on the possibilities for considering non-binding guidelines. I look forward to providing a written update on this during the autumn, once the issue has been discussed in detail by Member States under the Finnish Presidency.

14 August 2006

EURATOM: INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA) (7609/06)

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 3 May 2006.

As your Explanatory Memorandum reports, a number of significant difficulties could be raised by Euratom’s full membership of the IAEA, which the Commission recognises. How in your view might these difficulties be overcome? You write that “it is difficult to understand what might be gained from such an enhancement of status.” Does the Government, perceive any benefits from such a proposal? How likely a prospect would be the removal of the seats of Member States on the Board to accommodate Euratom? Is there as yet any word on which option the Commission will seek to pursue in negotiations with the IAEA?

Because of the serious nature of the Government’s misgivings over this proposal, we will hold this document under scrutiny. We would be grateful for news of any developments in this area.

4 May 2006

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 4 May about the above document and for your confirmation that you will be holding it under scrutiny.

Your letter raises a number of further questions which, I am afraid, the Government is not yet in a position to answer. The Commission’s plans have not been the subject of detailed discussions in the Atomic Questions Group (AQG). I am able to report that when the Commission made its presentation to AQG on 3 April the reception from many Member States appeared to be lukewarm. Consequently, it is uncertain whether the Commission will obtain political endorsement for its proposed strategy from the Council.

Given that the Commission does not yet have a mandate to begin negotiations with the IAEA, it is not possible to set out what the outcomes of those negotiations might look like. We will bear the questions you have raised in mind in future discussions in AQG. I will, of course, write to you should there be any developments in this area.

21 May 2006

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 21 May 2006, replying to my letter of 4 May. Sub-Committee B considered your letter at its meeting on 12 June.

We understand that you are unable to answer our questions until more detailed discussions have taken place, and that the scepticism of several Member States in the Council may prevent the Commission gaining an endorsement for this strategy. We would welcome a response to the questions posed in my earlier letter and an update on negotiations, as soon as both are available.

We will maintain scrutiny on this proposal.

15 June 2006

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department of Trade and Industry to the Chairman

Thank you for your letter of 15 June, about the above document and for your confirmation that you will be holding it under scrutiny. I am replying on behalf of Malcolm Wicks in my capacity as Duty Minister.
Your earlier letter of 4 May raised a number of further questions which, as Malcolm Wicks mentioned in his letter of 21 May, the Government is not yet in a position to answer. Member States’ formal views were invited at the Atomic Questions Group meeting in June and the response was lukewarm. Following this response, the Commission stated at the July meeting that there was confusion about its intention in this area: they did not propose Euratom membership of IAEA, but rather an enhancement of their status (ie something between observer status and full membership). Member States were asked to reconsider in the light of this change of emphasis.

Given that the Commission does not yet have a mandate to begin negotiations with the IAEA and has not set out what any enhancement in status might look like, it is not possible to set out what the outcomes of those negotiations might look like. We will bear the questions you have raised in mind in future discussions in AQG. Malcolm Wicks will, of course, write to you should there be any developments in this area.

23 August 2006

EURATOM: SEVENTH FRAMEWORK PROGRAMME (8087/05, 5057/06, 6185/06, 9981/06)

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

Sub-Committee B considered this document (6185/06) and your Explanatory Memorandum at its meeting on 13 March 2006.

We welcome the proposals and are content to clear this document from scrutiny at this stage.

15 March 2006

Letter from Lord Sainsbury of Turville to the Chairman

The above documents (12736/05, 12730/05, 12727/05, 12732/05, 12734/05, 5057/06) were discussed at the recent Competitiveness Council on 13 March.

Detail of the outcome of this Council has been sent to you by Barry Gardiner. I am writing to further update you on the discussions that took place regarding the 7th Framework Programmes. I attach a report of this discussion at Annex A.

I will continue to keep you up to date on the development of negotiations relating to the documents above.

7 April 2007

Annex A

REPORT OF COMPETITIVENESS COUNCIL DISCUSSIONS REGARDING THE 7TH FRAMEWORK PROGRAMMES

As stated in the Barry Gardiner’s letter the Council were asked to consider compromise texts for five of the Specific Programmes implementing the 7th Framework Programme and the proposed regulation for the Rules of Participation for 7th Framework Programme. The five Specific Programmes presented were “Co-operation”, “Ideas”, the two “JRC” (Joint Research Centre) Programmes and “Euratom”.

Ministers were not asked to agree any of the texts under discussion; rather they were invited to take note of the Presidency’s texts and progress to date.

In relation to the Specific Programme texts the Presidency identified two outstanding issues that Ministers might wish to address; the ethical principles that apply in respect of the eligibility of projects to be funded under the 7th Framework Programme, and the governance of the 7th Framework Programme.

Commissioner Potocnik reported he was pleased with the progress made so far on agreeing a large degree of the scientific content of the five Specific Programmes. he commented that Research had been a “winner” in the December European Council agreement on the Financial Perspectives. However, the budget for the 7th Framework Programme was inevitably going to be less than the Commission had originally asked for. Therefore revisions to the original proposals were likely. The Commission would be ready to do this within days of the final Inter-Institutional Agreement on the Financial Perspectives. The structure and the main components of the Framework Programme would remain but stricter prioritisation was likely. It was also likely they would not be able to fund all the Joint Technology Initiatives and Article 169s they had originally hoped, but the Commission remained committed to launching a number of these.
The points raised by Member States focused almost exclusively on four issues: the two areas of discussions suggested by the Presidency, the Rules of Participation proposal and, in the “Ideas” Specific Programme text, the method of appointing the Director and senior staff to the implementing body of the European Research Council, the Executive Agency.

A balanced exchange of views took place as to the ethical principles that should apply in respect of the eligibility of research projects involving human embryonic stem cells to be funded under Framework Programme 7, with a number of Member States adopting the for position and a number adopting the against position. Most other Member States considered that the proposal put forward by the Commission, which allows Framework Programme funding for stem cell research, but with certain exclusions and a stricter application procedure than other areas of research, represented a good compromise. Barry Gardiner’s letter stated the contribution the UK made in this debate.

On the governance arrangements for the 7th Framework Programme nearly all Member States felt it was important to retain the Programme Committees ability to approve individual projects and that the Commission needed to provide more information to Member States than in previous Framework Programmes. Barry Gardiner stated the UK felt it was key to strike a balance between simplification and ensuring due regard is given to transparency and accountability when considering the governance arrangements of the Framework Programme. The UK saw merit in the Commission’s proposal that programme committees should focus on strategically steering the programme, through the adoption of work programmes but added that it was important to ensure that replacing Member States approval of projects with an information procedure provided a sufficiently robust system to guarantee transparency and accountability.

The UK also agreed that it was crucial that the Commission provided comprehensive, accurate and timely data to Member States to enable them to fulfil their role effectively.

On the Rules of Participation text many Member States expressed concern that key details were being left to supporting documentation instead of the legal text. Some Member States also had concerns about the removal of the Additional Cost Model.

Regarding the “Ideas” Specific Programme, a number of Member States reiterated that they wanted the senior staff of the Executive Agency of the ERC to be appointed in agreement with rather than in consultation with the Scientific Council.

In summary, no decisions were asked of the Council and the meeting represented an opportunity for Member States to have an exchange of views on some of the issues still to be resolved in Framework Programme 7.

Letter from Lord Sainsbury of Turville to the Chairman

I am writing to update you on the recent discussions that have taken place regarding the budget for the 7th Framework Programme.

On 4 April 2006 an Inter-Institutional Agreement on the Financial Perspective 2007–13 was agreed between the three European institutions. This agreement provides for an extra €2 billion on top of the €862.4 billion agreed at the European Summit last December and within this extra funding an additional €300 million was earmarked for the 7th Framework Programme.

An indicative breakdown of expenditure for the Financial Perspectives 2007–13 was part of the discussion on 4 April. The indicative breakdown leaves the final budget for the 7th Framework Programme at €48 billion in 2004 prices.

This represents a significant reduction from the Commission’s original proposal adopted in April 2005. The Commission has yet to produce a revised proposal to reflect the revised budget. However, there have been strong indications that the form and structure of the original proposal will be maintained, but in the light of the reduced budget a reduction in the number of Joint Technology Initiatives (JTIs) and Article 169 initiatives is to be expected.

Discussions on how the reduced budget should be divided between the different areas of the 7th Framework Programme are still on-going both in the Council and the European Parliament.

Following the Financial Perspectives 2007–13 agreement the Presidency are aiming to achieve a General Approach on both of the above documents at the Competitiveness Council 29–30 May 2006.

I will continue to keep you up to date on the development of negotiations relating to the documents above.

10 May 2006
Letter from the Chairman to Stephen Ladyman MP, Minister of State, Department for Transport

Thank you for your letter of 10 May, which Sub-Committee B considered at its meeting on 22 May.

We were very grateful to you for your helpful update on the Financial Perspectives agreed on 4 April, and their implications for the Seventh Framework Programme (FP7). We have just published our report9 into FP7, and are content to clear the dossier from scrutiny ahead of the May Competitiveness Council. We look forward to receiving a response to our report in due course.

23 May 2006

Letter from the Chairman to Lord Sainsbury of Turville

Sub-Committee B considered this document (9981/06), and your Explanatory Memorandum, at its meeting on 26 June 2006.

As your EM notes, we cleared the Seventh Framework Programme from Scrutiny by report in advance of the May Competitiveness Council, following helpful updates from you on the likely alterations to the budget. As your EM notes, the amended budget reflects the Austrian Presidency’s proposals to Council, which the UK Government supported.

We are therefore content to lift scrutiny on this proposal.

We continue to maintain scrutiny on the separate Euratom elements of the budget, which as you indicate remain “subject to negotiation”. We would be grateful to you for any updates on these elements and we look forward to receiving a response from you to our report on the Seventh Framework Programme in due course.

28 June 2006

Letter from Lord Sainsbury of Turville to the Chairman

Further to your letter dated 28 June 2006 on EM 9981/06 I am writing to update you on the outstanding element of the Euratom text still subject to negotiation in Council and the recent discussions that have taken place regarding the 7th Framework Programme.

The European Parliament had their First Reading of the draft decisions for 7th Framework Programme text on 15 June 2006. Although a large number of amendments were proposed they do not change the substance of the decisions and the majority are fully consistent with the General Approach. There were some significant amendments relating to the European Research Council, where the Parliament agreed with Council’s view that it should be established first as an Executive Agency; stem cell research, where notably the Parliament agreed that the regime under the current Framework Programme should be maintained; and SMEs, where the Parliament wanted to maintain the current 15% target explicitly.

Following the European Parliament’s First Reading, the European Commission produced a revised proposal on 28 June 2006 (11142/06). This largely maintains its original proposal, whilst taking in some elements of the General Approach agreed in Council and the results of the European Parliament’s First Reading. In response the Finnish Presidency have acted swiftly to produce a compromise text with the aim of reaching Political Agreement at an extraordinary Competitiveness Council on 24 July 2006 (copy attached). The Presidency text is consistent with UK priorities. The major outstanding issues are, as before, (a) research using human embryonic stem cells, where there are differing views amongst Member States, and (b) continuing concerns from Austria over the role of the Joint Research Centre in relation to nuclear research under the Euratom Programme (the proposed budget for the Euratom Programme is not an issue of contention). The Presidency text does not make changes to the Commission’s revised proposal on either of these two key issues. The UK position remains unchanged on both issues and we hope they can be satisfactorily resolved at the July Council.

The European Parliament is aiming for a Second Reading on the Seventh Framework Programme in November and has asked that the Council provide a final position by September 2006. It is important that Member States reach Political Agreement in July so that the legislative process can proceed to enable the timely launch of Framework Programme 7.

The Government is content with the Presidency’s revised text, which maintains UK priorities, and therefore we would welcome the Committee considering clearing scrutiny ahead of the Competitiveness Council on 24 July. I will continue to keep you up to date on the development of the negotiations relating to the Seventh Framework Programme.

13 July 2006

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letter of 13 July, replying to my letter of 28 June. Sub-Committee B considered your letter, together with the Finnish Presidency’s revised text on this proposal, at its meeting on 17 July.

We were grateful to you for your update ahead of the extraordinary Competitiveness Council on 24 July, and are reassured that the revised text “maintains UK priorities” in your view. We share your hope that the Seventh Framework Programme can now be swiftly agreed in order that it is fully operational from the beginning of January 2007.

We are content to lift scrutiny on this proposal, and would be grateful to you for any further updates on this important dossier.

19 July 2006

EUROPEAN AUDIOVISUAL SECTOR—MEDIA 2007 (11585/04)

Letter from James Purnell MP, Minister for Creative Industries and Tourism, Department for Culture, Media and Sport to the Chairman

I am writing to update you on progress following the partial Political Agreement on the MEDIA 2007 programme (11585/04) reached at the Culture and Audiovisual Council on 14 November 2005. Your Committee cleared this proposal on 12 October 2004; therefore this letter is for your information only.

The final steps to agree the financial aspects on this programme have been ongoing at official level and we are now in a position to reach a final agreement by Ministers in Council.

In early April, the European Commission, Council of Ministers and the European Parliament reached agreement on the size of the 2007–13 Financial Perspective (FP).

Following this latest agreement, the Commission has produced a revised breakdown of the figures under each of the Headings of the overall budget. This document sets the budget for the MEDIA 2007 programme at a total of €671 million (£467 million) in 2004 prices for the seven years. This has been provisionally agreed at political level by Council. These numbers will now be confirmed by the final legal agreement, which will take place with the adoption of the Decision on the MEDIA 2007 programme on 18 May. The European Parliament is expected to approve this figure during their plenary vote on 17 May.

Whilst the budget for this programme is considerably below the original amount proposed by the Commission, the Presidency, Commission and all Member States have agreed at Council Working Group level that the partial Political Agreement reached last year on the content of the new programme should not be reopened. Instead the focus should be on making the best and most effective use of the resources available.

Therefore, amendments to the text of the financial article, Article 2, and the breakdown of resources across the different action lines, as set out in Chapter 2 Section 1.4 of the Annex, have been agreed.

Regarding Article 2. Member States and the Commission have agreed to the insertion of the final ceiling of €671 million (£467 million) for the budget for the duration of the programme, noting that it is in 2004 prices and therefore subject to technical amendment. In addition, the insertion of a reference to the indicative breakdown of resources set out in the Annex has been agreed.

Regarding the breakdown of the resources in the Annex, the following wording and figures have been agreed (changes are printed in bold-italics):

“1.4 Breakdown of resources

The funds available will be broken down according to the following guidelines:

<table>
<thead>
<tr>
<th>Action line</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition and improvement of skills</td>
<td>approximately 7%</td>
</tr>
<tr>
<td>Development</td>
<td>at least 20%</td>
</tr>
<tr>
<td>Distribution</td>
<td>at least 55%</td>
</tr>
<tr>
<td>Promotion</td>
<td>approximately 9%</td>
</tr>
<tr>
<td>Pilot project</td>
<td>approximately 4%</td>
</tr>
<tr>
<td>Horizontal issues</td>
<td>at least 5%</td>
</tr>
</tbody>
</table>
These percentages are indicative and subject to change by the Committee provided for in Article 11 in accordance with the procedure referred to in Article 11(2).

*In order to secure overall efficiency and appropriate implementation of the objectives of the programme, as laid down in Article 1, Community actions should concentrate on the development of the actions carried out under the previous programmes cited in Recital (5).*

*All actions shall be reviewed on a yearly basis in accordance with the procedure laid down in Article 10(2), allowing the Community to react to the needs and the development of the sector. In order to secure the overall cultural and industrial objectives of the programme the decision on the annual breakdown of the budget should be based on an ongoing monitoring of the effectiveness of the action lines in the programme.”*

The last paragraph was added following a proposal by the UK, agreed to by the Commission and other Member States. As you will be aware, the UK has repeatedly stressed that EU funding must be spent more efficiently and effectively across the EU budget as a whole.

The figures as agreed demonstrate the overall trans-border focus of the programme, with the main priority being the distribution of audiovisual works across the EU. However, the annual review process of both the budget and the different action lines will enable the Management Committee to review the effectiveness of each of those action lines. It provides the necessary flexibility to make minor amendments to the percentage of budget to be allocated to them for the following year, within the context of the overall agreed figures. This, coupled with the reference to SMART objectives and indicators in Recital 18a of the agreed text, will ensure a more robust monitoring and evaluation and, consequently, a more effective programme than has previously been the case.

We are content with both the final text of the Decision and the aim of agreeing the final Political Agreement on the MEDIA 2007 programme at the Culture and Audiovisual Council on 18 May, covering the financial aspects of the programme.

2 May 2006

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

**Letter from the Chairman to Karen Buck MP, Parliamentary Under Secretary of State for Transport, Department for Transport**

Sub-Committee B considered your Explanatory Memorandum at its meeting on 16 January 2006 and decided to maintain scrutiny on this document pending receipt of a Supplementary Explanatory Memorandum and initial Regulatory Impact Assessment following your investigations into the details of this framework proposal.

Members noted that the Commission is seeking to extend its competencies in this area. Is this consistent with the principle of subsidiarity?

In paragraph 196 and 20 of your Explanatory Memorandum you raise various concerns about the document relating to:

— the attestation and medical certificates for cabin crew; and
— the provisions applying the basic principles and essential requirements to airlines and aircraft from third countries.

We trust that these issues will be resolved in future discussions on this document.

18 January 2006

**Letter from Karen Buck MP to the Chairman**

Thank you for your letter of 18 January, regarding the Explanatory Memorandum that I sent to you on 13 December 2005. I would like to address the concerns that you raise and am also submitting an initial Regulatory Impact Assessment (RIA), under cover of a Supplementary EM.

I would like to comment on the two specific issues you raise in your letter. Firstly, the consistency of the extension of competencies with the principle of subsidiarity. The Government supported Regulation (EC) No 1592/2002 as it recognised that the establishment and uniform application of common rules in the field of civil aviation safety and environmental protection could not be sufficiently achieved individually by the Member States. The Community already had competence in the field of aviation safety through Council Regulation 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil
aviation which created a framework for incorporating Joint Aviation Requirements drawn up by the JAA. The Regulation repealed Council Regulation 3922/91 and established Community competence in many areas in which safety requirements were needed. Regulation (EC) No 1592/2002 required the Commission to bring forward proposals covering air transport operators and related personnel (in particular flight crew) and third-country aircraft as soon as possible. The need for Community competence in these areas is already, therefore, clearly recognised and endorsed in the current Regulation. The extension of Community competence in the proposed regulation is equally consistent with the principle of subsidiarity. The application of the proposed Regulation to further areas of aviation safety should ensure a high Community wide standard.

In your letter you also noted our concerns on the resolution of issues relating to attestation and medical certificates for cabin crew and the provisions applying the basic principles to airlines and aircraft from third countries. The Department’s consultation letter specifically seeks stakeholders’ views on these issues. In addition, my officials are seeking advice from the Civil Aviation Authority on this matter. This will help the Government to explore the issues fully and seek to find satisfactory solutions during consideration of the dossier in Council discussions. I will, of course, keep you informed as negotiations progress.

7 March 2006

EU-US AVIATION AGREEMENT (8656/06)

Letter from Rt Hon Alistair Darling MP, Secretary of State, Department for Transport to the Chairman

Thank you for your letter of 13 December 2005. Access for EU carriers to cabotage traffic in the US would require Congressional action to change the US statute, and it is clear that this is not a realistic possibility in the near future. For this reason the EU side has focused attention on changes to the administrative regime under which EU interests, airlines or others, may invest in US carriers, which may be regarded as an alternative means to gain access to the US domestic market.

For example, if an EU airline were to be able to control the operations of a US-registered carrier, it would be able to organise that carriers’ route structure and scheduling so as to maximise passenger feed onto its own trans-Atlantic services. Indeed, changing airlines ownership and control rules in a EU-US deal could have advantages compared to seeking cabotage rights, since significant relaxation of these rules in the trans-Atlantic market would be likely to have far-reaching consequences, increasing the pressure to dismantle anachronistic restrictions on airline ownership and control worldwide, thereby helping to bring the global airline industry into line with other sectors.

Any Stage One deal would include a commitment on both sides to resume negotiations at an early date towards further liberalisation. We know already that the US would have negotiating priorities in areas not likely to be covered in a Stage One deal, including seventh freedom rights for cargo operators, entitlements to set prices freely on intra-EU routes, and various regulatory concerns. This will enable the EU side to press for the further liberalisation we shall be seeking. Once a liberalising process gets under way it is likely to continue, as erstwhile opponents realise that the benefits outweigh any drawbacks. If we can achieve a sufficiently significant Stage One deal it will help to create its own momentum for going further.

A Stage One deal of the kind currently under consideration would very largely supersede the Bermuda II Agreement. All UK airlines, all non-UK EU airlines established in the UK, and all US airlines would be entitled to operate trans-Atlantic services into any UK airport, including Heathrow. The only parts of Bermuda II which would remain in force would be those dealing specifically with services between UK Overseas Territories and the US, which would be outside the scope of an EU-US agreement.

At the Transport Council on 5 December 2005 Vice-President Barrot reported on the progress of talks. We welcomed that progress, but agreed that Council could not make an overall assessment of whether to conclude a Stage One deal until the US had completed its current rule-making process on airline ownership and control which I described in my previous letter. I attach for your information an extract from the Council Press Notice showing the Presidency’s Conclusions following the debate.

20 January 2006

Annex A

The Commission informed the Council of the agreed minutes reflecting the outcome of the last two rounds of negotiations with the United States, following which a number of delegations intervened.

The President summarised the results of the exchanges as follows:

“The Council welcomed the significant progress made in the negotiations for an EU-US aviation agreement, which it regards as a matter of the highest importance for the future development of aviation worldwide. The Council unanimously expressed its satisfaction that the text represents significant improvement on the proposals considered by the Council in June 2004, in particular on the enhancement of cooperation on a range of regulatory issues, including in the areas of security, competition and state aids. The Council also welcomed the new opportunities created in the field of market access, such as the results achieved on code share approvals and wet leasing, but observed that improvements in the field of ownership and control of airlines would be an essential element for a Stage One deal to be concluded. In this regard the Council is following with close interest the rule-making process under way in the US through which the administration is seeking to relax the rules governing control of US airlines by foreign nationals. The Council noted that clear, meaningful and robust changes to US policy in this area would be critical in the evaluation of the overall situation, which will be a priority once the US rule-making process is complete.

The Council requests the Commission to continue its efforts accordingly.”

Letter from the Chairman to Rt Hon Alistair Darling MP

Thank you for your letter of 20 January in response to mine of 13 December 2005 which Sub-Committee B considered at its meeting on 30 January 2006.

Sub-Committee B remain concerned about EU-US aviation negotiations and will maintain a keen interest in them. Therefore I would ask that you keep them fully informed of future developments in this area.

What is the position of EU airlines not established in the UK? Would they not be entitled to operate trans-Atlantic services into and out of any UK airport? Can you provide a list of non-UK EU airlines which are established in the UK and a list of those which are not?

The press release attached to your letter stated that the Council noted that clear, meaningful and robust changes to US policy in the area of the rules governing control of US airlines by foreign nationals would be critical in the evaluation of the overall situation. We have noted carefully this point.

The Council expressed its satisfaction with the negotiated text on state aids. What are the principals of the text on state aids? Will it eliminate state aid for aviation on both sides of the Atlantic?

1 February 2006

Letter from Rt Hon Alistair Darling MP to the Chairman

Thank you for your letter of 1 February replying to mine of 20 January.

I note Sub-Committee B’s continued interest in EU-US aviation negotiations and I will keep you abreast of developments.

Under the terms of the agreement now under consideration by the Council any EU or US carrier would be able to operate transatlantic air services between any airport located in the territories of the European Community and any airport in the United States. Legal establishment of a Community carrier in the Member State where the European airport is located would not be required, though in practice the commencement of regular air services between a Member State and the United States would involve the establishment of a presence on the territory of that Member State by the airline concerned.

We do not keep a list of those non-UK Community carriers which are established here. We would treat an application from a non-UK Community carrier to be designated under one of our bilateral air services agreements with a third country on its merits. The basis for our decision would be whether it appeared to meet the definition of establishment set out in the tenth recital to Regulation (EC) 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries, as clarified by a statement included in the minutes of the Council meeting on 5 December 2003 which adopted a Common Position on that Regulation. The relevant extracts are attached in an Annex to this letter.

In general, we would expect that any Community carrier operating regular scheduled air services to and from the UK would meet the conditions for establishment.
Finally, you ask about the text on state aids. The draft agreement recognises that government subsidies and support may adversely affect the fair and equal opportunity of airlines to compete in providing international air transport services. It contains a mechanism whereby the parties may submit observations to the other party regarding government subsidies and support which they believe to be having an adverse effect on the ability of their airlines to compete, and if necessary request a meeting of a Joint Committee of the parties to consider the issues and develop appropriate responses.

14 February 2006

Annex A

_Tenth Recital from Regulation (EC) 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries:_

“Whereas establishment on the territory of a Member State implies the effective and real exercise of air transport activity through stable arrangements;

“whereas the legal form of such an establishment, whether a branch or a subsidiary with a legal personality, should not be the determining factor in this respect;

“whereas, when an undertaking is established on the territory of several Member States, as defined in the Treaty, it should ensure, in order to avoid any circumvention of national law, that each of the establishments fulfils the obligations which may, in accordance with Community law, be imposed by the national law applicable to its activities.”

_Statement on the right of establishment, entered in the minutes of the Council meeting on 5 December 2003:_

“The benefit of the right of establishment, according to the case law of the European Court of Justice on the ‘Open Sky’ judgements, is granted to Community carriers having in one or more Member States stable and permanent organisational structures; it is for Member States to examine, in accordance with Community law, the nature of those structures.

“The Member State is entitled to require, from Community carriers established on its territory, the respect of the appropriate national legislation, _inter alia_ the applicable air transport specific regulations, including those concerning safety and security, as well as fiscal and social law, in conformity with Community law and its principles, in particular the principles of non-discrimination and proportionality.

“The Member State is also entitled, under non-discriminatory conditions, to require from the Community carrier established the permanent presence on its territory of staff responsible for safety.

“The Council takes note of the declaration of the Member States on co-operation in all fields relating to the safety of aircraft and their operation.”

(Council Document 15247/03 ADD 1)

_Letter from the Chairman to Rt Hon Alistair Darling MP:_

Thank you for your letter of 14 February in response to mine of 1 February which Sub-Committee B considered at its meeting on 27 February 2006.

The Members of the Sub-Committee are grateful to you for undertaking to keep them abreast of development in this area.

You stated in your letter that “in practice the commencement of regular air services between a Member State and the USA would involve the establishment of a presence on the territory of that Member State by the airline concerned.” What is the difference, in practical terms, between the legal establishment of an airline in a territory and the establishment of a presence in that territory? You stated that the Government does not keep a list of those non-Community air carriers which are established in the UK. Does the CAA keep such a list?

I asked you whether the negotiated text on state aids would eliminate state aids on both sides of the Atlantic. Sub-Committee B assumes from your answer that the negotiated text will _not_ eliminate state aids on both sides of the Atlantic.

1 March 2006
Letter from Rt Hon Alistair Darling MP to the Chairman

Thank you for your letter of 1 March replying to mine of 14 February.

The proposed EU-US aviation agreement foresees an open regime for flights between any airport in the Community and any airport in the US, without the need for airlines to be designated by Governments. A non-UK Community carrier would therefore not be required to demonstrate that its operations in the UK amounted to legal establishment in order to operate to the US from a UK airport (as it would if it sought designation to operate services under one of the UK’s bilateral air services agreements). However it would be difficult for any airline to operate services to the US without having the presence of, for example, a sales office and personnel on UK soil.

I can confirm that neither the Government nor the CAA keeps a definitive list of non-UK Community carriers established in the UK. However, the Government would not seek to designate a non-UK carrier where this was required under one of our bilateral air services without first ascertaining that that carrier was duly established in the UK.

You are correct to assume that I do not think the first stage of a EU-US agreement would immediately eliminate all forms of aid currently provided to US carriers by the US Government. What the agreement would do from the outset is give Europe a legal framework and a forum within which to raise these issues and develop responses if it appears that US Government support for its airlines is having a detrimental effect on fair competition between air carriers on North Atlantic routes.

21 March 2006

Letter from the Chairman to Rt Hon Alistair Darling MP

Thank you for your letter of 21 March 2006 replying to my letter of 1 March 2006. Sub-Committee B considered your letter at its meeting on 19 April 2006.

We were grateful for your full response to our questions, and look forward to hearing of any developments in this area.

24 April 2006

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

Sub-Committee B considered this document (8656/06), and your Explanatory Memorandum, at its meeting on 12 June 2006.

As you might recall, the Sub-Committee published a report in 2003, “Open Skies or Open Markets? The effect of the ECJ Judgements of 5 November 2002 on Aviation Relations between the EU and the USA”, followed by a supplementary report. Our reports recommended that the Commission be given two mandates: firstly to negotiate with non-EU states to persuade them to accept Community airline designation instead of bilateral national airline designation in air service agreements (ASA); and secondly to negotiate a fully-liberalised Open Aviation Area with the USA.

We will carefully consider the latest proposal and your Explanatory Memorandum in the light of our previous recommendations and write to you further in due course. We will hold this proposal under scrutiny at this stage.

15 June 2006

Letter from the Chairman to Gillian Merron MP

As you will be aware, Sub-Committee B has been considering the above proposed Agreement (8656/06) together with your Explanatory Memorandum.

The Committee believes that it is likely to be in the interests of the EU, and more particularly the UK, for the proposed Agreement to be concluded, subject to clarifying the practical importance of certain aspects covered or not covered by the Agreement, and subject also to greater certainty about whether, and if so how, the EC slot Regulation is likely to be amended. The Committee welcomes attempts to liberalise markets (including the aviation market), provided there is a fair and even balance, and that any points of difficulty are given due consideration. In order to assist it in coming to a more definite recommendation, the Committee would be grateful for your views generally, and on the following points in particular:

1. How significant in practice would the right to operate domestic services within the US be for UK airlines?

2. How significant in practice, from the point of view of UK interests, would be the proposed rule change about the “actual control” of US airlines, given that the voting interest by non-US citizens would remain limited to 25% and that the airline’s constitutional documents would have to show that US citizens retained actual control?

3. Our understanding is that the proposed relaxation of the rule of “actual control” is encountering significant opposition in the US. Can you update us as to present status and the likely future timetable?

4. The Agreement would remove the present limits on the number of US airlines serving Heathrow and Gatwick (which we understand to be two in the case of each airport). However, is significant new entry by US airlines considered likely in view of the severe shortage of slots at Heathrow?

5. The allocation of slots at EU airports is governed by EC Regulation 95/93 (as amended). We are aware that the Commission is considering proposing further amendments in the near future, and we believe that, although it has not made up its mind what to propose, it is unlikely to interfere with rights in slots which airlines already have, and likely to propose formal recognition of secondary trading in slots. Do you have any further information about the Commission’s current thinking, and in any event do you agree that there might be risks in opening up access, to Heathrow before it were clear what the regime as to slots was to be, at least in the near and immediate future?

6. How commercially significant for UK airlines would it be for them to be able to participate in the Fly America programme (which requires most US Government commercial air transport requirements to take place on US airlines)?

7. Are you aware whether any EU Member State operates a policy similar to the Fly America policy (ie, requiring its government commercial air transport requirements to take place on a Community airline)?

8. Although the Agreement provides for quite detailed provisions on cooperation in connection with competition rules, there are no actual agreed common substantive provisions on competition rules or state aid. Do you consider that this is satisfactory, particularly given concerns which have been expressed by UK airlines about aid measures enjoyed by US airlines?

9. It seems likely that, if the Agreement is not concluded, anti-trust immunity will be withdrawn from certain transatlantic alliances to which it present applies. bmi is the only UK airline party to an immunised alliance. British Airways is not, although several of its main European competitors are. Do you have a view whether such withdrawal of anti-trust immunity would overall be in the interests of the UK or not?

We will maintain the scrutiny reserve on the proposed Agreement, and would be grateful to you for any updates as negotiations progress in this key area.

5 July 2006

Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 5 July regarding these proposed decisions, which would authorise the signature, provisional application and conclusion of an aviation agreement between the European Community and its Member States on the one hand, and the United States on the other.

Before responding to the specific questions in your letter, it may be helpful if I up-date your Committee on the latest position. I can now confirm that the US Department of Transportation’s Final Rule setting out a revised policy on foreign control of US airlines is unlikely to be published until late August or early September. As you are aware, this is a significant element within the overall package of measures surrounding the proposed agreement and, as indicated in my Explanatory Memorandum of 31 May, the UK Government will reserve its position until we have had a chance to consider the final package as a whole.

We understand that the Finnish Presidency currently intends to bring the matter forward for consideration at the Transport Council meeting on 12 October, and I wanted therefore to write to you before the summer break to provide your Committee with as much further information as we are able to give you at this point.

Turning to the questions listed in your letter:

1. Clearly the size of the US domestic market alone makes it of potential interest to foreign airlines. At the same time, it is a highly competitive environment served by a range of existing US carriers. Whether, given the opportunity, UK airlines would in practice operate there, either immediately or...
in the longer term, is difficult to judge. In the Government’s view, it is likely that over time some carriers operating out of the UK would at least make use of the opportunity to fly passengers or freight on onward legs between points in the US (so-called “consecutive cabotage”). EU cargo carriers in particular may wish to establish hubs for onward distribution of freight within the US. And EU passenger carriers might also want to establish or collaborate with US domestic airlines as a means of feeding traffic onto their transatlantic services.

2. The statutory limitations on ownership and control of US airlines that would remain in place even if the proposed rule change is implemented are in our view an unhelpful and unnecessary restriction. We would hope that in the future, perhaps as a further stage of an EU-US aviation agreement, the US Government would consider an appropriate relaxation of these statutory limitations. In the meantime, although clearly sub-optimal, we consider the proposed rule change is a well-intentioned attempt to alter the previous policy presumption against any semblance of foreign involvement in the running of US airlines. As such, it might encourage some investment by, and increased cooperation with, foreign airlines, although to what extent is difficult to predict. We believe this possibility could be enhanced if the rule can be improved in its final version so as to offer greater certainty to minority foreign investors, in particular about their ability to enter into arrangements to exercise meaningful control over commercial matters and to protect their investments.

3. Consultation on the Supplementary Notice of Proposed Rule-Making has now closed. There remains some opposition to the changes amongst vested interests in the US, and within Congress, but we do not currently anticipate that this will prevent the US Department of Transportation from promulgating its policy change through a final rule. As indicated above, we expect this to occur in late August or early September. However, there would remain a possible risk of legal or regulatory action thereafter to try to overturn the rule.

4. The current UK-US agreement limits services between the US and London Heathrow to two airlines from each country. In the Government’s view, removal of this restriction would be likely to lead to the entry of additional carriers from both countries into that market. Clearly, the scale and speed of new entries would be limited by the very restricted additional capacity currently available at Heathrow. However, some potential new entrants already hold slots at the airport, and the possibility exists for others to acquire them through secondary trading. We anticipate that the relative value of transatlantic services and the growth of airline alliances both make it more likely that such trading would take place.

5. We hope that the Commission will soon bring forward proposals to recognise secondary trading, and we do not expect these to interfere with the rights in slots which airlines already have. However, we do not believe that the content or timing of any such proposals need be a factor in deciding whether or not to conclude an EU-US aviation agreement.

6. We believe the Fly America policy has a significant effect in the market, though we have not sought to quantify this. We consider the policy to be anti-competitive, and would wish to see this issue addressed in the future. The proposed EU-US Aviation Agreement would provide potential mechanisms for doing so.

7. We are not aware that such a policy exists in any EU Member State.

8. There are well established arrangements for dealing with competition issues within both the EU and the US, and for collaboration between the relevant authorities. Both sides have concluded that it is therefore not necessary to lay down new substantive procedures for dealing specifically with aviation matters. However, state aids and indirect subsidies remain a matter of some concern: there remain differences of practice and interpretation between the two sides, and we would hope to see these reduced and eliminated over time. For the present, the arrangements that would be set up under the proposed EU-US agreement would at least offer a new mechanism for addressing these issues. We consider this to be a useful step forward and a realistic approach for a first stage agreement, but we would want to see further progress made under future stages.

9. As the question suggests, if the US authorities were to withdraw anti-trust immunity, this could affect European carriers in various ways and to different extents. We have not made any assessment of the overall balance of interests for UK carriers in this regard.

I hope this information will be helpful to Sub-Committee B in its further deliberations.

18 July 2006
Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 18 July, replying to my letter of 5 July. Sub-Committee B considered your letter at its meeting on 24 July.

We were grateful to you for the fullness of your response to our questions. We note that much will depend on the content of the US Department of Transport’s revised rules on foreign control of US airlines, which you expect either at the end of August or the beginning of September. We share your view that judgment on the proposed agreement should be withheld until those rules have been properly considered. In the meantime, we would be grateful if you kept the Committee informed of developments both in European and US institutions.

In answering our question 4, you refer to “potential new entrants” already holding slots. Can you confirm who these potential new entrants are?

We will maintain scrutiny on the proposal, and may revisit the issue after the US Department of Transport publishes its revised rules.

25 July 2006

EXPANDING THE EU EMISSIONS TRADING SCHEME (EU ETS) (11863/03, 12790/05)

Letter from Karen Buck MP, Minister for Aviation, Department for Transport and Elliot Morley MP, Minister for Climate Change and Environment, Department for Environment, Food and Rural Affairs to the Chairman

We are writing to update you on progress on our work relating to the above document, particularly in reference to the potential impact on allowance prices.

The Commission’s Aviation Working Group (AWG) has met twice and we are continuing to input into this work on technical issues, taking account of the views expressed by your Committee. The minutes of the AWG are available on the Commission’s website.

We recognise the concerns raised by your Committee and other stakeholders that the inclusion of aviation into the EU ETS may impact on allowance prices and feel that it is important to base any assessment of this complex issue on solid analytical work. We have therefore commissioned ICF Consulting to assess the potential impact of the inclusion of aviation into the EU ETS on the allowance price.

ICF Consulting have now completed their report and a copy is attached for your reference. While forecasting the carbon price is inherently uncertain, ICF Consulting’s findings suggest that adding the aviation sector to the EU ETS will not have a discernable impact on average annual prices of carbon instruments.

Forecasting allowance prices is complicated and uncertain but we consider that an understanding of the likely impact of the inclusion of the aviation on the allowance price should form part of the impact assessment of any legislative proposal. This report provides a starting point for the development of an evidence base on that impact. We would welcome stakeholders views on the report and its conclusions.

Received 15 February 2006

Letter from Rt Hon Alistair Darling MP, Secretary of State, Department for Transport to the Chairman

Today I announced that on 22 February Margaret Beckett, Alan Johnson and I wrote to Vice-President Jacques Barrot, Vice-President Gunter Verheugen and Commissioner Stavros Dimas of the European Commission expressing the UK’s support for the Commission review of the EU Emissions Trading Scheme (EU ETS) and to draw early attention to the potential expansion of the EU ETS to the surface transport sector.

The letter asked that the inclusion of emissions from surface transport be given serious consideration as part of the review and offered our active contribution to work in this area. A copy of the letter dated 22 February is enclosed.

28 February 2006

Annex A

We would like to express the UK’s support for the Commission review of the EU Emissions Trading Scheme (EU ETS), which provides a welcome opportunity to improve the functioning of the trading scheme and consider its expansion to other sectors. As we set out in our questionnaire response last summer, the UK considers that the review should be focussed on how best to increase certainty about the long term future of the
scheme and thereby maximise the potential of the EU ETS to stimulate necessary investments in low-carbon technology. Our officials will be writing to you shortly setting out our priorities for the review in more detail.

We are writing to you now to draw early attention to the potential expansion of the EU ETS to the surface transport sector and to ask that the inclusion of emissions from surface transport be given serious consideration as part of the review.

You will be aware that the EU ETS directive lists transport as one of the sectors that should be considered when assessing whether to expand the scheme. Emissions trading could potentially provide a cost-effective way for the transport sector to reduce its climate change impact.

The UK looks forward to working closely with the Commission and would be happy to make an active contribution to work in this area, such as sharing our analysis and hosting an event to open up an informed debate of the options.

Given the timescale for the review of EU ETS, to this end, we ask the Commission to consider the possibility of including this topic as an AOB item in a future Environment Council.

Letter from the Chairman to Rt Hon Alistair Darling MP

Thank you for your letter of 28 February 2006, and for the enclosed copy letter dated 22 February 2006 from Margaret Beckett, Alan Johnson and yourself to the European Commission endorsing the Commission’s review of the EU Emission’s Trading Scheme.

Sub-Committee B considered these letters at its meeting on 13 March 2006.

We thank you for this information and trust you will keep us up-to-date on any new developments in this important area.

15 March 2006

Letter from the Chairman to Karen Buck MP and Elliot Morley MP

Thank you for your undated letter which was received on 15 February 2006 and considered by Sub-Committee B at its meeting on 6 March 2006.

Sub-Committee B remain most interested in this area and will consider ICF Consulting’s report carefully, together with the Government’s response to our recent report, Including the Aviation Sector in the European Union Emissions Trading Scheme, when it arrives and write further to you on any issues which arise. We note that you would welcome stakeholders’ views on the report and its conclusions. To which stakeholders have you sent the report? Sub-Committee B would be grateful for a copy of any responses received.

8 March 2006

Letter from Derek Twigg MP, Parliamentary Under-Secretary of State, Department for Transport and Elliot Morley MP to the Chairman

Thank you for your letter of 8 March 2006 regarding the ICF Consulting report, Including Aviation into the EU ETS: Impact on EU allowance prices.

You were particularly interested to know which stakeholders we had sent this report to and whether we had had any responses. So far we have presented the paper to:

— The Emissions Trading Group (Working Group 5).
— The Aviation Working Group (set up by the Commission under the European Climate Change Programme).
— The Ad hoc Energy Taxation Steering Group.
— The Association for the Conservation of Energy.
— Our own Stakeholder Working Group (comprised of airline operators, NGOs, the Confederation of British Industry, and others).

We have sent copies of the report to the Devolved Administrations, the Environment Agency, the European Commission and to Point Carbon. It has also been made available on the Defra website.

We have not yet had any formal written responses to the ICF Consulting report. However, we have discussed the report in detail with stakeholders, following our presentations. The report was welcomed as a useful contribution to the debate and a focal point for analysis. Comments were focused around four main concerns:

— Are the assumptions regarding the availability of JI/CDM credits feasible?
— Will there be sufficient low cost power sector abatement options available, as suggested in the report?
— Are ICF Consulting’s forecast carbon prices for Phase II credible?
— What will be the impacts of aviation in the EU ETS in the long term, ie beyond 2012?

We are considering further work on broader carbon price modelling in conjunction with the DTI and are considering the above issues in evaluating what further work is required.

Received 18 April 2006

Letter from the Chairman to Derek Twigg MP and Elliot Morley MP

Thank you for your undated letter received on 18 April replying to my letter of 8 March 2006 and considered by Sub-Committee B at its meeting on 24 April 2006.

We were grateful for your detailing the stakeholders to whom the ICF report was sent, and for your summary of the areas of discussion which the report provoked. We do have some significant concerns over the report and, in particular, the interpretation which Ministers may have put on the conclusions.

As you may be aware, the Government Response to our report, Including the Aviation Sector in the European Union Emissions Trading Scheme, was due on 18 April. To date we have still received no response. We would be grateful for an explanation of the delay and a date when we might expect the response.

We will be considering the ICF report more fully and respond after consideration of the response to our report.

25 April 2006

EXTERNAL AVIATION POLICY (7214/05, 7369/05, 12044/05, 12045/05, 12276/05, 12752/05)

Letter from the Chairman to Karen Buck MP, Parliamentary under Secretary of State for Transport, Department for Transport

Thank you for your letter of 13 December in reply to my letters of 13 June (2), 19 October, 26 October and 9 November (2) which Sub-Committee B considered at its meeting on 23 January 2006.

Members found your response to be clear and comprehensive and we are most grateful to you for that. We are therefore lifting scrutiny from the 6 documents.

Towards the end of your letter, you mentioned our reference to “the European Union’s ability to apply regulatory or economic instruments”. Amongst the instruments this might cover are those to bring aviation emission into the EU Emissions Trading Scheme. Is it the intention that future aviation agreements will include sections that do not impede the ability of the European Community and Member States from taking action in this area, or will the agreements positively permit it? Have any agreements been reached to date which take either of those approaches?

Your letter also referred to document 12039/05 COM(05) 406 final Commission Communication: Strengthening aviation relations with Chile which we cleared from scrutiny on 11 October 2005.

25 January 2006

Letter from Karen Buck MP to the Chairman

Thank you for your letter of 25 January, lifting scrutiny on the above documents.

You asked how the possible agreements with other countries might deal with the possible future incorporation of aviation emissions within the EU Emissions Trading Scheme. It is of course not possible to give a definitive answer since, in none of the cases concerned here, have negotiations begun, or has the Commission even yet been given a mandate by the Council. However, from discussions to date within the Council Working Groups on a possible mandate for negotiations with China, it seems likely that any such mandate would include clear instructions for the Commission to ensure that the possibility remains open for the EU to take action in this and other areas of environmental protection.

In addition, the air services agreement recently reached between the EU and Morocco contains a specific provision that nothing in the agreement should prevent the imposition of any measure considered necessary to prevent or mitigate environmental impacts resulting from international air services (provided there is no discrimination on the basis of nationality).

Finally, the text of a possible EU-US aviation agreement currently under discussion also includes provisions aimed at ensuring that such an agreement would not prevent the EU from taking action in this area.

21 February 2006

Letter from the Chairman to Karen Buck MP

Thank you for your letter of 21 February 2006 responding to my letter of 25 January 2006, which Sub-Committee B considered at its meeting on 6 March 2006.

We considered your reply to be comprehensive and very helpful. We would of course be grateful to hear of any developments in negotiations in future.

8 March 2006

FINANCIAL SERVICES POLICY 2005–2010 (15345/05)

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

Thank you very much for your Explanatory Memorandum on the White Paper for Financial Services (2005–2010) which Sub-Committee B (Internal Market) considered at its meeting on 23 January 2006.

Members are interested to consider in more detail the important implications of the Commission’s post FSAP strategy as set out in this White Paper. We would like to receive further detail on whether the Commission’s plans are consistent with the Government’s own objectives in this area. For these reasons, it was decided to hold the document under scrutiny.

25 January 2006

Letter from Ivan Lewis MP to the Chairman

Thank you for your letter of 25 January, requesting further detail on whether the Commission’s plans are consistent with the Government’s own objectives in this area.

The UK Government strongly welcomes the Commission’s White Paper on financial services policy. We believe it sets out the correct approach to taking forward EU financial services integration and well reflects our own priorities in this area. Taking each of the UK’s five priorities in turn:

— Better implementation and enforcement of EU measures affecting the financial sector. The White Paper focuses on consolidation of existing legislation and attaches strong importance to implementing existing measures throughout the EU. It recognises that Member States need to demonstrate real commitment and deliver proper implementation on time, and furthermore commits the Commission to working with Member States to monitor progress and ensure accurate implementation.

— Alternatives to EU regulation. From approximately 70 concrete tasks or activities set out in the White Paper only five involve a legislative proposal (two of which have already been put forward). We believe this demonstrates a clear intention by the Commission to move away from always proposing a piece of EU legislation as the most appropriate policy response. Moreover, in fields like clearing and settlement, mortgage credit or investment funds, a decision on the nature of the instruments to be employed has not been taken at this stage. In addition, the White Paper also recognises the importance of using policy synergies between financial services and other policy areas—for example competition policy. In this respect, in June 2005, the European Commission launched competition enquiries into retail banking and business insurance, something for which the UK Government has called and fully supports. Finally, we fully support the Commission’s decision not to bring forward further EU legislation on issues such as rating agencies and financial analysts, following the application of better regulation principles.

— Better regulation. The UK Government has long been a champion of the better regulation agenda and this is a central theme of the White Paper. We welcome the Commission’s commitment to deploy the most open, transparent, evidence-based policy making underpinned by a dual commitment to open consultation and thorough impact assessments which will now accompany any new Commission proposal. There is also a commitment from the Commission that it will not hesitate to propose to modify or even repeal measures that are not delivering the intended benefits if future ex-post evaluation reveals this to be the case.
— Making the Lamfalussy Arrangements work well. The Commission recognises the Lamfalussy Arrangements lie at the core of the EU’s supervisory framework and emphasises the wide support for, and success of, these arrangements to date. In line with UK priorities for this area, the Commission’s White Paper places the focus on practical initiatives to optimise these Arrangements and ensure they achieve their full potential. For example:

(a) improving the transparency and accountability of these Arrangements;

(b) practical steps to enhance co-operation between supervisors and convergence of practices (developing streamlining reporting requirements, developing joint secondment and training schemes and developing the application of existing supervisory tools like delegation or mediation); and

(c) pressing for consultation and impact assessments on draft advice going to the European Commission from the Lamfalussy Level III Committees;

— Recognising the global nature of financial services. The White Paper recognises the importance of ensuring that financial markets remain globally competitive. The White Paper also makes a number of specific commitments, which include:

(a) deepening the already-successful EU-US financial markets dialogue; and

(b) widening dialogues and cooperation on financial issues with other countries, such as Japan, China, India and Russia.

13 February 2006

Letter from the Chairman to Ivan Lewis MP

Thank you for your letter of 13 February, responding to my letter of 25 January and detailing the Government’s support for the Commission’s objectives for the White Paper on Financial Services Policy 2005–2010 which Sub-Committee B considered at its meeting on 6 March 2006.

We are pleased that the White Paper largely reflects the UK’s five priorities. As this policy is of great significance to the UK financial services sector, and remains a developing proposal, we will continue to hold the document under scrutiny, and would be grateful for information on any future developments.

8 March 2006

FINANCING OF EUROPEAN STANDARDISATION (9264/06)

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 advise you of European progress on the proposed Decision on the financing of European standardisation.

The Commission’s original proposal (11841/05) was intended to provide a legal base for existing financing of standardisation activity. It didn’t mean any change in practice. It was welcomed by the UK (and other member states). The Select Committee on the European Union did not report on it (EM 1184/05—Progress of Scrutiny, 10 October 2005, Session 05/06).

We have now received document 9264/06. This sets out amendments which have been agreed informally at first reading between the Presidency and the Parliament’s committees.

In our view, none of the amendments is particularly weighty. Nineteen are purely drafting changes; four tidy up arrangements between the institutions; and three are “motherhood and apple pie” changes to recitals. Only one has any technical substance. Amendment 29 (presented out of sequence following amendment 21) increases the proportion of funding which may be used to cover overhead costs. This reflects the unusual financial structure of the standardisation bodies and was agreed without much difficulty by the institutions. The UK supported the amendment. Given the non-controversial nature of this document, your officials have indicated to mine that no Explanatory Memorandum will be required.

The proposal will now be analysed by jurist-linguists. We expect it to come to Council as an A-point after the summer break.

13 June 2006
FINNISH PRESIDENCY: TRANSPORT EXPECTATIONS

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

I thought you might find it helpful to have an update on a number of transport proposals that will be progressed in the next few months, including the Finnish plans for their Presidency.

Logistics improvement is the underlying transport theme for the Presidency, but the focus will be on dealing with the inherited agenda, on which EU/US and Galileo are understood as the main items. The dates for the two Councils have been confirmed as 12 October, in Luxembourg, and 11–12 December, in Brussels. There will be no Informal Transport Councils.

The Commission’s Communication on freight transport logistics was published on 28 June and will be the subject of EM 11312/06. There will be an exchange of views on it at the October Council, leading to Conclusions in December. Germany is expected to continue with the subject during its Presidency. Short sea shipping will be part of the logistics priority, as it was during the previous Finnish Presidency.

The mid-term review of the Commission’s 2001 transport policy White Paper appeared in June in a Communication entitled “Keep Europe moving—Sustainable mobility for our continent”, and is the subject of EM 10954/06. There will be a policy debate on this Communication in October, a summary of which the Presidency plan to report to the Commission, rather than agreeing formal Council Conclusions.

The Common Position on the third rail package (7147/04) will be transmitted to the European Parliament in September, where it will be handled as a package, and the Presidency are aiming for a second reading agreement.

The proposal on public passenger transport (11508/05) is expected to go to the European Parliament in November or December, so EP consideration may be under the German Presidency.

In Road Safety, proposals on infrastructure safety assessment and on retrofitting of blind spot mirrors will be taken to the December Council for general approach if Commission proposals come forward in time. The Finnish Presidency is working closely with Italy on plans for “Verona IV”, the fourth informal Ministerial conference on Road Safety, to be held in Verona in November.

Finland has started examination of the supply chain security proposal (6935/06). It is on the provisional agenda for the October Council, for a general approach, but early discussion of the proposal suggests this may be optimistic.

On Galileo, a conference/seminar on services and future applications is planned for 12 September in Brussels. The Presidency envisage Conclusions in October on the Commission’s state of play report and on third country links, and in December decisions on amending the regulations on the Joint Undertaking and the Supervisory Authority.

In aviation, EU/US is recognised as being potentially the big issue for the Presidency, and Gillian Merron is writing to you separately about this.

The Presidency will be working towards a general approach in October or December on the amending Regulation on the European Aviation Safety Agency (EASA). The Austrian Presidency began a preliminary examination of the dossier (EM 14895/05 & 14903/05), which identified several key elements which the Finnish Presidency will take forward. As expected these discussions have been complex and we do not expect the dossier to be completed before late 2007 at the earliest. The European Parliament First Reading is currently scheduled for January 2007. We have received 28 separate responses to our recent consultation on this matter, and these contributions are now being analysed. In addition to assisting with the production of the RIA they are informing our negotiating stance on the dossier. We expect the RIA to be produced, along with the Consultation Response Document, in late summer.

Finland is also prepared to start work on ground handling or the revision of the third aviation package if the proposals appear in time, but this seems unlikely.

Of current maritime proposals, the Presidency will continue with port state control (5632/06) for possible general approach in December. There may also be an initial Council discussion on the proposal on classification societies (5912/06). The European Parliament may give a first reading to the seven current proposals as a package during December/January.
The consultation process on the Maritime Green Paper will last throughout the Finnish Presidency, and into the following one.
I hope that this summary of our expectations is useful. Further information will, of course, be provided to you in the future on the progress of these dossiers.

14 July 2006

Letter from the Chairman to Stephen Ladyman MP
Thank you for your letter of 14 July, which Sub-Committee B considered at its meeting on 24 July.
We were grateful to you for your helpful update, and look forward to hearing from you further as the proposals progress under the Finnish Presidency.

25 July 2006

FLAG STATE REQUIREMENTS (6843/06)
Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport
Sub-Committee B considered this document, and your Explanatory memorandum at its meeting on 17 July.
We note and share your clearly expressed concerns over the necessity of this proposal, given the alternative of non-legislative action, and over the implications for Community competence and the influence of the United Kingdom within the International Maritime Organisation.
We note that you do not expect this proposal to be taken forward under the Finnish or the German Presidencies, and would of course be grateful for any news of the timetable as it develops.
We will hold this proposal under scrutiny.

19 July 2006

FREIGHT TRANSPORT SYSTEM—“MARCO POLO II” (11816/04)
Letter from Stephen Ladyman MP, Minister of State for Transport, Department for Transport to the Chairman
I am writing to update your Committee on developments on the Marco Polo proposal, and to notify you of the possibility of a First Reading Deal with the European Parliament on this proposal.
The Marco Polo II proposal 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 Tony McNulty on 15 September 200413 to advise of your intention to maintain the scrutiny reserve on this document until the Financial Perspective is agreed.
As stated in EM 11816/04, the Government generally welcomed the Commission’s proposal but reserved its position on the proposed increased budget of €740 million (£490.32 million) until the overarching negotiations on the new Financial Perspective were agreed. As you know, discussions on the Financial Perspective continued into the Austrian Presidency. I can now confirm, however, that as a consequence of the negotiations on the future Commission budget, the programme will now receive €400 million (£274.38 million) per year, a much lower figure than originally envisaged and in line with the UK’s objectives for both the overall budget and the Marco Polo 11 programme. This revised figure will now form part of the overall compromise to be agreed by the European Parliament and by the Council. The agreed figure will be subject to the normal annual review to take account of inflation.
In recognition of the smaller figure, the text of Article 1 of the draft regulation has been revised. Instead of the programme achieving modal shift of the expected yearly aggregate increase of international road freight traffic to short sea shipping, rail and inland waterways, over the period 2007–2013, the programme will now achieve “a substantial part” of this shift. The UK has now withdrawn its formal reservation.
The European Parliament’s Plenary First Reading of the proposal will take place on 15 May and, following discussions with the Commission and the Presidency, it is thought that a First Reading Deal may be achievable because there was common ground on most of the text. At Committee level, the EP accepted all of the

Council’s arguments in respect of the budgetary thresholds and there are no major changes to the scope of the programme as a result of the EP’s draft amendments. I will, of course, write again to inform the Committee of the outcome of the Plenary, and any further developments ahead of the Transport Council on 7-8 June.

9 May 2006

**Letter from Stephen Ladyman MP to the Chairman**

Further to my letter of 9 May 2006, I am writing to notify you of the outcome of consideration by the European Parliament of the Marco Polo proposal and to ask if the Scrutiny Committee is now content to withdraw its scrutiny reserve.

The proposed Regulation was the subject of Explanatory Memorandum 11816/04 dated 26 August 2004. This EM was considered by Sub-Committee B at its meeting on 13 September 2004, and you wrote to Tony McNulty on 15 September to advise of your intention to maintain the scrutiny reserve on this document until the Financial Perspective was agreed. My letter of 9 May informed you of the settlement and alerted you to a possible First Reading Deal with the European Parliament. I also promised to write to you again ahead of the Transport Council in June, once the result of the European Parliament’s First Reading was known.

The European Parliament’s Plenary First Reading of the proposal took place on 16 May and as expected the Parliament has accepted the proposed First Reading Deal. As set out in my previous letter, the Deal was possible because there was common ground on most of the text and the European Parliament accepted all of the Council’s arguments in respect of the budgetary thresholds. There are no major changes to the scope of the programme as a result of the European Parliament’s draft amendments. There are some minor changes which increase clarity and encourage sharing of good practice, and there is also a little more focus on encouragement of SMEs to participate. The Transport Council is now expected to discuss the proposal and the details of the First Reading Deal in June.

18 May 2006

**Letter from the Chairman to Stephen Ladyman MP**

Thank you for your letter of 9 May, which Sub-Committee B considered at its meeting on 22 May.

We are grateful to you for your update on the revised budget for the Marco Polo II Programme. We understand that the figure of €400 million which you quote in your letter is the overall, rather than the annual, figure; would you confirm this?

We look forward to receiving an update from you following the Plenary First Reading in the European Parliament, which took place on 15 May, and on any other developments ahead of the June Transport Council. We will continue to hold this proposal under scrutiny.

23 May 2006

**Letter from the Chairman to Stephen Ladyman MP**

Thank you for your letter of 18 May, which Sub-Committee B considered at its meeting on 5 June.

We are grateful to you for your report on the First Reading in the European Parliament and are satisfied with the results achieved. We are content to lift scrutiny on this dossier at this stage.

6 June 2006

**GALILEO: PROGRESS REPORT (11834/04, 13300/04)**

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

I last wrote to your Committee about Galileo on 29 November 2005. Your Committee maintains a scrutiny reserve on issues arising from Explanatory Memorandums 11834/04 and 13300/04. This letter is to update you on developments since November.

We continue to support the UK objectives. The priorities are: a civil programme under civil control; and a robust, public private partnership (PPP). The main focus continues to be on the PPP negotiations. Discussions have just started at official level about the policy of access to the secure governmental service, the PRS.

THE OBJECTIVES OF THE PROGRAMME

You asked in your letter of 14 December15 for an explanation of the ways in which the project will add value to the advantages already available from similar commercial systems.

In doing this I must draw a distinction between the provision of the infrastructure (the satellites and associated ground stations) for Global Navigation Satellite Systems (GNSS) and the development of applications that make use of the infrastructure (the receivers and the software associated with them).

There are currently two constellations of GNSS satellites, the American GPS and the Russian GLONASS. The Russian system is slowly being resurrected from a rundown state caused by lack of funding. Both are fully publicly funded and are essentially military systems developed during the Cold War years although the open service is available so that anyone with a suitable receiver can use it. No guarantee of service and availability can be assumed. The US Government has given an undertaking of some level of continuity in recognition of the rapidly developing GPS applications. In December 2004, they broadened the management and funding of the system to include the Federal Transportation Department.

Over the last 10 years or so, many commercial companies have made use of the existence of the GPS open signal to develop applications that provide positioning and timing data for civilian users. They do so, however with no guarantee of service and the applications are therefore unsuitable for safety-critical uses.

To make use of the open GPS signal for safety-critical applications, regional augmentation systems are being developed which give users a virtually instant notification of errors in the GPS and allow them to switch to a back-up navigation aid if necessary. These include the European EGNOS and WAAS, its American equivalent. These systems monitor GNSS performance at ground stations in a defined area and rebroadcast correction and integrity information via geostationary satellites. The differential GPS network provided in the UK by the General Lighthouse Authorities does the same thing around the UK coast, using VHF radio to broadcast the information—with a much more limited range.

Galileo will provide a GNSS under civil, European control, and designed from the outset for civil purposes. It will be complementary with GPS. In its basic form the open service will supplement the existing GNSS signals to give a more accurate and reliable position, less so vulnerable to distortion and blocking. It will also provide additional services, not offered by GPS and GLONASS. These include a safety-of-life service with an integrity guarantee that will be available world-wide, and a commercial service that will allow service providers to offer equipment and software adding value to the basic positioning information. The other two services to be included in the Galileo signals are the PRS, the encrypted signal for use by government organisations in situations where it may be necessary to block the other GNSS signals, and an enhanced Search and Rescue service. This will give more accurate positioning of casualties and allow an acknowledgement of their distress signal.

Although Galileo has been developed so far with public money, the opportunity for commercial added-value applications will enable the deployment and operation phase to be funded through a Public-Private Partnership. We expect that the increasing miniaturisation and cost-reduction in GNSS receivers will continue to encourage development of innovative applications in transport, energy, finance, recreation and other sectors.

TRANSPORT COUNCIL

No decisions on Galileo are on the agenda for the Transport Council on 27 March. We expect an update on the key elements of the concession negotiations, which have been agreed with the consortium. Vice President Barrot may also comment on these key elements. Over lunch, the schedule may include a discussion about agreements with third countries during the deployment (PPP) phase.

We expect the June Council to receive an assessment from the Commission on the final costs and risks of the concession contract. This is required by the Council conclusions of December 2004, and supported by a minutes statement by the UK and Austria. We continue to work with the Presidency and like-minded colleagues to ensure that this assessment will be rigorous and comprehensive.

The Selection of a Concessionaire

My November letter outlined the delays to the programme that resulted from the merger of the two consortia bidding for the PPP. Vice President Barrot asked the former Competition Commissioner Karel van Miert to broker a solution. The outcome was agreed by the members of the two consortia and presented for information to the Transport Council by Vice President Barrot. In subsequent correspondence, I stressed to the Vice President that the agreement between the consortium must be demonstrated to retain technical and economic efficiency. Council would have to decide whether the costs and risks of the concession contract were acceptable to the public sector. He assured me that the agreement did not commit either the Commission or the Member States, that the contract has to be affordable for the public sector and had to deliver considerable benefits. He also confirmed that the Commission will submit a reasoned analysis before signature of the contract “for a political assessment and endorsement by the Council and the Parliament”. Officials have followed up these points with the Commission and Barrot’s cabinet.

The agreement between the consortium partners included decisions about lead responsibilities, if their PPP bid is successful. Inmarsat, the only UK company involved, will take the lead in the operating company, and its headquarters will be in London.

Negotiations on the PPP concession are now under way. Partial agreement has been reached on nine key elements, and we expect this to be presented to the Council. The timetable for concluding the negotiations, including with the financial institutions which will provide most of the capital, is end 2006. This is more realistic than previous deadlines, but still demanding. The European Investment Bank is supporting the Commission, and an independent consultant has been appointed to produce the assessment expected for the June Council. Officials will continue to press for full transparency, especially on the overall costs and liabilities, and for a comprehensive assessment.

I will provide you with an Explanatory Memorandum before the June Council.

The Galileo Joint Undertaking and the GNSS Supervisory Authority

The Galileo Joint Undertaking (GJU) is the organisation managing the current programme and the negotiations. Under its statutes, established by Council Regulation (EC) No 876/2002, it has a finite life ending on 31 May 2006. To ensure continuity in the negotiations, the Commission proposes amending the Regulation to allow the GJU to be wound down gradually until the end of 2006. Budgetary and administrative procedures are being put in place to provide for a managed handover of responsibilities other than the negotiations from the GJU to the GNSS Supervisory Authority (GSA) during the course of the year.

The GSA will own the Galileo system on behalf of the Community and act as regulator of the PPP. It is being established in Brussels for an interim period, for good logistical reasons. The UK bid for the GSA to be located in Cardiff continues to be promoted by the Welsh Assembly Government, with support from my officials and the FCO.

Financial Regulation

It is not yet clear when the draft financial regulation for Galileo will be brought forward; discussions on the EU budget have not yet progressed to that level of detail.

Timetable

The timetable for completion of the satellite system has now slipped considerably. Because of earlier delays to the programme, and additional security costs, ESA asked its member states to contribute €187 million more for the In-Orbit Validation (IOV) phase of the programme. The Commission is expected to provide €201 million. The decision to open this funding process in ESA was delayed last autumn because of the political context of the merger of the two consortia. Provided ESA secures commitments from at least the five largest current contributors in the next few months, the launch of the first four operational satellites is now expected in the second half of 2008, with handover to the concessionaire in May 2009.

The timetable envisaged by the prospective concession consortium envisages that the remainder of the thirty satellites will be launched by the end of 2010. As the Galileo system will be compatible with the existing GPS open service, some of the benefits of Galileo will start to become apparent from 2008 although the full
commissioning of some of the specific Galileo services that are not available with GPS, such as the Safety of Life service, will have to await the deployment of the full constellation.

The EGNOS service is expected to be certificated for aviation use in 2007. EGNOS was originally developed for aviation and will be integrated in the Galileo PPP.

**Negotiations with Third Countries**

The Austrian Presidency expected to bring forward Council Conclusions on co-operation with third countries in the PPP phase. These have been delayed pending further discussion in the Commission on the legal position, and whether it is desirable that third countries become members of the Galileo Supervisory Authority. Under existing agreements, China and Israel are members of the Galileo Joint Undertaking. They, Norway, and Switzerland have requested membership of the GSA.

In the preliminary discussions, we have stressed that membership, if granted, should mean sharing liabilities as well as costs. We would oppose giving access to the PRS governmental service to third countries. A lunchtime discussion may take place at the March Transport Council.

Several other countries have expressed interest in some form of co-operation, including Saudi Arabia, Australia and New Zealand. It is agreed that the Commission will not seek new negotiating mandates until agreement has been reached on the principles.

21 March 2006

**Letter from the Chairman to Stephen Ladyman MP**

Thank you for your letter of 21 March 2006, replying to my letter of 14 December 2005. Sub-Committee B considered your letter at its meeting on 19 April 2006.

We were grateful for your update on this important project, and for your explanation of the timetable and the ways in which Galileo will add value to the similar systems already in existence and commercially available.

You write that “Galileo will provide a GNSS under civil, European control and designed from the outset for civil purposes”. Can you confirm whether Galileo will be used solely for civil purposes, or will there be military applications? If there were military applications, under what system of control and governance would they operate? Furthermore, could you clarify the difference between “Safety of Life Services” and “Enhanced Search and Rescue”?

You also write that the Government’s PRS signal “may be necessary to block other GNSS signals”. Could you give us an example of where signal blocking would be necessary?

We note that a number of key elements to this proposal are still to be negotiated and await the Explanatory Memorandum which you will provide to us before the June Council. We will maintain the scrutiny reserve at this stage.

24 April 2006

**Letter from Stephen Ladyman MP to the Chairman**

Thank you for your letter of 24 April responding to my earlier one of 21 March on the Galileo programme.

You asked about the nature of the programme. Galileo has been confirmed as a civilian system under civilian control. This has been restated by successive Transport Councils, most notably that of December 2004. It was also agreed at this Council that any change to that principle should be considered as a “Pillar II” issue; which, under the terms of the EU Treaty, requires the unanimous agreement of all member states. As you know Ministers have given assurances that we would use our veto to maintain this.

You also asked for clarification of the purpose of three of the five services that will be provided by Galileo: the Safety of Life (SoL), the enhanced Search and Rescue (SAR) and the Public Regulated Signal (PRS).

The SoL service is aimed at transport applications such as aviation and shipping, where guaranteed accuracy is essential. It will provide a high level of integrity for such safety critical applications.

The SAR service will enhance existing search and rescue systems in a number of ways, but most importantly it will enable distress messages to be received instantly from around the world (currently the average waiting time is about an hour) and for the location to be specified to within a few metres (rather than the current level of precision of about 5 kilometres).
Finally, the PRS will be a highly robust and access-controlled service. Its signal would be encrypted, and be more resistant to jamming and interference. It would only be available to authorised government sponsored users, including emergency services, and is expected to remain available in periods where it may be necessary for other signals to be deliberately degraded or blocked to assist civil protection or in times of crisis.

There are no decisions on the Galileo PPP on the agenda for the Transport Council in June and there is every likelihood that there will not be any before December. However, we expect there to be an oral presentation from the Commission. There has not been a great deal of progress on the Galileo programme since my previous letter, which is why I am sending this latest update as a further letter instead of the Supplementary EM that I had expected to be able to send you. I will continue to keep you informed of progress on this programme and expect to send you a Supplementary Explanatory Memorandum after the June Council.

18 May 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 18 May 2006, replying to my letter of 24 April. Sub-Committee B considered your letter at its meeting on 5 June.

We were grateful to you for your responses to our questions. You write that the Safety of Life service (SoL) is designed for transport applications “where guaranteed accuracy is essential”. Could you give an example of where this would apply? We will await the Supplementary Explanatory Memorandum from you following the June Council. We will maintain the scrutiny reserve at this stage.

6 June 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 6 June on the Galileo satellite navigation programme.

I enclose Explanatory Memoranda (EM) on two recent Commission documents (not printed).

EM 10431/06 refers to a Commission proposal to amend the Regulation that established the Galileo GNSS Supervisory Authority (GSA) and EM 10427/06 addresses the Commission communication on the current status of the Galileo programme.

You had asked for a formal Supplementary EM to update the Committee on the Galileo programme. I understand your Clerk has since agreed with officials that given the broad and comprehensive nature of EM 10427/06, that you will be content to accept the enclosed document as meeting your request.

14 July 2006

GALILEO PROGRAMME (10427/06)

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 24 July 2006.

We share your disappointment with this progress report, which we agree falls clearly short of “a searching assessment of the current state of play”. We share your desire for a more robust assessment by the Commission of the costs and risks as called for by the Council as far back as December 2004. Although the Commission’s revised timetables for the programme are, as you note, “more realistic” than the previous timetables, they still seem “optimistic”. We would be grateful for your views on how the proposed system will compare to the current capacity and technical effectiveness of the existing US satellite system.

We will clear this document from scrutiny, but would expect to receive any further assessments made by the Commission for scrutiny. We trust that you will keep us informed of any developments in this area.

25 July 2006
Letter from Rt Hon Alun Michael MP, Minister of State for Industry and the Regions, Department of Trade and Industry to the Chairman

It has been brought to my attention that the Explanatory Memorandum on the Commission’s Communication “Challenges for the European Information Society beyond 2005” (15177/04), (which was submitted to the Lords Committee on 12 January 2005) remains under scrutiny.

In your letter dated 26 January 2005 concerning this EM, you said that “We look forward to reviewing the Commission proposal for the 2006–2010 eEurope Action Plan in due course. In the meantime we maintain the scrutiny on this document”.

On 1 June 2005, the Commission published their Communication “i2010—A European Information Society for growth and employment” (9758/05). This Communication further expanded on the intentions of the Commission to take forward EU ICT policy from 2006 to 2010 and was the successor to the original Communication on “Challenges for the European Information Society beyond 2005”.

I submitted EM 9758/05 on this second Communication on 20 June 2005. We then exchanged several letters on this EM and in your last letter dated 15 November 2005, you agreed to lift scrutiny.

In light of the fact that you have lifted scrutiny on the second of these two EMs, I would be most grateful if you would also lift the scrutiny that remains on its predecessor EM 15177/04. I believe EM 9758/05 and our subsequent letters address all the concerns that you raised in your letter dated 26 January 05 to my colleague Mike O’Brien.

27 February 2006

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter of 27 February 2006 which Sub-Committee B considered at its meeting on 6 March 2006.

I confirm that Sub-Committee B are now content to lift scrutiny from this document because, as you point out in your letter, your Explanatory Memorandum 9758/05 and the subsequent correspondence address the concerns that we had raised on document 15177/04.

8 March 2006

Letter from the Chairman to Pat McFadden MP, Parliamentary Secretary, Cabinet Office

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 12 June 2006.

As the Action Plan seems to be entirely compatible with the UK’s objectives, and those of the Lisbon Agenda, we are content to lift scrutiny on this proposal.

15 June 2006

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 24 July 2006.

We support the adoption of the new Convention and the wish of the Government to ratify it. However we note your strong concerns regarding the issue of competence. Could you provide us with a detailed account of the reasons for your reservations? Are you content that the draft Decision sufficiently clearly identifies and is restricted to those matters where the Community has established competence?

16 Correspondence with Ministers, 4th Report of Session 2005–06, HL Paper 16, p 64.

Which areas within the Convention might trigger a claim by the Commission for Community competence in the future? We would also be grateful for an explanation of which EU measures “might require the UK to implement parts of the new Convention that are not mandatory, or to implement additional measures which go beyond those contained in the Convention”.

We will maintain scrutiny on the proposal at this stage.

25 July 2006

INLAND WATERWAY TRANSPORT (5583/06)

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

Thank you for your Explanatory Memorandum on this document which Sub-Committee B considered at its meeting on 27 February 2005.

We are maintaining the scrutiny reserve at this stage. We would be grateful for an indication from you of the time-scale for the Government’s consultation on this document. Sub-Committee B will review the scrutiny status of this document once the results of this consultation process are known.

1 March 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 1 March, in which you asked for an indication of the time-scale for the Government’s consultation on this document.

As this is a non-legislative document the Government has decided to hold an informal consultation exercise on this document, in which we are particularly interested in hearing from the key stakeholders. The informal period of consultation took place between 6 and 28 February. However, I am particularly keen to hear from some key stakeholders who represent the Inland Waterway industry, who will be providing their view but are yet to do so. Once the remaining stakeholders respond I will be able to provide you with a further update in March or April.

10 March 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 10 March 2006 which Sub-Committee B considered at its meeting on 27 March 2006.

We will await your update of the final outcome of the Government’s stakeholder consultation and continue to maintain the scrutiny reserve at this stage.

29 March 2006

Letter from Stephen Ladyman MP to the Chairman

Further to my letter of 10 March and your letter of 29 March, I am writing to update you on the Government’s informal consultation of stakeholders on the above Commission documents.

We received two brief responses to the informal consultation. Generally, the stakeholders welcomed the Commission’s Communication and the associated working document.

One industry association recognised that the possible application of the Commission’s Action Programme to the UK would be less than that of other EU Member States where the scope for developing inland waterway traffic is not so limited. Their main interest was confined to the extent to which any new initiative might open up new possibilities for the movement of unitised cargo (containers and roll-on, roll-off); in particular, that competition for land-use in the UK from residential and retail development might stifle future freight terminal development and inland waterborne transport innovation.

Sea and Water, which represents the inland waterways sector, felt that the Commission’s NAIADES initiative would enable better exploitation of inland waterways transport and should be implemented in all EU member states. In response to such EU initiatives, Sea and Water has recently published its “Case for Water” setting out opportunities for the freight transport sector of using inland waterways.

As stated in EM 5583/06, the Austrian Presidency hopes to achieve agreement on Council Conclusions welcoming the approach presented in the Communication at the June Transport Council on 7–8 June.

9 May 2006
Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 9 May, which Sub-Committee B considered at its meeting on 22 May.

We were grateful to you for your summary of responses received during the Government’s informal consultation, which appear to be supportive. We are content to lift scrutiny on this document at this stage, and would be grateful to you for a further update following the June Transport Council.

23 May 2006

Letter from Stephen Ladyman MP to the Chairman

Further to your letter of 23 May, I am writing to update you on the outcome of the Transport Council discussion on the above Commission documents.

After a short debate, the Transport Council agreed Conclusions on the Commission’s Communication. The Conclusions welcome and agree to the action programme to promote Inland Waterways transport and comment on the detailed proposals in the recommendations contained within it. A copy of an extract from the Council Press Notice, which contains the Conclusions, is annexed to this letter.

Although the Communication only has limited relevance to the United Kingdom because our inland waterways are not connected to those on the continent, the Government recognises the potential of Europe’s inland waterways to help reduce traffic congestion and harmful effects on the environment as a whole. We welcome therefore, the Communication and Action Programme as a way to promote the use of inland waterways to transport more freight where this makes sense.

5 July 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 5 July, replying to my letter of 23 May. Sub-Committee B considered your letter at its meeting on 17 July.

We were grateful to you for your report on the outcome of discussions on the two documents in the June Transport Council. We trust that you will update us further if there are any developments to these proposals.

19 July 2006

KOREAN PENINSULAR ENERGY DEVELOPMENT ORGANISATION, KEDO (15523/05)

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

I am writing to inform you that, on 21 December 2005, delegations of the European Commission and KEDO (Korean Peninsula Energy Development Organisation) agreed on the text of an agreement between the European Atomic Energy Community (Euratom) and KEDO on Euratom’s continued membership of KEDO in 2006. The negotiations were conducted by the Commission, with the UK Presidency closely involved. The Commission was authorised by the Council to open negotiations on a limited renewal of Euratom participation in KEDO through the adoption of Council decision 15523/05 ATO 128 CONOP 58.

Negotiations between the Commission and the KEDO Secretariat on the prolongation, for a maximum of one year, of the Euratom KEDO agreement, which expired on 31 December 2005, were held on 20 and 21 December at the KEDO HQ in New York. All KEDO Executive Board Members agreed that Euratom would not have to share in costs resulting from the termination of the Light-Water Reactor project. Euratom is only meeting cost relating to the funding of the Secretariat whilst it winds the organisation up. The Executive Board recognised that a Euratom contribution to KEDO’s administrative budget during KEDO’s liquidation process in 2006 constitutes further substantial and sustained support to KEDO. Euratom shall contribute 10 per cent of KEDO’s Administrative Budget in KEDO’s 2006 fiscal year up to a maximum of $1 million.

Under the new agreement, KEDO’s activity will be limited to the termination of the Light-Water Reactor project as soon as possible and the winding up of KEDO itself in an orderly manner before the end of 2006. There will no longer be nuclear industrial interests concerned.

KEDO is an international consortium set up in March 1995 under an agreement between USA, Republic of Korea (South Korea) and Japan. In December 1995 KEDO reached an agreement with the Democratic People’s Republic of Korea (North Korea) to supply a Light-Water Reactor Project. Euratom joined KEDO in September 1997. KEDO’s primary purpose was to implement a 1994 agreement with the United States (the “Agreed Framework”) whereby North Korea agreed to freeze its nuclear programme in exchange for two new
pressure light-water reactors (LWR’s) which are considered less capable of producing weapons-grade plutonium.

7 February 2006

LIABILITY OF CARRIERS OF PASSENGERS BY SEA AND INLAND WATERWAY IN THE EVENT OF ACCIDENTS (6827/06)

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 24 April 2006.

We note and share the Government’s serious concerns over the proposed Regulation’s conformity with the principle of subsidiarity; its potential conflicts with existing legislation and its potential impact on the insurance industry.

We look forward to receiving a supplementary Explanatory Memorandum with a Regulatory Impact Assessment when the details of the Proposal are clearer, and would be grateful for news of any significant developments in negotiations on this important dossier.

We will maintain scrutiny on this proposal at this stage.

25 April 2006

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 EM 5557/01.

In December 2005 the European Parliament voted to accept this third Amendment of the Machinery Directive at Second Reading. The adopted text incorporated nine minor amendments to the Common Position text, detailed in the attached document CODEC 1179, that had previously been agreed by a Council of Ministers in September 2004.

The amendments, which considered both individually and as a package, make a very marginal difference to the Common Position, are summarised below (according to the order in which they appear in the text).

— Amendment 22 clarifies the position on tractors in that those risks covered by the Machinery Directive will cease to apply once the same provisions are contained in a revised Tractors Directive.

— Amendment 20 simply reinforces the need, already established in the Common Position, for Member States to have in place proper procedures for ensuring their market surveillance activity can be carried out successfully.

— Amendments 2 and 8 express the formulation “and/or” in the English text in a different way so as to make it more intelligible, and thus easier, apparently, to translate into other languages. The net effect is to control the usage of markings that may appear alongside the CE marking, and that might therefore have the potential to mislead, even more firmly than previously and is welcome on that account.

— Amendments 4 and 5 both address the interface between the scopes of this directive and the Low Voltage directive (73/23/EEC). The former was accepted on all sides as providing a clearer expression of the excluded items whilst on the latter, although most interpretations of the term “machinery” as defined in the existing Common Position would not include “electric motors” anyway, it was accepted that there was enough potential for confusion here to justify the insertion of an explicit exclusion to that effect.

— Amendment 21/revised bolsters the protection of confidential information obtained by Member States in the execution of their tasks by expanding on the Common Position concept of “professional secrecy”.

— Amendment 13 restricts the application of the essential requirement on stability of machinery to the pre-scraping phases of its usage. This was a concession to the manufacturer’s lobby although the restriction is only arguable, as the term “any other action” remains alongside the phases of usage that are explicitly included.
— Amendment 23 introduces the concept of audit review of technical files into the new full quality assurance module which is made available as an option for machinery covered by Annex W, i.e. machinery regarded as particularly hazardous.

The new text, after translation into all Member States’ languages, will be subject to jurists-linguists action. The revised text will need to be formally ratified by a Council of Ministers and then published in the Official Journal of the European Journal before coming into force 20 days later.

Timescales are difficult to predict but it is anticipated that jurist-linguists action will be completed by Easter, ratification will be completed by early May, and publication by early June 2006.

This would mean the Directive coming into mandatory force from December 2009/January 2010.

30 January 2006

Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letter of 30 January 2006 providing an update on this document which Sub-Committee B considered at its meeting on 13 February 2006.

Members noted that the time-scale for the publication and coming-into-force of this Directive is still rather vague and so I would ask that you would keep us informed as things become clearer.

15 February 2006

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 15 February 2006 which stated that the “time-scale for the publication and coming-into-force of this Directive is still rather vague” and asking for further information as issues became clearer.

I apologise for the delay in replying on the timetable on the Machinery Directive and can now update you on the latest position.

I can confirm that the new Machinery Directive, 2006/42/EC, was published on the 9 June 2006 and entered into force on 29 June 2006. Member States have until the 29 June 2008 to transpose it into their national legislation and to apply those provisions from 29 December 2009.

31 July 2006

MARITIME ACCIDENT INVESTIGATION (6436/06)

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 27 March 2006.

We note in your Explanatory Memorandum the clear misgivings the Government has over the proposal in its current state, in particular the potential for an unnecessary additional bureaucratic burden and for a conflict with the UK’s existing adherence to IMO guidelines. We will maintain the scrutiny reserve on this proposal.

We were surprised that you expect the UK maritime industry to be supportive of the proposal, as long as it does not undermine the standing of the MAIB. Can you at this stage give us any guidance on when a formal consultation process will take place? We would of course be grateful to receive the results of such consultation, as well as any news of the emerging timetable for the Directive.

29 March 2006
MARITIME ACTIVITIES (5912/06)

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

Sub-Committee B considered this document at its meeting on 6 March 2006.

We note that several key details of the proposal, in particular the scope and scale of penalties for poor performance, have yet to emerge. We also note that UK industry seems unconvinced over the necessity or proportionality of the creation of an independent supervisory body, and over the value of reform of the system of recognition to a qualitative criteria.

We would be grateful if you could keep us abreast of any developments on the proposed measure as discussions progress, and will maintain scrutiny on this document pending resolution of the above concerns.

8 March 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 8 March, in which you maintained the scrutiny reserve.

I note the comments that you raise in your letter and I will as requested write to update the Committee on developments once discussions progress on this dossier. As you will have seen from the Explanatory Memorandum, it seems unlikely that there will be any working group discussion of this proposal for some time to come. It is possible that the Finns may be able to begin discussions on the dossier, but this is not considered likely and I understand that the Germans do not intend to take it forward under their own Presidency.

I will also, of course, keep you informed of the position in the European Parliament, though again, no timetable for this has yet been set.

24 March 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 24 March 2006, replying to my letter of 8 March. Sub-Committee B considered your letter at its meeting on 19 April 2006.

We note that this dossier is unlikely to be taken forward in the Finnish or the German Presidencies and would be grateful for news of any developments as and when they emerge. We will maintain the scrutiny reserve at this stage.

24 April 2006

MARITIME TRANSPORT—EC COMPETITION RULES (16106/05)

Letter from the Chairman to Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry

Sub-Committee B considered your Explanatory Memorandum on this subject at its meeting on 30 January.

We noted that the Working Group set up under the Austrian Presidency was to have met on 23 January 2006. Did this meeting go ahead? We are maintaining scrutiny pending the outcome of this Working Group.

1 February 2006

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 1 February.

You asked about the Council Working Group on 23 January, which did indeed go ahead. The Committee might find it helpful to know, in broad terms, the outcome.

The Working Group was the first to discuss the Commission proposal of December 2005. The Austrian Presidency sought the views of countries on the proposed repeal of Regulation 4056/86. A clear majority of countries either spoke in favour of repeal or did not object to it. The UK spoke in support of repeal (subject to a scrutiny reserve). Two countries did not have a position to report.

Many Member States welcomed the Commission’s proposal of guidelines, to be finalised by end 2007, covering the maritime sector. Some asked the Commission to produce guidelines in advance of the repeal of 4056/86. The Commission explained that they did not have the legal powers to do this until the repeal of 4056/86, which also amends Regulation 1/2003 to bring the maritime sector within Community competence.
However, the Commission are also taking the unusual step of offering informal guidance in the tramp shipping sector in advance to try and overcome this problem. The Commission noted that they were meeting the industry at least twice a month at present, discussing the way forward on guidelines and on other matters.

In response to questions about the impact of repeal on developing countries, the Commission said that they are expecting a positive impact of repeal and that developing countries do not like liner conferences. The UNCTAD code had failed and developing countries no longer had their own shipping lines. African trades are still in the grip of liner conferences and African shippers have told the Commission that they would like to see the end of liner conferences so as to improve their negotiating position. Developing countries are generally exporting low value goods so the cost of their transport is a higher proportion of their costs.

In response to questions about the views of other countries the Commission said that the US was unconcerned about repeal, the role of liner conferences had diminished to such an extent on US trades that repeal would not be an issue. The Australian Productivity Commission had recommended repeal to the Government. The Japanese system operated differently in that it involves more cooperation between shippers and carriers—discussions with the Japanese Government have identified that possibly such co-operation might be covered by the Consortia block exemption (this is an existing block exemption that allows co-operation but not price fixing or capacity regulation).

A few Member States questioned Article 83 (competition) as the sole legal base. They argued that both Article 83 and Article 80 (shipping) should be the legal base, as in the original Regulation. The Commission Legal Service explained their reasoning for proposing Article 83 as the legal base, which centres on the point that all other block exemptions (except one from 1968) are based on Article 83 alone, even those in other transport sectors such as cars and air and in particular the Consortia regulation amended only last year. There are also a number of other precedents and cases to take into account. The Council Legal Service will be considering further in the light of recent cases and are likely to report further on this issue at the next Working Group meeting. Our lawyers are of the view that Article 83 is appropriate as the sole legal base.

The next meeting of the Working Group is scheduled for 23 February. Officials from DTI, DfT and OFT will attend.

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter of 16 February 2006, providing a report on the outcome of the Council Working Group on 23 January 2006 which Sub-Committee B considered at its meeting on 6 March 2006.

Sub-Committee B appreciates the fullness of your report on the Working Group, and is satisfied that progress appears to being made. You mentioned in your letter that the next meeting of the Working Group would take place on 23 February. We would also be grateful for a report on the conclusions of that Working Group, and will maintain the scrutiny reserve pending receipt of that report.

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 8 March.

You asked for a report about the Council Working Party meeting on 23 February. As requested, I am writing to inform the Committee of the outcome.

This Working Party was the second to discuss the Commission proposed Draft Regulation of December 2005. The first took place on 23 January, which was the subject of my letter to you of 16 February. Good progress was made with further discussion of the appropriate legal base for the Regulation. All member states, except one, agreed that Article 83 only is appropriate and removed their reservations on this issue. The Commission announced that the European Competition Network (ECN) would be looking at the content of guidelines for the industry. As a result of this statement, a number of member states pressed for early introduction of the guidelines. However, the Commission said this would not be possible in the timescale.

On the legal base issue, the view was taken that the proposal is concerned with competition law and does not have any direct effect on transport policy. Therefore the appropriate legal base for the proposal is Article 83 alone and not Article 83 in conjunction with Article 80(2).

One Member State remains concerned on this issue and said they would consider the implications including in relation to the UNCTAD code, Council Regulation 954/79 (also referred to as the Brussels package) and Article 80. Concern was also expressed about the economic impact on short sea shipping in a relatively short period.
In response, the Commission said that they were looking at the implications for short sea shipping and were waiting for views from the industry. With regard to the UNCTAD Code, Regulation 954/79 allowed member states to adopt this Treaty. It is anticipated that Regulation 954/79 will be repealed at some point in the future and that this will be under Article 80.

The Commission responded to questions about the proposed guidelines for the shipping lines. The ECN had set up a sub-group to look at this issue and would carry out some preparatory work for the next working group. A number of Member States wanted to see the guidelines before the regulation was enacted. However the Commission believed it was too early to write them. These had not been done for this sector before and so work with other Member States was needed.

With regard to tramp shipping, the Commission had been informed by the industry itself that they regarded competition rules as already applying. Industry considered that there would be no major changes in the way that it operated, as a result of bringing the sector formally into the competition rules. However industry had identified one potential problem, namely how competition rules would apply to tramp vessel pools. Finally, the Commission had just issued a tender for a study of tramp shipping to help with the guidelines.

In respect of cabotage, the Commission was waiting for data from the industry. However, the industry did not see a problem with the proposals. It was generally a national issue and there would be very few EU cases.

EU Member States’ views on the proposed regulation were mixed. Some could support the draft regulation, without further comment. Others (including the UK) supported, subject to national Parliamentary scrutiny. One thought the guidelines were important, particularly for tramp shipping. Another wanted to see informal guidelines. Finally, a small number maintained their reservations, as they wanted to see guidelines in advance of any repeal and a review of the timescale.

The Commission did not set a firm date for the next meeting of the Working Party. However as and when this session takes place, tramp shipping, the European Liner Affairs Association (ELAA) proposal and preparatory work by the ECN sub-group would be discussed.

20 March 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter of 20 March 2006, replying to my letter of 8 March. Sub Committee B considered your letter at its meeting on 19 April 2006.

We were grateful for your update on discussions in the Second Working Group and look forward to hearing of any further details of this proposal as they emerge. We will maintain the scrutiny reserve at this stage.

24 April 2006

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

Thank you for your letter of 24 April, replying to Gerry Sutcliffe’s of 20 March.

You asked to be kept informed of progress on this proposal. In the last few weeks, events have progressed rapidly. The European Parliament has completed its work on its opinion (you will recall that the dossier is not co-decision) and voted in favour of the repeal of the block exemption, subject to the development of guidelines for the sector.

The Commission has also continued with its regular contact with the shipping lines, trying to help them put together a package of proposals for the exchange of information in the industry that will not breach EU competition rules. The Commission has also sought information from the industry on the operation of the tramp and cabotage sectors as they have not been responsible for the enforcement of competition law in this sector, the Commission have little expertise in the area. In fact, in the UK, the OFT also have little experience of the sector. We have therefore engaged with the UK Chamber of Shipping and the Freight Transport Association to ensure we are able to take account of their views and expertise.

On 10 July, a group of experts from Member States met for the first time to discuss the issues that would need to be covered in the guidelines. This included both a discussion of the information exchange proposals from the liner shipping sector and on the features of the tramp and cabotage sectors. It is fair to say that we (and OFT) have concerns that some of the proposals put forward in relation to information exchange may breach EU competition law. Others however are broadly acceptable. It was clear from this week’s meeting that the Commission and other Member States share this view. Nevertheless, we are content with the Commission’s approach which is to continue the dialogue with the shipping lines to help them develop proposals that are
both useful for the industry and fall within the relevant laws. The UK officials strongly endorsed this approach at the meeting.

In relation to the tramp shipping sector, there was a discussion of the information received so far from industry and Member States. Neither the Commission nor other Member States it appears have much experience with the sector (and there is no case law) so we will all be relying on the shipping industry to highlight the key issues. However, the Commission will publish an “issues” paper on the guidelines as a whole in September and we think this will provide a good opportunity for us to engage in a more focused way on the key issues with the UK industry.

The next steps in the process after publication of the “issues” paper are for the Commission to develop guidelines, taking into account the consultation on the issues paper. We understand that the Commission plan to adopt the draft guidelines by the end of 2007, which will allow them to be finalised before the repeal of the block exemption comes into force towards the end of 2008.

However, in order for the Commission to issue the guidelines, the proposal repealing the block exemption first needs to be adopted by the Council. This is because the proposal not only repeals the block exemption, but also gives the Commission competence to enforce EU competition law in the tramp and cabotage sectors, which they do not have at the moment.

The new Finnish Presidency have therefore decided to bring the proposal to Coreper on 19 July and the Council on 24 July to try and gain agreement before the summer recess. This is sooner than we had been expecting. They have also judged that they have the necessary qualified majority among Member States. As you are aware, the Government strongly supports the repeal of the block exemption. We are committed to playing a full part in the development of the necessary guidelines for the industry so that shipping lines and their customers can operate with sufficient legal certainty in a newly competitive market.

Given the consistent progress being made, I hope that the Committee will be able to consider lifting its scrutiny reserve. I would be happy to continue to keep the Committee informed of developments if it wishes.

12 July 2006

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 12 July, replying to my letter of 24 April. Sub-Committee B considered your letter at its meeting on 17 July.

We note the unexpectedly rapid progress made on this dossier. We share the Government’s aims of creating “a newly competitive market” with legal certainty for both customers and operators. We are reassured that the repeal of the block exemption for liner conferences will assist this aim. We were however surprised that the group of experts from Member States which you mention did not meet until such a late stage (10 July). Neither are we entirely clear how competition issues would arise in tramp shipping. We would of course be grateful if you kept us informed of any developments in relation to the emerging guidelines from the Commission.

We are content to lift scrutiny on this proposal ahead of the Council on 24 July.

19 July 2006

MARKET ACCESS TO PORT SERVICES (13681/04)

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

In November 2005 I submitted a partial regulatory impact assessment and updated you on progress with this directive. I am now writing to report the results of the first reading vote in the European Parliament and to provide some thoughts on the next steps with this contentious dossier.

Following an inconclusive vote in the European Parliament’s Transport Committee on 22 November, MEPs remitted the Commission’s original unamended proposal for a decision in the European Parliament (EP) Plenary. Whether intentionally or not, the Committee voted to reject, as a whole, all of the individual amendments they had painstakingly agreed. As a result the Parliament was faced with voting on a text with which a number of significant EP committees, many MEPs, Council and organised labour had serious reservations. Consequently, against the backdrop of 6,000 protesting dock workers the EP voted to reject this directive for the second time in three years, this time by 532 to 120.

Notwithstanding rejection of this directive, many MEPs have now demanded alternative legislation on transparency and fair competition in ports.
Transport Commissioner Barrot has yet to announce his next move, but there is a strong probability that he will ask the College of Commissioners to agree to a formal withdrawal of the directive. Immediately following the vote he made a statement in which he asserted that the underlying motivation for the Directive (the Lisbon agenda for economic reform) remained. He hinted that he would now seek to “redraw” EC ports policy. This would cover a broader field than the current Directive, bringing in aspects such as port charges, state aids and integration into the wider supply chain. This therefore points to a further consultation exercise, possibly via a Green Paper, later this year.

From a UK viewpoint (as you will have gathered from our regulatory impact assessment) the proposal clearly had the potential to make a significantly adverse impact on the continuing success of the UK ports sector. You will recall the Government was concerned that proposals on port services should be realistic and proportionate, recognising the diversity of the industry and the competition that already exists, particularly between the UK and other European Ports. This proposal simply did not achieve these reasonable goals.

We will now discuss with the Commission how they might take this forward and seek to steer them (and other Member States) away from proposals which may potentially prejudice the commercial functioning and future development of our competitive ports sector here in the UK. The elements outlined by Barrot at the European Parliament would be a useful starting point and we already have strong indications from some Member States that they wish to tread the same path in close collaboration with the UK.

I will, of course, continue to keep you informed of developments.

24 February 2006

MARKET REVIEWS FOR ELECTRONIC COMMUNICATIONS (6114/06)

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 13 March 2006.

In anticipation of the impending Communication from the Commission in July, we are content to clear this document from scrutiny at this stage.

We note, and share, your concerns over the potential for inappropriate harmonisation of remedies following market reviews. We trust that you will keep us informed of any developments in this area.

15 March 2006

MOTOR VEHICLES: EMISSIONS & ACCESS TO REPAIR INFORMATION (5163/06)

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 6 February 2006 and agreed to maintain the scrutiny reserve, pending receipt and examination of the Regulatory Impact Assessment that you mentioned.

We would also be grateful if you could inform us of any significant updates in the progress of negotiations on the Directive in the coming year.

In paragraph 13 of your Explanatory Memorandum you state that you are satisfied that this issue cannot be dealt with by Member States. However, your Explanatory Memorandum makes no comment on the proportionality of this Proposal. We would be grateful for your views on that matter too.

We noted that the Government is carrying out its own assessment of the costs and benefits of this Proposal. Will this be made available to the Committee well in advance of the June Council at which the Austrian Presidency aims to secure political agreement?

9 February 2006
Letter from the Chairman to Stephen Ladyman MP

Sub-Committee B considered this document (5163/06), and your Explanatory Memorandum, at its meeting on 26 June 2006.

We note that the Government still appear to have concerns over the inclusion of the article on fiscal incentives. We would be grateful to you for any updates on the progress of this proposal through the European Parliament. We note that in your previous EM, submitted in January, you expected the Austrian Presidency to seek agreement on the proposal in the June Environment Council. Can you give us an explanation for why this was not the case?

28 June 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 28 June 2006 informing me that Sub-Committee B had considered the above documents and my Explanatory Memorandum at its meeting on 26 June.

I confirm that we are continuing to oppose the inclusion of fiscal incentives in this proposal in negotiations. Should it prove impossible to secure the deletion of these provisions then we would not vote against an otherwise satisfactory compromise package. However, as on previous occasions, we would enter a minutes statement to record our opposition to the inclusion of fiscal provisions.

As regards the general progress of the proposal, the Austrian Presidency deferred consideration by Council until the autumn due to delays in the European Parliament’s consideration of the proposal. The Finnish Presidency remains hopeful that a First Reading agreement can be reached with the Parliament before the end of the year. The Parliament’s Environment Committee recently considered the Rapporteur’s draft report—which indicated broad support for Euro 5 and for the inclusion of a Euro 6 stage—but a substantial number of additional amendments have been tabled by its members and their vote has been deferred until 14 September 2006.

Discussions in Council working groups have been continuing with broad support for the “Euro 5” proposal and also for the inclusion of a Euro 6 along the lines indicated in the Department’s SEM. However a few of the larger Member States and the Commission’s DG Enterprise (who are responsible for this proposal) do not yet support adoption of Euro 6 in this negotiation, preferring this to be dealt with later by a separate proposal. This would inevitably delay Euro 6 implementation and hence the air quality and health benefits it delivers. It would also reduce the notice given to industry of the standards, thus compromising product development planning. Should the Commission maintain its opposition a unanimous vote in favour by Member States would be required to secure the Euro 6 stage. The Presidency is therefore pressing the Commission to adopt Euro 6 within the current proposal. However I would expect that once the views of the Parliament are known the Commission and those Member States currently opposed to Euro 6 will indicate whether they have any flexibility over this issue.

It is possible therefore that Member States will be in a position to reach agreement at the next Environmental Council on 23 October 2006. However, given that the position of most Member States in relation to the large number of amendments tabled by the Parliament remains uncertain, there is a significant risk that an agreement with the Parliament could take several months longer.

8 August 2006

Payment Services in the Internal Market (15625/05)

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

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 23 January 2006 and agreed to maintain the scrutiny reserve, pending receipt of the partial Regulatory Impact Assessment.

We would also be grateful if you could inform us of the results of the Government’s consultation process and of any significant updates in the progress of negotiations in the coming year.

25 January 2006
INTERNAL MARKET (SUB-COMMITTEE B)

PORT STATE CONTROL (5632/06)

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

Thank you for your Explanatory Memorandum on this document which Sub-Committee B considered at its meeting on 27 February 2006.

We are maintaining the scrutiny reserve at this stage. We would be grateful for an update from you on this document after the June Transport Council and after the European Parliament’s first substantive consideration of it.

1 March 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 1 March, in which you maintained the scrutiny reserve.

I will as requested be able to provide an update for your Committee on this document following the June Transport Council and after the European Parliament’s first substantive consideration of it, for which no date has yet been set.

10 March 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 10 March 2006, which Sub-Committee B considered at its meeting on 27 March 2006.

We will await your update following the June Transport Council and continue to maintain the scrutiny reserve at this stage.

29 March 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 29 March, in which you maintained the scrutiny reserve. As requested, I am writing to update you on progress in negotiations on the dossier.

Examination of the proposal in Council began at the end of the UK Presidency. One issue on which discussions have so far focused has been the New Inspection Regime (NIR), specifically the criteria to be used to prioritise vessels for inspection.

Work on developing the NIR has simultaneously been taken forward by the Paris Memorandum of Understanding on Port State Control (Paris MoU), which includes both EU and non-EU member States, including Russia and Canada. The NIR was agreed in principle by the Paris MoU at its Committee meeting in May 2006, subject to continuing discussion on a small number of outstanding issues. The Government considers it important that the requirements of the Directive should be compatible with the outcome of the Paris MoU’s work on targeting and we are confident that objective will be achieved.

The Transport Council received a short progress report on these developments in June and negotiations are set to continue in working group during the Finnish Presidency, with the aim of general approach being reached on the dossier at the December 2006 Transport Council. The European Parliament has yet to consider the proposal, but is expected to do so during the Finnish Presidency.

13 July 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 13 July, replying to my letter of 29 March. Sub-Committee B considered your letter at its meeting on 24 July.

We were grateful to you for your progress report following the June Transport Council. We would also be grateful for an update when negotiations in the Council working groups over the New Inspection Regime are concluded. We are reassured by your confidence that the requirements of the Directive will be compatible with the outcome of the Paris Memorandum of Understanding’s work on the NIR.

We will maintain the scrutiny reserve on this proposal at this stage.

25 July 2006
PUBLIC CONTRACTS (9138/06)

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 19 June 2006.

We are satisfied that the Commission’s proposal fits broadly with the UK’s own policy objectives on securing fairer access to public procurement across the EU. However, as you note, it is important that the approach taken on the introduction of the standstill period be “proportionate to its objectives”. We would be grateful for any updates you can provide the Committee on the course of negotiations in Council and the European Parliament.

We will hold this proposal under scrutiny at this stage.

20 June 2006

PUBLIC-PRIVATE PARTNERSHIPS (12303/05)

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

Sub-Committee B considered this document at its meeting on 6 February 2006 and decided to hold it under scrutiny.

Members noted that the Commission is floating the idea of greater certainty (and competition) where Member States use PPPs. Your Explanatory Memorandum makes it clear that the Government favour competition but not legislation in this area. What steps are you taking to ensure that this view is communicated to the Commission?

Your Explanatory Memorandum states that action at Community level is appropriate. I would be grateful if you could explain why it is appropriate. This does not seem to tally with your later explanation that separate legislation in this area would create legal uncertainty. Your Explanatory Memorandum does not address the issue of proportionality—do you believe that the Proposals contained in this document are proportionate?

9 February 2006

Letter from John Healey MP to the Chairman

Thank you for your letter following Sub-Committee B’s consideration of the Explanatory Memorandum 12303/05 COM(2005) 569 on Public Private Partnerships and Community Law on Public Contracts and Concessions Final. I understand that you are concerned and unclear on the UK Government’s position on the Commission’s proposal for separate legislation in the area of concessions, and are therefore holding the EM under scrutiny.

Our position on the Commission’s proposal for separate legislation in the area of concessions is clear; we do not support this proposal. Separate legislation would result in a resource intensive task with compliance burdens for businesses, reducing the very competitive market appetite that the Commission is trying to promote. However, we do recognise that service concessions are currently outside the existing procurement framework, creating legal uncertainty around Community rules governing the award of a concession. We believe that this can be remedied by amending the existing public procurement directives (2004/18/EC) rather than the Commission’s proposal of separate legislation, and hence the EM comment that “action at Community level is appropriate”.

These views have been conveyed at the Commission’s Advisory Committee on Public Contracts, which is attended by the Office of Government Commerce (OGC).

11 May 2006

Letter from the Chairman to John Healey MP

Thank you for your letter of 11 May, replying to my letter of 9 February. Sub-Committee B considered your letter at its meeting on 22 May.

We were grateful to you for clarifying the Government’s view that, whilst Community action is appropriate in this area, the Government is opposed to new legislation and would prefer to see an amendment of the existing procurement framework to create legal certainty on service concessions.
In the light of the potentially serious implications separate, burdensome legislation could have for competition in the UK, we will maintain scrutiny on this proposal. We would be grateful for any further updates as negotiations progress.

23 May 2006

PUBLIC TRANSPORT SERVICES BY RAIL AND ROAD (11508/05)

Letter from Derek Twigg MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

I am writing further to my letter of 24 November 2005\textsuperscript{18} on the above European Commission proposal.

Sub-Committee B considered the EM on 17 October, and the letter on 12 December 2005. Your letters of 19 October and 14 December commented that the Sub-Committee should like to see the results of the public consultation and the full Regulatory Impact Assessment (RIA).

The Department launched a full public consultation exercise on 21 October 2005, accompanied by a partial RIA, to gauge the views of key stakeholders on the impact of the revised proposal (which I copied to you for your early consideration). The consultation period ended on 13 January 2006, the results of which have been amalgamated into a Summary document and used to help my officials to update and revise the RIA. Both these documents are attached for your further consideration.

The headline message from the consultation is that stakeholders appear to be realistic that the draft proposal would provide some increase in legal certainty and would not require drastic changes to existing operations. Whilst the proposal would not require competitive tendering of services, stakeholders appear to be content that it might make a modest contribution to market opening in some Member States where the public transport market is currently closed.

Overall, respondents strongly reinforced the Department’s position set out in the partial RIA. A number of respondents expressed concern at the potentially significant public sector costs, particularly if the early termination of light rail schemes proved necessary which could lead to compensatory claims. We continue to believe there are reasonable prospects of success in securing acceptable changes to the proposal, particularly following the recent Transport Council Working Group discussion on this dossier where a number of Member States expressed similar concerns on this issue.

Respondents also supported the Department’s concern that the emergency provisions (allowing a one year extension to a contract or direct award) maybe insufficient for heavy rail services. There was some concern that the need to put in place a contract between a competent authority and a transport operator should not be overly prescriptive or burdensome. And some doubt was raised as to whether GB commercial (deregulated) bus services would be compatible with the regulation as proposed. We have reflected these concerns in the summary and RIA and also taken them into consideration when forming our negotiating position for discussions on this dossier.

It is expected that the proposal will be the subject of a policy debate at the Transport Council on 27 March, and that following this the Presidency will reflect on whether to attempt to achieve a political agreement at the June Council. I shall, of course, continue to keep you informed of the progress of negotiations.

16 March 2006

Letter from the Chairman to Derek Twigg MP

Thank you for your letter of 16 March 2006, which Sub-Committee B considered at its meeting on 27 March 2006.

We note that your consultation uncovered a number of concerns amongst UK stakeholders, notably over the potential public sector costs; over the emergency provisions being insufficient for heavy rail services; over the potential for unnecessary red tape as well as doubts over the compatibility of commercial bus services in the UK with the Regulation. Please inform us whether a full Regulatory Impact Assessment will be produced.

We hope that you will be able to resolve these matters in forthcoming negotiations, and would be grateful if you could keep us informed of any progress on this dossier. We will maintain the scrutiny reserve at this stage.

29 March 2006

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

Derek Twigg wrote to you about the above European Commission proposal on 16 March reporting on the outcome of our consultation exercise and enclosing an updated and revised Regulatory Impact Assessment (RIA). Sub-Committee B considered the letter on 27 March and you wrote on 29 March, noting that there were remaining concerns to be addressed in negotiations, asking to be kept informed of progress and whether a full Regulatory Impact Assessment will be produced.

There have been a number of Working Group discussions on this proposal since March, most recently on 4 and 12 May, and although some issues remain to be resolved at the Transport Council on 9 June, a great deal of progress has been made. I am writing to update you on these developments and to let you know that the Austrian Presidency has now confirmed that it will seek a political agreement at the Council.

Following the publication of the Commission’s proposals in July 2005 and in the light of responses to our consultation, we established a UK negotiating strategy which had two main objectives:

— first, and foremost, to secure changes to the proposal to ameliorate potentially significant adverse effects on UK public transport arrangements; and
— second, to seek to amend the proposal in such a way as to create a more level playing field for public passenger transport operators and to create an environment for further opening of the passenger transport market.

In official-level negotiations in the EU Transport Council Working Group since January, we have largely secured the first objective. In particular, the latest text would:

— allow all existing UK light rail contracts to remain in place and would provide a satisfactory framework for taking forward any new light rail schemes;
— allow authorities, such as Transport for London, to operate services outside the jurisdiction of their authority;
— safeguard the continuation of GB commercial (deregulated) bus services outside London; and
— offer a satisfactory period of time for a new contract to be put in place following an emergency.

We have also had some success in securing changes towards the second objective; which has been increasingly important since ministers agreed at the December 2005 Transport Council that Member States should be free directly to award long-distance and regional rail contracts. In particular, the latest text would:

— strengthen the rules designed to ensure that operators which benefit from contracts awarded directly without competition are not over-compensated;
— require authorities which directly award rail contracts to publish detailed information about those contracts to allow proper public scrutiny; and, to tell operators which unsuccessfully challenge a direct award why they failed; and
— require the Commission to publish a post-implementation report which, among other things, would contain an assessment of the effects of direct awards.

We have also been pursuing a provision which would allow authorities that award contracts competitively to exclude from tendering exercises any operator which obtains more than 50 per cent of its overall revenues from directly awarded contracts (a so-called “reciprocity” clause). Only four other Member States support this, so it cannot be secured. But we have been using it as a lever to try to limit further extension of the scope in the regulation for directly awarding contracts and to further strengthen safeguards to limit the potential for beneficiaries of direct awards to compete unfairly in the market.

On the degree of direct award allowed, three major issues remain to be resolved:

— first, whether the possibility of direct award for long-distance and regional heavy rail contracts which ministers agreed to in December 2005 should be extended to suburban and urban services;
— second, the de minimis value of contracts which may be directly awarded. Here, the Commission proposed an annual financial value of less than €1 million or, alternatively, the provision annually of less than 300,000 km of services. But a small group of Member States is insisting on a single value of 1 million km ostensibly to protect small and medium sized enterprises (SMEs); and
— third, the extent to which provisions relating to awards to “in-house” operators should be relaxed.

While we have largely met our key negotiating objectives, it is important we maintain pressure to limit the further extension of the potential for direct award. It seems we would not have sufficient support to block direct award for all rail services and this point was effectively lost at the March Council (although it might well be opened-up again when the regulation goes to the European Parliament for Second Reading). But we are...
in a much stronger position to fight a significant increase in the de minimis direct award level, because the group lobbying for a value of 1 million km appears to have very little support. We have had discussions with representatives of UK public transport operators who have indicated that they could live with the de minimis level set at about 500,000 km per annum, which would represent a service operation with an average of six or seven buses. And, informal contacts suggest this would be acceptable to many Member States and to the Commission. On the third issue, we will continue to monitor developments closely and will seek to ensure that the constraints on in-house operators proposed by the Commission are not unduly watered down.

Looking forward to the Council, our proposed strategy is to:

— continue to seek further safeguards against direct award including shorter maximum lengths for such contracts vis-à-vis competitively awarded contracts;
— consider with like-minded Member States the possibility of seeking to trade (a) conceding of direct award for all rail contracts and without a reciprocity clause for (b) a Council declaration which makes clear that agreement of the PSO dossier does not close the door to further liberalisation in the rail sector through other mechanisms eg through the opening-up of access to the track as has recently been agreed for international services;
— seek to limit the de minimis provision to a maximum of 500,000 km; but be prepared to move to 600,000 km should that prove impossible; and
— ultimately, be prepared to support a deal at the Council if the final text on the table appears to offer a satisfactory balance.

In my view, this is a pragmatic approach which recognises that:

— the majority of Member States are unwilling at this time to open up their public transport markets to competition;
— the changes to the Commission’s proposal which we have secured offer substantial safeguards against beneficiaries of direct awards competing unfairly in open markets;
— the proposed publicity requirements may well lead to citizens demanding to know why their authorities favour direct award over competitive tendering;
— a new regulation would provide much greater legal certainty for operators and authorities in the future.

While it has not been possible to secure everything we might have wished for during the negotiations, I feel that the proposal, as revised, now goes a long way to reaching a satisfactory balance although we shall, as outlined, still try to obtain further improvements at the Council. On this basis, I hope that the Committee can agree to lift its scrutiny reserve. I will, of course, write to your Committee again after the Council and will keep you informed of the progress of this dossier throughout the remainder of the European legislative process. You will also wish to know that my officials will update the RIA in the light of any agreement in the Council and we shall of course let you have sight of this when it is ready.

You will appreciate the sensitivity of our proposed negotiating strategy in the run-up to the Council, and I should therefore be grateful if you would treat it in confidence until 9 June at the earliest.

18 May 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 18 May, which Sub-Committee B considered at its meeting on 5 June.

We are very grateful to you for the fullness of your explanation of negotiations ahead of the June Transport Council, and are satisfied that, with the exception of the proposed direct awards system, satisfactory progress has been achieved.

We are content to lift scrutiny on this proposal at this stage, and would be grateful for a report on the outcome of negotiations in the Transport Council.

6 June 2006

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

Douglas Alexander wrote to you about the above proposal on 18 May 2006 outlining our proposed negotiating strategy for the Transport Council on 9 June. I am now writing to inform you of the outcome of the Council, at which I represented the UK.
As set out in Douglas Alexander’s letter, the key issues that remained to be settled were:

— the proposal to extend the possibility of direct award for long-distance and regional heavy rail services to suburban and urban services, which we opposed but with very little support;

— the maximum size of small contracts that could be directly awarded. The UK preferred a maximum of 500,000 vehicle-kilometre. Others were arguing for 1,000,000 vehicle-kilometres;

— the extent to which provisions relating to awards to “in-house” operators should be relaxed.

We also proposed to:

— continue to press for further “reciprocity” arrangements (eg any operator receiving more than 50 per cent of its revenues from directly awarded contracts to be excluded from competitive tenders). The aim was to limit demands for further extension of the scope for direct award, as we did not expect that additional reciprocity provisions could be agreed;

— seek safeguards against abuse of directly awarded contracts, such as shorter contract lengths compared with competitively tendered contracts;

— consider with like-minded states the possibility of seeking a Council declaration making it clear that the PSO regulation does not close the door to rail liberalisation through other mechanisms.

After initial negotiations in the morning, the Presidency proposed a compromise text which:

— provided for direct award for all rail contracts;

— set a 500,000 vehicle-kilometre limit for directly awarding small contracts;

— included satisfactory provisions relating to awards to “in-house” operators;

— retained unchanged the measures on transparency that the UK had supported;

— reduced the contract length for directly awarded rail contracts to 10 years, compared to 15 years for competitively tendered contracts;

— included reciprocity provisions only for operators for whom 50 per cent of their business is not compliant with the regulation;

— extended the period before the Regulation would come fully into force from 2 years for the first provisions and an additional 8 years for the provisions concerning direct award, to 3 years and 12 years respectively.

It was also clear that there was insufficient support for anything other than a very weak Council Statement on rail liberalisation. We are therefore considering with some other Member States the potential for a more strongly-worded minutes statement.

This compromise was a long way short of the demands of some other Member States, which wanted significantly greater scope for direct awards. From a UK perspective the compromise met nearly all of our objectives. Although direct award was extended to suburban rail, this was counterbalanced by transparency measures introduced during earlier negotiations, and by reducing the maximum length of directly awarded rail contracts to 10 years—which will ensure that such contracts come under regular scrutiny and increase the likelihood that the benefits of competition are recognised in such cases. And the maximum size of small contracts for which direct award would be permitted was kept down to 500,000km. In addition, in earlier negotiations we had secured a strengthening of the rules designed to ensure that operators are not over-compensated for directly awarded contracts. This contrasts with the existing situation where Member States are effectively permitted to award any contract directly, regardless of modality or size, with no transparency or limit on contract length.

As noted in Douglas Alexander’s letter, we had already succeeded during earlier negotiations in removing most provisions that could cause problems for the UK. Existing contracts which would have needed to be renegotiated under the early drafts of the regulation, potentially triggering large compensation payments, will now be able to remain in place. Authorities, such as Transport for London, will be able to continue to operate services extending outside their geographical jurisdiction. Existing UK commercial (deregulated) bus arrangements will not have to be changed. Emergency contracts will be able to have a satisfactory length to enable a new contract to be put in place.

The compromise package therefore improves upon the current situation, and avoids negative impact on existing UK public transport arrangements, while achieving the goal of increasing legal certainty. Although only very modest market opening would be likely to be achieved, this recognises the fact that the majority of Member States are unwilling at this time to open their public transport markets to competition; and a range of safeguards and transparency arrangements are included to mitigate the effects of direct award. In view of this, I supported the compromise package. A final Council common position is likely to be agreed under the
Finnish Presidency, and will then go to the European Parliament for their consideration. I will, of course, keep your Committee informed of the outcome.

29 June 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 29 June, which Sub-Committee B considered at its meeting on 10 July.

We were grateful to you for the fullness of your report on the outcome of the Transport Council negotiations on this important dossier and welcome the Government’s efforts to secure compromise over the potentially anti-competitive direct award system.

We regret that “only very modest market opening” is likely to be achieved, but understand that the majority of Member States were reluctant to support greater liberalisation and trust that the Government will continue to press for greater progress. We would of course be grateful for any further updates as the Finnish Presidency takes the proposal forward. We are reassured that the Finnish Presidency appears to have similar priorities for transport policy to those of the United Kingdom.

12 July 2006

RIGHTS OF PERSONS WITH REDUCED MOBILITY WHEN TRAVELLING BY AIR (6622/05)

Letter from Karen Buck MP, Parliamentary Under-Secretary of State, Department for Transport to the Chairman

Thank you for your letter of 7 December 200519 replying to mine of 21 November 2005.

You may by now be aware that the European Parliament approved this proposal by a very large majority when it held its plenary First Reading on 15 December 2005. The text debated by Parliament was developed following close collaboration between the Presidency and the Rapporteur with a view to adoption of the proposal at the earliest opportunity, and its essential features were unchanged from those discussed in my supplementary Explanatory Memorandum which was considered by Sub-Committee B on 7 November. We now expect the proposal to be adopted without further debate at a forthcoming meeting of the Council. It is not expected that a further depositable text will be issued, however, I attach a copy of the European Parliament’s First Reading amendments.

I very much welcome this measure, which was a priority for the UK Presidency and which will I am sure be a genuine enhancement to the lives of disabled people and those with reduced mobility by enabling them to take full advantage of the opportunities for air travel for business and leisure which have so transformed our world in recent years. Please accept my thanks for your contribution to its successful passage.

26 January 2006

Letter from the Chairman to Karen Buck MP

Thank you for your letter of 26 January 2006 which was received on 3 February 2006 and considered by Sub-Committee B at its meeting on 13 February 2006.

Members were pleased to note that you expect the Proposal to be adopted without further debate at a forthcoming Council. We share your view that this legislation should be a genuine enhancement to the lives of disabled people and those with reduced mobility.

15 February 2006

ROAD TRANSPORT LEGISLATION (3671/05, 3672/05)

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

Thank you for your Explanatory Memorandum on these documents which Sub-Committee B considered at its meeting on 27 February 2006.

We are content to lift the scrutiny reserve at this stage.

1 March 2006

SATELLITE RADIO—NAVIGATION PROGRAMMES (10431/06)

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 24 July 2006. We agree with your assessment that minimising the duplication of costs and structures between the GJU and the GSA is a sensible strategy. We note however, that a number of issues need to be resolved over intellectual property rights, and would be grateful for an update from you when progress is made on negotiations over those issues. We will hold this proposal under scrutiny at this stage.

25 July 2006

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 enclose a copy of the Directive (not printed).

24 January 2006

SERVICES DIRECTIVE (8413/06)

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

I am writing to update your Committee on progress on this dossier in the light of the European Parliament’s First Reading, which took place on 16 February 2006. The adopted position of the European Parliament (EP) diverges in many significant respects from the position that had been reached in Council under the UK Presidency. The EP amendments exclude a number of sectors from the Scope of the Directive, whilst offering a new approach to facilitating the free movement of services in Article 16 and deleting articles 24 and 25, on reducing administrative burdens for the posting of workers.

The full effect of these amendments is still being analysed. The EP excluded several large service sectors, essentially on the basis of concerns over the country of origin principle. Given the new approach to Article 16 adopted by the EP, there no longer appears to be a case to exclude such a wide number of sectors. In particular, I believe that two of the economically significant sectors excluded from scope by the EP, namely all legal services and privately funded healthcare, would benefit from, and should remain covered by, the Directive.

The new article 16 is unclear and possibly internally inconsistent so requires clarification. It is also important that its provisions are robust and make a genuine difference to temporary service providers.

The EP excluded all labour law from the scope of the Directive and removed Articles 24 & 25. Like many supporters of the Directive, the UK would have preferred to retain key administrative simplification measures relating to the “posting of workers” (Art 24). However, labour law is problematic for a significant number of Member States and the Commission are likely to accept that agreement will not be possible unless they follow an approach similar to that of the EP.

The Commission have indicated that whilst the EP text will form the basis for their revised proposal, expected on or after the 4 April, they will resist accepting all the EP amendments en bloc. There will not be any working groups until after the Commission has produced its revised proposal. There is a Competitiveness Council 29-30 May, and a further provisional date for one on 29 June. The majority of Member States do not want to rush into agreement without having time to work on improving the text. It is possible, however, that the Austrians may attempt to push through political agreement during their Presidency. I will of course submit a new explanatory memorandum on the revised Commission proposal as soon as the text is available.

10 March 2006
Internal Market (Sub-Committee B)

Letter from the Chairman to Ian Pearson MP

Thank you for your letter of 10 March 2006, which Sub-Committee B considered at its meeting on 19 April 2006.

We have been following the progress of the Services Directive with great interest and it was the subject of our report, Completing the Internal Market in Services,20 published in 2005. We intend to conduct a follow up inquiry into the revised draft Directive. Now that this has been published, can you give an indication as to when we can expect the Explanatory Memorandum which you mention?

We would be grateful if you would keep us informed of any developments.

24 April 2006

Letter from the Chairman to Ian Pearson MP

Sub-Committee B considered this document (8413/06), and your Explanatory Memorandum, at its meeting on 3 May 2006.

As we have just commenced an inquiry into the draft Services Directive, we will maintain scrutiny on this proposal at this stage, and look forward to hearing your views on 17 May.

4 May 2006

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

As you will be aware, Sub-Committee B has been conducting a short follow up Inquiry into the Commission’s Revised draft Directive on Services in the Internal Market. We were grateful to your colleague Ian McCartney MP for the oral evidence which he gave to us on 17 May 2006. We have revisited our inquiry of last summer, Completing the Internal Market in Services, and sought the views of some key contributors to that inquiry on how they view the revised draft. I enclose a short document that summarises the views received, and provides the Committee’s emerging conclusions on the revised draft Directive, ahead of the Competitiveness Council on 29–30 May.21 A full report will be published in due course.

While the Committee is not prepared to release the proposal from scrutiny at this point, we would, on the basis of the assurances and information received from you, be content to the UK agreeing to the text of the Directive in its current form, or if amended to meet the UK’s priorities. We would not consider such an agreement to constitute an override of scrutiny, and ask that you provide the Committee with a full report following the Council.

25 May 2006

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

Further to your letter to Lord Sainsbury of 25 May 2006 on EM 8413/06, I am writing to update your Committee that political agreement was reached on the Services Directive at the Competitiveness Council on Monday 29 May 2006. I am grateful to note that your Committee will not record this as an override of the scrutiny reserve, in spite of the reserve not having been lifted. I await the publication of your full report.

As you are aware, this is an important step towards achieving a truly open market for services in the European Union and will provide a major boost to Europe’s economy. It is an example of an enlarged Europe delivering major economic reform. Due to the nature of our economy, the UK is likely to be one of the biggest beneficiaries, to the tune of £5 billion per year. Businesses, consumers and jobseekers will all benefit.

As I explained to the Committee on 17 May, I am keen to ensure that the Directive delivers for UK business and protects UK interests in sensitive areas. In short, that it achieves a balance between opening up markets and upholding standards.

The Government promised to ensure that standards in sensitive areas such as health and safety are not disturbed, that the vulnerable such as children and the elderly are protected and that the procedures for establishing in another Member State work well, add real value and are not needlessly costly.

21 Refer to following letter dated 23 June 2006 from the Chairman to Lord Sainsbury of Turville.
I am sure your Committee will agree that political agreement reached at the Council is an excellent result for the UK and achieves our negotiating objectives. Whilst the text of the Directive remains broadly unchanged, amendments on our key remaining issues were secured. Pressures to further reduce the scope of the Directive and the impact of some of the deregulatory measures were largely resisted.

In particular, existing wording for certain important areas, such as in the field of labour law, was maintained, and clarifications on health and safety and other matters were secured. Further exemptions from the Directive were successfully resisted, with one exception, that of notaries. Significantly, the screening provisions which require Member States to review their legislation and remove barriers to trade have been strengthened. I have supplied a copy of the revised Directive to the Committee Clerk.

The draft Directive will now be considered again by the European Parliament, possibly before the end of the Austrian Presidency. Although it is hoped that the text agreed at the Council will largely be retained, the Parliament may propose amendments and we will need to ensure that the Directive continues to protect the UK’s sensitive policy areas and that the market opening provisions are not diluted.

I am grateful to the Committee for the attachment outlining emerging conclusions on the revised draft Services Directive and for their ongoing thorough examination of the draft Directive. I will of course inform you and the Committee members of the outcome of the Parliament’s second reading.

6 June 2006

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 25 May on EM 8413/06. I am writing to update your Committee that political agreement was reached on the Services Directive at the Competitiveness Council on Monday 29 May. I am grateful to note that your Committee will not record this as an override of the scrutiny reserve, in spite of the reserve not having been lifted, I await the publication of your full report.

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I am grateful to the Committee for the attachment outlining emerging conclusions on the revised draft Services Directive and for their ongoing thorough examination of the draft Directive. I will of course inform you and the Committee members of the outcome of the Parliament’s second reading.

7 June 2006
Letter from the Chairman to Lord Sainsbury of Turville

Thank you for your letter of 7 June, replying to my letter of 25 May. Sub-Committee B considered your letter at its meeting on 19 June.

We note the outcome of the Competitiveness Council on 29 May. We very much hope that this agreement will be “an important step towards achieving a truly open market for services in the European Union” and that it will “provide a major boost to Europe’s economy”. We nevertheless share your concern that the market-opening elements of the text of the Services Directive are not diluted further. We trust that the Government is taking steps to brief UK MEPs to this effect and we would be grateful for any updates on the Directive’s progress.

We would like to take this opportunity to thank you personally, and your Department, for all the cooperation you have provided with our inquiry into the Commission’s revised draft Directive. We will of course be sending you a copy of our report, which will be published at the beginning of July.

20 June 2006

Letter from the Chairman to Lord Sainsbury of Turville

Please find enclosed a corrected version of the Committee’s Emerging Conclusions which were sent to you with my letter of 25 May ahead of the Competitiveness Council on 29 May. The original document contained a drafting error in the final paragraph.

I would be grateful if you could replace the Emerging Conclusions which you have on record with this corrected version for future reference.

23 June 2006

Annex A

EMERGING CONCLUSIONS ON THE REVISED DRAFT SERVICES DIRECTIVE

INTRODUCTORY REMARKS

The European Union Treaty sets out the free movement of goods, persons, services and capital as a central principle governing the internal market. Service industries account for approximately two thirds of the GDP of EU Member States and a similar proportion of the labour force. In the European Council in February 2005, the European Commission identified the creation of a better functioning internal market for services in the EU as key to making progress on the Lisbon Agenda and called for urgent action to achieve it. We were supportive of the first draft Services Directive and its attempt at legislation to speed up the liberalisation of services provision. We recognise the considerable differences of view engendered by that first draft, not least those concerned with ensuring a balance between social, environmental and labour market issues on the one hand and the drive to complete the internal market in this important area on the other. The current revised draft Directive from the Commission appears to have broader political support across the EU, not least following extensive discussions in the European Parliament. The new draft has, of course, yet to be finally considered by the Council of Ministers. Whilst we welcome this broader consensus, we have felt it important for us to examine how this revised version differs from the original and to comment on any significant issues arising.

Our latest inquiry and these emerging conclusions relate largely; but not entirely, to those parts of the revised Directive that deal with the provision of services on a “temporary basis” as opposed to on an established business basis. We recognise the importance of the measure relating to the latter but the main controversies have concentrated upon the former. We comment below on five issues; a horizontal Directive; the basis of the freedom to provide services; derogations and exclusions; the points of single contact; and implementation. We end with some concluding remarks.

A HORIZONTAL DIRECTIVE

We warmly welcome the fact that the Directive remains horizontal in conception and application. This should greatly assist ease the path of legislative process and implementation.
The Freedom to Provide Services

We continue to recognise the considerable importance that provision of services on a temporary basis has particularly for small and medium sized firms wishing to “test the water” of market entry into another Member State in the EU without becoming formally established there. It also helps market flexibility in often fast moving service sectors and where business opportunities are occasional in nature rather than based on long term contracts of supply.

The first draft Directive offered considerable comfort to this need for flexibility by setting out a “Country of Origin Principle” (CoOP) under which a firm could operate temporarily in another member state under rules applicable in its country of origin. That principle has been replaced in the new draft by a switch to country of destination or host country basis of operations. At the same time, the revised Directive seeks to set clearer limits to what host countries can impose on businesses operating there on a temporary basis. This combined package of host country rules with clearer limits on constraints to doing business is the basis of a Freedom to Provide Services.

In our first Report we saw the CoOP as “an essential part of enabling SME service providers to break into the markets of other Member States”. We have considered whether or not the change in the underlying basis for temporary provision of services in other Members States from the CoOP principle to the Freedom to Provide Services is a change of substance and whether it will change the effectiveness of the draft Directive in ensuring an effective single internal market in services.

We welcome the fact that the temporary [non-established] basis of provision of services across borders of Member States remains fully supported. One view expressed to us is that not a lot of substance is changed by the revised draft Directive. Since the EU Treaty contains a freedom, reinforced by court decisions, to provide services on a temporary basis, the role of the Directive is arguably to reiterate that freedom, to provide a more explicit framework within which that freedom can be exercised and to provide a convenient source to which a service provider operating outside its home base can point if challenged.

On the other hand, there may be a gap between perceptions and legal rights, acting as a brake on service provision. A business may understand its obligations in its home country but be wary of legal requirements and nuances in up to 24 other Member States. Thus witness views differed on the practical extent of the freedom. The Federation of Small Business considered that the ease and benefits of temporary operations had largely been lost in the new draft, whereas the law firm Clifford Chance told us that the change of emphasis from the CoOP to the Freedom to Provide Services within the revised draft had no effect upon the existing rights of businesses under the EU Treaty as upheld in the European Court of Justice.

In practice, however, SMEs may feel that the emphasis will still, as now, be upon understanding and meeting all the rules and regulations of up to 24 other Member States before testing out markets elsewhere in the EU, notwithstanding that the revised draft seeks in Article 16 to limit the restrictions that can be imposed upon them. It may be that the appetite of small business for testing particular local restrictions on service activity through the courts is not strong. Businesses will as a result of the Directive have the new right to sue for damages against a Member State which infringes these rules, once transposed, in Member States courts.

On a more positive note, the sets of reasons why temporary provision of a service may or may not be permitted has been clearly set out and might be regarded as quite rigorously drawn. These are set out in Article 16 of the revised draft Directive. It includes directly only issues of public policy, public security, public health and the protection of the environment, and these must be proportionate and must not be discriminatory. There is a “blacklist” of illegitimate reasons for restricting the freedom to provide services; for example a service provider need not hold an identity document specific to a particular service activity. We consider this framework a good first step in liberalising service provision under a host country approach.

The Government’s Revised Partial Regulatory Impact Assessment concludes that the loss of economic benefits by moving from a CoOP to the Freedom to Provide Services is in the order of 10–20 per cent of potential benefit to the GDP. The Assessment also concludes that the effects of the negative change away from the CoOP probably outweighs the positive effects of deleting some general derogations and clearer limits on what host Member States may impose. There are, however, important non-economic benefits in meeting concerns in the social and environmental areas and securing agreement on a draft Directive to free up trade
in services. Overall, the Government’s assessment is that the net annual benefit of the revised proposal compared with no Directive will be in the range of £7.7 and £8.6 billion. 44 per cent of the UK GDP and of UK employment is in services industries covered by the freedom to provide services in revised Directive, while 49 per cent of GDP and employment is covered by improvements in the freedom to establish a business across the EU [Tables 2, 3, pages 24, 25].

EXCLUSIONS AND DEROGATIONS

Some changes have been made between the revised version of the draft Directive and the original draft in the list of exclusions and derogations. Exclusions are those sectors which are entirely removed from the provisions of the Directive. Derogations are sectors to which the Freedom to Provide Services does not apply. Services that are generally publicly provided across all EU countries (services of general interest, in the language of the Directive) are excluded. Several of the significant excluded sectors, for example Financial Services, Transport and Electronic Communications Services, and Health are the subject of other Directives relating to free movement. There are significant derogations from the key Article 16 (the Freedom to Provide Services) listed in Article 17. The main elements here are Gas, Electricity, Water and Postal Services, which have their own Directives.

Nevertheless, as noted above 44 per cent of the UK GDP and of UK employment is in services industries covered by the freedom to provide services in revised Directive, while 49 per cent of GDP and employment is covered by improvements in the freedom to establish a business across the EU. We are persuaded that the lists of exclusions and derogations are less daunting than they might seem and that the revised draft Directive covers a substantial part of the services sector such that it can make a major contribution to the growth of cross-border services provision within the EU.

POINTS OF SINGLE CONTACT

The draft Directive provides [Article 6] that Member States shall ensure that it is possible for service providers to complete appropriate procedures and formalities at contact points known as points of single contact. Articles 7 and 22 state that Member States shall ensure that specified information is easily accessible to providers and recipients of services via the points of single contact. A fee may be payable for the services at or by the point of contact.

Given the new framework of the Directive, under which a good knowledge by a business of its home country requirements is insufficient to enable it to carry out the activity in another Member State, the Point of Single Contact assumes considerable significance in facilitating cross-border trade across the EU. It will also be helpful to recipients of services provided across borders.

In its EM and Revised Partial RIA [RPRIA], the Government makes a distinction between a point of information and a point of completion. Article 6 of the revised Directive refers to possible completion of procedure and formalities. The point of single contact should be provided by each Member State by three years after the Directive enters into force.

The DTI favours the point of information approach. The RPRIA calculates that providing the facility to complete necessary processes through a point of single contact rather than information about requirements and where to complete them would cost UK government some £90 million per annum but would add service benefits to business of more than £200 million per annum. The Government has indicated that it would seek to ensure that the single points of contact are points of information, not of completion. In oral evidence, the Minister told us that the main issue was not that of cost but the risk of failure to deliver within the timetable set out a working point of single contact with the capacity to deliver completion of requirements and processes for businesses.

Businesses, particularly small businesses, would benefit from the more comprehensive approach of a point of completion. The government’s own RPRIA put a value of over £200 million per annum for business, mainly for SMEs. However the difficulty is that the beneficiaries of the point of completion are largely based in other countries, so the benefits for UK SMEs would flow from the single points of contact set up in the other 24 Member States. If a full single point of completion is created in all Member States, there will be far greater benefits to the Community as a whole than if each Member State provides a more modest single point of information.
In some Member States, a single point of information may not provide incoming businesses with a great deal of help in completing necessary formalities etc. If each Member State decides what kind of service it will provide there could be a bewildering variety of contact points, negating the objective of providing ease and simplicity in doing business across the EU. We understand the reluctance of the government to take unnecessary risks with public money. However, this could be mitigated if a phased approach were adopted with points of information provided not later than three years and points of completion no later than five years after the Directive enters into force.

IMPLEMENTATION

We note the timetables proposed by the Commission, that the Directive come into force within two years and that points of single contact be in place within a maximum of three years of possible adoption in 2006 proposed for the introduction of this measure. This will require a thorough review by each Member State of existing relevant law and actions to repeal or amend that law as appropriate. Articles 15 of the draft Directive requires Member States to assess requirements imposed on access to and exercise of service activities and to make a report to the Commission on the results of that assessment under Article 41. That report must be completed within two years from adoption of the Directive and must specify which requirements the Member States plan to retain and their justifications and also those that have been abolished by that date. These are ambitious timetables. We hope they can be met. It is important for UK service businesses, especially SMEs, that these timetables are met in other Member States as well as in the UK. Thus in the UK we have a specific interest in how the implementation timetables are met throughout the EU.

We note that the political will must be coupled with a strong programme of staged implementation across all MS, in order that the Directive does not lose impetus. It must be hoped now that a strong consensus has truly been reached not only to agree the draft Directive but also to ensure its speedy and full implementation. The pace and patchiness of implementation of Directives such as those on the liberalisation of Gas and Electricity markets demonstrates the possible gulf between agreement of legislative proposals and their implementation.

CONCLUDING REMARKS

In the time available, we have interviewed witnesses representing a broad spectrum of both political and economic interests including MEPs, business organisations and the TUC as well as a leading law firm. Whilst there may be voices we have not heard, it is notable that none of the parties questioned was now opposed to the Directive in its current draft. Several would have preferred to see changes, but all could live with it in the current form. We share that view.

The move away from trade in services on a Country of Origin Principle to a Country of Destination Principle is a matter of regret. It is a backward step from the original draft, but we recognise that the alternative to the revised draft Directive would have been no agreement on the way forward and continued barriers to trade in services across borders within the EU. The revised draft Directive should be supported. Whilst we regret some of the changes, we also recognise that many changes helped meet real concerns about issues wider than the single market and helped achieve a workable compromise. The draft Directive is not the end of the process of liberalising the services market within the EU but it is a significant step forward.

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter dated 20 June to Lord Sainsbury. There has been some progress since then with respect to the process in the European Parliament for the Services Directive.

Meetings in Brussels between Members of the European Parliament have revealed that most MEPs believe that the Directive will be adopted quickly without a re-opening of the debate. However, services of general economic (and non-economic) interest continue to be a hot topic for discussion: and could continue outside of the context of the Directive, but possibly in parallel with its second reading.

We now expect the second reading to take place in either November or December of this year. My team have provided MEPs with written briefs and I have made telephone calls to influential members. I am also aware that during the approach to the second reading I will need to be ready to undertake targeted visits to Europe to persuade key groups of MEPs to accept the Council text and avoid upsetting the delicate compromise that they have enabled Council to achieve.
I shall of course update you further in the autumn on any new developments. In the meantime, I look forward to reading your report.

24 July 2006

STATE AID FOR INNOVATION (12695/05)

Letter from the Chairman to Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry

Thank you for your letter of 20 December 2005 covering a copy of the United Kingdom’s response to the Commission’s consultation document on State Aid for Innovation.

Sub-Committee B considered this document at its meeting on 23 January 2006 and found it both useful and interesting. We are grateful to you for sending it.

25 January 2006

SUPPLY CHAIN SECURITY (6935/06)

Letter from the Chairman to Rt Hon Alistair Darling MP, Secretary of State, Department for Transport

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 24 April 2006.

We note the Government’s concern over subsidiarity issues, and its further concerns as set out in paras 12–18 of your Explanatory Memorandum. We look forward to receiving a full Regulatory Impact Assessment. In your Explanatory Memorandum you mention that a presentation on this Regulation was scheduled for the Council Meeting on 27 March and that you anticipated that a Working Group would be set up following the meeting. Can you now confirm whether this occurred? Can you advise us of any timetable which was agreed?

We will maintain scrutiny on this proposal at this stage.

25 April 2006

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

Thank you for your letter of 25 April to my predecessor Alistair Darling, in which you maintained the scrutiny reserve on the above subject.

I note that you will maintain scrutiny at this stage, and thought that you would wish to know that the timetable for negotiations on this dossier has still not been established. As requested, I can confirm that at the Transport Council on 27 March the Commission gave a presentation on the Regulation, which the Commissioner explained would be a voluntary system to provide a quality label of “secure operators”. As you noted from the EM, we had expected that a Working Group would be established after the Council to develop the proposal. The Austrian Presidency has not scheduled any Working Group time for discussion of this proposal, however; I therefore now expect it to be taken forward by the Finnish Presidency in the second half of 2006. The European Parliament is still in the early stages of dealing with this dossier, and has also not yet set a timetable to consider it.

The Department will begin work on a Regulatory Impact Assessment shortly, which will of course be submitted to you as soon as it is complete. I will also keep you informed of the timetable in both Transport Council and the European Parliament, and keep you updated as the negotiations progress.

26 May 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 26 May. Sub-Committee B considered your letter at its meeting on 12 June.

We were grateful to you for confirming the timetable for the proposed Regulation as it stands, and await the Regulatory Impact Assessment which you mention. As the proposal continues to raise the issue of subsidiarity, we will continue to maintain scrutiny on this proposal.

15 June 2006

TELECOMS COUNCIL, LUXEMBOURG, JUNE 2006

Letter from Rt Hon Margaret Hodge 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 8 June which is taking place in Luxembourg.

5 June 2006

WRITTEN STATEMENT

I will be representing the UK at the Telecoms Council in Luxembourg on the afternoon of 8 June 2006. This is the only Telecoms Council under the Austrian Presidency of the EU.

The first item on the agenda will focus on EU eGovernment policy. In response to a recently published Commission eGovernment Action Plan, the Presidency have prepared a set of Council Conclusions looking at the priorities that need to considered in the area of eGovernment policy. I intend to endorse these Council Conclusions which are compatible with the UK Government’s Transformational Government Strategy.

The Presidency will then introduce a policy debate on the future challenges for the electronic communications regulatory framework. This anticipates the Commission’s forthcoming review of the regulatory framework for Electronic Communications markets. A Communication on this issue is expected in July and negotiation will formally begin under the German Presidency. I will highlight some of the specific challenges that the UK would like to see addressed in the review of the Framework. In particular, I plan to stress the need for effective implementation of the existing regulations and the importance of striking the right balance between maintaining competition, encouraging investment and protecting consumers.

The Austrian Presidency may also informally ask for the views of Ministers on the Commission’s forthcoming International Mobile Roaming Regulation. If they do, I will present the UK’s initial views on this dossier, that we support the objective of reducing charges to consumers but have reservations about the Commission’s approach on the regulation of retail prices.

There will then be a short exchange of views on network and information security issues. If time allows, I may intervene under this agenda item to highlight the importance of discussions on this key issue and the need to consider carefully the most effective and proportionate way to address security concerns.

Finally, under Any Other Business, the Commission will provide some information on the first annual report on the 12010 Strategy and on their recently published Communication on the World Summit on the Information Society. I do not expect to intervene under either of these items.

Letter from Rt Hon Margaret Hodge MP 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 Luxembourg on 8 June.

16 June 2006

WRITTEN STATEMENT

I represented the United Kingdom at the Telecoms part of the Transport, Telecommunications and Energy Council on 8 June 2006.

The Council began with a presentation by the Commission on their recently published Communication—the “i2010 eGovernment Action Plan”; which was largely based on a Ministerial Declaration agreed at a Conference in Manchester during our Presidency. The Action Plan highlights the social and financial benefits that can be gained through the implementation of an array of different eGovernment initiatives in helping to bridge the gap between citizens and administrators.

Ministers were asked to endorse a set of Council Conclusions responding to the eGovernment Action Plan. These focused on five major objectives: the need to promote inclusion through national eGovernment strategies; the importance of user satisfaction in accessing eGovernment services; Government public procurement contracts which should be available in electronic format in all cases; convenient and secure...
authenticated access to public services in the EU; and the promotion of public debate and participation in
democratic decision-making. As the substance of the above is compatible with the UK Government’s
Transformational Government Strategy, I leant my support to them.

The Presidency then introduced a policy debate on the future challenges for the EU’s electronic
communications regulatory framework which the Commission are currently reviewing, with a major
Communication expected in July to be followed by legislative changes in December. In their presentation they
highlighted the need to promote investment and innovation in the telecommunications sector and to ensure
the framework met the needs of an ever evolving and converging technology and business environment. In my
intervention I stressed the necessity for full implementation of the current framework by all Member States
and the importance of maintaining the complementary goals of investment, consumer protection and
competition.

On the issue of wireless spectrum, I agreed with the Commission on the need to make the best use of this finite
resource primarily through market-based management, which will hopefully create a favourable environment
for the introduction in the market of new information communication technologies.

In the interventions from (nearly all) Member States there was a wide range of views though with the majority
welcoming the approach of the Commission on both the maintenance of the regulatory framework, which was
thought to be sound, and on introducing market based mechanisms into spectrum allocation.

There was then a short exchange of views on the Commission’s recent Communication on network and
information security. The Presidency noted the overall problems that exist with regards to information
security and the need to gain the confidence of citizens and enterprise by assuring them that ICTs and
information systems are able to handle information in an accurate, confidential and reliable manner. Those
Member States that intervened generally supported the Commission approach.

Due to a shortage of time it was not appropriate to comment on Commission Communications on the i2010
First Annual Report and the World Summit on the Information Society (WSIS) both of which were under
Any Other Business. On the i2010 Annual Report the Commission highlighted the need for more work to
prevent the EU falling further behind our main competitors; while on WSIS the Commission reported on
development since the Tunis Conference and looked forward to the first Internet Governance Forum in Greece
in November.

Finally the Austrian Presidency thanked the UK for the strong foundations that we laid during our
Presidency.

TELEVISION BROADCASTING ACTIVITIES (15983/05)

Letter from the Chairman to James Purnell MP, Minister for Creative Industries and Tourism,
Department for Culture, Media and Sport

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 6
February 2006 and agreed to maintain the scrutiny reserve, pending receipt and examination of the Regulatory
Impact Assessment which you mentioned will be forwarded to us under a Supplementary Explanatory
Memorandum.

We noted, and shared, the serious misgivings of UK industry in relation to this document. We are minded to
revisit this matter more fully in the forthcoming weeks.

In paragraph 39 of your Explanatory Memorandum you mentioned the UK-based stakeholder group. It
would be helpful to have a brief summary of areas of concern that this group has considered.

In paragraph 48 and 49 of your Explanatory Memorandum you explained that the UK Government had
serious reservations about aspects of these Proposals. Are you able to expand further on these reservations?

9 February 2006

Letter from James Purnell MP to the Chairman

Thank you for your letter of 9 February about the European Commission’s proposal to amend Council

You asked about the UK-based stakeholders group. The group met three times last year and has met once so
far this year, with another meeting imminent. Represented on it is a wide range of interests including
broadcasters, satellite and cable operators, Internet Service Providers, new media providers, content
producers, co and self-regulatory organisations, trade unions and civil society groups.
The major concern for stakeholders has been the scope of the Directive. An overwhelming majority are not in favour of the scope being extended to on-line services. Many have expressed concerns that the Commission’s proposals could lead to increased regulatory burdens and legal uncertainty. They also believe that the Commission’s definitions do not make it clear which services the revised Directive will cover, or where exactly the proposed dividing line between “linear” and “non-linear” services would be drawn.

The Government shares these views. Aside from the important issue of lack of clarity in the proposed definitions, our key concern is that the concepts of “audio-visual media” and “non-linear” services in the Commission’s text appear to bring in a very wide range of new media services which have little in common with broadcasting. This is a fast growing and converging area, and we should take great care before imposing controls which might discourage particular business models or encourage providers to move outside the EU.

The impact assessment prepared by the Commission offers no convincing case for harmonisation across all the services falling within the scope of the Directive. It is based upon a theoretical projection of what might happen if Member States were to take advantage of derogations available under the e-commerce Directive to impose burdensome national controls that would distort the working of the internal market, or if there were to be serious distortions (in terms of legal certainty or market advantage) as between the types of regulation that applies to different platforms.

It concludes that there would be an overall—albeit essentially unquantified—loss of business. But there are very few figures in the assessment to back this assertion up.

We see no sign that Member States are in fact imposing burdensome, damaging controls in these areas, although the assessment claims that no less than 23 already have controls of some sort. Our own extensive discussion with UK and pan-European businesses and trade associations has not revealed any evidence of concern that lack of harmonisation is stifling business opportunities.

Rather, discussion has revealed severe concerns that these proposals could increase business uncertainty and regulatory risk. Without more evidence of potential harm to business, it seems to us that proceeding with these measures in their current form would run counter to the Commission’s own stated aim—endorsed by Member States—of better regulation.

If evidence of undue interference in the single market for such information society services did come forward, we believe that the question would be best resolved in the forthcoming review of the Electronic Commerce Services Directive.

Our overall concern, therefore, is that the imposition of controls of the sort suggested on non-linear services could itself cause just the kind of damage to growth and development in these sectors which the Commission quite rightly seeks to avoid. They could themselves lead to market distortions and to a net outflow of jobs and development in the new media industries from the EU area.

28 February 2006

TRANS-EUROPEAN NETWORKS 2007–13 (11740/04)

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

As you have requested, I am writing to update your committee on progress on this dossier in the light of the European Council’s agreement of the budget for 2007–13 on 19 December 2005.

A total budget of €72.12 billion (£49.4 billion) was allocated for the sub-heading including TENS. This is considerably less than the Commission proposal of €1.22 billion (£83.6 billion), but still represents year on year real growth of 7.5 per cent compared to 2006. There is no specific figure for TENS or other components of the sub-heading, but the budget agreement does call for particular priority to be given to enhancing the EU’s research effort. It is also stated that due account will be taken of some priority projects within the Trans-European Networks.

The Commission will propose a breakdown of all the budget sub-headings including this one in February. TENS will be a part of this. This overall proposal, including funding for TENS, will then form part of the negotiation of the Inter-Institutional Agreement (IIA) on the budget with the European Parliament.
We expect the IIA to be agreed at some point between March and May. Once the IIA and programme amounts have been agreed with the European Parliament, the amounts for the programmes will be slotted into the relevant regulations, and the regulations will go on to be agreed between the Council and the European Parliament, probably in the second half of this year.

I will continue to keep you up to date as we move forward. If you require any further information, please contact me.

30 January 2006

Letter from the Chairman to Rt Hon Alun Michael MP

Thank you for your letter of 30 January in reply to mine of 9 November 2005 which Sub-Committee B considered at its meeting on 13 February 2006.

We were interested in the progress report that you provided. We are maintaining scrutiny until full information as to the financial aspect of the draft Regulation is available for us to scrutinise.

15 February 2006

TRANS-EUROPEAN TRANSPORT AND ENERGY NETWORKS (10089/06)

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

Sub-Committee B considers this document, and your Explanatory Memorandum, at its meeting on 17 July.

We note and share your support for the development of trans-European Energy and Transport networks. We share your concern that they are not developed “at the expense of sacrificing budgetary discipline in the quest for speedy completion.” Could you explain tous the rationale behind the Commission’s proposal that priority inland waterway projects should have higher levels of financial intervention than priority projects involving other modes of transport?

We would welcome details from you of the Commission’s explanation of how the proposed loan guarantee arrangements would operate, when you have received it, and we would be grateful for any further updates on this proposal as it is taken forward.

We will maintain the scrutiny reserve on this proposal at his stage.

19 July 2006

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

Thank you for your letter of 19 July, requesting further information on the above. I am replying on behalf of Margaret Hodge in my capacity as Duty Minister.

Although the DTI is the lead department for Trans-European Networks, your question on inland waterways relates to Transport Networks and all the relevant officials in the Department for Transport and at the Commission are currently on leave. On their return we will be in a position to respond to you.

14 August 2006

Letter from Rt Hon Margaret Hodge MP to the Chairman

This letter is in response to your letter of 19 July and your request for an explanation as to the rationale behind the Commission’s proposal that priority inland waterway projects should have higher levels of financial intervention than priority projects involving other modes of transport.

On 8–9 June the Council adopted Conclusions on the NAIADES action programme to promote the use of inland waterways for freight transport. The Conclusions invite the Commission to give “appropriate weight” to inland waterway projects within the framework of the Trans-European Network, transport (TEN-T). They also indicate that the River Information Services (RIS) should be part of the Multi-Annual Indicate Programme of TEN-T. The Department for Transport wrote to the Committee on 5 July about this matter.24 I attach a copy of this letter to this document. (not printed)

The proposed TEN Finance Regulation is proposing to pay special attention to inland waterways projects, increasing the intervention rate to up to 30 per cent. We are opposing this, and furthermore, we do not believe that the Conclusions justify this increase. While we agree that the TEN-T should concentrate funds on those projects of Community interest, we argue that the selection criteria should focus on how the project optimises the capacity usage of the TEN-T network, not on the mode of transport.

Regarding your request for information about the Commission’s explanation about how the proposed loan guarantee mechanism would work, I will keep you informed when we hear from the Commission.

6 September 2006

UK PRESIDENCY: EUROVIGNETTE—2ND READING DEAL WITH THE EUROPEAN PARLIAMENT (11944/03)

Letter from the Chairman to Rt Hon Alistair Darling MP, Secretary of State, Department for Transport

Thank you for your letter of 21 December 200525 (UK Presidency letter) which Sub Committee B considered at its meeting on 30 January 2006.

Members were pleased to note that the UK Presidency had brokered a deal on this document and were grateful to you for keeping them informed of the progress made. We noted that the text requires the Commission to develop a strategy for the stepwise introduction for all modes of transport. Does this mean all modes of transport? Precisely which modes of transport does this include? You explained in your letter that for tolls and charges, other than those in mountainous regions, Member States would retain the freedom to determine how these venues are used. However, the European Parliament’s Amendment 46 states that these revenues should “be used for the maintenance of the infrastructure concerned and the transport sector as a whole.” How can these two points be reconciled? In Amendment 48 there is reference to an Annex III which we have not seen. It would be helpful to have a copy of this please.

1 February 2006

Letter from Rt Hon Alistair Darling MP to the Chairman

Thank you for your letter of 1 February.

The text agreed with the European Parliament will require the Commission to develop a model for the assessment of all external costs to serve as the basis for future calculations of infrastructure charges. This model will have to be accompanied by an impact assessment on the internalisation of external costs for all modes of transport and a strategy for a stepwise implementation of the model for all modes of transport. While we cannot prejudge the work of the Commission, I think we might expect its proposals to cover charging for the use of road, rail, airport and port infrastructure.

The agreed text does, indeed, say that revenue from charges should be used to benefit the transport sector and optimise the entire transport system. However, the first sentence of the Article in which this text appears reads “Member States shall determine the use to be made of revenue from charges for the use of road infrastructure.” I am entirely satisfied that the provisions of the new Directive would not fetter the Government in deciding how any revenues it might receive from road charging should be used.

I am enclosing, as requested, a copy of Annex III to the new Directive (together with Annex IV which is referred to in Annex III).

20 February 2006

Annex A

ANNEX III: CORE PRINCIPLES FOR THE ALLOCATION OF COSTS AND CALCULATION OF TOLLS

This Annex stipulates the core principles for the calculation of weighted average tolls to reflect Article 7(9). The obligation to relate tolls to costs shall be without prejudice to the freedom of Member States to choose,

in accordance with Article 7a(1), not to recover the costs in full through toll revenue, or to the freedom, in accordance with Article 7(10), to vary the amounts of specific tolls away from the average.26

The application of these principles shall be fully consistent with other existing obligations under Community law, in particular the requirement for concession contracts to be awarded in accordance with Council Directive 2004/18/EC and other Community instruments in the field of public procurement.

Where a Member State engages in negotiations with one or more third parties with a view to establishing a concession contract regarding the construction or operation of a part of its infrastructure, or in view of this purpose engages in a similar arrangement based on national legislation or an agreement entered into by the government of a Member State, compliance with these principles shall be judged on the basis of the outcome of these negotiations.

DEFINITION OF THE NETWORK AND OF VEHICLES COVERED

— Where a single tolling regime is not to be applied to the whole TEN road network, a Member State shall specify precisely the part or parts of the network which are to be subject to a tolling regime as well as the system its uses to classify vehicles for the purposes of toll variation. Member States shall also specify whether they are extending the scope of the vehicles covered by their tolling regime below the 12-tonne threshold.

— Where a Member State chooses to adopt different policies regarding cost recovery for different parts of its network (as permitted under Article 7a(1)), each clearly defined part of the network shall be subject to a separate calculation of costs. A Member State may choose to split its network up into a number of clearly defined parts so as to establish separate concession arrangements or similar for each part.

2. INFRASTRUCTURE COSTS

2.1. Investment costs

— Investment costs shall include the costs of construction (including financing costs) and the costs of developing the infrastructure plus, where appropriate, a return on the capital investment or profit margin. Costs of land acquisition, planning, design, supervision of construction contracts and project management, and of archaeological and ground investigations, as well as other relevant incidental costs, shall also be included.

— The recovery of construction costs shall be based on either the design lifetime of the infrastructure or such other amortisation period (not being less than 20 years) as may be considered appropriate for reasons of financing through a concession contract or otherwise. The length of the amortisation period may be a key variable in negotiations regarding the establishment of concession contracts, particularly if the Member State concerned wishes, as part of the contract, to set a ceiling regarding the weighted average toll applicable.

— Without prejudice to the calculation of investment costs, the recovery of costs may:

— be apportioned evenly over the amortisation period or weighted to the early, middle or later years, provided that such weighting is carried out in a transparent manner; and

— provide for indexation of tolls over the amortisation period.

— All historic costs shall be based on the amounts paid. Costs which are still to be incurred will be based on reasonable cost forecasts.

— Government investment may be assumed to be financed borrowings. The rate of interest to be applied to historical costs shall be the rates that applied to government borrowings over that period.

— Costs shall be apportioned to heavy goods vehicles (HGVs) on an objective and transparent basis taking account of the proportion of HGV traffic to be carried on the network and the associated costs. The vehicle kilometres travelled by HGVs may for this purpose be adjusted by objectively justified “equivalence factors” such as those set out in point 4.27

26 These provisions, together with the flexibility offered in the way costs are recovered over time (see the third indent of point 2.1), give considerable margin to fix tolls at levels which are acceptable to users and adapted to the specific transport policy objectives of the Member State.

27 The application of equivalence factors by Member States may take account of road construction developed on a phased basis or using a long life cycle approach.
— Provision for estimated return on capital or profit margin shall be reasonable in the light of market conditions and may be varied for the purpose of providing performance incentives for a contracted third party with regard to quality of service requirements. Return on capital may be evaluated using economic indicators such as IRR (internal rate of return on investment) or WACC (weighted average cost of capital).

2.2. *Annual maintenance costs and structural repair costs*

— These costs shall include both the annual costs of maintaining the network and the periodic costs relating to repair, reinforcement and resurfacing, with a view to ensuring that the level of operational functionality of the network is maintained over time.

— Such costs shall be apportioned between HGV and other traffic on the basis of actual and forecast shares of vehicle kilometres and may be adjusted by objectively justified equivalence factors such as those set out in point 4.

3. *Operating, Management and Tolling Costs*

These costs shall include all costs incurred by the infrastructure operator which are not covered under Section 2 and which relate to the implementation, operation and management of the infrastructure and of the tolling system. They shall include in particular:

— the costs of constructing, establishing and maintaining toll booths and other payment systems;
— the day to day costs of operating, adminstering and enforcing the toll collection system;
— administrative fees and charges relating to concession contracts; and
— management, administrative and service costs relating to the operation of the infrastructure.

The costs may include a return on capital or profit margin reflecting the degree of risk transferred.

Such costs shall be apportioned on a fair and transparent basis between all vehicle classes that are subject to the tolling system.

4. *Share of Goods Traffic, Equivalence Factors and Correction Mechanism*

— The calculation of tolls shall be based on actual or forecast HGV shares of vehicle kilometres adjusted, if desired, by equivalence factors, to make due allowance for the increased costs of constructing and repairing infrastructure for use by goods vehicles.

— The following table gives a set of indicative equivalence factors. Where a Member State uses equivalence factors with ratios differing from those in the table, they shall be based on objectively justifiable criteria and shall be made public.

<table>
<thead>
<tr>
<th>Vehicle class</th>
<th>Equivalence factors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Structural repair</td>
</tr>
<tr>
<td>Between 3,5t and 7,5t, Class 0</td>
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<tr>
<td>&gt; 7,5 t, Class I</td>
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<tr>
<td>&gt; 7,5 t, Class II</td>
<td>3,47</td>
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<tr>
<td>&gt; 7,5 t, Class III</td>
<td>5,72</td>
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— Tolling regimes which are based on forecast traffic levels shall provide for a correction mechanism whereby tolls are adjusted periodically to correct any under or over-recovery of costs due to forecasting errors.

28 See Annex IV for the determination of the vehicle class.
29 The vehicle classes correspond to axle weights of 5,5, 6,5, 7,5 and 8,5 tonnes respectively."
## ANNEX IV: INDICATIVE VEHICLE CLASS DETERMINATION

The vehicle classes are defined by the table below. Vehicles are classed in subcategories 0, I, II and III according to the damage they cause to the road surface, in ascending order (Class III is thus the category causing most damage to road infrastructure). The damage increases exponentially with the increase in axle weight.

All motor vehicles and vehicle combinations of a maximum permissible laden weight below 7.5 tonnes belong to damage class 0.

### Motor Vehicles

<table>
<thead>
<tr>
<th><strong>Driving axles with air suspension or recognised equivalent</strong></th>
<th><strong>Other driving axle suspension systems</strong></th>
<th><strong>Damage class</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of axles and maximum permissible gross laden weight (in tonnes)</strong></td>
<td><strong>Number of axles and maximum permissible gross laden weight (in tonnes)</strong></td>
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<tr>
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<td>Less than</td>
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INTERNAL MARKET (SUB-COMMITTEE B) 145

**Vehicle Combinations (Articulated Vehicles and Road Trains)**

<table>
<thead>
<tr>
<th>Driving axles with air suspension or recognised as equivalent</th>
<th>Other driving axle suspension systems</th>
<th>Damage class</th>
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| 31 | 33 | 31 | 33 |
| 33 | 36 | 33 | 36 | III |
| 36 | 38 |

**Letter from the Chairman to Rt Hon Alistair Darling MP**

Thank you for your letter of 20 February 2006 in reply to mine of 1 February which Sub-Committee B considered at its meeting on 6 March 2006.

You answered the points that I raised in a helpful manner for which I am grateful. We note that in your letter you mention that, without prejudging the work of the Commission, “we might expect its proposals to cover charging for the use of road, rail, airport and port infrastructure.” Could you clarify whether “port infrastructure” in this case would include inland waterways?

8 March 2006

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

Thank you for your letter of 8 March 2006 to Alistair Darling regarding infrastructure charging. In an earlier letter Alistair Darling mentioned that, without prejudging the work of the Commission, “we might expect its [the Commission’s] proposals to cover charging for the use of road, rail, airport and port infrastructure.” You asked whether “port infrastructure” would include inland waterways. I had hoped to be able to give you a definitive answer by now. We had expected the Commission to publish its mid-term review of the 2001 EU Transport Policy White Paper in April and had envisaged it might contain the necessary information. But publication of the review has been delayed and we do not know for sure whether inland waterways might be covered by any infrastructure charging proposal the Commission might intend to bring forward. I shall, of course, write to you again as soon as we have anything definite to report.

19 May 2006
UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE—REGULATION 51 (8301/06)

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

Sub-committee B considered this document, together with your Explanatory Memorandum, at its meeting on 8 May 2006.

We share the concerns laid out in your Memorandum relating to the desirability of keeping to a minimum the period of double testing and over the choice of tyres for noise testing of heavy-duty vehicles. In the event of the Government being unable to secure changes on these two issues in Council, would the Government oppose the draft Decision? We will hold the proposal under scrutiny at this stage.

11 May 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 11 May in which you outlined your shared concern on the two issues of minimising the burden of double testing and tyre choice, as outlined in our explanatory memorandum.

As you know the Commission chose (as is its right) to submit this proposal to Council for decision, having failed to obtain agreement in its regulatory committee. Based on what we know of other Member States’ positions, it looks as though there will be no qualified majority either to adopt the proposal without amendment, or to reject it (effectively the only options open to the Council). Seven Member States abstained earlier, in the regulatory committee, on technical and/or procedural grounds. This puts the Commission in a very strong position—the comitology rules mean that the unamended proposal is adopted by default if Council cannot come to a decision within three months of the initial submission (ie by 4 July).

It is however possible that in Council Working Group the Commission will agree to resubmit their proposal with amendments. We understand that they are willing to accept the minimising of the burden of double testing by modifying the test procedures. These changes had achieved a broad level of support at the regulatory committee stage. This seems to be the easier of the two concerns to resolve and is likely to satisfy all the big Member States. The Commission may also give some ground on the issue of tyre choice but I am not confident that such changes would go far enough to satisfy us.

However, if the Commission do agree to the changes necessary to satisfy our concerns on double testing and tyre choice, then I propose to accept the amended proposal in due course. On the other hand, if we do not secure the necessary commitment from the Commission on both points, then I propose that we vote to reject the proposal in its entirety, albeit that this would be unlikely to prevent its adoption. I will, of course, report back to you as soon as possible on the outcome of this proposal in Council. This proposal is due to be discussed in a Council working group today, 12 June, and—if unamended—is expected to be taken at a Council shortly after that.

12 June 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 12 June, replying to my letter of 11 May. Sub-Committee B considered your letter at its meeting on 19 June.

We are grateful to you for your update, and share your concerns that the two key issues of keeping to a minimum the period of double testing and of the choice of tyres for noise testing of heavy-duty vehicles remain unresolved.

We note that the Council Working Group was due to discuss the proposal on 12 June. Can you inform us whether any amendments were made? We would also be grateful to learn of further any details of the timetable for the proposal which may have emerged.

We will maintain the scrutiny reserve at this stage.

20 June 2006

Letter from Stephen Ladyman MP to the Chairman

In my letter of 12 June I explained that, if the Commission agreed to changes to the above proposal that would satisfy our concerns on double testing and tyre choice, then I intended to support the amended proposal. On the other hand, if we did not secure the necessary commitment from the Commission on these points, then I proposed that we vote to reject the proposal in its entirety.
In the Working Group, the Commission agreed to an amendment to the double testing regime that simplifies the administrative mechanism of the regime—this is acceptable to us. The Commission also agreed to an amendment on tyre choice such that snow and special tyres will now be excluded from the test. Although the UK stressed its concern regarding the future potential and cost of lowering overall vehicle noise when such vehicles were tested with tyres having a tread depth of at least 80 per cent of that of a new tyre, there was no support from other Member States on this point. However, the exclusion of snow and special tyres from the noise test goes part of the way to addressing our concerns, as noted in the Explanatory Memorandum.

In consequence, the amended proposal now largely addresses the concerns we raised in the Explanatory Memorandum. I am aware that only 2 Member States are likely to reject the compromise proposal when it comes before COREPER and, even if the UK did also decide to reject it, this would not constitute a blocking minority.

In view of this, and in order to protect the negotiated improvements to the measure, I propose to accept the amended proposal.

20 June 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 20 June. Sub-Committee B considered your letter at its meeting on 3 July.

We are grateful to you for your update following the Working Group on 12 June. We note that a compromise has been secured which “now largely addresses the concerns” which you raised both over keeping to a minimum the period of double testing and over the choice of tyres for noise testing of heavy-duty vehicles.

As a satisfactory resolution appears to have been reached, we are content to lift the scrutiny reserve on this proposal.

5 July 2006

UNIVERSAL SERVICE (8485/06)

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 12 June 2006.

As the Communication will not lead to any further action by the Commission, we will await the Communication on the broader eCommunications Review, which you anticipate will arrive in July. We are content to lift scrutiny on this document.

15 June 2006

VEHICLE APPROVALS DIRECTIVE (14469/04)

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

I am writing to let you know where things stand with the draft Vehicle Approvals Directive that was the subject of EMs 11641/03 and 14469/04 and for which there remains a scrutiny reservation by your Committee. I last wrote about this in my letter of 18 July 2005, and explained that some progress had been made during the Luxembourg Presidency on several aspects of this complicated dossier. However, there had been no progress made, in the first half of 2005, regarding the lead times for the new arrangements, which will have an impact on UK industry. There was also no progress on the “small series” type approval issues that are of particular concern to the UK, although good progress had been made in bi-lateral discussions with the Commission, with an agreement in principle on the “small series” issues.

I am pleased to say that progress was made in the second half of 2005, and the basis for political agreement has been reached. We expect that agreement to be reached formally at a future Council meeting during the Austrian Presidency. Overall, the draft text is now acceptable from the UK’s standpoint. Discussions will be taking place to determine whether a second reading deal with the European Parliament will be possible.

The original EM and previous correspondence drew attention to concerns for UK industry about the prospective limitations on “small series” type approvals and individual vehicle approvals. These are important for our independent specialist car manufacturers, which produce vehicles ranging from kit cars to those for disabled people. They are also of significance to many commercial vehicle bodybuilders. We have continued to consult these sectors of industry as the discussions in Brussels have progressed and have been successful in securing the key exemptions and flexibility critical to the continued viability of these businesses.

In relation to the specific issues identified in the EMs, there have been increases in the number of vehicles permitted to enter service under the “small series” type approval schemes: from 50 to 75 per type per year for national approvals; and from 300 to 1,000 per type per year for the harmonized EC small series scheme. Whilst these limits are not ideal, industry has indicated that they are reasonable in the context of the overall package, where there will be off-setting advantages of easier access to European markets for low-volume producers. We have achieved exemptions from the prohibitively expensive approval elements such as destructive testing and the “on-board diagnostic” elements of exhaust emission control systems, which are only viable for mass-production.

For individual approvals—these will be needed where, for whatever reason, a manufacturer’s type approval is not available—our case for accepting standards that achieve the “maximum practical level of protection”, rather than the Commission’s disproportionate and impractical proposal for equivalence with type approval standards, has also prevailed.

For the transitional lead-times that are of particular importance to the commercial vehicle sector, there are—perhaps almost inevitably—compromise periods roughly midway between our ideal and the Commission’s proposals. Given the prolonged period it has taken to progress this dossier, the net effect is actually not too far from what we originally envisaged, and I am pleased to be able to report that industry is broadly content.

The draft Directive provides for Member States to contribute to a review of the new type approval procedures within 24 months of its application and for a subsequent review by the European Parliament.

Notwithstanding the remaining procedural hurdles this draft Directive has to clear both in Europe and nationally, my department is developing a comprehensive implementation plan that will involve industry and other interested parties. This is intended to ensure that we take account of their views and produce user-friendly procedures for both granting and accepting vehicle approvals under the anticipated new regime.

10 March 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 10 March 2006 providing an update on the progress of the draft Vehicle Approvals Directive which Sub-Committee B considered at its meeting on 27 March 2006.

We are relieved that the Government has had a great deal of success in ironing out the potentially undesirable elements of this proposal, particularly those which might have a detrimental impact on independent low volume manufacturers in the UK.

As at present it is not known whether the European Parliament will accept the amendments on the draft Directive, we would be grateful to you if you could provide us with a report on any further progress. We will maintain the scrutiny reserve on this proposal.

29 March 2006
2005 INDIAN OCEAN TSUNAMI AND EARTHQUAKE: UK RESPONSE UPDATE

Letter from Rt Hon Hilary Benn MP, Secretary of State, Department for International Development to the Chairman

As it is now almost a year since the devastating Boxing Day earthquake and tsunami in the Indian Ocean that killed over 300,000 people, I am writing to you to give you an update on the UK government’s response.

When the earthquake and tsunami struck, the Department for International Development (DFID) responded immediately by setting up a crisis team and sending an assessment team to Sri Lanka. As the scale of the disaster became clear, DFID arranged 15 airlifts to transport essential relief supplies to the region and also paid for 25 flights for the Disasters and Emergency Committee (DEC). Reconstruction work in the region is progressing, and we continue to work in partnership with the Governments of Sri Lanka, Indonesia and India to ensure that our contribution is coordinated and meets the needs of the affected population.

In total the UK government has allocated the equivalent of around £290 million to disaster relief and reconstruction in the tsunami-affected countries. This total includes: £75 million to the humanitarian relief effort; £65 million to the longer-term reconstruction; £55 million through the UK’s share of EC humanitarian assistance and longer-term reconstruction; £50 million through tax relief on public donations made through the Gift Aid Scheme; and £45 million which is the UK’s share of Sri Lanka’s debt service costs to the World Bank until 2015 (following the tsunami, Sri Lanka was added to the list of countries eligible for the Multilateral Debt Relief Initiative).

Examples of projects that the UK has funded include £4 million in Indonesia to the United Nations Development Programme to help restore and improve the livelihoods for the villagers of Aceh Ting. By the end of June 2006, UNDP will have helped to restore the livelihoods of more than 20,000 households. In Sri Lanka, DFID has provided ZOA Refugee Care with nearly £1.2 million to build transitional shelter for 2,000 people. ZOA are now building permanent housing which includes running water and sanitation. If you would like to find out more about DFID’s tsunami reconstruction work, please visit our website: www.dfid.gov.uk

The overwhelming public response to the tsunami and the numerous offers of assistance that DFID received from individuals resulted in our collaboration with the DEC to produce the booklet Disasters and Emergencies Overseas: How You Can Help, a copy of which is enclosed. The booklet explains how the UK Government and international community respond to a disaster overseas. It also offers practical advice and information for the UK public about how best they can help following a disaster: from donating cash and fundraising to volunteering and retraining as an emergency worker.

To get hold of more free copies of the How You Can Help booklet please call DFID’s Public Enquiry Point on 0845 300 4100 or email enquiry@dfid.gov.uk or download the booklet from DFID’s website www.dfid.gov.uk

Our response to October’s earthquake in Pakistan was swift and we have now pledged £58 million in humanitarian relief and a further £70 million to meet longer term reconstruction needs. The UK has also championed the UN Central Emergency Revolving Fund which, in the case of a humanitarian disaster, will ensure that funding reaches aid agencies on the ground faster and therefore helps to save more lives. We have already pledged $70 million to the fund and six other countries have followed suit, meaning that funding now totals $172 million. The Fund is expected to be operational early in the New Year.

I hope this is helpful.

Received 9 January 2006
ACEH MONITORING MISSION

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

Thank you for the Explanatory Memorandum dated 9 February 2006 which was cleared in the Chairman’s sift on 14 February.

We would like to commend the EU for the way in which this Mission has been conducted to date and consider that the proposed extension is fully justified. We ask to see any future report assessing the operation of the Mission as and when it is produced.

16 February 2006

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

Further to the FCO’s Explanatory Memorandum of 18 May on the Aceh Monitoring Mission (AMM), Jimmy Hood’s Committee asked for clarification on why the election timetable had slipped.

Overall, implementation of the peace agreement has continued to progress well. Reintegration of former Free Aceh Movement (GAM) fighters is continuing, the outstanding amnesty cases are being resolved, and the number of security and human rights incidents in Aceh has dropped. In May, GAM announced that it was relaunching as a civilian political movement.

However, a new Law on Governing Aceh (LoGA), mandated in the peace agreement, needs to be passed through the national parliament in Jakarta before the local elections can take place (its provisions cover how the election will be run). This is necessary to fulfil some of the terms of the peace agreement—in particular, the clause on local political participation. Under the peace agreement, the LoGA should have been passed by 31 March 2006. The delay came about because the draft bill, presented to Parliament on 31 January by the Indonesian government, is still under discussion by the relevant parliamentary committee.

At this stage, we do not judge that the delay is a significant setback to overall implementation of the MoU. The bill is progressing through the parliamentary system. The Indonesian government has pledged to urge the legislature to take the draft law forward quickly once it reaches plenary session. Thus far the GAM leadership has not made an issue of the delayed timetable.

Under these circumstances we support this short extension to the AMM. Its presence is helping provide confidence to both sides during this crucial period and premature withdrawal could prove detrimental.

May I add that in the Explanatory Memorandum we stated that the AMM would be reduced on extension from around 200 to 85 EU and ASEAN country monitors. In fact, the number of monitors was reduced on 15 March, to 88 (the current total).

21 June 2006

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

Geoff Hoon wrote to you on 21 June to explain the background to our decision to support the extension of the Aceh Monitoring Mission (AMM) until mid-September, to allow it to remain in place during the run-up to local elections.

On 11 July, the Law on Governing Aceh (LoGA) was passed by the Indonesian parliament. Although the final text was not entirely consistent with the terms of the peace agreement in certain areas, replacing references to the need for the “consent” of Acehnese government with the alternative formula of “consultation and consideration”, the Free Aceh Movement (GAM) has agreed to consider the text carefully, and pledged not to return to armed conflict. Consultation is likely to continue for some time, including over the local regulations which will determine the detail of how the legislation is implemented. So far the signs are that this issue will not derail the peace process.

Now that the legislation has been passed, preparations for Acehnese local elections can proceed. The government has said that this will take 120 days at least. As this takes us past the beginning of Ramadan, the elections are now likely to take place in November.

As a consequence, the Indonesian government has now requested a further extension to the AMM to continue to support stability in the province and to facilitate contacts between the government and GAM in the pre-election period. This is supported by GAM.
Foreign Affairs, Defence and Development Policy (Sub-committee C)

It is likely that a decision on this will be taken by the EU at the September GAERC. I shall confirm whether this will be the case once a text of the Joint Action is available and after the Presidency has indicated its intended schedule. The EU and ASEAN contributing countries are likely to agree to an extension with a narrower mandate.

The extended AMM will operate in parallel with an EU election observer mission (EOM), and it will be focused on resolving any tensions which arise in the run-up to the elections—something which the EU EOM would not have a mandate to do. The mission will also be further slimmed down, probably leaving a small team in the headquarters in Banda Aceh, and two district offices, one on the west coast and one in the east. Mobile monitoring teams will cover other parts of the province.

We support this. It is a tribute to the success of the AMM and reflects well on the EU. It is important to see the peace process through in Aceh, and to provide support through the potentially difficult pre-election period. We have impressed upon the Indonesians the importance of ensuring that the elections take place as promised in November.

As soon as a text for the proposed Joint Action becomes available, I shall ensure this is forwarded to your Committee with an Explanatory Memorandum in the usual way.

7 August 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

Following my letter of 7 August, I am writing to let the Committee know of plans to extend the Aceh Monitoring Mission (AMM) until 15 December 2006. This extension has been requested by the Indonesian government, and supported by the Free Aceh Movement (GAM), to allow the mission to cover the period of time until the local elections in Aceh. This will be the final extension of the mission—the election date has been confirmed as 11 December.

The AMM’s current mandate expires on 15 September, and a decision on its extension will need to be taken at the September GAERC, before parliament resumes. This will unfortunately mean that there is not enough time for your Committee to scrutinise the decision. I hope therefore the Committee will understand if I agree the decision before scrutiny.

4 September 2006

ACP-EC PARTNERSHIP (COTONOU) AGREEMENT (15329/05)

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

DFID officials have been in touch with the Clerk to your Committee about the above proposal. In writing about the proposal, I thought it would also be helpful to provide an update on where things stand with the revision of the Africa, Caribbean and Pacific (ACP)-EC (Cotonou) Partnership Agreement, including on a future level of EC assistance to ACP States.

Your Committee previously gave scrutiny clearance to the revisions to the Cotonou Agreement (Document 8704/05) and to the EU Council’s position on the adoption of transitional measures to apply most of the changes prior to the entry into force of the revised Agreement (Document 9267/05). My letter dated 7 July 2005 updated the Committee following the Parties’ signature of the revised Agreement at the ACP-EC Council of Ministers meeting on 25 June.

The enclosed Proposal (15329/05) amends the existing Internal Agreement (which forms part of the overall Cotonou Agreement) to incorporate the agreed changes to the procedures for conducting political dialogue under Article 8 and for consultations on the essential and fundamental elements under Articles 96 and 97 and the new Article 11b, regarding cooperation in countering the proliferation of Weapons of Mass Destruction. The changes will be transitionally applied from 25 June 2005 until the revised Agreement comes into effect.

You will have seen that Heads of State and Government agreed in December on a future level of Community financial cooperation with ACP States, to succeed the 9th European Development Fund (EDF), as part of the overall deal on the EC’s 2007–2013 Financial Perspectives. This awaits endorsement by the European Parliament. ACP States will be allocated €22,682 million (£15,536 million) in current terms for the period 2008-2013 under the existing inter-governmental EDF framework, therefore meaning a 10th EDF. The UK will contribute 14.82% of this amount, (£3,361.5 million / £2,302.6 million). Hilary Benn made a short written statement to Parliament on the outcome for ACP States before Christmas; this was published in Hansard on 1 Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, pp 242–243.

20 December (Annex A). The Commission will now bring forward a proposal for a new internal financing agreement for a 10th EDF, for the approval of EU Member States.

The revised Cotonou Agreement, including the updated Internal Agreement and the new internal financing agreement, will need to be ratified by all EU Member States and at least two thirds of ACP States before coming fully into force. As stated previously, these will be laid before Parliament as Command Papers to adhere to UK Parliamentary procedures for ratification.

12 January 2006

Annex A

Extract from House of Commons Hansard Written Ministerial Statement for 20 December 2005

EUROPEAN DEVELOPMENT FUND

The Secretary of State for International Development (Hilary Benn): The European Council on 15–16 December agreed to establish a 10th European Development Fund (EDF) to provide development assistance to African, Caribbean and Pacific (ACP) countries that are signatories to the ACP-EU Partnership (Cotonou) Agreement.

I am pleased to announce that the 10th EDF will provide £22,682 million (£15,536 million) over the period 2008–13. This is a significant increase on the value of the 9th EDF and the EDF will remain as an EU intergovernmental fund, both important objectives of the UK Government. The UK share of the 10th EDF will be 14.82% rising from a 12.69% share of the 9th EDF, reflecting our recognition of an upward trend in the effectiveness of the Fund, and our commitment to increasing EU assistance to Africa.

I believe that this represents a good outcome for our ACP partners and I am delighted that the UK Presidency was able to deliver this positive agreement after lengthy negotiations. Member States will now negotiate an intergovernmental agreement on the structure, allocation, programming and management arrangements of the 10th EDF. This will present an opportunity to further enhance the effectiveness of the EDF. I will keep the House informed fully on progress.

ARMS EMBARGO ON LEBANON

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

I am writing to let your Committee know of plans of the EU Council to adopt a Common Position concerning a prohibition on the sale or supply of arms and related material and on the provision of related services to entities or individuals in Lebanon in accordance with UN Security Council Resolution (UNSCR) 1701 (2006). The adoption of this Common Position will enable the EU to implement the measures contained in paragraph 15 of UNSCR 1701 in a uniform and rigorous manner, with the purpose of creating the conditions for a lasting peace in Southern Lebanon.

The UK can implement sanctions measures contained in Security Council Resolutions through national legislation, but a number of EU Member States depend upon the adoption of EU Common Positions and Regulations for implementation. In order for targeted measures to be effective, it is important that sanctions provisions are implemented in a uniform and rigorous manner. The adoption of an EU Council Common Position ensures that the arms embargo provisions contained in UNSCR 1701 will be enforced throughout the EU in a uniform and rigorous manner, thus ensuring the effectiveness of the measure.

I regret there will not be time for your committee to scrutinise the adoption of the Common Position owing to the pressing nature of the situation in Southern Lebanon, and the urgent requirement to implement UNSCR 1701 on the ground. In the light of the situation in Southern Lebanon, and the urgent need to create the conditions for a lasting peace there, I hope the Committee will understand any decision to agree the adoption of a Common Position on this matter before the completion of scrutiny.

5 September 2006
ASSETS OF PERSONS INDICTED FOR WAR CRIMES (PIFWCs) IN FORMER YUGOSLAVIA

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

I am writing to inform your Committee of plans to extend the above Common Position freezing the assets of Persons Indicted for War Crimes (PIFWCs) in the former Yugoslavia and to explain that on this occasion it will be necessary to use the scrutiny override.

The Common Position is scheduled to be renewed at the EU Justice and Home Affairs (JHA) Council on 5 October. However this will mean that there is not enough time for your Committee to scrutinise the Decision. In light of the need to maintain financial restrictions on the remaining six fugitive indictees, including the former Bosnian Serb President Radovan Karadzic and his General Ratko Mladic, I hope the Committee will accept my decision to use the scrutiny override on this occasion. I had hoped to let you know of this likely extension before the Parliamentary recess, however since no text was available until a few days ago, we could not be certain of the precise details of the measure.

14 September 2006

BELARUS: OPENING A DELEGATION (5236/06)

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

Thank you for the Explanatory Memorandum dated 9 February 2006 which Sub-Committee C considered at its meeting on 16 February. The Sub-Committee agreed to clear the document from scrutiny.

Paragraph 12 of the Explanatory Memorandum notes that the Commission is currently in the process of opening the Delegation, but paragraph 3 also states that plans for its opening were delayed as of 7 February 2006. Given the uncertainty concerning its opening and problems relating to the accreditation of the Delegation’s staff, we ask to be kept informed of the progress being made on the opening.

16 February 2006

BOSNIA AND HERZEGOVINA: OPENING OF NEGOTIATIONS ON A STABILISATION AND ASSOCIATION AGREEMENT

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

In my Explanatory Memorandum of 8 December I undertook to seek an explanation for the delay of the Commission Communication in the Council Secretariat between 24 October and 23 November.

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. This delay is regrettable. Fortunately, it is unusual for documents to be delayed like this, but we have registered our concern with the Council Secretariat concerning both this and the delay relating to the Commission Communication on the 10th Anniversary of the EuroMed Partnership.

The FCO will continue to monitor their circulation of Council Communications to try and prevent any delays in the future. As set out in my December letter on the Commission Communication on the 10th Anniversary of the EuroMed Partnership, we will continue working to ensure that 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.

The FCO has made great strides in recent years in the early deposit of legislative material using unofficial texts, which both Committees have recognised and welcomed. We will continue to work to ensure that the FCO submits Commission documents at a suitable stage as unofficial text.

16 January 2006
CHINA: PARTNERSHIP AND CO-OPERATION FRAMEWORK AGREEMENT

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 a Recommendation by the European Commission to open discussions on negotiating a Partnership and Co-operation Framework Agreement with China.

Relations with China are currently based on the Trade and Economic Agreement, concluded in 1985. The EU-China relationship has developed beyond recognition in recent years and this agreement is no longer adequate for the more dynamic and strategic EU-China partnership which covers a wide range of areas including trade, political dialogue, counter-terrorism and non-proliferation.

The nature of the Agreement will be determined during the negotiations, but it is envisaged that the result will be a mixed agreement providing a framework for encompassing the full scope of the EU-China relationship. Once the negotiations are completed, we expect a Council Decision endorsing the text of the agreement. I will of course submit this Decision for scrutiny in the usual way.

12 January 2006

CIVILIAN CAPABILITY IMPROVEMENT PLAN

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

In your letter of 19 December 2005 you requested that the Civilian Capability Improvement Plan, approved by the Council in December, be deposited for scrutiny. I am enclosing a copy of the plan, which forms an integral part of the Civilian Headline Goal 2008 process, as explained in the introduction to the Plan (not printed).

The Plan follows on from completion last September by all Member States of a Capabilities Questionnaire which highlighted capabilities available for EU civilian crisis management, and where gaps lie. The Civilian Capability Improvement Plan sets out a roadmap for tackling shortfalls and taking forward the Headline Goal process during 2006, including further work on best practice in raising personnel for missions, and training. It also sets out steps for improving mission support which includes procurement, security and finance. It highlights ongoing work on Civilian Response Teams and rapidly deployable police elements, and it has at annex timelines and milestones for taking all this work forward.

The Government strongly supports work on the Civilian Headline Goal which is fundamental to ensuring the EU is able to play a full and constructive international role and has the resources it needs to do so effectively. The UK has played an active part in the process, including by sending experts to Headline Goal planning workshops, and we intend to continue to participate to the full.

John Reid has written to you separately with a summary of the Lessons Identified from the Battlegroups Initial Operational Capability paper, which you also requested. It has not yet been possible to submit the Battlegroup roadmap because, while the Presidency report stated that the Battlegroup roadmap was due to be updated at the beginning of 2006, work is still in progress. It remains unclear when the roadmap will be completed.

10 February 2006

COMPREHENSIVE NUCLEAR TEST BAN TREATY ORGANISATION (CTBTO)

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

Thank you for your Explanatory Memorandum dated 9 March which Sub-Committee C considered at its meeting on 16 March. The Sub-Committee agreed to clear the document from scrutiny.

We fully support the measures being proposed in support of the CTBTO. In addition, however, we urge you to consider pressing Member States to agree a common position in support of encouraging the entry into force of the CTBT at the earliest opportunity. We believe that such a common position would be in accordance with the overall position adopted by the EU in its Strategy against the Proliferation of Weapons of Mass Destruction in December 2003.

20 March 2006

**Letter from Rt Hon Douglas Alexander MP to the Chairman**


We agree that the early entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT) is very important and will continue to take every suitable opportunity to encourage States to sign and ratify the treaty. With this in mind, the EU’s contribution to the promotion of early entry into force of the CTBT already forms part of Common Position 1999/533/CFSP, as implemented by Council Decision 2003/567/CFSP of 21 July 2003. The Common Position adopted by partners in regards to the Nuclear Non Proliferation Treaty (NPT) Review Conference, agreed in 2005, called upon States to sign and ratify the Treaty without delay and without condition, and pending the entry into force called upon all States to abide to a moratorium. The recently adopted Joint Action builds upon this Common Position and reaffirms our strong commitment to the CTBT.

6 April 2006

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**CONFLICT SETTLEMENT PROCESS IN SOUTH OSSETIA**

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

I am writing to let you and your Committee know of our plans to agree a Joint Action in support of the conflict settlement process in South Ossetia, Georgia, on 27 June. This will, unfortunately, constitute an override of parliamentary scrutiny. The current EU Joint Action regarding this commitment expires on 30 June 2006. The EU plans to adopt a renewal Joint Action to give financial assistance to the OSCE Mission to Georgia to fund the operation of the Joint Control Commission (JCC) on 27 June. The JCC is the main framework and forum for the conflict settlement process in South Ossetia, the separatist Georgian region. The new Joint Action will finance meetings of the JCC and other JCC framework mechanisms, provide for the organisation of JCC conferences and supply running costs for the two Secretariats for one year.

The EU’s assistance has reinforced efforts to help resolve this conflict, ensuring the continued functioning of both the Georgian and South Ossetian Secretariats (run under the aegis of the OSCE) and the JCC. The OSCE and both Georgian and South Ossetian JCC co-Chairs have requested this follow-up assistance from the EU. We attach considerable importance to the conflict resolution process in South Ossetia. Tensions between the Georgian government and South Ossetia have in the past led to military clashes. These problems have the potential to involve others such as Russia.

Recent redistribution of EU responsibilities inside the FCO and staffing problems have caused the delayed deposit of this Memorandum to your Committee. I apologise for this and assure you that measures are being taken to prevent this occurring again. So that the JCC continues to receive funding, and given the importance of this ongoing conflict resolution process, I hope your Committee will understand that I am reluctant to ask the Council to postpone the Council’s decision until after scrutiny has been completed.

21 June 2006

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**COTONOU AGREEMENT—CONSULTATIONS BETWEEN THE EU AND HAITI: HAITIAN ELECTIONS (11691/05)**

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

Following your Committee’s decision to clear Explanatory Memorandum 11691/05 on Haiti, and your subsequent letter of 5 October 20053 to Douglas Alexander, I would like to take this opportunity to update you on the recent elections in the country.

Originally scheduled to start on 20 October 2005, the Haitian elections were postponed four times due to logistical difficulties and concerns over the security situation. The first round of presidential and parliamentary elections finally took place on 7 February 2006. Several international observer missions were present, including one sent by the EU and all were encouraged by the high voter turnout of 63% and by the relatively low levels of violence on polling day.

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Tensions flared up in the following days due to delays and allegations of fraud in the vote count. On 16 February the Electoral Council announced that René Préval had been elected President with 51% of the vote. This was possible due to eliminating the influence of blank votes from the overall tally. Whilst this initially caused some controversy amongst Préval’s opponents, they decided not to challenge the result. Préval was acknowledged by the international community as the democratically elected President and was inaugurated on 14 May.

The second round of parliamentary elections took place on 21 April. Turnout was relatively low at around 30%, although it is worth noting that this is significantly higher than for previous legislative elections in Haiti. René Préval’s Lespwa Platform again performed well and will be the dominant force in both the Senate and the Chamber of Deputies.

We very much welcome the successful holding of both presidential and legislative elections. This as an important step forward in Haiti’s democratic process and we look forward to working with the new government.

29 June 2006

DEFENCE PROCUREMENT

Letter from the Chairman to Lord Drayson, Parliamentary Under-Secretary of State, Ministry of Defence

Thank you for your Explanatory Memorandum dated 28 February 2006 which Sub-Committee C considered at its meeting on 16 March. The Sub-Committee agreed to clear the document from scrutiny.

We consider that the proposed Interpretative Communication would be a useful mechanism for ensuring that Art.296 is used more consistently across the Member States. We would like to reserve our position on the proposed Defence Directive until the draft text is available.

In both cases we urge you to deposit versions of the draft texts along with Explanatory Memoranda at the earliest opportunity in order to allow as much time as possible for parliamentary scrutiny.

20 March 2006

Letter from Lord Drayson to the Chairman

I was grateful for your letter of 20 March broadly endorsing the Government’s Explanatory Memorandum response to the recent EC communication on Defence Procurement. I fully understand your Committee’s reservation of its position on a Defence Directive.

I will, of course, ensure that future draft texts are deposited with the Committee as quickly as possible. This is a matter of standing policy, to the extent that we are able. The European Commission is, of course, under no obligation to consult on the text of Interpretive Communications.

30 March 2006

EC DEVELOPMENT POLICY—ANNUAL REPORT

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 11 July 2006 which Sub-Committee C considered at its meeting on 20 July and which Sub-Committee A considered at its meeting on 25 July. We have agreed to clear the document from scrutiny.

We welcome the Report which raises a number of issues concerning the implementation of external assistance on which we would appreciate your views.

The Report comments on the Commission’s proposals for the new financial instruments and thematic programmes. Whilst acknowledging concerns expressed by the Council and European Parliament, the Report does not address developments late in 2005 such as proposals for splitting the DCECI, for creation of a new Democracy and Human Rights instrument, or for incorporating the thematic programmes within the other instruments. Whilst this is a Report on 2005 activities only, having been published in June it would have been preferable to see a more up-to-date analysis.
6.2 billion was spent on aid by the EC in 2005—up from €5.7 billion the previous year. The full Report states that this demonstrates that the Commission “can deliver effectively and rapidly on its commitments so that the money reaches those who need it.” This improvement is welcome given a recent report published by Save the Children which argued that the Commission had the worst global disbursement record with only 40% of its committed budget support disbursed between 2002 and 2004.

In 2000 4.94 years were needed on average to implement commitments entered into. In 2005 this had decreased to 3.33 years. The reforms launched in 2000 (the subject of a former European Union Committee Report EU Development Aid in Transition—12th Report of Session 2003–2004 HL Paper 75) thus appear to be working, though it is difficult to say whether the improvements are adequate.

The 2005 European Consensus on Development confirmed the Commission’s new approach to increased use of budget support. In 2005 the total amount of budget support commitments, around €1.55 billion, represented nearly 20% of total commitments. The Report states that this “demonstrates a slow but positive trend in the use of the new aid modalities . . . Nevertheless, overall targets fixed for budget support commitments were not reached in 2005, largely due to political and specific in-country issues.”

The process of simplifying EC procedures was one of the Commission’s priorities for 2005. A number of reviews have taken place, with most proposed changes still under consideration and likely to come into effect in 2007. Changes include, for example, an improved presentation of procedures, a simplification of the language used, and harmonisation of the terminology to ensure coherent application of the rules. The 2006 Annual Report should contain a full analysis of the agreed changes.

On aid management and, in particular, on assuring good financial management of external assistance projects, Sub-Committee A noted the references made in sections 5.1.1, 5.1.2 and 5.1.3 of the Commission’s report and paragraph 6 of your Explanatory Memorandum. However, given the current concern within the Commission and the Member States to improve the quality of financial management we would appreciate a fuller analysis of the actions taken. We would also like your view of whether these are sufficient to ensure that appropriate analysis is made of the risks of financial mismanagement or fraud occurring in these schemes; and of whether this analysis is properly incorporated into the design of the programmes.

We look forward to receiving your comments on all these matters.

25 July 2006

Letter from Rt Hon Hilary Benn MP to the Chairman

Thank you for your letter of 25 July responding to my Explanatory Memorandum dated 11 July and informing me that the committee met on 20 July and cleared the document from scrutiny. You asked for my views on four issues: the need for the Report to present more up-to-date analysis of new financial instruments and thematic programmes; progress with reforms aimed at increasing the speed and effectiveness of Commission assistance; progress made with simplifying EC procedures; and the adequacy (or otherwise) of improvements to the quality of financial management for the purposes of managing risk and reducing fraud.

I shall deal with the first and third of your requests together. The UK has consistently asked for Annual Reports to be forward looking. In Working Group meetings, we have urged the Commission to draw lessons from past experience, and comment on changes which will be made as a result. While the Reports have on the whole improved over the years, the Commission still limits its reporting to completed actions, and does not comment on events (or plans for activities) which occur after the end of the calendar year. Thus, the Report makes no comment on developments with regard to new financial instruments or on the simplification of Commission procedures, as neither of these issues was resolved in 2005. The UK will urge the Commission to provide an analysis of the new instruments and the new simplified procedures in the 2006 Annual Report.

I agree that despite progress in recent years, Commission aid must become faster and more effective. While the Save the Children report argues that the Commission had the worst disbursement record on budget support compared to four well-performing bilateral development agencies, it also notes that “the EC is more likely to disburse on time than other multilaterals” including the World Bank and International Monetary Fund.

You asked for a fuller analysis of the steps taken to improve financial management and whether they lead to a proper assessment by the Commission during the project design phase of the risk of financial mismanagement or fraud. Two of the most important measures are the development by EuropeAid of mechanisms and indicators to promote sound financial management; and the deconcentration (decentralisation) of project management to Commission delegations.

All projects and programmes are now assessed by a team of Commission officials against a dozen indicators during the preparation and implementation phases. These indicators include institutional capacity issues, monitoring and evaluation systems and risk management. Changes can be made to projects and programmes
accordingly. As regards deconcentration, the 2005 Court of Auditors’ Report on deconcentration concluded that robust financial management procedures are generally ensured under devolved management. The Commission’s Annual Report describes further measures taken in 2005 to help Delegations carry out quality checks at the design phase of projects and programmes.

Much development assistance, regardless of the donor, is delivered in inherently difficult and risky environments. But the right balance needs to be struck between ensuring both timely provision of aid and proper use of funds. Overall, I believe that the EC has struck a reasonable balance and has the structures and procedures in place to analyse the risks of financial mismanagement and alter the design of their programmes accordingly.

1 September 2006

ESDP: EU PLANNING TEAM IN KOSOVO

Letter from Rt Hon Douglas Alexander 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 10 April 2006. At this meeting Foreign Ministers are expected to agree a Council Decision to establish an EU Planning Team (EUPT) in Kosovo in preparation for a possible civilian ESDP mission there.

With the UN-led final status process underway, there is broad agreement within the international community (eg the Contact Group and the European Union) that the UN will no longer take the lead in Kosovo once a settlement has been concluded. We support a leading EU role and there is broad agreement among Member States that the EU should lead the international civilian presence in Kosovo post-Status, which, as the London Contact Group Ministerial statement of 31 January stated, should be concluded during the course of 2006.

The establishment of a Planning Team does not prejudge the outcome of the Status Process, or any subsequent decision by the EU to launch an ESDP mission in Kosovo. But it is important that contingency planning keeps in step with the Status Process already underway. Deploying a Planning Team now will also ensure that appropriate advance contingency planning is in place and that the EU decision making is based on sound analysis.

The Planning Team is expected to comprise around 30 personnel, including policing and justice experts where we anticipate there will be a particular need for EU assistance. We will be considering how the UK can best contribute to the Planning Team in due course.

Unfortunately the nature of the status process has meant no EU Joint Action was available before the Easter recess. Since it is important that contingency planning keeps in step with the status process, HMG will have to agree to this Council Decision on 10 April before scrutiny can be completed. I hope you will understand our reasons. When the Joint Action is available, I will of course forward this under the cover of an Explanatory Memorandum.

As this Council Decision relates only to the deployment of a Planning Team, a further Council Decision will be required before any civilian ESDP mission is established. I will ensure you are alerted to this at the earliest opportunity.

6 April 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter dated 6 April 2006 which Sub-Committee C considered by written procedure during the week commencing 17 April.

We welcome the proposal to establish a planning team for Kosovo. Your letter states that there is broad agreement among Member States that the EU should lead the international civilian presence following the determination of Kosovo’s future status and we strongly support this. However, it is not clear why, given this broad agreement, the planning team could not have been proposed earlier, thus avoiding the need for an override.

Furthermore, we would like to know why the ensuing explanatory memorandum and document were not received until 19 April, nine days after the Council Decision had been agreed by the 10 April GAERC. Your letter states that this was due to no official text yet having been received. However, it is often the case that you deposit explanatory memoranda in advance of an official text having been received. The text which you deposited on 19 April is dated 5 April. Although we accept that it would not have been possible to avoid an
override in this instance, the explanatory memorandum and document should have been deposited prior to the agreement in Council on 10 April.

We look forward to receiving your Explanatory Memorandum relating to any proposed Council Decision to establish a civilian ESDP mission in Kosovo and hope that more time for scrutiny of any such mission will be made available.

24 April 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your Explanatory Memorandum dated 18 April 2006 which Sub-Committee C considered at its meeting on 27 April. The Sub-Committee agreed to clear the document from scrutiny.

We have written separately (letter dated 24 April) concerning your letter (dated 6 April) noting that there would be an override on this Decision.

Given the potential significance of any eventual ESDP mission in Kosovo we ask that you keep us briefed about the outcome of the planning team’s mission and any recommendations that the planning team should make. Such briefs should include an assessment, from your point of view, of the EU’s capacity to fulfil those recommendations.

28 April 2006

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

Thank you for your reply of 24 April to Douglas Alexander’s letter of 6 April on the Council Decision to establish an EU Planning Team in Kosovo.

The timing of the EU’s work on Kosovo, including the Planning Team proposal, reflects the pace of progress with the wider Status Process. While the EU’s work has been developed rapidly to keep in step with the Process it is important that its plans do not pre-judge or overtake the underlying political process.

In terms of the timing of the Explanatory Memorandum, Mr Alexander had hoped to be able to provide you with an Explanatory Memorandum on the final text, or on a more recent draft, before the Committee reconvened after the Easter recess. When it was clear a better text was not going to be available I understand that he agreed we should provide an Explanatory Memorandum on the available text. In submitting the Memorandum on 19 April he hoped this would reach you in time to be considered for the Committee’s first meeting on 27 April. We will continue to submit Explanatory Memorandum’s on draft texts where these are available.

As Mr Alexander noted, the establishment of a Planning Team does not prejudge the outcome of the Status Process, or any subsequent decision by the EU to launch an ESDP mission. I would also add that I do not expect any decision on a mission to be taken before the end of the year, but I will ensure you are alerted to any such decision at the earliest opportunity. We will of course update you on progress more generally through the Ministerial Statements we issue following General Affairs and External Relations Council discussions.

May 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

I am writing to alert you to developments within the EU relating to Kosovo, which may require the adoption during the Summer Recess of a Joint Action to establish a preparation team to contribute to preparations for the establishment of a possible International Civilian Mission (ICM) in Kosovo, including an EU Special Representative (EUSR).

On 12 July, the Presidency circulated a Council Secretariat-Commission non-paper recommending that the Council adopt a Joint Action to establish an EU planning team that could contribute to preparations for any future International Civilian Mission (ICM) for Kosovo, including an EU Special Representative (EUSR).

There is broad agreement amongst the international community, including within the Contact Group and the European Union, that the EU will play an important role both in the planning and in the implementation phases of the international civilian presence in Kosovo post settlement.

The objective of the proposed planning team would be to contribute together with relevant international partners, to preparations for the establishment of an International Civilian Mission in Kosovo, including an EU Special Representative. A Joint Action of the kind envisaged would not prejudge the final outcome of the Status Process but it is essential that EU contingency planning keeps in step with the Status Process now
underway. As it is hoped that the ICM/EUSR will be in place following the adoption of the status settlement, it follows that planning for the ICM needs to be close to completion at the time of the settlement. As the London Contact Group Ministerial statement of 31 January noted, the Contact Group is aiming for the process to be concluded by the end of 2006.

The Presidency is therefore rightly keen to secure adoption of the Joint Action as soon as possible and this is likely to be during the summer recess, probably at the September GAERC. Given the importance of early preparations for implementation of a settlement, it is likely that the Government will need to agree this Council decision before scrutiny can be completed. I hope that you will understand the exceptional operational reasons that make this necessary. As soon as the Joint Action is available, I will naturally forward this under cover of an Explanatory Memorandum.

20 July 2006

ESDP: MILITARY OPERATIONS IN BOSNIA-HERZEGOVINA AND PARTNERSHIP AGREEMENT WITH FYROM

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

The former Yugoslav Republic of Macedonia has offered to supply two helicopters to the EU Force in Bosnia-Herzegovina. The Operation Commander and the PSC are keen to accept the offer given the shortage of helicopters available to the operation. In order to facilitate acceptance of this offer the EU is preparing a Partnership Agreement with Macedonia based on the standard Framework Partnership Agreement. This agreement takes into account all previous Council Decisions relevant to Operation ALTHEA.

Once the helicopters are deployed the number of non-EU countries participating alongside the 22 EU Member States in the operation will increase to 12.

14 June 2006

ESDP: POSSIBLE ACTIVITY IN AFGHANISTAN

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

On Tuesday 18 July the Political and Security Committee gave its support to a joint Council-Commission needs assessment mission to Afghanistan. The civilian assessment mission will focus on the Rule of Law/Justice sector, an area that we are keen to see benefit from greater international support. While I do not want to pre-judge the mission’s recommendations, I wanted to alert you to this work and the possibility that one outcome might be a recommendation for an ESDP mission to strengthen support to the Afghan justice/Rule of Law sector.

Details of the mission, including exact timing, have yet to be confirmed, but we expect that the mission will be able to report back some time in September or October. I will ensure you are alerted to any plans for an ESDP mission at the earliest opportunity.

21 July 2006

ESDP: SECURITY SECTOR REFORM IN DEMOCRATIC REPUBLIC OF CONGO (7733/06)

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 March 2006 which Sub-Committee C considered at its meeting on 30 March. The Sub-Committee agreed to clear the document from scrutiny.

We note that questions remain over the financing of this extended Joint Action. We accordingly ask that you provide us with a detailed financial breakdown as soon as this becomes available.

30 March 2006
Letter from Rt Hon Geoff Hoon MP, Minister for Europe, Foreign and Commonwealth Office
to the Chairman

On Friday 15 September, the General Affairs and External Relations Council agreed Conclusions indicating that the EU would be prepared to take a leading role in co-ordinating international security sector reform (SSR) efforts in the Democratic Republic of Congo (DRC). An ESDP SSR mission would build on the work of the two current missions, EUSEC RD Congo and EUPOL Kinshasa, which are both nearing the end of their mandate. The work of these missions has been successful, but their mandates were narrowly targeted on getting the country through the election period, and focused on individual sectors within the security sector. The view amongst EU partners is that a future mission should assist the Congolese authorities with a co-ordinated approach to the security sector as a whole, rather than concentrating on army reform and the police force in Kinshasa.

Ultimate decisions on how to reform the Congolese security sector can only be taken by a new, democratically mandated government in the DRC. Given the current political climate, it is unlikely that this will take place before the New Year at the very earliest. Current discussions in Brussels and Kinshasa are focussed on the shape of possible future ESDP involvement, rather than on designing programmes and taking decisions. I will ensure that you are alerted to any firm plans for an ESDP mission at the earliest opportunity.

18 September 2006

EU-ALBANIA STABILISATION AND ASSOCIATION AGREEMENT

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

Thank you for the Explanatory Memorandum dated 23 March 2006 which Sub-Committee C considered at its meeting on 30 March. The Sub-Committee agreed to clear the document from scrutiny.

We would like to emphasise the importance of Stabilisation and Association Agreements as part of the process of bringing the countries of the Western Balkans closer towards eventual membership of the EU and recognise their immediate impact on increasing stability within the region. We accordingly welcome the conclusion of this Agreement with Albania.

We do, however, note the ongoing challenge of tackling organised crime in Albania and stress that the EU should continue to regard this as one of its priorities in the monitoring and implementation of this Agreement.

30 March 2006

EU-CARIBBEAN PARTNERSHIP (6129/06)

Letter from the Chairman to Rt Hon Hilary Benn MP, Secretary of State,
Department for International Development

Thank you for your Explanatory Memorandum dated 14 March 2006 which Sub-Committee C considered at its meeting on 23 March. The Sub-Committee agreed to clear the document from scrutiny.

We fully support the Commission’s proposals in this Communication which recognise the many challenges still facing all the Caribbean states, despite the fact that many of them are listed as middle-income countries. The Communication demonstrates that crude statistical analyses of which countries need support in order to develop viable economies and increase their stability are insufficient. Although the Caribbean region as a whole has achieved significant levels of human development, the existence of pockets of extreme poverty, as well as wide-ranging challenges such as the spread of HIV/AIDS, ensure that the region continues to require the full support of both the EU and the UK government.

We believe the Commission to be right in its statement that: “In spite of what may appear at first glance from economic indicators and of the ambition of some countries to achieve the status of developed countries by 2020, there are concerns that some Caribbean states may slip from Middle Income to Low Income status if steps are not taken to reverse economic trends and to define security and stability strategies that will take fully into account the emerging global realities and address the challenges and opportunities ahead.” We hope that you will agree that this is the correct approach to be taken, both with regards to the Caribbean and to other countries in a similar economic position.

23 March 2006
EU—EGYPT ACTION PLAN (10560/06)

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

Thank you for your Explanatory Memorandum dated 29 June which Sub-Committee C considered at its meeting on 6 July. The Sub-Committee agreed to clear the document from scrutiny.

We strongly support the values of democracy and human rights contained within the Action Plan and hope that the Plan, with its emphasis on political dialogue, will enable the EU to encourage further democratic reform within Egypt.

As with previous Action Plans under the European Neighbourhood Policy, such as that agreed with Syria, the success of the new relationship between the EU and Egypt will depend largely on implementation of the commitments made within the Plan. We therefore urge both yourselves and the Commission to closely monitor Egypt’s progress towards further democratic reform.

6 July 2006

EU-IRAQ RELATIONS

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

Following my letter of 4 October 2005 informing you of progress in the EU’s relationship with Iraq, I would like to take this opportunity to update you on further developments on EU-Iraq trade co-operation.

At the 7 November 2005 General Affairs and External Relations Council (GAERC), the EU reiterated its commitment to establish contractual trade and co-operation relations with Iraq. This was in line with the June 2004 Commission Communication “The European Union and Iraq: a Strategy for Engagement”. EU Partners are currently discussing the negotiating mandate for a Trade and Co-operation Agreement with Iraq. We expect EU Foreign Ministers to approve this mandate at the 20 March GAERC with a view to negotiations commencing once the constitutionally elected Iraqi Government is in place.

Under the Agreement, Iraq would benefit from improved access to EU markets as well as co-operation in a wide range of areas including science and technology, environment, energy, industry, investment, financial services, transport and telecommunications. The Agreement will help Iraq prepare for WTO membership and provide a framework for EU technical assistance and capacity building efforts in Iraq. The negotiations will also cover co-operation on Human Rights, Counter-terrorism, the International Criminal Court, and Non-proliferation. We fully support the approval of the negotiating mandate as another important step in increasing EU engagement with Iraq.

Member States will be consulted regularly during the negotiations. Once the negotiations have been completed, the Council will need to take a formal Decision to endorse it on the part of the European Community. A draft of this Decision will submitted for Parliamentary Scrutiny in the normal way for consideration by your Committee. To the extent that the Agreement extends beyond the scope of the Community’s competences, the nature and the structure—either a mixed agreement or two parallel agreements concluded by the EU and the EC respectively—will be determined during the negotiations.

15 March 2006

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

My predecessor wrote to you on 15 March regarding progress on the mandate for negotiating an EU-Iraq Trade and Co-operation agreement and agreed to keep you informed of further developments in taking forward the EU’s relationship with Iraq. I am writing to inform you that the Commission intends to issue a Communication on EU-Iraq engagement on 7 June for consideration at the 12 June General Affairs and External Relations Council. This timetabling was only announced at the end of last week.


With a constitutionally elected government now in place, this is a timely opportunity to take stock of progress against the 2004 Communication and to take a fresh look at how the EU can engage with Iraq, starting with political dialogue with the new government. Given that the EU has implemented the actions identified in the 2004 Communication, the Commission now intends to issue a revised Communication setting out its recommendations for a renewed engagement on 7 June 2006. The Communication should send a strong signal of the EU’s commitment to engage with the new government. It should also set out the EU’s commitment to support the political process, including the Constitutional Review; promote security and stability in Iraq and the region, and engage with the new government to lay the foundations for longer-term relations. An Explanatory Memorandum on the Communication will follow once it has issued.

We expect the Communication to be endorsed at the 12 June 2006 General Affairs and External Relations Council. Unfortunately, given that there are only three working days between issue of the Communication and the GAERC, Member States will have to consider the Communication before your Committee has had the chance to complete scrutiny.

6 June 2006

EU-RUSSIA SUMMIT—MAY 2006

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

The 17th EU-Russia Summit took place on 25 May in Sochi, Russian Federation. The EU side was led by the Austrian Presidency represented by Chancellor Wolfgang Schussel, the High Representative for CFSP Javier Solana, and European Commission President Jose Manuel Barroso. The Russian side was led by President Vladimir Putin.

The Summit made some substantive progress in the EU-Russia relationship. The two main Summit outcomes were the approval of visa facilitation and readmission agreements between the EU and Russia; and agreement on the basis for negotiations on a Partnership and Co-operation Agreement (PCA) successor. The visa facilitation agreement does not apply to the UK as a non-Schengen country, but the UK will benefit from the readmission arrangements. The PCA is the legal framework document for EU-Russia relations. It expires in 2007, though it can be rolled forward. The EU and Russia are keen to see a new agreement to reflect changes since the PCA was first signed.

The Summit had frank discussions on areas important to the UK. The latest round of the EU-Russia Human Rights Consultations was welcomed. Discussion on Chechnya was particularly noted. On the common neighbourhood, the EU expressed the hope for progress on Nagorno-Karabakh in the South Caucasus, though the Russian side was less optimistic. We were pleased to see final agreement on the EU’s aid package to the North Caucasus, the proposal announced at the UK Presidency’s EU-Russia Summit last year.

The EU stressed its concerns on Belarus and Moldova. On this issue more than any other, the Russians defended their policy of engagement with Belarus. Russia was critical of the steps taken by the EU border assistance mission on the Moldova/Transnistria-Ukraine border to reduce smuggling as creating undue pressure.

There were detailed discussions on energy, the EU noting continuing concerns in Europe stemming from the January Russia/Ukraine gas dispute interruptions. Russia in response stressed their reliability as a supplier, although they did not agree to EU proposals to ratify the Energy Charter Treaty.

There were discussions of a number of other international issues such as Kosovo and Iran. The Russians raised the Kosovo process as a possible precedent over questions of territorial integrity, including for the South Caucasus states’ frozen conflicts. The EU underlined its view of Kosovo’s unique situation.

The incoming Finnish Presidency has put the EU’s relations with Russia as one of their priorities. We welcome this focus. We will continue to sustain the focus on commitment to common values such as democracy, human rights, and respect for OSCE and Council of Europe principles.

21 June 2006
EU-SOUTH AFRICA STRATEGIC PARTNERSHIP

Letter from the Chairman to Lord Triesman of Tottenham, Minister for Africa, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum dated 12 July 2006 which Sub-Committee C considered at its meeting on 20 July 2006. The document was cleared, on the Sub-Committee’s recommendation, at the Chairman’s sift on 25 July.

The document raises a number of issues, both specific to the document and more generally in relation to the use of strategic partnerships by the EU. The latter issues will be addressed in a separate letter.

Overall, we welcome this initiative from the European Commission, which responds to a request issued by the 7 November 2005 Joint South Africa-EU Cooperation Council for the development of a strategic partnership. We feel that the proposal is fairly comprehensive and should serve to strengthen relations between South Africa and the EU.

Despite this generally positive appraisal, the Communication completely eludes the importance to the EU of South Africa’s reserves of so-called “strategic minerals”, including precious and rare metals. In particular, chromium, cobalt, manganese, vanadium and platinum-group metals are used in key industrial processes (notably in the defence and aeronautical sectors). South Africa holds the majority of the world’s reserves of platinum, gold and manganese ore, as well as significant reserves of chromium. We therefore believe that South Africa’s strategic position in relation to security of supply and market equilibrium must receive the attention it deserves in the draft Joint Action Plan to be prepared for the EU-South Africa Cooperation Council of 14 November 2006.

We also felt that two issues should have received more attention in the Communication: the challenges posed by the situation in Zimbabwe, and the threats to health and development posed by the HIV-AIDS pandemic. With regards to Zimbabwe, we feel, as was highlighted in our report on the EU’s Strategy for Africa, that weak governance in Zimbabwe and other African countries has to be addressed as a priority, and that it should figure as an important aspect of future regional political cooperation in the Joint Action Plan. Similarly, we feel that the question of HIV/AIDS should be a priority issue in the Joint Action Plan, and in particular in the Country Strategy Paper currently being prepared.

We request that you take into account the above issues when the Communication is considered during the General Affairs and External Relations Council on 15 September. We would furthermore encourage you to seek to obtain agreement in Council inviting the Commission to integrate these considerations fully into the draft Joint Action Plan.

25 July 2006

EU AID (7066/06, 7067/06, 7068/06)

Letter from the Chairman to Rt Hon Hilary Benn MP, Secretary of State, Department for International Development

Thank you for the three Explanatory Memorandums dated 14 March 2006 which Sub-Committee C considered at its meeting on 23 March. The Sub-Committee agreed to clear the first two documents from scrutiny, but to hold the third document “Increasing the impact of EU aid (7068/06)” under scrutiny.

We recognise that the UK has a high level of expertise in the delivery of aid to third countries. However, we also believe that this expertise should be fully utilised through better coordination with the EU and other Member States and consider that the Commission’s overarching aim to improve coordination is sound.

We note that in paragraph nine of the explanatory memorandum you state that you are looking for a framework “that recognises the leading role of partner governments, encourages alignment of donor programming cycles to those of the partner country, builds on ongoing joint strategy work in country, draws on existing analysis and encourages a mutual accountability relationship where both donor and partners are judged on their performance.” We fully agree with the focus on these elements, but feel that the UK, as a major donor of aid to developing countries, in conjunction with the Commission, should be taking a leading role in the development of such a framework.

We are pleased to see that you are involved in intensive discussions in Brussels with the Commission and other donors to resolve these issues and look forward to seeing your proposals for so doing.
The Sub-Committee will be meeting again on 30 March and hope to be able to consider your response at that meeting, prior to the 11 April GAERC at which Council conclusions on this document will be adopted. We wish in particular to know what Conclusions you would wish to see adopted at that meeting, and hope that you will be able to agree with our belief in the importance of improved coordination.

23 March 2006

Letter from Rt Hon Hilary Benn MP to the Chairman

Thank you for your letter of 23 March regarding the above Communication. Your Committee did not clear the document from scrutiny and asked for further information.

The common EU framework reflects the growing recognition amongst many donors, not just the EU, of the importance of improving how we work together and with governments in developing countries. The UK has been committed to developing joint assistance strategies and frameworks wherever possible.

Working with a range of donor partners (eg other donors, including outside the EU, World Bank, Regional Development Banks), we have developed or are developing joint strategies in Tanzania, Cambodia, Nigeria, Kenya, Zambia, Uganda, and Mozambique; in South Africa we have been working with the Commission. In many countries, we are also working with a range of donor partners in specific sectors.

The results so far have been encouraging. The common characteristics of these programmes are their responsiveness to the situation in country, the strength of the partner country leadership, the size and number of donors present; and the ability of donors to be flexible and participate in cost and resource sharing arrangements.

The development of an EU framework needs to be able to address these issues and join up with whatever processes have already begun in the countries where we are already engaged in joint strategy development. We have therefore sought to negotiate a framework that would not only encourage all EU Member States and the Commission to express their development programmes in a common framework, but also encourage other donors, such as the World Bank, into joint arrangements with us.

In the process leading up to the April General Affairs and External Relations Council (GAERC), we have led the development of a common statement with Denmark, Finland, Ireland, the Netherlands and Sweden that set text for the Council Conclusions on the common framework (text attached). We have also offered key drafting inputs to the Nordic + Donor Group statement of principles for common frameworks and joint multi annual programming, which have been adopted as introductory key principles in the revised text for the EU paper.

29 March 2006

Annex A

INCREASING THE IMPACT OF EU AID: A COMMON FRAMEWORK FOR DRAFTING COUNTRY STRATEGY PAPERS AND JOINT MULTI ANNUAL PROGRAMMING

Joint Submission from Denmark, Finland, Ireland, Netherlands, Sweden and UK

Text Proposal for Council Conclusions:

The Council:

- Reaffirms its commitments to the Paris Declaration and recognises the importance of reflecting the principles of ownership, harmonisation, alignment, managing for results and mutual accountability in the development of a common framework for country strategies and joint multi annual programming.

- Reconfirms that the EU will support partner countries to be the leading force in the preparation, coordination and monitoring of joint multi-annual programming of all donor support to the country. Preparation and coordination should be based on, and aligned with, the partner country’s Poverty Reduction Strategy or similar strategy and budget cycle. Member states should, within their respective competences, ensure flexibility in their own procedures to meet alignment principles.

- Recalls that joint multi-annual programming will pave the way for coordination, harmonisation of procedures and opportunities and decisions relating to complementarity. Notes in this context with interest the ongoing work of many Member States on developing and applying complementarity principles.
— Underlines that the Member States and the Commission should under the leadership of the partner country support and participate in existing donor-wide country-level initiatives that are often already supported by different Member States or other donors. Where joint initiatives do not exist the Commission and Member States should encourage the partner government to start a joint donor wide initiative.

— Recognises the current draft CFCSP should be applied to Community aid in all regions for the ongoing and forthcoming programming cycles.

— Recommends further development of the current draft CFCSP framework in close consultation between the Commission and the Member States in adherence to these principles to give a concise strategy for a new EU joint multi annual programming framework, for gradual adoption across the EU and fully cognisant of individual partner country contexts.

Letter from the Chairman to Rt Hon Hilary Benn MP

Thank you for your letter dated 29 March which Sub-Committee C considered at its meeting on 30 March. The Sub-Committee has agreed to clear the document from scrutiny.

We thank you in particular for attaching the joint submission from Denmark, Finland, Ireland, Netherlands, Sweden and UK containing proposals for Council Conclusions. We note that this states that the draft common framework for drafting country strategy papers should be further developed to give a concise strategy for a new EU joint multi-annual programming framework, for gradual adoption across the EU.

We accept that further development of the Commission’s proposals would be beneficial. However, we urge you to cooperate fully with the Commission in producing a revised strategy and consider that any such strategy should be fully acceptable to all Member States and be adopted across the EU. We recommend that a new text should be ready for consideration at the 16-17 October Development GAERC and be deposited for scrutiny prior to this meeting.

30 March 2006

EU CONTRIBUTION TO COMBATING THE DESTABILISING ACCUMULATION AND SPREAD OF SMALL ARMS AND LIGHT WEAPONS (SALW)

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

I attach Explanatory Memoranda (not printed) covering the Fifth Annual Report on the EU’s contribution to combating the destabilising accumulation and spread of small arms and light weapons and First Progress Report on the EU Strategy to Combat Illicit Accumulation and Trafficking of Small Arms and Light Weapons (SALW) and their ammunition.

The Government fully supports the EU Strategy and Council Joint Action as useful tools that demonstrate a co-ordinated EU response to the requirements of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit trade in Small Arms and Light Weapons in All Its Aspects. The Government welcomes these reports which, demonstrate EU activity and commitment to addressing the scourge of the illicit trade in SALW.

In light of the FCO’s continuing commitment to deposit substantial non-legislative documents such as these, I hope that your Committee finds the memoranda informative.

14 June 2006

EU DISASTER RESPONSE

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

Following a request from the Committee’s Clerk, please find enclosed for your information the “General Framework for the use of ESDP Transportation Assets and Coordination tools in Support of EU Disaster Response” (not printed). The European Council approved this in May. The document proposes a framework through which the Member, States’ military transportation assets and military chartered assets can be used and co-ordinated in support of EU disaster response.
During the UK Presidency of the EU, the informal meeting at Hampton Court considered how the EU could better coordinate its disaster response efforts and requested that the Secretary General/High Representative, Javier Solana, take forward work to ensure that EU crisis management structures could meet new demands upon them. In his response Solana highlighted the need for “the maximum possible civilian/military integration” and suggested the need for “arrangements for transport coordination of the relief effort.. [which] should cover military assets made available by Member States”. The Framework builds upon his proposals and experience of the relief efforts following the Algerian floods.

The use of military transportation assets where appropriate will improve the EU’s capacity to respond to disasters while the identification and coordination of these assets by the EU MovementPlanning Cell should ensure a more effective response. The UK has been a strong supporter of such practical improvement to the EU’s crisis response procedures following the Tsunami of 2004. The paper also recognises the need for wider international cooperation and the pre-eminent role of the UN Office for the Coordination of Humanitarian Affairs in overseeing this although it does not go into detail.

The paper importantly respects two key principles from the UK point of view. Firstly, that all national military assets are provided on a voluntary case by case basis, recognising that “prior operational tasking of the assets and political/financial imperatives” may inform decisions. Secondly, existing institutions are proposed to coordinate the transport assets, avoiding the need to create new unnecessary structures.

The Council General Secretariat and Commission, directed by the Member States, will now work up detailed procedures to reflect this framework. This work is likely to take until the end of 2006 and will require unanimous Member State approval before the procedures are implemented.

28 June 2006

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter dated 28 June 2006 which Sub-Committee C considered at its meeting on 13 July. We welcome the High Representative’s proposals for the use of strategic airlift for disaster relief on a voluntary basis by Member States. However, we consider that the procedures and mechanisms are potentially too slow to cope in a crisis situation. What is your view on the likely effectiveness of these procedures and are there any plans in place to carry out a test exercise?

14 July 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 14 July 2006 regarding the discussion by Sub-Committee C of the “General Framework for the use of ESDP Transportation Assets and Coordination in Support of EU Disaster Response” on 13 July.

You commented that the procedures and mechanisms outlined in the framework are potentially too slow to cope in a crisis situation. The EU places the highest importance on being able to respond rapidly to a crisis and is developing further the means to allow it to do so.

In the case of a response to a natural disaster, we expect that in most cases the initial response will be direct bilateral aid offered by individual Member States and which therefore would not require use of the procedures outlined in the document. The Community’s “ECHO” Directorate General would manage the immediate humanitarian aid effort, in liaison with relevant UN agencies and international organisations, and would be able to deploy assessment teams from their network of offices around the world.

We see the use of military assets, including military transportation assets, as generally a last resort when civilian alternatives are not available and once an assessment of requirements has taken place. The proposed framework for co-ordinating military transportation assets in support of civilian-led disaster response builds on the procedures already in place to improve the co-ordination of strategic transportation assets for other ESDP operations and we are confident that it will facilitate a more rapid EU response.

You also asked whether there were any plans to carry out a test exercise. The Finns have stated that under their presidency of the EU they intend to hold an exercise to test the EU’s Crisis Coordination Arrangements. While the plans for this exercise are still under development it should offer the EU an opportunity to trial its disaster response arrangements.

25 July 2006
EU EXTERNAL RELATIONS BUDGET: UPDATE AND OUTLINE PLANS FOR 2006 (11734/05, 5834/06, 5835/06, 5836/06, 5837/06, 6297/06)

Letter from Rt Hon Hilary Benn MP, Secretary of State, Department for International Development to the Chairman

In your letter to me of 20 October 2005, you asked that the Committee be kept generally informed of the ongoing discussions on the future structure of the external relations budget. I thought it would be useful to provide an update and outline our plans for 2006 at the conclusion of the UK Presidency of the EU. This is a joint letter with the FCO and has been agreed with HMT.

The overall agreement on the Financial Perspectives reached at the December Council in Brussels included a Global Partner (External Actions) budget over the seven years 2007–2013 of €50.1 billion / £32.24 billion (the figure proposed by the Luxembourg Presidency in June). Although over 15% less than the Commission’s opening 2004 proposal, the ‘budget will increase by about 4.3% annually from €6.28 billion / £4.3 billion in 2007 to reach €8.07 billion / £5.53 billion by 2013. At the same time, Council agreed to establish a 10th European Development Fund (EDF) to provide assistance to the African, Caribbean and Pacific countries for six years from 2008. The figure to be allocated of €22,682 million (£15,544 million) is separate from, and additional to, the Global Partner budget figure. The EDF will remain an inter-governmental fund.

Discussions throughout the UK Presidency focused on the draft regulations for the European Neighbourhood and Partnership Instrument (ENPI), Pre-Accession Instrument (IPA), the Development Co-operation and Economic Co-operation Instrument (DCECI) and the Stability Instrument (SI). Steady progress was made in discussions, both on the specific language for each regulation and on cross-cutting issues. The IPA, ENPI and SI are all now fairly well advanced, but there are in each case some difficult sticking points still to be resolved, in consultation with the European Parliament.

The UK Presidency presented a redraft of the DCECI that was well received by all parties. This puts a stronger emphasis than earlier versions on poverty reduction as the central aim of the instrument and the use of best development practice. The UK redraft helped change the European Parliament’s earlier position of rejecting the proposal: the Parliament is now in the process of introducing amendments to the text.

While it was originally intended that questions of nuclear safety be included in the Stability Instrument, it was subsequently decided that they should be covered in a separate instrument, drawing on the Euratom Treaty as their legal base. An Instrument for Nuclear Assistance is accordingly under preparation. I anticipate that the appropriate Regulation will be ready for adoption at around the same time as the others.

In addition to the new instruments, the Humanitarian Aid Instrument will continue: we look forward to further discussion on this under the Austrian Presidency. We have argued against retaining Macro Financial Assistance as a separate policy instrument on simplification and rationalisation grounds, since its functions could be absorbed into the geographical regulations. It seems though that such an instrument will feature also under the next Financial Perspective.

A number of issues which apply to the Global Partner budget heading as a whole remain to be resolved, including the question of financial provision between the instruments. The debate on relative shares can only be finalised once the European Parliament has endorsed the overall budget and the Global Partner heading budget itself. We also need decisions on the numbers and relative scope of the instruments. Discussions so far have focused on the six instrument architecture proposed by the Commission in early 2004. But it seems fairly clear that there will need to be some adjustments to reflect the direction of the negotiations as laid out above; and also, for example, to respect the distinct nature of Common Foreign and Security Policy arrangements. Our position (and that of many other Member States) remains that the simplification and rationalisation of the current budget structure is integral to a more effective budget structure.

Agreeing an appropriate role for the Parliament and Council in setting policy priorities for external funding will be a major challenge in the months to come. This makes it difficult to predict when any of the Regulations will go to Council. It is also important that policy commitments entered into during 2005 are fully reflected in the new external Regulations, including the November 2005 Council Conclusions on the Orientation Debate and the European Consensus on Development signed by the Council, the Commission and the European Parliament on December 20th. They provided considerable clarity on the overarching objective of

EU aid—reducing poverty—and guidance about a rational allocation of resources of development resources. They also invited the Commission and the European Investment Bank to investigate the role of loans and grants in middle income countries.

We will support the Austrian Presidency in their efforts to finalise the draft regulations for the external actions instruments, building on the foundations provided by the decisions taken in Brussels in December last year.

5 February 2006

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

Thank you for your Explanatory Memoranda which Sub-Committee C considered at its meeting on 16 March. The Sub-Committee agreed to clear the documents from scrutiny. The documents were cleared, however, on the basis that we share the many concerns expressed by you in the memoranda and urge you to press for the further details which you state are necessary for the proper implementation of these programmes.

We consider that the general themes of the programmes are sound. In particular we are happy to see the specific attention being paid to both food security and democracy and human rights, each of which should inform all the Commission’s development assistance programmes. However, we also consider that all five documents are poorly written, lacking in detail and incapable of being applied in any measurable or objective manner. The Commission should give further consideration to redrafting these communications prior to their being agreed by the Council. We hope that you will support this proposal.

We also recognise that these programmes are an attempt by the Commission to simplify and realign its thematic programmes in the light of the newly agreed budget lines contained within the Financial Perspective 2007–2013. However, we fully agree with you that it is unclear how these programmes will be implemented in line with the budget, and ask that you write to inform us of the budget allocations for each programme once they have been approved. It is imperative that such allocations take place in an open and transparent manner.

On each of the specific programmes we would like to add the following additional specific comments:

Investing in people—We consider that insufficient attention has been paid to women’s rights within these programmes as a whole, and that it should not be simply one aspect of this programme on human and social development. In particular, women’s rights should be emphasised more strongly within the programme on democracy and human rights given that women suffer unduly in those states with poor records on human rights and governance.

Non-state actors—We agree that further consideration ought to be given to the Commission’s wide definition of non-state actors (para 11, EM). Support for development NGOs ought to take priority over support for political foundations, universities and local authorities.

Environment—We agree with the point made in your explanatory memorandum that care is needed to ensure that an integrated approach does not detract from the need to ensure that geographical support is given to priority environmental issues reflected in country plans (para 11, EM). We also urge you to ensure that any EU support for the management of natural resources takes full account of international guidelines.

Food security—We welcome the focus of the programme on transition and fragile states, and the necessary transition from relief to development assistance (para 14, EM). However, we would like to see these issues being linked to the establishment of the UN’s Peacebuilding Commission (PBC): a guarantee of food security by the EU in post-crisis situations would be of great assistance to the work of the PBC.

Democracy and human rights—We agree that the EU’s valuable work in election monitoring should be funded through a separate budget (para 20, EM) in order that it does not affect the overall budget allocations between the various programmes. We are, however, concerned about your proposal for a contingency reserve to facilitate emerging opportunities and to deal with emergencies (para 15, EM): we consider that this would bypass all the usual rules for ensuring that funds are correctly spent and, at the very least, would need to be closely monitored and kept under review.

We ask to be kept fully informed on the outcome of these programmes at the forthcoming discussion at the 10–11 April General Affairs and External Relations Council. Should the programmes be amended, we ask that you submit the amended versions along with a commentary on the specific changes made.

20 March 2006
Letter from Rt Hon Hilary Benn MP to the Chairman

On 16 March 2006, your Committee discussed the Communication on External Actions through Thematic Programmes under the Future Financial Perspectives 2007–2013 (FP) and the five specific thematic Communications as per above. Your Committee cleared all Communications for scrutiny on the basis that I press for more clarity on the issues raised in my EM. Similarly, you asked me to inform you of the budget allocations for each programme once decided.

There has been some development since I last wrote. On February 16, Council decided in Coreper to pursue a line of negotiations with the European Parliament based on including all current geographic and thematic regulations into the DCECI—the new Development Instrument. Promoting simplicity and effectiveness in the management of EC external spend underpinned this decision. We supported this line.

Following this, the Austrian Presidency prepared procedural Council Conclusions on the seven specific thematic Communications plus the global one. These Conclusions simply took note of the respective Communications and invited the Commission and Member States to integrate these as appropriate into the new external action instruments, including the DCECI. The Conclusions were adopted by the Environment Council on 9 March. A copy of the Conclusions is attached (not printed).

The Presidency then brought forward proposals on how to include these regulations into the DCECI. They were briefly discussed in Council working groups. It is our understanding that discussions on the Communications as part of the DCECI will replace any discussions and adoption of the specific thematic Communications in Council. We plan to raise concerns spelled out in our respective EMs in the context of these discussions.

The EP Development Committee adopted their report on the DCECI on March 21. They rejected the approach adopted by the Council for the thematic regulations. We anticipate that high-level political negotiations will be needed to move this dossier further.

We will write again once there is more progress. It is our wish to keep you as informed as possible, but I hope you share my view that this is a complex process where the outcome is sometimes difficult to anticipate.

24 April 2006

Letter from Rt Hon Hilary Benn MP to the Chairman

Following my letters of 5 February and 24 April, we have set out to provide you with regular updates as regards to the ongoing discussion on the Development Instrument (DCECI) of the next EC Financial Perspective (FP) 2007–2013. As you are well aware, negotiations on this Instrument have been complex and are still a way from conclusion.

On 3 May, the Committee of Permanent Representatives (COREPER) decided to present the European Parliament (EP) with a “package deal” for the external instruments under the next FP to advance these negotiations. This involved an approval of the four instruments on which the text has already been agreed—Stability Instrument, European Neighbourhood and Partnership Instrument (ENPI), Instrument for Pre-accession Assistance (IPA) and Instrument for Nuclear Assistance (INA)—together with a Development Instrument split into four: one instrument for cooperation with developing countries; one for cooperation with industrialised countries; one instrument for democracy and human rights; and one instrument regrouping the other thematic programmes. The Development Instrument would then be based solely on TEC article 179, the development article of the Treaty.

This deal was seen as going some way towards meeting the EP’s request to keep separate ll the current 16 regulations, which would be regrouped under the DCECI in the Commission’s proposal. We supported this deal as a constructive compromise and way forward. Despite our support for the principle of reducing the number of instruments to a minimum, we see sense in creating a new instrument for managing cooperation with industrialised countries, as separate from cooperation with developing countries, and in raising the political visibility of democracy and human rights through a further separate instrument.

On 18 May, however, the European Parliament voted in Plenary for the “Mitchell report”, which effectively suggests retaining all current regulations plus the DCECI, and introduced a total of 117 amendments to the Commission’s initial proposal. Formally, this becomes the EP’s first reading report, a copy of which is attached for your information.

Essentially the EP report suggests:

— To retain the current legislative structure of the EC budget for development spending, involving a total of 16 regulations plus the DCECI, to safeguard the EP’s current role in setting policies for thematic and geographic programmes;
A DCECI based on TEC 179, developing countries only, all aid classified as ODA and with clear barriers to other external instruments;

- A strong focus on poverty reduction and the MDGs as the overarching aim for the Instrument, based on development best practice, with active involvement of civil society in all stages;

- A greater involvement of the EP in the management of Community aid programmes, including in the stages of design, approval, reviews and suspension;

- A call-back mechanism allowing the EP to object to country/region and thematic strategy papers and ask for adoption through co-decision;

- Added measures of control against fraud, irregularities and human rights abuses;

- Sectoral spending targets in the programmes.

Without doubt, this will take us into the second reading as Council will not be disposed to endorse some of the key demands put forward by the EP. While we welcome the EP’s wish to turn this into a true Development Instrument, focused on development priorities, developing countries and best practice—in fact many of the EP’s amendments build on the ideas we put forward during our 2005 EU Presidency—we support the COREPER position for a rationalised budget structure involving fewer regulations. Also, we do not support the EP’s demands for more involvement in the management of Community aid, at the same time as Member States are ready to step back and extend more autonomy to the Commission.

The next step will be to agree a Council Common Position on the EP 1st reading report. Ideally, this should be designed as a compromise text acceptable to both the EP and Council, thereby allowing for a rapid 2nd reading agreement. To do this, the Austrian Presidency is holding parallel negotiations with both parties. We await the outcome of these negotiations but it is possible that discussions on a Common Position will fall into the Finnish Presidency.

I will keep you informed of future movements on this dossier and will forward you a copy of the Council Common Position when it merges. It is also possible that negotiations continue over the summer and during Parliamentary recess. We will discuss with your Clerks on how best to keep you informed during this period.

26 June 2006

EU MILITARY OPERATION IN SUPPORT OF THE UN MISSION IN THE DEMOCRATIC REPUBLIC OF CONGO (7779/06)

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

The next meeting of the General Affairs and External Relations Council (GAERC) will be held on 10 April. It is possible that at this meeting Foreign Ministers will agree to a Council Decision concerning an EU military operation in support of the United Nations Mission in the DRC (MONUC) during the election process. Agreement on this at the GAERC will depend on whether the UN Security Council passes a resolution authorising the EU force by then.

If the Council Decision on the mission is not agreed at this GAERC it is likely that it will be agreed by written procedure before Easter, as member states are keen to press ahead with the planning for the mission. The EU force needs to be ready to deploy in time for the June elections.

The UK Government supports the proposal for this EU mission, which will comprise a small EU force based in Kinshasa, with a larger “over-the-horizon” EU force on stand-by outside the DRC, ready to deploy if the situation requires. It agrees that planning should begin as soon as possible.

I hope therefore that you will understand why it is necessary to override scrutiny in this instance. Of course, I will ensure that an Explanatory Memorandum is submitted on this subject for the next sitting of the Scrutiny Committee.

5 April 2006

Letter from Rt Hon Douglas Alexander MP to the Chairman

I wrote to you on 5 April to explain why it was likely that scrutiny would not be possible before the Council Decision on this mission. I also undertook to ensure that an Explanatory Memorandum was submitted to the Committee for their consideration as soon as possible. Please find this enclosed (not printed).

18 April 2006
172 FOREIGN AFFAIRS, DEFENCE AND DEVELOPMENT POLICY (SUB-COMMITTEE C)

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your Explanatory Memorandum dated 18 April 2006 which Sub-Committee C considered at its meeting on 27 April. The Sub-Committee agreed to clear the document from scrutiny.

We note the urgent need to begin planning this military mission as soon as the UN Security Council Resolution was received and therefore accept that this was an appropriate case for a scrutiny override.

The mission is intended to cover the election period in the Democratic Republic of Congo and is due to terminate four months after the date of the first round of elections. We hope that if the mission proves successful, the EU will act swiftly to seek an extension to the Joint Action in order that ongoing support by the EU can be provided to MONUC.

Following commencement of the mission we would also like to receive more detailed information on the national composition of the EU troops deployed both within and outside the DRC, and on the command and control structure between the EU and MONUC. As the EU increases its capacity and willingness to engage in military ESDP it is essential that the relationship between the EU and other forces is both clear-cut and transparent. Accordingly such information should be made available to Parliament once the command and control structures have been agreed.

28 April 2006

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

As you will be aware from Douglas Alexander’s letter and EM of 18 April the EU has been preparing for an EU military mission under ESDP to support the UN peacekeeping mission (MONUC) in the Democratic Republic of Congo (DRC). We now expect the General Affairs and External Relations Council (GAERC) to take a decision to authorise the launch of this operation at its next meeting on 12 June, so that the deployment can take place in advance of the DRC elections.

I attach an Explanatory Memorandum on the Joint Action authorising the launch of the operation (not printed).

The document is still in a draft stage and is being worked on in committees. I am sending this version to you now to ensure that both your Committee and the Commons Committee have sufficient time to clear the text. I will, of course, keep you informed about any substantive changes to the Joint Action, as well as details of the national composition of EU troops and command and control structures, once they become clear.

17 May 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

As you will be aware from Douglas Alexander’s letter and EM of 18 April and my subsequent letter and EM of 17 May, the EU has been preparing for an EU military mission under the ESDP to support the UN peacekeeping mission (MONUC) in the Democratic Republic of Congo.

I thought you might like to be aware that as part of the preparations for this mission the EU is preparing a Status of Forces Agreement with Gabon to cover the element of the force which will be on stand-by there. This SOFA has been drafted on the basis of the EU Model SOFA that your committee scrutinised in March 2005 and follows standard language.

14 June 2006

Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office to the Chairman

I am writing to inform your Committee of a Council Decision to exchange letters between the Presidency and Switzerland on the participation of Swiss doctors in EUFOR RD Congo—the EU military operation supporting the UN mission during the DRC elections. This exchange is necessary because Switzerland was not originally a contributing nation to the mission. We strongly support the Swiss offer. It meets a much-needed operational requirement.

Given the operational nature of the Swiss offer and the need to avoid delay, the Council Secretariat decided to use a written procedure to approve the decision. The Secretariat only issued the relevant documents for approval on 7 August. They requested any objections to be made by 8 August, with a view to exchanging letters by mid-August.

Given that your committee is not currently sitting and the straightforward operational nature of this decision, I have decided to agree to the Council decision without seeking the Committee’s views.

9 August 2006
EU POLICE ASSISTANCE TEAM (EUPAT) IN MACEDONIA

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

I am writing to let your committee know of the successful completion of the mandate of EUPAT in Macedonia culminating in the handover of police development and reform activities to a field monitoring team under the European Commission Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme.

Throughout its mandate of six months EUPAT continued to support the development of a professional police service, focusing its activities on sustainability of EUPOL Proxima achievements through monitoring and mentoring the country’s police on priority issues in the field of Border Police, Public Peace and Order and Accountability, and the fight against corruption and Organised Crime. EUPAT focussed on middle and senior management and special attention was paid to three key areas.

1. The Sector for Internal Control and Professional Standards—an increase in initiative and proactivity in the launch of investigations and increased confidence of the public and other organisations in the Sector was noted.

2. Co-operation between police and other law enforcement agencies—there are positive indications that this is increasing, particularly between agencies such as the Uniformed Police and Crime Investigation Department and Border Police who have followed the advice given by EUPAT and its predecessor EUPOL Proxima to hold regular inter-agency co-ordination meetings. EUPAT further recommends that these inter-agency meetings become mandatory. Positive progress was also noted by EUPAT’s Law Enforcement Monitors in the Organised Crime Unit of Public Prosecutors which has performed well when involved in a number of high profile investigations and prosecutions.

3. Police comprehensive reform—Progress in areas such as decentralisation and the restructuring of the Territorial Police Services was slower than expected, due to delays in the adoption of the Law on Police. In response to this EUPAT has produced detailed recommendations on the areas that will need continued support from the field monitoring team, particularly that the team maintains a significant presence at the Ministry of Interior level and takes a two pronged approach to supporting police in the decentralisation process. High level commanders need to be mentored and advised on how to relinquish their powers to the appropriate level and local police will need support in dealing with the added responsibility as these powers are delegated. The EUSR’s Office has supported and co-ordinated the transition from EUPAT to the field monitoring team.

As intended EUPAT has provided a monitoring presence bridging the gap between EUPOL Proxima and the CARDS field monitoring team, sustaining the progress made thus far and allowing for continued progress in the interim. The field monitoring team will be given valuable head start thanks to the provision of a comprehensive dossier put together by EUPAT in order to facilitate knowledge transfer between the two teams.

28 June 2006

EU RELATIONS WITH THE PACIFIC ISLANDS (10873/06)

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

Thank you for your explanatory memorandum dated 21 June 2006 which Sub-Committee C considered at its meeting on 6 July 2006. The Sub-Committee agreed to clear the document from scrutiny.

Overall we support the objective of the Communication, and believe that it is a timely and well-thought out proposal for the strengthening of relations between the EU and the Pacific Islands.

However, we consider that some important issues have been understated or left out of the Communication. We would like to draw particular attention to the following points:

The Communication gives the impression that development cooperation takes place in a vacuum. We would have preferred to see key international frameworks figure much more prominently. The Millennium Development Goals should have been a central theme. Reference could also usefully have been made to the Barbados Programme of Action (BPoA), which is the “blueprint providing the fundamental framework for
the sustainable development of small island developing states”.6 Similarly, there should have been an adequate reference made to the need to coordinate activities with the UN and other international actors.

The area of conflict prevention and management receives scant attention in the Communication, despite the challenges of security and stability faced by many of the Pacific Islands. Greater emphasis should be laid on the frameworks that can be applied, and the actions that can be taken, to assist states experiencing or recovering from violent conflict, such as Samoa and Timor Leste, in a way that is tailored to their specific situation.

We consider that the Council should specifically consider the Common Foreign and Security Policy (CFSP) dimension of the partnership. One area in which the CFSP could add value is crisis management, both through civil and military instruments, as well as through assistance in building the capacity of the Pacific Islands Forum to respond to crises.

We welcome the Communication’s recognition of the vulnerability of the Pacific Islands to natural disasters, and are fully in favour of the proposed expansion of the current regional disaster preparedness programme into the area of disaster risk reduction.7 However, given the extreme vulnerability of these countries to natural hazards,8 and the huge impact of disasters on development, it seems worthwhile emphasising a stronger focus on disaster risk reduction. A reference to the Hyogo Strategy for Action 2005–2015, which is the overarching international framework in this field, would also be helpful.

We would like to emphasise the role that both Australia and New Zealand play in the Pacific region, both bilaterally and as members of the Pacific Islands Forum. Whilst the EU could play a useful role in the development of good governance and institution-building, this must be done in coordination with these two countries. There is a need to strengthen the EU’s dialogue and cooperation with Australia and New Zealand on regional development and security issues. We would like further information on the current partnership between the EU and Australia and New Zealand as it relates to the Pacific Islands. Are there any formal consultation mechanisms, and what is the level of bilateral dialogue between the Member States and Australia and New Zealand?

Finally, in its conclusions the Commission states that “the Pacific region would appear particularly well-suited for joint EU presence and action in the field, for instance through seconding officials from Member States’ services to the Commissions’ regional Delegations in the Pacific.”9 Do you support this proposal?

We request that you take account of the above considerations when considering the Communication at the forthcoming General Affairs and External Relations Council, and that you write to inform us of the outcome of that meeting.

6 July 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Following the Commons Scrutiny Committee’s report on our recently deposited EM on the Commission’s Communication, “EU relations with the Pacific Islands”, I am writing to give you the Government’s views on the passage you highlight from the conclusions of the Communication.

Firstly, it might be helpful to reiterate that the Government supported the idea of a European External Action Service, only as part of the Constitutional Treaty settlement, and as a body to support the proposed European Foreign Minister. Without the provisions of the CT we therefore see no useful role for an EEAS. In addition, and more generally, we would be opposed to any proposals for Commission Delegations to take on responsibility for Pillar II policies.

However, we would not be opposed to seconding UK officials to Commission Delegations per se. Provided that those officials were tasked with the implementation of Pillar I policies, this would be similar to our current practice of sending officials to the Commission’s headquarters in Brussels—a system that has proved successful in promoting a better mutual understanding of policies and working practices.

13 July 2006

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7 P 10, para 2.
8 As recognised in the annex (p 19, para 4).
9 P 12, para 3.
Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 6 July, in which you confirmed that Sub-Committee C had considered the EU’s Communication on a Strategy for the South Pacific and cleared it from scrutiny.

I welcome your Committee’s support for the objective of the EU Communication and your confirmation that it is a timely and well-thought out proposal. Your letter also drew attention to some issues of particular importance to Committee Members and asked that full account be taken of their considerations at the General Affairs and External Relations Council (GAERC) meeting. The GAERC met on Monday 17 July and approved, without discussion, Conclusions agreed at the COREPER Meeting on 12 July. I enclose for your information a copy of the agreed Conclusions (not printed).

As you will see, the Council Conclusions address many of the points raised by your Committee Members, but I shall attempt to summarise these, and other additional points, in the same order as in your letter:

MILLennium Development GOALS (MDGs)

The Council has stressed the importance of supporting the Pacific region to achieve the Millennium Development Goals (MDGs), especially in the fight against poverty. Issues such as governance, stability, regional and economic integration, and environmental vulnerability will need to be addressed. The Council has commented that special attention should be given to Papua New Guinea, the Solomon Islands and Timor Leste, being the three countries with the lowest GDP/capita in the Pacific, and the most disadvantaged and poorest groups of society of the countries in the region.

BARBADOS Programme of Action (BoPA)

The Council did not include a specific reference to the BoPA in its Conclusions but highlighted the unique identity and vulnerability of Small Island States and the importance of respecting the special needs of the smaller nations in the region. In addition, the Mauritius Strategy, the outcome of a 10 year review of BoPA at a special UN international meeting in January 2005, reinforces the BoPA and recognises the need for achievement of the internationally agreed development goals for Small Island Developing States (SIDS), which will require a more focused and substantially increased effort by the SIDS and the international community.

CONFLICT Prevention and Management

The Council agreed that a key area of focus in the Communication was the need for a strengthened political relationship between the EU and the Pacific ACP countries, for example through an enhanced dialogue with the Pacific Islands Forum (PIF). It was also acknowledged that political cooperation will include specific assistance for fragile states and for post-conflict reconstruction, in line with the United Nations, and encouragement for further initiatives, such as electoral monitoring and special missions to help resolve political issues. It was also recognised that the objectives and principles of Community development should highlight the importance of policy coherence and should take account of individual countries own needs, strategies, priorities and assets.

CFSP and Crisis Management

The EU’s limited resources are used in places where they can best contribute to peace and security through engagement in active crises. It would be difficult for the EU to prioritise its limited resources to build crisis management capacity with other organisations eg the Pacific Islands Forum. In the case of disaster response, the Pacific Islands are beyond what the EU is currently considering.

NATURAL Disasters and PACIFIC ISLANDS Vulnerability

The Council did not include a specific reference to the Hyogo Strategy for Action 2005–2015 but noted the vulnerability of the Pacific Islands to natural disasters and the particular challenges of sound sustainable development. The EU is committed to support sustainable development in the Pacific and will help countries to protect their biodiversity, including dealing with climate change and rising sea levels and addressing diminishing fish-stock and coral bleaching. In addition, the Council stressed the need to strengthen Disaster Risk Reduction including through the Pacific Tsunami Early Warning System and the France, Australia and New Zealand (FRANZ) agreement.
COORDINATION WITH AUSTRALIA AND NEW ZEALAND

In underlining the importance of ensuring that policies fully support the MDGs and the principles outlined in the Paris Declaration on Aid Effectiveness of March, 2005, the Council recognised the importance of working closely with all other donors in the region, including multilateral institutions. It was also recognised that an improvement on donor coordination, harmonisation and alignment to recipient country systems was essential and in this context the Council acknowledged that the EU’s existing relations with Australia and New Zealand should be further strengthened. There are no formal consultation mechanisms for the EU to discuss the Pacific Islands with either Australia or New Zealand, although, as you may know, each Member State holding the EU Presidency hosts Foreign Ministerial meetings with both countries at which a wide range of issues are discussed. In addition, the EU, the UK and France are Dialogue Partners with the Pacific Island Forum (PIF) and attend the Post Forum Dialogue meeting immediately after the annual PIF Meeting. Ian McCartney, the Minister for Trade, will lead the UK Delegation at the 2006 Post Forum Dialogue in Tonga at the end of October. I cannot comment on the level of bilateral dialogue between Member States and Australia and New Zealand. In the South Pacific, only the UK and France have a diplomatic presence. The Commission has Delegations in Canberra, Wellington, Suva and Port Moresby, as well as offices in the Solomon Islands, Vanuatu and Samoa.

EU SECONDMENTS

A similar question was posed by the House of Commons Select Committee following their scrutiny of the Pacific Strategy Communication. I responded to this question in my letter to you of 13 July. I hope that this response, and the enclosed Council Conclusions, addresses satisfactorily the concerns of your fellow Committee members.

20 July 2006

EU STRATEGY AGAINST THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (WMD)

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

The European Council adopted the following texts on 15/16 December 2005.

— Six Monthly Progress Report on the implementation of Chapter III of the EU Strategy against the Proliferation of Weapons of Mass Destruction
— Updated List of Priorities for a coherent implementation of the EU WMD Strategy

I am writing to submit the documents to your committee for information in response to the Committee’s request in your letter of 18 November 2005.10 The range of projects and initiatives detailed in the Progress Report demonstrates that implementation of the EU WMD Strategy remains a high priority for the Union. The revised list of priorities take into account experiences gained from two years of implementation and the new challenges that have arisen since then. As a consequence of new factors and realities the EU will have to step up its efforts; to do this it will have to look at the necessary financial and human resources implications.

During the UK Presidency, the Government led this review of both the WMD Strategy progress report and the priorities for its implementation. We were fully involved in ensuring that these priorities were indeed the most urgent and important and worked with the Council Secretariat, Commission and other Member States to guarantee this.

The overarching aim of our EU Presidency was to improve the EU’s contribution to multilateral counter-proliferation work through continued implementation of the EU WMD Strategy. Our general coordination of EU positions in numerous lobbying campaigns and multilateral meetings such as the UNGA First Committee was acknowledged to be strong and helped convey the EU’s policies clearly and positively. We made good progress on existing initiatives: the EU agreed to renew Joint Actions in support of International Atomic Energy Agency and Organisation for the Prevention of Chemical Weapons efforts towards universalisation and full implementation of the Non-Proliferation Treaty and Chemical Weapons Convention. We have also begun two major pieces of work on strengthening the Biological and Toxic Weapons Convention which we expect to be completed early in the Austrian Presidency: a new Joint Action on universalisation of the BTWC and an EU Common Position for the BTWC Review Conference. We have agreed a new Strategy to combat illicit trafficking in SALW to complement the WMD Strategy. We launched a debate on future

financing of WMD work to focus discussion on how best to channel limited EU resources for the period 2007–13.
We feel that this is a good paper, showing good progress and development from the initial EU strategy. It also reflects considerable UK input. I thought that you and your committee would find much of interest in this report. I therefore attach a copy of the report and revised list of priorities for your information (not printed).

17 January 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter dated 17 January 2006 which Sub-Committee C considered at its meeting on 2 February.

We welcome both the six monthly progress report on the EU’s WMD Strategy and the updated list of priorities for its implementation, both of which we found extremely useful. We were happy to note that many of the points made in these two reports coincided with the recommendations contained in our earlier Report on the Strategy: “Preventing Proliferation of Weapons of Mass Destruction: The EU Contribution” (EUC, 13th Report of 2004–2005, HL 96). However, we draw your attention to a few areas of continuing concern.

The document notes (p. 3) that “The objective of the EU to preserve the integrity of the NPT regime remains valid, even more after the NPT Review Conference.” Given the failure of that conference, why are no concrete proposals contained in the document as to how this might be achieved, even though it is described as “an important priority” (p. 29).

The non-proliferation budget decreased in 2005 as compared with 2004 due to the smaller range of priorities. What is the exact amount of the 2006 budget and how will the EU reprioritise if funds are insufficient to cover all those activities noted in Annex B? We ask to be kept updated as to the ongoing discussions on the budget and the impact this will have on the funding of implementation of the Strategy.

The document also notes (p. 24) that “there is a need to step up EU efforts. In order to ensure a focused and coherent action the EU will also have to look into the financial and human resources available to achieve this goal.” Has any consideration been given to increasing the resources available for implementation of the Strategy, despite the reduced range of priorities?

A draft paper covering the possible mission and modalities of a WMD monitoring centre has been prepared by the Office of the Personal Representative, Annelise Giannella, with a view to circulation to Member States before the end of 2005 (p. 22). We request that a copy of this paper be deposited since the absence of the planned centre was of particular concern during the Sub-Committee’s inquiry.

The document notes (p. 23) that staff to staff contacts between the EU and NATO have continued to take place. Has there been any agreement on formal consultation and coordination in relation to non-proliferation?

Finally, we take note that negotiations of a political agreement with Iran containing a WMD clause have been suspended and that Iran has been reported to the Security Council. Do you believe that tighter international controls should be put in place to prevent the spread of facilities for the enrichment of uranium, and what further steps should the EU take in this regard?

3 February 2006

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 3 February 2006 in reply to my submission to you of the six-monthly Progress Report and updated List of Priorities for Implementation of the EU Strategy Against the Proliferation of Weapons of Mass Destruction. I am writing to respond to the six areas you raised as being of continuing concern.

The next formal opportunity to work directly in an NPT context will be the First Preparatory Committee of the new Review cycle. This will probably take place during April 2007 (the dates are not yet fixed). In the interim, it is important that other aspects of the wider nuclear non-proliferation regime receive attention. To name action being taken in just a few areas:

— support for the IAEA—the EU is currently discussing a new Joint Action in support of their work;
— work on breaking the deadlock in the Conference on Disarmament and beginning negotiations on an Fissile Material Cut-off Treaty—discussions at EU level continue in Geneva;
— the Convention for the Physical Protection of Nuclear Material where Member States are taking a lead in seeking early ratification by their own Parliaments in order both to strengthen the regime and to set an example when lobbying other states to do likewise;
The amount spent through CFSP on non-proliferation projects dropped in 2005 from 2004 not because of a smaller range of priorities but because of other demands on the limited CFSP budget, notably the mission to Aceh. As I discussed during my evidence session with Sub-Committee C on 2 February, we were very pleased to have secured a much-needed uplift in the total amount available for CFSP. We very much hope that this additional money will allow more to be spent on non-proliferation projects in 2006. The List of Priorities for Implementation of the EU WMD Strategy lists six projects as Absolute Priorities, with a total cost of 27.9 million euros. At this early stage in the year, I cannot state categorically that all will be funded, given the inherent unpredictability of crises which may require responses funded from CFSP, but we very much hope that there will be sufficient money available to fund at least the majority and are supporting the Austrian Presidency in moving forward this agenda. The European Council approved one of the projects in December under our Presidency, the Political and Security Committee has recently agreed a second, and the EU working groups on Global Disarmament (CODUN) and Non-proliferation (CONOP) will consider three more over the next month. We will, of course, submit these for scrutiny in the normal way.

As your letter rightly highlights, resources are not simply a question of money. Human resources are also critical to the successful implementation of the EU WMD Strategy. We would like to see more such resources available for both the Commission and the Secretariat. We were pleased that the Commission was able to find quickly a successor to Marc Deffrennes, who left his post in January this year after many years of excellent service to the non-proliferation agenda. His successor, Vincent Metten, is well-placed to continue Marc’s work. However, as his appointment is for one year only, we will continue to impress upon the Commission the need to ensure sufficient money and human resources are in place, particularly with the introduction of the Stability Instrument, which should lead to increased Commission funding available for non-proliferation projects.

On the Secretariat side, you refer to Dr Giannella’s proposals for an EU WMD Centre. A draft paper has not yet been circulated to Member States, as hoped for in the List of Priorities, though we have had informal consultations with Dr Giannella. We understand that discussions continue between the Secretariat and Commission and look forward to seeing a joint draft paper. I will ensure that the Committee receives a copy, as I am aware of your concerns. We continue to support the principle of such a centre, but getting the detail right, particularly with the complicated institutional issues involved, remains essential, and we are keen to avoid duplication with other bodies.

One of these bodies is clearly NATO. Staff-to-staff contacts are continuing, though there has not been any formal consultation and co-ordination in relation to non-proliferation. We are aware of the need to improve this, and remain seized of the issue: we secured invitations for representatives of the NATO WMD Centre to attend the Interparliamentary Conference to discuss the results of the Commission- and UK-funded Pilot Project on WMD and Small Arms and Light Weapons in December last year. We are considering how to improve co-ordination further and will keep the Committee informed of any significant developments.

You asked also whether tighter international controls could be put in place to prevent the spread of facilities for the enrichment of uranium. As you know, Art IV of the NPT grants all Parties to the Treaty the inalienable right to develop research, produce and use nuclear energy, provided they are in compliance with Articles I, II and III of the Treaty.

Control over the spread of technology does exist and all EU member states are active participants in the Nuclear Suppliers’ Group which continues to work on strict guidelines both for the sale of goods and the spread of technology. Particularly relevant to your question is the work currently underway in the Nuclear Suppliers’ Group designed to strengthen the guidelines on the transfer of Enrichment (and Reprocessing) technology. There would be little advantage to the EU undertaking a separate process apart from this.

I hope these responses go some way to answering your questions. In many of these areas work continues, and so I have not been able to provide as definitive a set of answers as I would otherwise wish. We will keep the Committee informed of progress in these important areas.

27 February 2006

Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office to the Chairman

The European Council adopted the following text on 12-13 June 2006:

Six Monthly Progress Report on the implementation of Chapter III of the EU Strategy against the Proliferation of Weapons of Mass Destruction
I am writing to submit this document to your committee for information in response to your request of 18 November to Douglas Alexander. This Progress Report is not accompanied by an updated “List of priorities for the implementation of the EU WMD Strategy” because the priorities endorsed by the Council in December 2005 are still valid.

It is worth noting that the Progress Report is shorter than previous versions as it now concentrates on main developments and trends rather than containing an exhaustive repetition of all the items that are mentioned in the Strategy. However, the range of projects and initiatives detailed demonstrates that implementation of the EU WMD Strategy remains a high priority for the Union.

You may note from the Progress Report that a draft note has been circulated to Member States about the agreed EU WMD Centre. I know this topic is of interest to your committee. Discussions are still in their very early stages and we await a more substantive and detailed document on the modalities of such a Centre. I will keep you informed of progress.


The report also calls attention to the EU Common Position for the BTWC Review Conference which was adopted by the Council on 20 March 2006, whose purpose is to strengthen the BTWC and to promote the successful outcome of the Sixth Review Conference.

We feel that this is a good paper, showing useful progress and development over the reporting period. I thought that you and your committee would find much of interest in this report. I enclose a copy (not printed).

11 July 2006

EU STRATEGY FOR AFRICA

Letter from the Chairman to Rt Hon Hilary Benn MP, Secretary of State for International Development, Department for International Development

Thank you for coming to give evidence to Sub-Committee C on the EU’s Strategy for Africa on Tuesday, 29 November 2005.

Following agreement of the Financial Perspective 2007–2013 at the European Council in December 2005 we have a number of specific questions which we wish to raise concerning the financing of the Strategy, which were not capable of being answered during the evidence session. We would be grateful for your detailed answers to these questions which will assist in our current inquiry into the implementation of the Strategy.

The Strategy reflects the commitment given by the EU and its Member States in May 2005 to give as official development assistance 0.56% of EU GNI by 2010, with half of the additional €20 billion going to Africa, and 0.7% of GNI by 2015 in the case of 15 Member States, whilst other Member States will strive to increase their ODA to 0.33% by 2015. We understand that these increases will be provided through both bilateral and multilateral resources. However, it remains unclear what proportion will be provided by Member States directly and what through other international organisations and institutions, including the EU.

Could you therefore provide a table setting out the proportion of Member States’ ODA which will be provided through (a) bilateral assistance; (b) the EU (including the EDF); and (c) other multilateral organisations (such as the World Bank). We appreciate that no precise figures will be available and ask only for broad estimates based on previous spending and agreed future commitments such as the Financial Perspective.

For clarification, could you also provide a full list of the distinct funds upon which the EU is expected to draw in its implementation of the Strategy for Africa, along with (a) the overall amount available in each of those funds for the last year for which figures are available; and (b) the projected amounts available under the next Financial Perspective.

Aside from this statistical information, we ask the following questions arising from the agreement of the Financial Perspective.

The agreed budget envisages an increase in the CFSP budget from 2007, and that over the period 2007–2013 that at least 90% of its overall external assistance should be counted as official development assistance. What impact will this have on implementation of the Strategy for Africa?
Cooperation with the ACP countries is to be allocated €22,682 million in current prices for the period 2008–13 under the existing inter-governmental European Development Fund framework. Is there any commitment to use this increase on the funds available in the 9th EDF to specifically support African countries and projects devised under the Strategy for Africa?

The Strategy seeks to “strengthen the Africa Peace Facility with substantial, long-term, flexible, sustainable funding”. What progress has been made on agreeing a source for this funding bearing in mind the serious implications of this for what the Facility money can ultimately be used to fund?

Finally, how will the various funding strands of the EU architecture be better coordinated so that they are both more streamlined for recipients, and so that all essential initiatives are covered?

12 January 2006

Letter from Rt Hon Hilary Benn MP to the Chairman

Thank you for your letter of 12 January seeking further clarification on the financing of the EU-Africa Strategy.

On your first question, as you suspected, no precise figures are available at this stage for the breakdown between bilateral official development assistance (ODA) and contributions to the various multilateral organisations, where future commitments have yet to be agreed eg the size and shares of the next replenishment of IDA. But I can provide your Committee with a table showing OECD/DAC forecasts of ODA to 2010 and a breakdown of outturn EU ODA for 2004. Based on current spending patterns and the commitments which have been made, such as the replenishment of the EDF, the multilateral share of EU ODA is likely to decline in the future.

In terms of Community funding for Africa, the main source is the European Development Fund (EDF). In 2004, €2,464 million was spent under the EDF, of which €1,912 million in sub-Saharan Africa. Sub-Saharan Africa also receives funds from the EC external actions budget, as does north Africa. In 2004, sub-Saharan Africa received €447 million from the budget and North Africa €558 million.11 The precise allocations to sub-Saharan Africa and North Africa within the 10th EDF and new Financial Perspective will depend on the outcome of resource allocation decisions to be agreed over the coming months, but I would expect both to increase significantly over the level of funding available under the 9th EDF and current Financial Perspective.

An increase in spending on CFSP will have little if any impact on spending in Africa. The 90% ODA target will not necessarily have much impact on the level of assistance going to Africa specifically, but will mean that expenditure will focus on development assistance and should be subject to the new European Consensus on Development, which I think is very positive.

The increase in the size of the 10th EDF over its predecessor will be reflected in an increase in resources available to African countries.

Work will soon begin on EDF resource allocation criteria. I expect this work to maintain the high proportion going to the poorest countries. Especially in sub-Saharan Africa. The EDF will be used to support some of the activities identified in the EU-Africa Strategy; indeed the Austrian Presidency intends to put forward a draft roadmap to implement the Strategy, which will set out areas where the EDF will play a major role.

To date, there has not been further progress on future funding of the Africa Peace Facility. The Austrian presidency has agreed however to try to bring discussions to a conclusion now that the Financial Perspectives have been agreed. I will keep you advised of progress.

On your final point, I agreed that is essential that the EU improves its coordination and access to assistance for developing countries. Work is being carried out on harmonisation and coordination in which the European Commission is playing a leading role.

11 February 2006
OECD-DAC SECRETARIAT SIMULATION OF DAC MEMBERS’ NET ODA VOLUMES IN 2006 AND 2010
IN CONSTANT 2004 US$ MILLION

The date below are not forecasts but Secretariat projections based on public announcements by member countries of the OECD’s Development Assistance Committee (DAC). The key figures from such announcements are shown as “Assumptions”. To calculate net ODA and ODA/GNI ratios requires projections for GNI for 2006 and 2010. For 2006 the projections of real growth for each country are taken from the OECD Economic Outlook No 77 (May 2005) Annex Table 1. For the period 2006–10 real annual GNI growth of 2% is assumed for all countries. White calculations have been discussed at technical level with national authorities the DAC Secretariat is responsible for the methodology and the final published results.

20 September 2005

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<td>0.15</td>
<td>0.33% in 2006 and 0.51% in 2010</td>
<td>5,537</td>
<td>0.33</td>
<td>3,075</td>
<td>9,262</td>
<td>0.51</td>
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<td>Luxembourg</td>
<td>241</td>
<td>0.85</td>
<td>1% in 2009</td>
<td>275</td>
<td>0.91</td>
<td>34</td>
<td>327</td>
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<td>Netherlands</td>
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<td>0.74</td>
<td>Minimum 0.8%</td>
<td>4,501</td>
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<td>5,070</td>
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<td>474</td>
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<td>Spain</td>
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<td>0.5% in 2008 and 0.7% in 2012</td>
<td>3,446</td>
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<td>6,687</td>
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<td>4,025</td>
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<td>0.47% in 2007-08 and 0.7% in 2013</td>
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<td>1,716</td>
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<td>54,132</td>
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<td>11,166</td>
<td>80,633</td>
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<td>0.36% in 2010</td>
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<td>2,460</td>
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<td>Canada</td>
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<td>8% annual increase until 2010</td>
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<td>See footnote 4</td>
<td>9,859</td>
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<td>51</td>
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<td>Norway</td>
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<td>0.87</td>
<td>1% over 2006-09</td>
<td>2,657</td>
<td>1.00</td>
<td>458</td>
<td>2,876</td>
<td>1.00</td>
<td>677</td>
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<tr>
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<td>0.41</td>
<td>See footnote 5</td>
<td>1,596</td>
<td>0.41</td>
<td>51</td>
<td>1,728</td>
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<td>See footnote 6</td>
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<td>97,233</td>
<td>0.30</td>
<td>18,453</td>
<td>127,876</td>
<td>0.36</td>
<td>49,096</td>
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1 ODA/GNI ratios interpolated between 2004 and year target scheduled to be attained.
2 Finland aim to achieve 0.7% by 2010 subject to economic circumstances; Spain aim for a minimum of 0.5% by 2008, with the intention then to aim for 0.7% by 2012; the UK has announced a timetable to reach 0.7% by 2013.
3 Portugal’s ODA in 2004 was above trend due to an exceptional debt relief operation for Angola.
4 Japan intends to increase its ODA volume by $10 billion in aggregate over the next five years (2005–09), compared to its net ODA in 2004. The Secretariat’s estimate assumes $1 billion extra in 2005 and $3 billion extra in 2010.
5 Switzerland’s ODA will increase by 8% in nominal terms from 2005 to 2006. A new goal will be determined for the following years. The Secretariat’s estimate assumes maintenance of 0.41% of GNI in 2006 and 2010.
6 Secretariat estimates based on 2004 ODA plus $5 billion per annum to cover the G8 commitments on increased aid to Africa, Millennium Challenge Account, and initiatives on HIV/AIDS, malaria and humanitarian aid.
7 The Netherlands ODA in 2004 was below its target, as India repaid all its outstanding Dutch aid loans. The Netherlands intends to maintain its target of 0.8% of GNI on average, over the period 2004-07.
EC NET ODA DISBURSEMENTS—BILATERAL AND MULTILATERAL BREAKDOWN, 2004

<table>
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<td>ODA</td>
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<td>Bilateral ODA</td>
<td>26,155</td>
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<td>Multilateral ODA</td>
<td>16,731</td>
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<tr>
<td>of which</td>
<td></td>
</tr>
<tr>
<td>— EC</td>
<td>8,910</td>
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<tr>
<td>— IDA</td>
<td>2,647</td>
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<td>— UN agencies</td>
<td>2,481</td>
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<td>— Regional Development Banks</td>
<td>1,036</td>
</tr>
<tr>
<td>— Other</td>
<td>1,657</td>
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</table>

Source: OECD DAC.

Letter from the Chairman to Rt Hon Hilary Benn MP

Thank you for your letter dated 11 February 2006 which Sub-Committee C considered at its meeting on 16 February.

We are grateful for this information on the financing of the EU’s Strategy for Africa which will be most invaluable to our current inquiry on the implementation of the Strategy.

In the letter you note that the Austrian Presidency intends to put forward a draft roadmap to implement the Strategy. It will be important for us to take this roadmap into consideration as part of our inquiry so we ask that it be made available to us as soon as possible. We would be happy to see an early draft version if the roadmap is not due to be finalised for some time.

16 February 2006

EUROPE IN THE WORLD—GREATER COHERENCE, EFFECTIVENESS AND VISIBILITY (10325/06)

Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office to the Chairman

I attach an Explanatory Memorandum (not printed) covering a Communication from the Commission to the European Council published on 8 June: “Europe in the World—Some Practical Proposals for Greater Coherence, Effectiveness and Visibility”.

The Communication seeks to identify how, within the framework of existing treaties, the EU can make its external policies more coherent and effective. It does not include any legislative proposals. Rather one portion of the proposals refers to internal Commission reforms that the Commission will be implementing; with the remainder to be developed further by the Commission, the Council and the High Representative for CFSP.

I hope that your Committee finds the EM informative.

16 June 2006

Letter from the Chairman to Kim Howells MP

Thank you for your Explanatory Memorandum dated 16 June which Sub-Committee C considered at its meeting on 6 July. The Sub-Committee agreed to hold the document under scrutiny and to conduct a short inquiry into the issues raised. We expect to publish a short report in November in order that our views may be taken into consideration as part of ongoing work in this area.

The explanatory memorandum simply stated: “Although the Government does not agree with all the proposals in the Commission Communication, it welcomes the paper as a helpful contribution to an important workstream. It is right that the EU should be considering ways of making its external policies more coordinated and effective, within the framework of the existing treaties.” We do not believe this explanation to be sufficient, especially given the extremely important nature of this Communication.

We note that the Minister for Europe is due to give evidence to the Sub-Committee on current developments in European foreign policy on 13 July and members will ask questions relating to this document. In order to have a more productive discussion with the Minister we would like to receive, prior to that session:
the Government’s specific views on the various Commission proposals and whether or not you agree with them;
— reasons for your views, in particular relating to those proposals with which you disagree; and
— a copy of the letter and annexe by the High Representative, Javier Solana, which were considered by the European Council in conjunction with the Commission Communication.

6 July 2006

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

Thank you for your letter of 6 July to Kim Howells. As you know, the Commission Communication, “Europe in the World”, was the product of continuing debate about how the EU’s external policies can be made more co-ordinated and coherent, particularly in those areas that fall between pillars. The June European Council tasked the incoming Presidency, the Council, the Secretary-General/High Representative, and the Commission with examining measures contained in the paper, as well as further measures, with a view to improving the EU’s external coherence. While I do not believe that setting out the Government’s detailed views on each of the Commission’s recommendations will be helpful until the debate at EU level has developed further, there are some suggestions that appear to be sensible administrative and practical steps that can be implemented without too much difficulty.

These include the proposals in the paper focussed on improving the internal coherence of the Commission’s contribution to EU external policy. So we would support the proposals to strengthen the role of the External Relations Group of Commissioners; to improve Commission reporting and analytical capacities both in Brussels and its Delegations; and to develop new working methods and procedures within the Commission to allow real time policy decisions in response to evolving events. Such reforms seem sensible and can of course be implemented by the Commission itself without reference to the Member States.

We also support a number of the recommendations in the paper that will require further discussions between the Brussels institutions and the Member States. One example would be the proposal that there should be informal meetings every 6 months between the incoming President of the European Council and Foreign Minister, the President of the Commission and the External Relations Commissioner and the High Representative to undertake an overview of the Union’s external action. Another would be the call for earlier preparation of Summits with key partners to identify key internal policy issues to be raised. Equally the recommendation that there should be an enhanced programme of exchange of personnel with the diplomatic services of the Member States and the staff of the Council Secretariat also seems worthwhile.

However, there are other suggestions within the paper that will require more detailed study, and indeed proposals that will not be taken any further. On double-hatting, the Foreign Secretary stated our position at the Foreign Affairs Committee on 13 June. We would not anticipate an extension of the precise model used in the Former Yugoslav Republic of Macedonia to other countries. However, as the Committee is aware, the EU will need to take decisions later this year about the organisation of its representation in Bosnia and Herzegovina once the Office of the High Representative closes, probably in June 2007. After this point, the EU will have both a key political role in Bosnia, in the form of an EUSR who will take on some of the OHR’s functions, and a substantial amount of leverage in the form of the Stabilisation and Association Process, run by the Commission.

In our view there is a good argument for having the EU speak with one voice on these two closely interlocking issues, so maximising the effectiveness of our presence in BiH. This points to a different form of double hatting, which reflects the greater political content of the job, under which the EUSR (that is to say a politician, or senior national official, appointed by the Council) also heads up the Commission’s presence in country. As with the FYROM case, safeguards would be needed to ensure that lines of accountability were not blurred. Discussions on the way forward in BiH are still at an early stage, but I would welcome the opportunity to discuss our thinking with the Committee.

During the term of the incoming Presidency the Government will continue to discuss all of these issues with the other Member States, the Commission and the Council Secretariat. I shall keep you up to date on any important developments.

As requested, I enclose a copy of the letter and annexe by the High Representative, (not printed) which were considered by the Council with the Commission’s paper.

12 July 2006
**Letter from Rt Hon Geoff Hoon MP to the Chairman**

During my appearance before Sub-Committee “C” on 13 July I promised to write concerning which of the proposals in the Commission’s Communication “Europe in the World” could be implemented without further consideration of the Constitutional Treaty.

The proposals were intended as a contribution to a debate, and indeed in accordance with the June European Council Conclusions, discussions in Brussels have now moved on from them to the Finnish Presidency’s own external relations agenda.

However, to answer Lord Tomlinson’s question directly, the proposals in the Commission Communication are distinct from the provisions envisaged in the Constitutional Treaty, and could be introduced without the Constitutional Treaty.

This is because the Constitutional Treaty sought to define a new institutional dispensation, and set the terms by which the EU MS and institutions would interact with each other. The Commission’s Communication, on the other hand, is predicated on existing treaties and focuses on: (a) improvements to internal Commission working practices in external policy areas; and (b) how the EU can make its external policies more coherent through the Member States and the Brussels institutions coordinating and liaising more.

26 July 2006

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**EUROPEAN AGENCY FOR RECONSTRUCTION (5275/06)**

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

Thank you for the Explanatory Memorandum dated 1 February 2006 which Sub-Committee C considered at its meeting on 16 February. The Sub-Committee agreed to clear the document from scrutiny.

We first considered the European Agency for Reconstruction (EAR) in our Report “EU Aid to the Balkans” (European Union Committee, 20th Report of 2001–2002), published in April 2002, in which we concluded that the EAR was “a promising pointer to the way forward” in the delivery of EU aid (paragraph 220). We are pleased to see that the EAR has proved to be successful and efficient in delivering aid under the CARDS programme and agree that its mandate should be extended for a further two years in order to finish implementation of CARDS.

16 February 2006

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**EUROPEAN DEFENCE AGENCY—BUDGET**

**Letter from Lord Drayson, Minister for Defence Procurement, Ministry of Defence to the Chairman**

I hope the Committee found my evidence session on 19 January useful. I thought it a helpful opportunity to build on the excellent working relationship that is developing between your Committee and the MOD. During the evidence session I agreed to pass on to the committee the key for member states’ contribution to the EDA budget and information concerning all the projects that the EDA is currently engaged.

I have enclosed at annex the key showing member states’ contribution to the EDA’s budget in 2006 (not printed). As you can see the UK contribution for the 2006 calendar year will be £3,778,052 which equates to 17.57% of member states’ contributions. For comparison, in calendar year 2005 the figure was £3,596,803 which equated to 18.07% of member states’ contributions. I would envisage that the UK percentage contribution may be reduced slightly following enlargement. However, I am not able to provide you with more details as contributions are re-calculated at the beginning of each year on the basis of each member state’s gross national income.

In respect of the other information that was requested regarding the EDA’s work programme, we are today seeking additional information from the EDA in order to provide you with the fullest information. We are still awaiting this but as soon as it arrives I will write again.

4 February 2006
Letter from Rt Hon John Reid MP, Secretary of State for Defence, Ministry of Defence to the Chairman

The next European Defence Agency (EDA) Steering Board meeting is due to take place on 7 March. 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 and draft papers that have been circulated by the EDA (not printed). The final papers for this meeting will not be issued by the Agency until some time after 24 February, thus I am not able to provide these to you at present.

The first item on the Agenda will be an administrative point on the auditing arrangements for the EDA’s accounts. Similar to the situation that arose last year, the Agency is once again asking to derogate from its Financial Regulations. Instead of establishing a college of auditors consisting of six auditors from participating member’s states, the EDA is requesting that two auditors are reappointed from the 2005 college and one additional auditor is appointed from a third participating member states. We have received this proposal late in the day and my official’s are currently considering it. I am therefore unable at this stage to tell you whether we will be able to accept this.

The main substantive discussion at the Steering Board will be European Defence Research and Technology, on the basis of the discussion paper at annex (though this paper may be amended following discussion by officials on 24 February).

The paper first puts forward an idea for a particular model (the “ACARE” model), which could be used to derive R&T programmes from capability needs. Although the EDA have suggested a programme of research, in the area of Force Protection, I will wish to see other options considered as well. I will look forward to receiving proposals for a programme of research, but without prejudice at this stage on whether we will decide to become involved in any research in this area with EDA partners. I will also want to ensure that we properly understand how EDA proposes to adopt the ACARE model to ensure that it is suitable for the defence environment.

The other main issue will be an EDA suggestion for a novel way of funding R&T. This has potential attractions but the details of this approach need to be developed. I intend to agree that this idea should be developed for further consideration by the Steering Board in May.

I will support an EDA suggestion of an examination of the technologies that will be important in the future but will insist that this is firmly based on the EU’s emerging Long Term Vision of its capability needs. I intend to ask for a better explanation of the role and possible composition of the European Defence Science and Technology Advisory Board that they have proposed.

21 February 2006

Letter from the Chairman to Rt Hon John Reid MP

Thank you for your letter dated 21 February which Sub-Committee C considered at its meeting on 2 March.

The members of the Sub-Committee would like to express their gratitude for the improved level of communication on matters concerning the European Defence Agency (EDA) which your letter represents. It is extremely helpful to be alerted to issues which are due to be considered by the Steering Board prior to its meetings.

With reference to the proposed derogation by the EDA from the Financial Regulations, we believe that this is a sensible way of proceeding prior to the review of those Regulations which is due to take place at the end of 2006. We agree that a simplified procedure for the appointment of the College of Auditors would be appropriate for the EDA subject to satisfactory proposals being brought forward.

With respect to European Defence Research and Technology, we fully support the idea of increased collaboration between participating Member States. It is important that such collaboration receives the funding necessary to ensure that it is effective and worthwhile. However, collaboration should be built up gradually as particular projects are identified.

We therefore agree with the idea that there should be a pilot project for R&T on the ACARE model which would demonstrate the value of collaboration. It is likely that early collaborative projects would be relatively small-scale in order to encourage participation. However, once suitable projects have been identified, participating Member States should be prepared to give those projects their full support.
We do not believe that the EDA should be provided with a significant R&T budget to spend as it wishes, but collaborative projects need to be properly funded and the EDA should have control over the spending of those funds where that would ensure the most efficient means of delivery. There is, accordingly, some value in the EDA’s proposed “middle-way” for funding of R&T and the EDA should be encouraged to prepare more concrete proposals on this basis.

More generally, we also consider that business spending on R&T should be taken into consideration when making decisions on funding. The significant sums spent by the defence industry cannot be overlooked when dealing with R&T.

We look forward to hearing the outcome of the 7 March Steering Board and hope that our comments will be taken into consideration.

6 March 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 Innsbruck on 7 March 2006. I wrote to you on 21 February with the agenda, draft papers and an outline of the likely points of discussion. I was grateful for the comments that were received from the House of Lords select Committee on the European Union.

I would now like to inform you of the outcome of this meeting and to provide copies of the papers that were considered at this meeting (not printed). These differ slightly from the papers I sent to you before the meeting as they were updated and reissued prior to the Steering Board.

The administrative decision on the derogation from the EDA’s financial regulations, which I informed you of in my previous letter, was not tabled at this meeting. Following official-level consultation with the National Audit Office, I was happy to agree to the EDA’s proposals for a reduced College of Auditors this year. However, due to the short timescales involved, other member states were not in a similar position. The proposal was not therefore placed on the Agenda for agreement at the Steering Board but will instead be dealt with under a written procedure.

One item, which came as a late addition to the Steering Board Agenda, was for agreement to authorise the Head of the Agency to make the Administrative Arrangement between the EDA and the Norwegian MoD effective through the exchange of letters. The Norwegian Administrative Arrangement was agreed at Council on 27 February in accordance with Article 26 of the Joint Action establishing the Agency. I was therefore content for the exchange of letters to take place. This will enable Norway to collaborate with Member States through the Agency to improve European capabilities and will enable the transfer of Norway’s ad hoc R&T projects from the Western European Armaments Organisation to the EDA.

However I also expressed my regrets that a similar outcome has not so far been achieved for Turkey, as there is currently no consensus in Council to agree their Administrative Arrangement. Turkey plays an important part in ESOP, in Bosnia and in Battlegroups, and I believe it can make a major contribution to European capability development. I therefore urged member states to progress this issue as quickly as possible in the hope it can be resolved by the time of the next Defence Ministers’ GAERC in May.

The main substantive discussion at the Steering Board was European Defence Research and Technology, on the basis of a paper produced by the EDA. I have attached the paper that was considered at the meeting. This is a slightly amended version from the paper that I attached to my letter of 21 February.

With respect to the EDA’s “middle way” funding mechanism, I made clear that the UK did not need a new funding mechanism to encourage us to spend on R&T. We already spend more than other partners on defence R&T and would continue to look for opportunities to collaborate with others in the EDA. I said if the new funding mechanism allowed countries that invested less in R&T to do more, then the UK was prepared to consider it. The EDA will now work up detailed proposals for the new funding mechanism. This will be presented at the May Steering Board, at which time Ministers will be able to decide whether or not they wish to use this mechanism to fund R&T projects.

I supported the proposal for the EDA to conduct a pilot exercise to derive from capability needs an R&T programme suitable for joint investment. I did, however, caution that the UK is already well advanced nationally in the suggested capability field of force protection, which may make it difficult for the UK to participate on joint projects within this area. As an alternative, I suggested that logistics may be a better area to focus on in order to work up suitable concrete proposals to allow joint investment. The EDA will now proceed with the pilot exercise to ensure that their proposals are well advanced by the May Steering Board and completed by the end of June.
Finally, I agreed that the Agency should develop, by the May Steering Board, a roadmap for achieving an agreed European R&T strategy and priorities. I also gave my consent for the EDA to commission a study of the impact of Defence R&T on the wider economy. However, I felt that the EDA proposals for an Advisory Board were somewhat underdeveloped. This proposal will therefore be parked for the time being, while the EDA tackles other priority areas that I have detailed above.

15 March 2006

EUROPEAN DEFENCE AGENCY—STEERING BOARD MEETING, MAY 2006

Letter from Rt Hon John Reid MP, Secretary of State for Defence, Ministry of Defence to the Chairman

The next European Defence Agency (EDA) Steering Board meeting is due to take place on 15 May. I would therefore like to inform you of the main items I expect to be discussed at this meeting. I also enclose for your information the draft agenda and draft papers that have been circulated by the EDA (not printed). The final papers for this meeting will be issued by the Agency during the week beginning 8 May, thus I am not able to provide these to you at present.

There is one item for agreement by the Steering Board as an administrative point, without discussion at the meeting. This is for the approval of the Code of Best Practice in the Supply Chain, which is a supplementary element of the Code of Conduct for Defence Procurement. Following positive discussions with UK Industry on the draft EDA proposal I intend to allow this to pass at the Steering Board.

There are two particular issues of note for the defence R&T agenda item. First, the Agency has recommended that the Steering Board approves the EDA’s blue print for a new vehicle for Joint investment in Defence R&T. We received the Agency’s proposal rather late in the day and will need to work through some of the details before we are in a position to formally endorse this approach. I would want to be satisfied that MoD experts were content with the arrangement for this new funding mechanism before giving my approval. Instead, noting that the EDA’s proposals on the Force Protection programme of work will not be available until June, I will propose that participating Member States continue to work with the EDA on both the funding mechanism and the work programme in parallel. When both have been finalised, participating Member States will be able to decide whether there is merit in participating in the Force Protection work using the new joint investment vehicle.

The second issue concerns the data on defence R&T spending and the suggested targets for participating Member States to achieve collectively. I am firmly of the belief that Europe needs to spend more on defence R&T. The EDA recommendation is to set a collective target for defence R&T to reach 3% of total participating Member States defence spending by 2010. This would be a substantial increase on the current figure of less than 1.5%. I will therefore want to use this opportunity to discuss with fellow Ministers whether it is right to set such a challenging target.

The EDA have also suggested setting a collective target for 20% of defence R&T money to be spent collaboratively within Europe, by 2010. I will want to discuss with fellow Ministers whether there is merit in setting such a target in this area. The UK policy will continue to be to collaborate with European and non-European nations on the basis of common military requirements and access to the best scientific knowledge. I will make the point that the only way to increase defence R&T collaboration in Europe will be to firstly ensure that participating Member States have harmonised military requirements. I will also explain our reservations about setting a target that takes no account of our extensive cooperation with states outside the EU.

On the capabilities agenda item I will reiterate that MoD will continue to engage in the various EDA work strands where appropriate. However, I will resist the proposal that the Commission should be involved in the funding of civilian airlift for ESDP operations. The Commission has no competence in ESDP and I do not believe it should not be asked jointly to fund this activity.

The armoured fighting vehicle agenda item will be used to discuss the progress the EDA has made in this area, particularly their 5 proposed feasibility studies. MoD experts are currently considering these proposals in light of the work already taking place with respect to the UK Future Rapid Effects System programme. Before the UK commits to those studies in which we have indicated an interest we will want to ensure that the output from the studies would not duplicate work already under way in the UK, was aligned with UK needs and represented value for money.

The EDA has also proposed that the R&T Directors Steering Board and the National Armaments Directors Steering Board be amalgamated to help make EDA activity more manageable. I will support the moves to reduce the number of Steering Boards but would wish to be assured that there will continue to be proper oversight and management whichever Steering Boards are amalgamated.
Finally, I agreed last May to submit to Parliament the EDA’s report to the Council detailing its activities during the previous and current year (article 4.2a of the Joint Action establishing the Agency). It appears that the EDA will not issue this report until some time during the week on 5 May. I will endeavour to pass this on to you before your meetings during that week so that you may have sight of it before it is noted at the Council on 15 May. However, this may not be possible, due to the short timescales involved. In this event I will enclose the report with the letter I intend to send to you reporting on the outcome of the 15 May Steering Board.

4 May 2006

Letter from the Chairman to Rt Hon Des Browne MP, Secretary of State for Defence, Foreign and Commonwealth Office

I am writing in response to the letter from your predecessor, John Reid, dated 4 May 2006. Sub-Committee C considered the letter at its meeting on 11 May.

We would like to make a number of points concerning the issues raised in the letter.

Code of Best Practice in the Supply Chain—We welcome the draft Code and note that it is voluntary and complementary to any national procedures, with such procedures taking precedence. We consider that the ability of buyers to limit the number of suppliers invited to tender on the basis of optimum economy constitutes a very general opt-out which could be used by buyers to undermine the principles of the Code. Accordingly we ask to be kept informed as to the EDA’s assessment of compliance with the Code by subscribing Member States.

Joint investment in defence R&T—We consider that it is necessary to agree a financing mechanism before any work on the Force Protection Programme can be carried out. We therefore urge you to press for agreement on a blue-print at the 15 May meeting.

Collective targets for defence R&T—We agree that Europe needs to spend more on defence R&T and believe that a target should be set in order to encourage increased spending. However, we also agree that 3% of total defence spending is a challenging target and accept that a more realistic target might need to be set at this stage. We also agree with your comments on the target of 20% of defence R&T to be spent collaboratively at the European level by 2010. It is important to take account of cooperation with states outside the European Union. However, whilst we agree that no such target should be set, we will continue to press for further collaboration on R&T between the participating Member States.

Capabilities—Further to our previous point, it is necessary to ensure that collaboration on defence R&T, where the Member States are closely involved, is not impeded by questions of competence. The Commission has a clear role to play in civilian crisis management and collaborative research on dual-use technology would be beneficial. The letter states that you will resist the proposal that the Commission should be involved in the funding of civilian airlift for ESDP operations, arguing that the Commission has no competence in ESDP. We do not agree with this interpretation of the EDA’s proposal. The EDA’s proposal states that “there might also be interest in a parallel arrangement for assumed access to conventional civil air transport, for both ESDP and disaster relief purposes, jointly funded by the Commission and pMS.” This does not state that the Commission would be co-funding ESDP research, rather that civil air lift is necessary for both ESDP (pMS responsibility) and disaster relief (where the Commission has competence), therefore it would be a suitable case for joint funding. We agree with the EDA’s proposal.

Feasibility studies on Armoured Fighting Vehicles (AFVs)—We agree with the approach taken by the UK Government to these studies and support the reservation given in the letter concerning the potential for duplication of work already being carried out within the UK.

Reduction of Steering Board compositions and meetings—We agree with the proposed reductions and ask to be kept informed on the management of the Steering Boards following their amalgamation.

12 May 2006

Letter from Rt Hon Des Browne MP to the Chairman

You will be aware that the Ministerial Steering Board for the European Defence Agency (EDA) met in Brussels on 15 May. Prior to this meeting John Reid wrote to you with the agenda, draft papers and an outline of the likely points of discussion. I was grateful for the responses I received from Michael Connarty (letter dated 8 May) and Lord Grenfell (letter dated 12 May). I am now writing to inform you of the outcome of this meeting.
I enclose the final versions of the papers that were considered at the 15 May Steering Board (not printed). The main changes were that the items on armoured fighting vehicles and the proposals to reduce the number of Steering Boards were removed from the agenda for the 15 May meeting and so were not considered by Ministers. Similarly the proposal on assured access arrangements for civil airlift on the basis of joint funding by Commission and participating Member States was removed from the “Hampton Court Capabilities paper”, and not therefore considered by Ministers.

I also enclose a commentary that outlines the discussions that took place on 15 May (not printed) and picks up on a number of points raised by Lord Grenfell and Michael Connarty.

31 May 2006

EUROPEAN DEFENCE AGENCY—STEERING BOARD MEETING, OCTOBER 2006

Letter from Rt Hon Des Browne MP, Secretary of State for Defence, Ministry of Defence to the Chairman

The next European Defence Agency (EDA) Steering Board meeting will be held on 3 October. I enclose for your information the draft agenda and draft papers that have been circulated by the EDA (not printed). The final agenda and papers for this meeting will be issued by the Agency later this week but I thought you would like to have sight of these drafts.

On the basis of the current drafts, the Steering Board will be invited to agree as an administrative item (known as an “A” point) to the establishment of a Defence R&T Joint Investment Programme on Force Protection as an Ad-hoc Category A Programme. We have already informed the EDA that we will not be taking part in this programme as it represents a very high degree of duplication with our national programme. Several other Member States wish to participate in the programme and I will, therefore, be willing to accept the recommendation at the Steering Board.

The Steering Board will also be invited to endorse a document setting out a Long Term Vision of the EU’s capability needs. I intend to offer wholehearted support to this work as a useful common baseline for future planning. As I am keen to encourage greater harmonisation between NATO and the EU, I will ask that the document be passed to NATO so that the Alliance may take it into account when doing similar work.

The final agenda item relates to the Agency’s Priorities and Financial Framework for 2007–09. The Agency is required to recommend to the Council at the end of the year a three year financial framework which establishes the ceiling within which annual budgets can be set. This will be an initial Ministerial level discussion, noting that there is another Steering Board meeting on 14 November. The EDA has proposed a framework that would allow an increase in their staffing levels and an increase in the Operational budget from £5 million in 2007 to £10 million in 2009. Overall, this would allow an increase in the Agency’s total budget from £23 million in 2007 to £31 million in 2009. I will argue that, while we broadly support the suggested priorities for the Agency, the work plan needs to be developed with a sense that the Agency exists in an environment of resource constraints and that the resource implications of any new piece of work need to be established, priorities agreed and possible offsets identified. I will propose that a much lower ceiling be set and press for more effective scrutiny and controls over operational budget expenditure.

I will write to you after 3 October to report on the outcome of the Steering Board.

27 September 2006

EUROPEAN INSTRUMENT FOR DEMOCRACY AND HUMAN RIGHTS

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

Thank you for your Explanatory Memorandum dated 13 July 2006 which Sub-Committee C considered at its meeting on 20 July. The Sub-Committee agreed to hold the document under scrutiny awaiting the outcome of further negotiations.

We share many of your concerns with the draft proposal, in particular that the instrument should be “flexible, responsive and creative” in order that it can be implemented quickly and efficiently. We agree that there should be a fast-track procedure to deal with emergency situations and believe that the idea of a contingency reserve should be further considered.
However, we would appreciate your detailed views on the extent to which the use of this instrument, for example through the funding of election monitoring missions, might overlap with the work of other multilateral organisations, in particular the Council of Europe and the OSCE. It is essential that the potential duplication of resources in promoting democracy and human rights is avoided and that efforts are coordinated in order to ensure the widest possible coverage. EU initiatives under this instrument should be global and not simply targeted on the EU’s eastern neighbours where the Council of Europe already plays a prominent role.

25 July 2006

Letter from Gareth Thomas MP to the Chairman

Thank you for your reply dated 25 July 2006 to my Explanatory Memorandum of 13 July. Your letter sought my views regarding two aspects of the proposed instrument: the potential overlap between work under the new instrument and that of other multilateral organisations; and the instrument’s geographical scope.

The draft regulation includes provisions at the planning, approval and evaluation stages which should prevent potential overlaps and duplication of effort. These include Article 3 (Complementarity and Coherence of Community Assistance), which proposes that the Commission “shall promote close co-ordination between its own activities and those of the Member States, both at decision-making level and on the ground. Coordination shall involve regular consultations and frequent exchanges of relevant information during the different phases of the assistance cycle, in particular at field level and shall constitute a key step in the programming processes of the Community and Member States”. The UK will press for full consideration of the activities of other multilateral organisations, such as the Council of Europe and OSCE, during these consultations.

In addition, paragraph 12 of the Commission’s Explanatory Memorandum notes that: “The strategy papers are adopted by the Commission in the form of a Commission decision after obtaining a favourable opinion by a management committee made up of representatives of the Member States and chaired by a Commission representative (Article 16). To ensure adequate complementarity of Community assistance with Member States’ assistance and that of other donors and actors, consultations including with representatives of civil society, shall take place during the programming process.” If at the committee stage it is clear that the Commission has not taken the work of other multilateral organisations into account during the programming process, then we will have the opportunity to raise this with the Commission and seek changes or try to block the proposal.

Article 15 of the draft Regulation requires the Commission to “monitor and review, and regularly to evaluate the effectiveness of its programming under this Regulation. Member States and the European Parliament shall receive the respective reports for their information and discussion”. The same Article also provides for “international organisations or other bodies” to participate in joint evaluations with Member States. The management committee will review the evaluation reports. This will be a further opportunity to assess any potential overlaps and advocate remedial action as necessary.

These provisions should avoid unnecessary duplication. Similar provisions under the existing Regulation have not led to any duplication. The EIDHR has not funded any election observation missions to OSCE countries, although it has very occasionally provided some extra support to OSCE observation missions in particularly difficult situations, like the Ukrainian elections. Work with the Council of Europe is undertaken on the basis of a joint programme in which the costs are shared equally between the two organisations. However, when the Council Working Group discusses the proposal again in September we will seek reassurances from the Commission on the point you raised, and if necessary press for a strengthening of the text.

Your letter also expressed the view that EU initiatives under the new instruments should be global and not simply targeted on the EU’s eastern neighbours. I fully agree. I hope that like me you will be reassured by Article 2 “The assistance measures may be implemented on a global or regional basis, or in the territories of third countries” and the fact that there is no regional earmarking of the budget.

10 August 2006

EUROPEAN NEIGHBOURHOOD POLICY: ACTION PLANS FOR EGYPT AND LEBANON

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

In his letter to you of 20 December 2005, Douglas Alexander undertook to keep the Committees up to date on the developments of the European Neighbourhood Policy (ENP) Action Plans and to submit a further Explanatory Memorandum once the negotiations of the “second-wave” Action Plans had been completed. I am writing to inform you that negotiations for the Lebanon Action Plan were completed in early July, prior

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12 Refers to letter addressed to J Hood, MP, European Scrutiny Committee, House of Commons.
to the publication of the final draft on 7 July and that the Plan is due to be adopted by the Council on 16 October. I now submit an Explanatory Memorandum on the Action Plan for consideration by your Committee.

I should explain that we had intended to submit this Explanatory Memorandum before the summer recess. But the conflict in Lebanon that began on 12 July raised the possibility of significant change to the Action Plan. Now that the hostilities have ended it is clear that the text remains fundamentally sound, and it is unlikely to change significantly before adoption. The Government remains convinced that the Action Plan with Lebanon will contribute to the much needed peace and security in that country. It will also provide opportunities for closer co-operation in key areas of common interest, including political and economic reform, combating terrorism, border security and improving the conditions of the Palestinian refugees. The Government hopes that the Action Plan will reinvigorate Lebanon’s reform programme aimed at further integration into European economic and social structures and work in the interests of stability in the Middle East.

28 September 2006

EUROPEAN SECURITY AND DEFENCE POLICY (ESDP): PRESIDENCY REPORT

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

Thank you for your letter of 19 December 2005 informing me that the UK Presidency ESDP Report had been cleared from scrutiny. You raised questions about a number of issues in the Report.

Firstly, the likelihood of an ESDP mission being established in Kosovo. There is a general understanding amongst EU Member States and the broader international community that the EU should engage more broadly in Kosovo once the status process has been concluded. Areas where the EU could contribute through ESDP include policing and rule of law. However the precise nature of any mission will depend on the outcome of the final status process. We expect NATO to keep a military presence in Kosovo after a final status settlement. We will update you on developments in Kosovo through written ministerial statements following meetings of the General Affairs and External Relations Council and will write to you as details of any likely ESDP involvement in Kosovo become clearer.

Secondly, there are currently no plans to extend the EU Border Assistance Mission on the Moldova/Ukraine border, which was launched on 30 November 2005.

Finally, there are no specific ESDP requirements for space-based capabilities under Headline Goal 2010. Nor are there any plans to build such capabilities. Acquiring capabilities remains a Member State responsibility and therefore the EU will not be acquiring any space-based military capabilities under ESDP. The Requirements Catalogue 05 listed the broad capabilities necessary to meet the EU’s Headline Goal 2010 ambitions. Space-based assets were included as options to meet some of the requirements but are not the only possibilities. Other capabilities (e.g. unmanned aerial vehicles) may represent better value for money. The UK will continue to oppose the procurement of common funded military assets, including those that are space-based, by the EU. It is UK policy that any shortfalls in ESDP capabilities identified should be met in the most cost-effective manner while avoiding duplication of assets with existing NATO capabilities.

As you say in your letter, you can explore these issues further with Lord Drayson on 19 January and with me on 26 January.

You asked for a number of documents that are referred to in the Report to be deposited for scrutiny. As agreed with the Committee Clerk, I will forward the Civilian Capabilities Improvement Action Plan to you shortly. Also as agreed with the Committee Clerk I have passed your request for Battlegroups documents to the Ministry of Defence, which leads on the military capability aspects of ESDP, and they will be in touch separately about these.

12 January 2006

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

The next meeting of the European Council is on 15–16 June 2006. At this meeting Foreign Ministers are expected to agree the Presidency’s Report on the European Security and Defence Policy (ESDP) and the ESDP mandate for the incoming Finnish Presidency. An Explanatory Memorandum is attached (not printed).
We had hoped to deposit the ESDP report before now, given that the European Council is less than two weeks away. Regrettably this was not possible because a draft of the final text was only released on 1 June. We hope that there will be sufficient time for the report to clear scrutiny before it is adopted at the end of next week.

6 June 2006

EUROPEAN UNION SPECIAL REPRESENTATIVE TO BOSNIA AND HERZEGOVINA

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

Thank you for your Explanatory Memorandum dated 14 July 2006 which Sub-Committee C considered at its meeting on 20 July. The Sub-Committee agreed to clear the document from scrutiny.

We agree that the mandate of the Special Representative in Bosnia and Herzegovina should be strengthened in order to promote stability in the country following the closure of the Office of the High Representative on 30 June 2007.

We note from your memorandum (paragraph 14) that there is a possibility that the EUSR will become double-hatted with the Head of the Commission Delegation, and that any such proposal will be the subject of a separate Joint Action. We are currently considering the broader issue of double-hatting as part of our inquiry into the Commission’s recent Communication “Europe in the World”. However, in relation to Bosnia we believe that there are strong grounds for double-hatting given the leading role played by the EU within the country. Accordingly, we hope that you will give your fullest consideration and support to such a proposal, so long as the proper measures for transparency and accountability are put in place.

25 July 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 25 July. I am pleased that the Sub-Committee cleared the document from scrutiny.

With the planned closure of the Office of the High Representative in June 2007 and the increasing importance of Bosnia’s European perspective in maintaining the momentum of reform, we agree that a fully co-ordinated EU presence there is vital. The EU will need to discuss this matter in greater detail in coming months, and we will, of course, endeavour to keep the Scrutiny Committees fully informed and consulted.

17 August 2006

EUROPEAN UNION SPECIAL REPRESENTATIVE TO CENTRAL ASIA

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

I am writing to let your Committee know of plans to amend the mandate of the existing EU Special Representative (EUSR) to Central Asia. The previous EUSR to Central Asia, Jan Kubis, vacated his post in July following his appointment as Foreign Minister of the Slovak Republic. Javier Solana is currently looking for a successor to Jan Kubis. In my view there are strong arguments for agreeing the Council Joint Action needed to appoint Jan Kubis’s successor in September, to enable an early appointment. However, I am writing to highlight this issue as it would require an override of parliamentary scrutiny.

If the Joint Action were not agreed in September then Mr Kubis’s successor would not be able to take up their post until October. This is a crucial period in the EU’s relations with Central Asia. In particular the EU will be considering the future of relations with Uzbekistan following the recent troika visit, possible action on Uzbekistan at the Human Rights Council in September and the renewal of targeted measures in October. It will also be considering Kazakhstan’s bid for the Chairmanship of the OSCE in 2009. The EUSR plays an important role in these considerations, and I believe that early appointment of Mr Kubis’s successor is crucial.

If the Joint Action is adopted in September, this would unfortunately mean that there is not enough time for your Committee to scrutinise the decision. In the light of the need to allow a continued EUSR presence in Central Asia I hope that your Committee will understand that I am reluctant to ask the Council to postpone its decision until after scrutiny has been completed.
I will of course write to update you as soon as Mr Kubis’s successor has been appointed. I would be grateful to know as soon as possible whether you have any objection to this way of proceeding.

3 September 2006

EUROPEAN UNION SPECIAL REPRESENTATIVE TO MOLDOVA

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

On 19 January the European Commission informed Member States of a revised funding amount for the mandate of the EU Special Representative for Moldova. Owing to an error in calculation, the original figure of €0.86 million, outlined in my Explanatory Memorandum (EM) of 19 January 2006, would increase to €1.03 million.

Regrettably, this change could not be factored into the EM before it was submitted to Parliament. As you are aware, strict time limits are faced to allow proper scrutiny of texts before their adoption at the GAERC.

23 January 2006

EUROPEAN UNION SPECIAL REPRESENTATIVE TO THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

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

In my letter to you of 7 October 2005 regarding the proposed Joint Action to appoint Head of Delegation (HOD) Erwan Fouere as EUSR in Macedonia, I informed you that Fouere’s mandate would be renewed in February. Given that we are now almost three months into his mandate as EUSR and in the light of the Committees interest (26896, 12 October) I would like to take this opportunity to update the Committee on how his mandate has been implemented in practice, and to set out our views on extending the EUSR’s mandate which expires on 28 February.

Firstly, I would like to update you on how Mr Fouere has implemented his mandate as EUSR and our views on whether his mandate need to be extended. The Joint Action to appoint HoD Erwan Fouere as EUSR was taken on 17 October (Environment Council) with Fouere taking up his position on 1 November. The short initial mandate of only 4 months was implemented to ensure that the mandate of the EUSR FYROM remained on the same cycle as other EUSR mandate renewals. These arrangements have now only been in place for almost three months, and to date, they are working well. The messages that Mr Fouere has delivered as EUSR in the period leading up to and after the European Council’s decision to grant Macedonia candidate status were both clear and unambiguous. This was an important decision particularly at this time, reaffirming the EU’s continued commitment to enlargement which is a major HMG commitment with widespread parliamentary support. As EUSR, Mr Fouere also played an important role in establishing the new EUPAT arrangements and overseeing the implementation of the Ohrid Framework Agreement.

The Presidency now proposes to extend the arrangements for 12 months. I believe there remains a strong case for maintaining an EUSR-function in Macedonia for the coming year. The country has made encouraging progress towards EU norms since 2001, which was rightly rewarded with EU candidate status at the December European Council. However, security and stability in Macedonia cannot yet be taken for granted. Distrust between the two major ethnic groups remains high and the potential for escalation of disputes despite the progress since 2001 cannot yet be discounted. Other challenges include ensuring the continued implementation of the Ohrid Framework Agreement; overseeing the transition from PROXIMA via EUPAT to Commission-led policing projects; and crucially monitoring the possible effects in Macedonia of the Kosovo Status Process. Fouere will now have a key role in working with the Macedonian government to deliver the conditionality-plus-capability-building on which progress with integration depends. There is a huge amount to do, and his credibility is an essential collective EU asset. The case for continued EUSR coverage therefore remains strong at least until the EU’s remaining stabilisation missions in the country are wound down. The original arguments for EUSR coverage (as set out in my letter to you on 7 October) therefore remain valid, and it is my view that continued external support offering classic mediation between different groups including on security issues, remains important at this stage.

The Council/Commission declaration on the adoption of Mr Fouere’s mandate makes clear that his appointment “is an exceptional measure and is not to be regarded as setting a precedent for the appointment of future special representatives.” Should there be any proposals for similar arrangements elsewhere we would, as noted in my letter of 7 October, “consider the merits of any possible future proposal for such arrangements on its own terms”.

When the mandate for the double-hatted EUSR was agreed in September 2005, the following safeguard was included at UK request in a declaration which accompanied the Joint Action:

Council/Commission statement in relation to the adoption of Joint Action 2005/.../CFSP appointing the European Union Special Representative in the former Yugoslav Republic of Macedonia

The Council and Commission welcome the appointment of Mr ... as the EUSR for FYROM as provided for in Council Joint Action .../2005. They note that, as regards his institutional responsibilities, the appointment is an exceptional measure and is not to be regarded as setting a precedent for the appointment of future EU Special Representatives. The Council and Commission agree that in his capacity as EUSR, Mr. [...] shall carry out the instructions of the Council and the Secretary General/High Representative on CFSP matters.

Any extension of Fouere’s mandate would reaffirm this declaration, thus safeguarding the primacy of the Council in CFSP.

In my view, given that we can ensure the primacy of the Council as set out above, and given the unique Balkans security and stability concerns involved here, a time-limited extension in this instance remains the most effective and practical course of action.

Either I or my officials would be happy to meet you and/or members of the Committee to discuss these arrangements formally or informally should you judge this necessary or helpful.

27 January 2006

FOREIGN MINISTERS’ INFORMAL (GYMNICH) MEETING, SEPTEMBER 2006

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

The EU Foreign Ministers’ Informal meeting (Gymnich) took place in Lappeenranta on 1–2 September 2006. I represented the UK.

The agenda items were as follows:

MIDDLE EAST

Discussions at the Gymnich affirmed the need to move forward the Middle East Peace Process, with Partners exchanging views on how the EU could best contribute. On Lebanon, External Relations Commissioner, Ferrero-Waldner reported on the Stockholm donors’ conference on 31 August, noting that the Commission had pledged €118 million. Member States reaffirmed their commitment to the implementation of UNSCR 1701, including through a substantial European contribution to the UNIFIL force in Southern Lebanon.

IRAN

Ministers discussed Iran in the light of UNSCR 1696 and the report of the International Atomic Energy Agency on 31 August on Iranian non-compliance. Ministers agreed to return to the issue at the General Affairs and External Relations Council on 15 September and in the meantime expressed their support for the role of the High Representative, Javier Solana in Iran.

EU-RUSSIA

Partners exchanged views on the options available to the EU in pursuing a long-term relationship with Russia, including a possible successor agreement to the Partnership and Cooperation Agreement between the EU and Russia which runs until 2007.

8 September 2006
GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, BRUSSELS, FEBRUARY 2006

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) will take place on 27 February in Brussels. My Right Honourable Friend the Foreign Secretary will represent the UK. The agenda items are as follows:

GENERAL AFFAIRS

Preparation of the European Council, 23/24 March. The Presidency will update the Council on preparation for the Spring European Council. This will be on the basis of the traditional annotated agenda setting out the issues, with an indication of likely Conclusions. Substantive discussion will take place at the 20 March GAERC.


EXTERNAL RELATIONS

Schengen visa fees. The Council is expected to have a short discussion on a proposed increase in the fee for a Schengen visa from €35 to €60. Some Member States remain concerned about the proposed increase which we understand reflects the costs of the introduction of the Visa Information System and the collection of biometric data. The issue was also discussed at the JHA Council on 21 February. No decision is expected until April. The UK will not participate in this measure which constitutes a development of the Schengen acquis.

Western Balkans. Enlargement Commissioner Olli Rehn will debrief on his and Commission President Barroso’s recent visit to the region. The Council is expected to agree Conclusions covering the Montenegrin referendum, Kosovo and the need for Serbia to co-operate fully with ICTY to ensure continued EU progress.

Iraq. We expect that discussion will focus on negotiations on the formation of the Iraqi government. The Foreign Secretary will offer an update on the situation on the ground, following his visit to Iraq on 20–21 February.

Reactions in the Muslim world to publications in the European media. We expect the Council to offer support to the efforts of CFSP High Representative Javier Solana and the Presidency to foster dialogue following reactions to the cartoons which have appeared in some European press.

Iran. The Council is expected to discuss the outcome of the 4 February IAEA Board; developments since that Board; handling of the 6 March IAEA Board; and what may happen at the UN Security Council. The Council is expected to agree Conclusions.

MEPP. CFSP High Representative Javier Solana is expected to brief the Council on his visit to the region on 15–17 February. We expect discussion will focus on the situation following January’s Palestinian Legislative Council elections and Hamas’ victory. The Government believes the EU should continue to be guided by the Quartet statement of 30 January.

Children in armed conflict. The Council is expected to discuss how best to ensure greater EU enlargement in tackling the issue of Children in armed conflict (CAAC). The UK has been active in international fora in encouraging progress in this area. We played a key role in the process of negotiating and adopting UNSCR 1612 which establishes the first comprehensive system of monitoring and reporting on the use of children in armed conflict, and in drafting the biennial review and recommendations under EU CAAC guidelines under our EU Presidency last year.

Democratic Republic of Congo. The Council is expected to discuss the EU’s response to a UN request for the provision of an EU deterrent force, which could be deployed if necessary, to support MONUC (the United Nations Mission in the DRC) during the forthcoming election period. The Government believes the EU should consider the request favourably, taking into account expert military advice, contributions Member States can make and the political situation in DRC. Owing to the UK’s heavy operational commitments, any UK contribution would be confined to planning support. The Council is expected to agree Conclusions but not agree a specific option for EU assistance. The Government believes it important that the EU notes the constraints on its ability to provide support to DRC in addition to current and future engagement in Darfur.

22 February 2006
GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, LUXEMBOURG, APRIL 2006

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

The next GAERC will be held in Luxembourg 10–11 April. My Right Honourable Friend the Foreign Secretary will represent the UK on 10 April with my Honourable Friend Gareth Thomas, Parliamentary Under-Secretary of State for International Development, doing so for a half-day discussion on 11 April. The agenda items to be covered are as follows:

FOREIGN MINISTERS

General Affairs

Financial Perspective: IIA (poss)

Foreign Ministers will discuss progress in the negotiation for a new Interinstitutional Agreement on the 2007–2013 Financial Perspective in the light of the 4 April Trilogue with the European Parliament.

External Relations WTO/DDA

The Commission will update the Council on negotiations in the WTO Round following the trilateral meeting between the EU, US and Brazil (31 March–1 April) in Rio. At this stage we do not anticipate Conclusions.

Ukraine

We expect a short discussion of ODIHR’s report on the recent elections. We do not anticipate Conclusions.

Belarus

The Council will discuss Belarus in the light of the 19 March Presidential elections and the decision to impose restrictive measures, agreed in the 7 November and 30 January Conclusions of the GAERC.

MEPP

The Council will focus on latest developments. Conclusions are currently being negotiated.

We expect the EU to continue to call on the new Palestinian Government to implement the three Quartet principles as soon as possible. The Quartet stated on 30 March that, having carefully assessed the programme of the new government approved on 28 March, it noted with concern that the new government had not committed to the principles laid out by the Quartet on 30 January.

Iran

The Council will discuss the EU’s wider relationship with Iran, taking into account the EU’s areas of concern eg the nuclear file, terrorism, Human Rights and political freedoms, and Iran’s opposition to the MEPP. We expect Conclusions to be short and to cover the nuclear file.

Iraq (poss)

We expect the Council to discuss given the continuing debate on government formation in Baghdad. The Foreign Secretary will want to update Partners on his recent joint visit with US Secretary of State Rice on 2–3 April. We do not expect Conclusions.
Sustainable Development

This is on the GAERC agenda as part of work to review the EU’s Sustainable Development Strategy. The UK wants to see a single coherent Strategy that effectively communicates the Community’s internal and external sustainable development objectives. Most interested Council formations are scheduled to give views.

As Member States are providing written views to the Presidency, we do not anticipate lengthy discussion at the Council. Adoption of the revised Strategy is planned for the June European Council.

AOB: UN Reform

This is on the agenda at Sweden’s request. They have played a key role in UN reform issues, and their newly-appointed Foreign Minister, Jan Eliasson, has been President of the General Assembly since the World Summit last September.

The UK supports the work of Eliasson, continues to remain engaged on the breadth of UN reform issues, and is equally keen to maintain the necessary pressure and momentum in New York.

We expect discussion at the Council to be short.

Development Ministers

EU Strategy for the Caribbean

The Council is expected to agree Conclusions on the Commission Communication on the EU-Caribbean partnership for growth, stability and development.

10th EDF: Financial Protocol and Internal Agreement

The Presidency will ask the Commission to update Ministers on progress towards agreeing the implementing documents related to the 10th EDF. This item may also include an update on the EU-Africa strategy.

EU Aid Effectiveness Package

The Council is expected to agree Conclusions on the Commission Communications, which form the EU Aid Effectiveness package. These Communications are:

- Increasing the Impact of EU Aid: Common framework for drafting country strategy papers and joint multi-annual programming
- EU Aid: delivering more, better and faster
- Financing for development aid effectiveness—The challenges of scaling up EU aid 2006–2010

The conclusions will reaffirm and take forward various EU commitments on financing for development, including ODA targets, and measures to promote better aid effectiveness. A common framework for country strategies will be adopted for community aid and on a voluntary basis for Member State aid.

Council Conclusions will also be adopted on policy coherence which will invite the Commission and Member States to prepare a rolling work programme by June 2006 with a view to adoption by a later Council.

Humanitarian Assistance: coordination and delivery assistance:

There will be an exchange of views around coordination and efficient delivery of humanitarian aid, based on a Presidency paper. The discussion will be a follow-up to the GAERC debate in November 2005 by Development Ministers on humanitarian aid and will focus on three questions covering: reform of the international humanitarian system, the links between this and UN reform; and whether the Commission should provide more regular information on humanitarian issues to Council.

AOB: UN System-wide coherence:

This AOB item has been proposed by the Netherlands. It will be an opportunity for Council to exchange views on this topic and discussion is likely to focus around the work of the Secretary General’s Panel on UN System Wide Coherence.

5 April 2006
GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL: EXTRAORDINARY MEETINGS, AUGUST 2006

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

Extraordinary meetings of the General Affairs and External Relations Council (GAERC) took place on 1 and 25 August in Brussels. The Foreign Secretary represented the UK on 1 August. I did so on 25 August.

On 1 August the Council discussed the situation in the Middle East and adopted Conclusions: expressing utmost concern at the Lebanese and Israeli civilian casualties and human suffering, the widespread destruction of civilian infrastructure, and the increased number of internally displaced persons following the escalation of violence.

The Conclusions called on all parties to do everything possible to protect civilian populations and to refrain from action in violation of international humanitarian law.

The Council also called for an immediate cessation of hostilities to be followed by a sustainable cease-fire. In this context, the Council expressed full support for UN efforts to define a political framework for a lasting solution agreed by all parties, as a necessary precondition for deployment of an international force.

The Council deplored the continuing violence in Gaza and the West Bank that has led to an equally distressing humanitarian situation and reiterated its call for the parties to return to the peace process on the basis of the Roadmap.

On 25 August the Council discussed Lebanon, Iran and the Democratic Republic of Congo.

LEBANON

The Council discussed Lebanon in the presence of UN Secretary General Kofi Annan with Partners offering up to 7,000 personnel and a range of air, sea and specialist assets to the deployment of UNIFIL.

The Council adopted Conclusions: expressing full support for the UN Secretary General’s efforts in implementing Resolution 1701; welcoming Partners’ willingness to contribute rapidly to the reinforcement of UNIFIL (United Nations Interim Force in Lebanon); while stressing UNIFIL’s important role in assisting with the deployment of the Lebanese Army to Southern Lebanon.

The Conclusions also reiterated the EU’s determination to bring humanitarian relief to the people of Lebanon.

IRAN

The High Representative briefed the Council on Iran’s response to the E3+3’s offer. This was discussed further at the Informal Gymnich meeting of Foreign Ministers on 1–2 September in Lappenranta, Finland.

DEMOCRATIC REPUBLIC OF CONGO

The Council adopted Conclusions condemning the recent violence and calling on President Kabila and Vice-President Bemba to show restraint in the run-up to the second round of elections.

The Conclusions also underlined the EU’s commitment to ensuring the smooth conduct of the electoral process as shown by the role of the EUFOR RD Congo force, supporting MONUC (United Nations Mission in the Democratic Republic of Congo) in restoring calm in Kinshasa.

4 September 2006

GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, BRUSSELS, SEPTEMBER 2006

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

The next GAERC will be held in Brussels on 15 September. I will represent the UK. The agenda items are as follows:
EXTERNAL RELATIONS

WTO/DDA
The WTO Round remains a possible item for the GAERC. Little progress has been made since the end of July. If the WTO remains on the agenda, we expect Peter Mandelson to brief Partners, including on the meeting of the G20 group of advanced developing countries he attended on 9–10 September in Rio.

Western Balkans
We expect discussion and Conclusions to focus on the Montenegrin and Bosnian elections.

Sudan/Darfur
There is an urgent need to persuade President Bashir to stop his military offensive in Darfur, accept transition to a UN force and allow the African Union forces to remain in Darfur until the UN takes over. Our key objective is to ensure that the EU plays an active, visible and high level role in achieving this. We are expecting Conclusions.

Democratic Republic of Congo (DRC)
The Presidency have yet to decide whether there will be Conclusions on DRC. If Conclusions are adopted, we would expect them to focus on the political tensions between President Kabila and Vice President Bemba and the need for the second round of elections to take place on 29 October.

Middle East Peace Process (MEPP)
The GAERC is likely to continue the Gymnich discussion on the EU’s role in, and contribution to, the MEPP. I will debrief ministers on the Prime Minister’s visit to the region and the Foreign Secretary’s recent visit to Egypt.

On Lebanon we expect discussion to focus on how the EU can support implementation of UNSCR 1701. I will also debrief Partners on the work currently being undertaken by the UK’s Security Sector Reform Scoping team which has visited Beirut, Washington, Paris and Rome in recent weeks.

Iran
High Representative Solana may brief the Council on his meeting with Larijani on 9–10 September. The Council may also be briefed on the E3 + 3 Political Directors preparatory meeting in Berlin on 7 September to discuss next steps at the Security Council. The Presidency are planning Conclusions, mainly on the nuclear issue.

Iraq
There was a meeting of the Preparatory Group of the International Compact for Iraq in Abu Dhabi on 10 September where the Government of Iraq and UN briefed on the scope and proposed content of the Compact. This meeting provided wider political endorsement of the Iraqi vision for the Compact ahead of the discussion at UNGA on 18 September. We want the GAERC to endorse the Compact, ensuring a positive framework for discussions at UNGA.

AOB: EU co-operation with the Black Sea region
Greece have asked for EU co-operation with the Black Sea region to be added to the GAERC agenda as an AOB item.

12 September 2006
Letter from Rt Hon Geoff Hoon MP to the Chairman

The General Affairs and External Relations Council (GAERC) took place on 15 September in Brussels. I represented the UK.

The agenda items were as follows:

WESTERN BALKANS

The Council adopted Conclusions on recent elections in Montenegro and forthcoming elections in Bosnia, expressing its concern about inflammatory rhetoric in Bosnia and emphasising that elections scheduled for 1 October should be conducted in accordance with international standards.

The Council also agreed Conclusions on Serbia, expressing readiness to resume negotiations on a Stabilisation and Association Agreement as soon as full cooperation with ICTY is achieved and urging the Serbian authorities to step up their efforts in implementing the Action Plan.

SUDAN/DARFUR

There was agreement in the Council among Member States, High Representative Solana and Commissioner Michel to increase diplomatic pressure on Khartoum to comply with UNSCR 1706 to accept transition to a UN mission.

The Council adopted Conclusions stressing its concern about the deterioration of the security and humanitarian situation in Darfur and expressing firm support for UNSCR 1706, which expands the mandate of the UN Mission in Sudan (UNMIS) to Darfur. The Conclusions also reiterated the EU’s readiness to support the efforts of the UN and others in planning for the transition from the African Union Mission (AMIS) to the UN and urged the Sudanese Government to give its consent to the deployment of the UN.

DEMOCRATIC REPUBLIC OF CONGO

High Representative Solana briefed on his recent trip to Kinshasa.

The Council adopted Conclusions welcoming the meeting between President Kabila and Vice-president Bemba on 13 September and noting that cooperation between the EU military operation EUFOR RD Congo and MONUC, together with the EU’s reinforced police mission in Kinshasa (EUPOL Kinshasa), had proven instrumental in maintaining stability during the electoral process.

LEBANON

The Council adopted Conclusions stressing its commitment to supporting the implementation of UNSCR 1701 and welcoming the early deployment of the Lebanese army in southern Lebanon and the substantial contribution by EU Member States to the reinforced UNIFIL mission.

The Conclusions called on the Presidency, High Representative Solana and the Commission to produce a report on a possible European contribution on the Lebanese-Syrian border and also underlined the EU’s commitment to assist the Lebanese government in taking forward reforms in a number of areas.

MIDDLE EAST PEACE PROCESS

The Council adopted Conclusions: underlining its commitment towards the resolution of the Israeli-Palestinian conflict; welcoming the announcement by Palestinian President Mahmoud Abbas of an agreement to form a government of national unity; and expressing the hope that its political platform would reflect the Quartet principles.

IRAN

High Representative Solana briefed the Council on his meetings with the Secretary-General of the Iranian Supreme National Security Council, Dr Ali Larijani on 9–10 September.

The Council took note of the report by IAEA Director-General El Baradei of 31 August 2006, which concluded that Iran had not complied with UNSCR 1696 and agreed that it was now appropriate to consider next steps.
Iraq

The Council adopted Conclusions welcoming progress in developing the Iraqi International Compact and reaffirming the EU’s readiness to participate actively in the Compact process.

AOB: EU COOPERATION WITH THE BLACK SEA REGION

The Council took note of the request by Greek Foreign Minister Bakoyannis for the EU to strengthen its relations with the Organisation of the Black Sea Economic Cooperation and to develop a comprehensive policy towards the Black Sea region.

AOB: FIGHT AGAINST TERRORISM—SECRET DETENTION FACILITIES

Ministers reiterated their commitment to combating terrorism in accordance with international humanitarian and legal standards, including the Geneva Convention.

21 September 2006

GLOBAL MONITORING FOR ENVIRONMENT AND SECURITY (GMES) (14443/05)

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


As you know, Defra is the policy lead on GMES, but we have worked closely with FCO and MoD on the security aspects of the initiative. We will continue to work closely as GMES develops.

In terms of the security aspects of GMES, our focus is very much ensuring that these activities remain in the civil arena and I offer more detail on this in my answers to the questions that you raised.

The Commission has assured Defra that GMES is intended as a civilian system for civilian purposes and under civilian control. “A Report from the Panel of Experts on Space and Security” (March 2005), which the Commission cites in its GMES 2005 Communication, COM (2005) 565, provides an idea of the type of GMES functions. These are likely to include, in the area of security, viewing disaster areas, tracking population movements and border movements and observing terrorists. We are monitoring this issue closely and are drawing up a strategy to direct GMES towards those civil functions where it can be most useful.

The European Defence Agency has not played a role in the development of GMES. A body under the second pillar of the European Union will be necessary to co-ordinate GMES’ role on security issues. But the UK does not believe the EDA is appropriate for this because it only has a military remit.

The ESDP and Space report adopted by the Council in November 2004 does not explore the possible uses of GMES for ESDP operations in any detail. The report simply states:

“On the civilian security side, significant steps have been taken by the European Communities to include security objectives in civilian space programmes, as illustrated by the Global Monitoring for Environment and Security (GMES).”

This underlines that GMES is designed for civilian purposes.

As outlined above, GMES is a civil system. As with other civilian technology, the EU may draw on the information it provides for European Security and Defence Policy (ESDP) crisis management operations. We anticipate that in some circumstances, such as disaster relief missions, the images received from GMES for civilian purposes may also be used by the military. MOD may wish to make use of GMES in a similar way. The UK would oppose the system being under military control or being tasked to serve the military directly. No one has proposed this.

The EU Satellite Centre (SatCen) is mandated to support the ESDP decision making process by providing analysis of commercial satellite imagery. It has been used for activities such as post-disaster impact assessments and monitoring illegal crops. Currently there are no links between SatCen and GMES. The UK is not opposed in principle to SatCen using information provided by GMES for ESDP purposes.

At the ESA Ministerial on 5–6 December 2005, the UK subscribed £6.23 million over three years to the ESA GMES Space Component Programme, with contributions from Defra, DTI and the Natural Environment Research Council (NERC). The subscription allows the UK to join the ESA GMES programme and influence its development.

The first phase of the ESA GMES Space Component Programme is funded by ESA Member States, but it is expected that the European Commission will contribute to the funding of subsequent phases. Commission activities on GMES have so far been funded through the EU’s Framework Programme 6 for Research and Technological Development and it is expected that this funding will be continued in Framework Programme 7. However, the level of this funding will be subject to further negotiation of the Financial Perspectives 2007–13. As GMES transitions into the operational domain there will be a need to identify appropriate Commission budgets to fund operational activities in the long-term and the UK is working with the Commission and other EU Member States to develop an appropriate governance structure for GMES.

I will, of course, keep you informed of further developments.

25 January 2006

Letter from the Chairman to Lord Bach

Thank you for your letter dated 25 January 2006 which Sub-Committee C considered at its meeting on 2 February. The Sub-Committee was broadly satisfied with your reassurances concerning the potential military use of GMES and has now agreed to clear the Commission Communication from scrutiny.

However, we would like clarification on one point. You note in your letter that “A body under the second pillar of the European Union will be necessary to coordinate GMES’ role on security issues” but that you do not believe the EDA to be appropriate for this role. Will this proposed body be a new body, or will the role be given to another existing body? If new, why is it necessary to establish a new body purely for this one purpose? What will be the precise remit of this body, and where will it be placed within the current Council or Commission structures?

3 February 2006

Letter from Lord Bach to the Chairman

I am writing in response to your letter of 3 February 2006 requesting further information on which body would be responsible for the coordination of GMES’ role on security issues.

The UK does not believe there is a need for a new Pillar II body specifically to co-ordinate GMES’ role on security issues. The UK thinks that the existing EU Political and Security Committee (PSC) should provide political guidance on this. The PSC is composed of national representatives at the ambassadorial level and deals with all aspects of the Common Foreign and Security Policy including the European Security and Defence Policy.

1 March 2006

INSTRUMENT FOR PRE-ACCESSION ASSISTANCE

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

You may welcome an update on the progress that has been made in the negotiations over the Draft Council Regulation on the Instrument for Pre-Accession Assistance since it was considered by the European Standing Committee in November 2005.

A provisional agreement on the text of the Regulation was reached at Working Group level on 4 April. The Presidency has indicated that the Committee of Permanent Representatives (COREPER) will consider the Regulation on 3 May, along with the other external relations instruments. The UK is content with the text as it stands. However, a number of member states maintain reserves. Notably, France maintains a reserve on the procedure for agreeing the Multi-annual Indicative Financial Framework (MIFF) and a number of other Member States maintain reserves on the Cross-Border Component (CBC) of the instrument. Once these outstanding concerns have been resolved in COREPER, the Regulation will be submitted for Parliamentary scrutiny in the normal way.

The IPA is one of six external relations instruments to be applied during the period 2007–2013. It is designed to simplify the existing complex set of pre-accession assistance programmes and streamline them into a single framework, covering both candidate countries and potential candidate countries. Once the framework
regulation has been agreed, the next step is for the Commission to present the MIFF in the form of a communication to Council and Parliament. This will outline the funds available under IPA by country and by component. It will subsequently be included in the Commission’s Enlargement package, to be presented to the Council and Parliament annually.

21 April 2006

ISRAEL/GAZA CASUALTIES

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

During my appearance before your committee on 13 July I promised to write with information on known casualties in the current military conflict between Israel and militants in the Gaza Strip.

We estimate that since 4 May (when the Israeli government came into office) 221 Palestinians and five Israelis were killed in the conflict in Gaza. These figures include civilians, militants and soldiers. It is extremely difficult to assess with any accuracy how many on the Palestinian side were civilians. They are also higher than indicated in the recent evidence session. This is due to the figure including militants and soldiers. We regret all civilian deaths and hope that both sides can move forward from the recent violence.

I am deeply concerned at recent events. The escalation of this crisis poses a serious threat for Israel, the Occupied Territories and now Lebanon and the wider security of the region. We continue to raise our concerns on a regular basis with both the Israelis and the Palestinians and call upon all parties in the region to make every effort possible to resolve the current situation by peaceful means.

We strongly support the EU’s and UN’s efforts to arrange, as quickly as possible, a ceasefire and the release of the abducted soldiers. We call have continued to call for the release of the kidnapped Israeli soldiers, and end to attacks on Israeli towns and cities. We urge all those countries with influence over Hizbollah and Hamas to play their part.

Israel has every right to act in self-defence. But we have urged the Israeli military to do everything in its power to avoid civilian casualties and conform by international law. All military action should abide by the principle of proportionality. As my Rt hon Friend the Prime Minister said on 18 July “It is important that Israel’s response is proportionate and does its best to minimise civilian casualties, but it would stop now if the soldiers who were kidnapped—wrongly, when Hizbollah crossed the United Nations blue line—were released. It would stop if the rockets stopped coming into Haifa, deliberately to kill innocent civilians.”

25 July 2006

JOINT DECLARATION ON A POLITICAL DIALOGUE BETWEEN THE EU AND MONTENEGRO

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

I am writing to advise you of the Presidency’s proposal for a Joint Declaration on a political dialogue between the EU and Montenegro. This political dialogue will take place through: high-level meetings between Montenegro and the EU, in the Troika format; bilateral and multilateral exchange of information on foreign policy decisions; and contacts at parliamentary level. This dialogue is part of the Stabilisation and Association process and runs in parallel to, but separate from, the Stabilisation and Associations negotiations.

On 21 May 2006, in a referendum assessed as free and fair by the international community, the Republic of Montenegro voted for independence from the State Union of Serbia and Montenegro (SaM). Independence was formally declared on 3 June and the UK recognised Montenegro as an independent sovereign state on 13 June. On 5 June, the National Assembly in Belgrade declared the Republic of Serbia to be the continuing international personality of SaM. This was in accordance with the SaM Constitutional Charter and is a position which the UK accepts.

Serbia has inherited the Joint Declaration on a political dialogue between the EU and SaM, and the Presidency now proposes a new version for Montenegro, albeit based closely on the text of the SaM Declaration. This is very much a procedural process. I enclose for your information a draft copy of the Joint Declaration. We do not expect this draft to change significantly but I shall send you the final version when it emerges.

24 July 2006
LATIN AMERICA: PARTNERSHIP WITH THE EU—COMMISSION PROPOSALS

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

Thank you for your Explanatory Memorandum dated 19 January 2006 which Sub-Committee C considered at its meeting on 2 February. The Sub-Committee agreed to hold the document under scrutiny.

The Explanatory Memorandum is wholly inadequate in its analysis of the policy implications of the document. Merely stating that you welcome the Commission decision to update the Strategy does not enable us to perform satisfactory parliamentary scrutiny of the document nor, in particular, the Government’s position.

We would like to know whether you agree with the Commission’s proposals to build a stronger partnership with Latin America and how you propose to take this issue forward in Council. Although you state in paragraph 11 of the Explanatory Memorandum that you have “commented that it will be important to ensure that the EU’s dialogues with the region are focused and help build a stronger partnership” there is no indication of where this earlier commentary appears. More detailed commentary such as this ought to have been contained with the explanatory memorandum.

We also wish to raise a number of substantive points arising out of the document.

Do you agree with the Commission’s conclusion (p 5) that “Some consideration ought to be given to joint action to improve the political dialogue between the two regions with a view to eventually expanding their world influence”?

How do you believe that the economic policies of the governments of Bolivia and Venezuela will impact on the relationship between the EU and Latin America?

The EU has supported Mercosur since its creation in 1991. However, this Communication makes little reference to relations with Mercosur, other than to treat it as another example of sub-regional organisation. Does the document reflect a changing relationship with Mercosur and, if not, how does that relationship accord with the proposals made in the Communication?

The document states (p 6) that 44.4% of the population live in poverty and that “these inequalities are a contributory factor in undermining democracy and fragmenting societies. They jeopardise growth and economic development.” Will this, and other challenges detailed in the document, be fully taken into account in preparation for the next EU-Latin America Summit in May 2006?

It has always been the case that the European Union has tried to be even-handed in its relations with both SE Asia and Latin America. Does this Commission Communication mark a departure from this?

Finally, we would like some clarification over the status of the document. To what extent will it be necessary for the Council to endorse the Commission’s proposals for increased political dialogue, and what part will the High Representative, Javier Solana, play in carrying out this dialogue?

3 February 2006

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 3 February concerning the Explanatory Memorandum on the Commission Communication on Latin America dated 19 January. I am sorry that Sub-Committee C found the memorandum inadequate. Now that the Commission has formally presented the Communication to the GAERC, I am better placed to comment. I hope that this letter, taken together with the information already sent, will provide you with the clarification that you seek.

Perhaps I should start by explaining the status of this Communication and how we see it being taken forward over the coming weeks.

The Communication is a Commission policy document, which is presented to the European Council and Parliament. We have an opportunity to contribute our views on the Communication at the GAERC on 27 February, when the Council will agree conclusions.

The EU already has a strategic partnership with Latin America. This Communication is essentially an update of the Commission’s last strategy paper on Latin America, produced in 1995. The Commission’s overall objective is twofold: to improve dialogue and to make clear that Latin America matters to Europe at a time when there is a perception in the region that the EU has lost interest. A similar Communication on the Caribbean will follow in the next few months. There is no umbilical link between either Communication and the EU-Latin America Caribbean Summit in Vienna in May 2006 (EU-LAC Summits take place every two
to three years). But it makes sense for the European Union to signal its commitment to the region in the lead-up to the Summit.

Much of what is in the Commission Communication is intended to improve on the existing arrangements; some of it is new. But it is in general intended to give more substance to the EU-LAC relationship. The main points are:

- The EU has formal political dialogues with relatively few countries in the region. It has, for example, no dialogue with Brazil, the emerging regional power. The Commission want to plug that gap and also intend to create sectoral dialogues with Latin American countries on two key areas: on social cohesion (at senior official level) and on the environment (at Ministerial level).

- The Commission considers that current political dialogues (eg the Rio Group) are not working very well: agenda are too long and meetings are too declaratory. They intend to try to focus these meetings to concentrate on a limited number of topics in order to have a genuine dialogue. Javier Solana is involved in existing dialogues and would presumably be involved in any new dialogues.

- The Commission want to promote a more favourable climate for EU trade and investment by working with Latin American countries to identify obstacles to foreign investment and by promoting EU norms and standards.

- The Commission have taken up a European Parliament proposal to create a Euro-Latin America Transatlantic Assembly (similar to those that already exist with ACP and EuroMed countries) with the aim of promoting the democratic process in a region where democratic institutions are weak.

- The Commission are stepping up programmes of higher education co-operation.

- In addition, the Commission hope that a decision will shortly be reached on a Latin America Facility for the European Investment Bank, and that this can be presented at the Vienna EU-LAC Summit.

We believe that the Commission’s proposals to build a stronger partnership with Latin America are positive. We are generally satisfied that in this Communication the Commission has focused on the most important challenges facing the region today and identified the areas in which the EU’s partnership with Latin America can help to make a difference. The UK has commented on the Communication during discussions at the EU-Latin America Working Group and in the form of textual amendments to the draft Council Conclusions. Our comments have focused on the following points:

- we welcome more focused dialogue and agree there is a case for creating new dialogues, especially with major emerging powers like Brazil and on issues of critical importance to the UK, EU and Latin America such as the environment, but we should avoid where possible creating new burdensome structures;

- all development co-operation must be consistent with the principles and commitments contained in the recently agreed Joint Council, Commission and European Parliament Statement on the European Consensus on Development and the European Community Development Policy Statement;

- in line with the European Consensus on Development, and in view of the pronounced levels of inequality across Latin America, poverty eradication in the context of sustainable development [including pursuit of the Millennium Development Goals] must remain the primary and overarching objective of EU development co-operation. Similarly community co-operation with Latin American countries should have poverty eradication as its main objective.

You raised a number of other specific points in your letter:

The economic policies pursued by the government of Venezuela are based on President Chavez’s “Bolivarian revolution and 21st century socialism”. There is high government spending on social projects, principally funded by oil revenue. The price of oil is crucial to the sustainability of this project. The Venezuelan government has recently re-negotiated the contracts it holds with the international energy companies operating in the country. We understand that some negotiations are still going on. It is therefore a little early to judge whether, and if so to what extent, this will effect the participation of European companies in Venezuela.

Venezuela is also reaching out economically and politically within the region. It has started accession negotiations to join Mercosur. It is unclear how long these negotiations will last. The implications of Venezuelan membership of Mercosur on EU-Mercosur relations is a subject that we continue to assess within the EU. It should be noted that the EU also has regular contact with the Andean Community, of which Venezuela is a member.
The direction that the new Bolivian government will take on economic policy is not yet clear. It is likely that President Morales’ stated intention of “nationalising” the country’s hydrocarbons industry will have implications for British, other EU and foreign investors, including Brazilian companies. But it is too early to speculate exactly what form government policies will take. Morales has made clear his wish to maintain good relations with the EU, and his willingness to work with foreign investors as “partners” not “owners” of Bolivia’s natural resources. His strong commitment to tackle poverty and exclusion is welcome, and the EU has made clear its support for Bolivia’s efforts in these areas. It will be important for EU donors to be supportive and open to dialogue with the new Government.

I do not think that the Communication reflects a changing relationship with Mercosur, which is mentioned in several sections of the paper (eg “Creating a climate favourable to trade and investment”, “Contributing together to stability and prosperity” and “Co-operating more effectively and increased mutual understanding”), as well as in the final section on the Summit. As you know, an EU-Mercosur Association Agreement is currently under negotiation. Engaging with Mercosur remains an important aspect of the EU strategy in Latin America.

As stated previously, tackling poverty and inequality represents the most pressing challenge for most Latin American countries. They should remain the focus of Community co-operation, and I can confirm that they are being taken into account in preparations for the forthcoming EU-LAC Summit in Vienna in May.

Finally, I do not see the Commission’s Communication as signalling an alteration in the balance of the EU’s relations with Latin America and SE Asia. For both regions the EU has a committed dialogue. The EU’s partnership with SE Asia contains similar priorities, including regional stability, human rights, trade and investment and development. For both Latin America and SE Asia the essence of our relations rests on effective dialogue, which in the case of Latin America the Commission’s Communication rightly underlines.

I hope that the additional information in this letter addresses your concerns—and that you will be able to complete the scrutiny process in advance of the GAERC on 27 February.

13 February 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter dated 13 February which Sub-Committee C considered at its meeting on 2 March. The Sub-Committee has now agreed to clear the Commission Communication from scrutiny.

We would like to thank you for providing such full information on the policy implications of the Commission Communication in your letter, but stress that in future such information should be contained within Explanatory Memoranda.

7 March 2006

LESSONS IDENTIFIED FROM BATTLEGROUPS INITIAL OPERATIONAL CAPABILITY

Letter from Rt Hon John Reid MP, Secretary of State, Ministry of Defence to the Chairman

You wrote to Douglas Alexander, Minister for Europe, on 19 December 200516 requesting a number of documents referred to in the UK Presidency ESDP Report. The request for the documents related to Battlegroups has been referred to me as the Ministry of Defence leads on the military capability aspects of ESDP.

Please find attached the paper on “Lessons Identified from Battlegroups Initial Operational Capability”. This summarises and explains the initial lessons identified following the period, 1 Jan–30 Jun 05, in which the UK Battlegroup was on standby.

The updated Battlegroups roadmap which you requested has not yet been completed by the EU Military Staff. As soon as Member States have agreed it, I will forward you an unclassified summary.

27 January 2006

Annex A

UK EU BATTLEGROUP IOC COMMITMENT JANUARY–JUNE 2005: LESSONS IDENTIFIED

1. The Interim Operating Capability (IOC) for the EU Battlegroup Concept was initiated on 1 Jan 05. The UK provided a BG for the period 1 January–30 June 2005, alongside France. The BG was not deployed, but

as this was the first commitment to a new EU concept, the UK initiated an internal review which identified a number of lessons, both external and internal. These lessons are offered to all MS as part of the ongoing process to refine and develop the BG concept and to assist with their own preparations for standby.

2. The UK commitment involved the Department for International Organisations (DPIO–MOD Policy), the Directorate of Joint Commitments (DJC–MOD Commitments), and the Permanent Joint Headquarters (PJHQ) which supported and prepared to activate the potential OHQ. Options for the FHQ existed from differing formations\(^{17}\) with force elements provided from within the respective formation selected.

### WIDER LESSONS

3. **Common Understanding.** Because the BG commitment was a new concept and a new commitment, wider understanding of its rationale and implications was not as good as it might have been both within the UK Armed Forces as a whole and within the MOD. A programme is required to foster better understanding, dealing with its raison d’être, the range of tasks involved (TEU Article 17) and a broader understanding of EU strategic and operational planning processes. This programme needs to deal with both the specialist requirements of strategic/operational planners and the broader needs of the Armed Forces in general and might include wider participation in seminars, workshops and similar activities as well as ensuring that knowledge of the BG concept is promulgated in teaching and educational establishments.

4. **Lesson.** A broader understanding of the BG concept is required across UK Defence. A programme is required to ensure this occurs as appropriate at all levels.

### EU LEVEL

5. **Communication.** Links between EUMS and UK proved adequate, although the efficacy of the CIS link between EU and potential OHQ was not tested under busy conditions. It became apparent during the standby period however that UK and EUMS Liaison Officers (LOs) would play a vital part in the early stages of a potential deployment. Some work is required to ensure that plans for a liaison officer matrix and its manning are developed for activation during a potential deployment.

6. **Lesson:** Liaison Officers will play a vital part in facilitating the deployment of a BG. It is recommended that the ECAP HQ PG examines the requirement for LOs and makes recommendations.

7. **EU BG Preparation—“Document Pack.”** Although all MS have access to the relevant documents underpinning the BG concept, there would be merit in formalising a “document pack” to ensure a common understanding of the task, continuity between BGs on handover of standby and to lessen the opportunity for misunderstanding and error. This pack might include the key BG documents, notes on EU crisis management, the latest iteration of the Watchlist, and any other up to date papers to set the scene for the standby period, such as agreed recent EU CFSP statements. The pack would be a living compilation, which in due course might include lessons identified from previous BG standbys/deployments. It is envisaged that the updated pack would be issued by the EUMS to each MS (not direct to BGs) before it assumed its standby responsibilities.

8. **Lesson:** The possibility of the EUMS issuing a BG pack to MS before each BG commitment should be explored, with a view to formalising procedures and ensuring a common and up to date understanding of tasks before the assumption of a BG commitment.

### MOD LEVEL

9. **Sister BG MODs.** During this first IOC period there were 2 EU BGs on standby. During Full Operating Capability (FOC) this will become routine. The BGs are designed to be stand-alone forces. However this should not preclude the standby BG MODs from regular liaison with each other to exchange ideas and familiarise each other with like capabilities from other MS. Ways of improving liaison should be explored with a view particularly to improving a common understanding of the tasks and feeding off the experience of others.

10. **Lesson:** Liaison between the MODs of nations with BGs on standby should be established as a matter of routine so as to share experience and foster a common understanding of likely tasks.

11. **Assuming a BG standby commitment requires the establishing of clear points of contact within the UK MOD Policy and Commitments areas.** Although this occurred, the POCs were not promulgated to all interested parties, with the result that advice was not always sought from the appropriate quarter. For future

\(^{17}\)Formation HQ included HQ 16 Air Assault Bde (Airborne Task Force) and HQ 3 Cdo Bde (Lead Commando) with the Joint Force HQ also available to command the Spearhead Lead Element (SLE).
BG commitments, a clear MOD POC should be established and promulgated to PJHQ, Fleet, Strike and Land Commands.

12. **Lesson:** Assumption of a BG commitment requires the establishment and promulgation of an MOD expert POC.

13. Although sufficient Strategic Lift was identified for the BG throughout the period of IOC, maintaining this in the face of other commitments remained a challenge. This issue was particularly relevant during the deployment of the UK Ready Battalion to Kosovo in March 2005. This short notice movement requirement impacted heavily on aircraft availability within the charter market. Over this period, deployment of the EU assigned BG would have required careful prioritisation of resources.

14. **Lesson:** Identifying sufficient strategic lift to sustain a BG throughout its duty period is one of the most challenging aspects of such a commitment. This is likely to be the case for all MS and is an aspect that requires particular attention, especially during periods of concurrent activity.

**OHQ and Force Level**

15. During the UK standby period it became apparent that the OHQ required to oversee a BG deployment could be smaller than that required for other larger deployments. The current “one size fits all” approach to the design of an EU OHQ therefore requires examination. Some redesigning is necessary to ensure that relevant augmentees are identified and that any smaller number meets the notice requirements of rapid reaction, particularly concerning the timely and effective integration of the MN and EU elements. It is suggested that the EU HQ Project Group examines this issue and makes recommendations.

16. **Lesson:** The generic OHQ requirements of an EU BG deployment require re-examination. The EU OHQ could potentially be smaller, but it must also meet the needs of rapid reaction. The EU OHQ PG should examine this issue and make recommendations.

17. PJHQ retains responsibility for the adequate preparation of UK forces for potential EU BG deployments and provides the key nucleus for the potential OHQ. In this instance, PJHQ was therefore responsible (as it is for all UK force deployments) for ensuring that all relevant measures were in place to facilitate a successful standby. Key elements were:

   (a) Direct liaison was established between force elements and the coordinating authority over force elements vested in the potential Force Comd, from as early as the 6-month point (including an exchange of POC details).

   (b) Force Generation exercises and rehearsals were conducted.

   (c) Logistic planning was conducted, including the identification of sustainment stocks.

   (d) Force element planning was conducted (where detailed numbers for personnel, weapons, vehicles, etc were determined).

   (e) Assembly / deployment exercises and rehearsals were conducted (including all procedures up to departure from APOD).

   (f) Pre-emptive pre-deployment training was conducted (by means of a generic package, tailored to “more likely” op destinations—tailoring informed by Watchlist). Training consisted of staff and HQ training CPXs (against scenarios drawn from Watchlist docs) as well as FTX-type activity as well as familiarisation training between the staffs at all levels (PJHQ, FHQ, BGHQ).

   (g) Appropriate precautionary medical, dental, moral and welfare preparations were conducted.

18. **Lesson:** The preparation requirements for a BG standby period are similar to those for any other short-notice standby, and cannot be conducted by the BG in isolation. The potential OHQ needs to be involved at an early stage to ensure that appropriate preparations for BG standby have been made to meet the requirements of rapid reaction.

19. **Lesson:** Prior identification and rehearsal of the OHQ, the Op Comd and his Op Staff is likely to have a significant effect on early performance.

20. The Force was satisfied with the range of BG-related material received, although the adoption of a more formal mechanism would have saved time and engendered confidence that all relevant issues had been addressed (para 7 and lesson 8 refers).

18 Such recommendations should be without prejudice to the need for the Op Comd to retain the ability to tailor the structure of the OHQ according to the scale and complexity of the operation.
21. Gaps in understanding referred to in para 3 (lesson at para 4) were most apparent at Force level and below where the novel aspects of BG standby and differences between this and other standby commitments were initially not well understood. Particular efforts to foster a broader understanding are required at this level.

Letter from the Chairman to Rt Hon John Reid MP
Thank you for your letter dated 27 January 2006 providing the document “Lessons Identified from Battlegroups Initial Operational Capability”. Sub-Committee C considered this letter at its meeting on 9 February.

We look forward to receiving the updated Battlegroups roadmap. The continued development of the Battlegroups remains an issue in which we take a close interest.

We noted the absence of any mention of a standardised testing process for the operational readiness of a Battlegroup. Could you provide more information on how a Battlegroup, whether from the UK or another Member State, is considered ready for operational activity on a mission.

Letter from Rt Hon John Reid MP to the Chairman
Thank you for your letter dated 14 February 2006 regarding the EU Battlegroups Roadmap and the testing procedures for Battlegroups.

The EU Battlegroups Roadmap, which is agreed in committee by all member states, is published six-monthly, usually in January and July and sets the work schedule to take forward the Concept for the period following. January’s Roadmap this year was slightly delayed in order to take into account the outcome of discussions which were held in Brussels on 31 January 2006. The new Roadmap was agreed and distributed on 13 February 2006 and an unclassified summary is enclosed at annex.

The Battlegroups Concept has been instrumental in persuading some nations to shoulder greater responsibilities under the ESDP and to transform their military structures and capabilities in the process. Of the four main elements of existing work you have already received from me a summary of the Lessons identified paper from the UK Battlegroup standby period, the basis of which is being used for the EU Military Committee lessons identified work from standby period 1. It is important that we continue the lessons identified exercise so that we are able to improve with experience. For this reason work will begin to examine the experience of the Italian Battlegroup in standby period 2.

The work on Battlegroups reserves is designed to understand the principles and procedures that should be adopted if, after a Battlegroup has been deployed, there is a need for reinforcement. The Government view is that each Battlegroup should arrange suitable reserves for itself before it begins its standby duty. This should be carried out through national or bilateral agreements between the members of the Battlegroup.

The Government believes it is essential that there is good alignment and cooperation with NATO. Indeed the Battlegroups concept might be a good stepping stone for some nations to be involved in the NATO Response Force. Cooperation with the UN is also key to ensure that there is good understanding of how, and under which circumstances a Battlegroup could be deployed. Equally the Government believes that work to understand how the Battlegroups concept could fit within civil–military coordination needs to be explored, for example to understand how Battlegroups will interface with civilian security sector reform. Much of the “Possible new work” outlined in the Roadmap stems from initiatives made under the UK Presidency and hence, the government remains hugely supportive of this programme.

You raised a question about a “standardised testing process for the operational readiness of a Battlegroup”. Work on this issue is still evolving. The UK has been involved from the beginning with the construction of the EU Battlegroups Standards and Criteria and many of its principles stem from our ideas and processes which are compliant with NATO. We are now starting to work on the detail but until this has been agreed member states are responsible for their own certification but may, of course, call upon the European Defence Agency or the EU Military Staff to assist them.

24 February 2006

Annex A

Unclassified Summary of the EUMC Roadmap BG Concept
1. The Roadmap summarises three different strands of work as follows.
2. Existing work. The following issues from on the former roadmap remain in progress:
(a) EU Military Committee Lessons Identified from the 1st standby period.
(b) Battlegroup Reserves.
(c) Co-operation with NATO (NATO Response Force) and UN.
(d) Civ-Mil co-ordination.

3. New work. The following items need to be addressed in 2006:
(a) Experience on preparation and standby period 2005–02. By April 2006, Italy might share its experience on the preparation of the Italian BG. This issue should be taken forward in conjunction with the UK Lessons Identified paper.
(b) Battlegroup Co-ordination Conference (BGCC) 1/06. The 3rd BGCC is planned for 3 May 2006. A key issue is likely to be the identification and confirmation of BGs for 2009.

4. Possible additional new work. The following further areas of work might be considered during the next semester:
(a) Editorial review of the BG Concept. The aim of the editorial review is to compile one comprehensive document based on the BG Concept and its annexes. To do so, some text could be adapted, but the BG Concept as such will not change.
(b) Assessing the need for and feasibility of producing media products. The aim of this assessment would be to identify possible media products to further support the implementation and common understanding of the BG Concept.
(c) Full Operating Concept (FOC) event. In relation to the previous area of work, the desire for having a FOC event at the end of 2006/beginning of 2007 should be assessed. Main players in this area of work are the future Finnish and German Presidency. However, if assessed useful, work has to start early 2006.
(d) Further consideration. Discussions during the Czech Battlegroups Seminar 3–4 November 2005 and the UK Battlegroups Workshop 8–9 December 2005 led to the need for further consideration of Crisis Management Procedures and Advance Military-Strategic Planning.

LIBERIA SANCTIONS

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

I am writing to let your Committee know of plans to adopt a Council Regulation on amending the sanctions measures relating to Liberia. These implements the Council Common Position, on which the FCO deposited an EM on 29 June and that you cleared in the Chairman’s sift on 4 July. At the time of deposit we anticipated that the Regulation itself would fall under the category of non-depositable documents, however we now understand that this is not the case. I therefore attach a new EM (not printed) on the Regulation that implements the Council Common Position which you have already scrutinised. Since the original EM was written with implementation of the Common Position in mind, you can be assured that there is no difference in substance or policy in the new document.

Both the Common Position and Regulation are due to be adopted at the Council of Justice and Home Affairs (JHA) on 24 July. If the Regulation is adopted at that time, this will unfortunately mean that there is insufficient time for your Committee to scrutinise the document. In light of the need to adopt a regulation to implement the UN’s measures, and given that you have already cleared the substance of the proposals during scrutiny of the Common Position, I hope the Committee will understand if I decide to support the Regulation before scrutiny has been completed.

20 July 2006

MULTIYEAR FINANCIAL FRAMEWORK 2008–2013: ACP COUNTRIES (7625/06)

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

Thank you for your Explanatory Memorandum dated 7 April which Sub-Committee C considered at its meeting on 27 April. The Sub-Committee cleared the document from scrutiny.

We would like to thank you for the particularly well-written and clear explanation of the proposal to be found in the Explanatory Memorandum which proved very helpful in our scrutiny of the document.
We wish to receive, in due course, further information on the decisions taken by the Commission in relation to the allocations to particular ACP countries and regions. In particular, how will the €300 million allocated to the African Peace Facility be allocated? Will that amount be specifically set aside from one of the three main funding areas (to be spent as and when required), or will it be taken in separate amounts from allocations to the relevant countries and regions (so that only a specified amount from the APF could be spent in each)? As we are currently conducting an inquiry into the EU’s Strategy for Africa, detailed answers to these questions, if available, would be extremely helpful.

Finally, we note that under the 9th EDF there was a conditional €1 billion euros, partly used to finance the Water Facility. Will there be a similar sum set aside under the 10th EDF?

28 April 2006

Letter from Gareth Thomas MP to the Chairman

Thank you for your letter of 28 April 2006 responding to my Explanatory Memorandum dated 7 April and informing me that the Committee met on 27 April and cleared the document from scrutiny. You asked for further information in due course about three issues: the allocations between countries; the African Peace Facility; and a conditional funding tranche. I would also like to take this opportunity to update you on negotiations of the Multiannual Financial Framework (MAFF) and the other EDF 10 implementing documents. You will be aware that the House of Commons European Scrutiny Committee also cleared the document in April and asked to be kept informed about managerial and budgetisation issues in particular. This letter also covers those issues for your information.

The Commission has yet to finalise the allocations to individual ACP countries and regions. They presented the EDF Committee on 17 May with provisional allocations, but stressed that this information is sensitive and should not be shared with the partner countries. The indications are however that Africa will receive a slightly higher share of the funds compared to EDF 9 (90.6%) while the Caribbean and the Pacific regions will receive slightly lower shares. On the basis of this information around 90% of the baseline allocation funds are likely to go to Low-income Countries.

The €300 million (£208.2 million) earmarked for the African Peace Facility will be allocated using the same procedure as under EDF 9. The allocation process is triggered by a request to the European Commission from the African Union or the relevant sub-regional organisation for support for a particular operation. Once the Commission is satisfied with the proposal, they seek political approval to support the mission from the EU Council of Ministers—usually via the Political and Security Committee. Assuming approval is granted, the EDF Committee is asked to approve a financing proposal. The €300 million is included under the heading of Intra-ACP cooperation. An additional €300 million has been set aside in a Reserve under that heading in case the Council decides during the review of the Peace Facility envisaged for 2010 to provide a further €300 million for 2011–2013 from the 10th EDF.

As you rightly noted, the 9th EDF included a conditional €1 billion, half of which is being used to fund the Water Facility. Member States made the release of the funds to the Commission conditional on improved performance of the EDF. There is no similar “conditional” funding under the 10th EDF. However, Member States are able to increase their contributions to the 10th EDF on an individual and voluntary basis, thereby providing a continuing incentive to the Commission to improve the EDF’s performance.

On 17 May the Committee of Ambassadors (COREPER) agreed the MAFF. The overall amount of direct financial assistance for the ACP countries will be €23,966 million (£16,637.2 million). The Overseas Countries and Territories (OCTs) will be allocated €316 million (£219.4 million) of which €286 million (£198.5 million) in grants. An additional €430 million (£298.5 million) will be for administrative costs. This gives a total of €24,712 million (£1,041.3 million) will be for administrative costs. This breaks down between the €22,682 million (£1,874.3 million) agreed by the December 2005 European Council and €2,030 million (£1,409.2 million) in own resources for loans to be provided by the European Investment Bank (EIB) of which €2,000 million is for ACP countries and €30 million for the OCTs.

The €21,966 million (£15,248.8 million) grant funding available to ACP countries (£22,682 million, minus OCT and administrative costs) will be divided as follows:

- €17,766 million (£12,333.2 million) is for national and regional indicative programmes (80.9%);
- €2,700 million (£1,874.3 million) is for intra-ACP and inter-regional programmes (12.3%);
- €1,500 million (£1,041.3 million) will finance the Cotonou Investment Facility, managed by the EIB (6.8%).
Compared to the Commission’s original proposal, there is a slight increase in the share going to the intra-ACP and inter-regional envelope at the expense of national and regional programmes. This is partly because of the funding for the Africa Peace Facility as set out above.

The UK and other Member States removed any reference to possible future budgetisation. Managerial issues remain unfinalised, reflecting the continuing negotiations on the Development Instrument with the European Parliament. The MAFF was agreed by Council as an “A” point shortly before the ACP-EC Council of Ministers meeting in Papua New Guinea on 1–2 June where it was agreed by the ACP countries.

During the latter stages of the MAFF negotiations, the Commission requested that Member States agree to decommit any unspent funds from the 9th EDF and transfer them to the Reserve of the 10th EDF. The Government supports this idea providing that adequate safeguards are in place for the use of the money including agreement by unanimity of their use. In the event, the proposal was not approved. Instead, COREPER agreed a Statement noting that “Based on the performance review in 2010 and a proposal by the Commission, the Council of the European Union will consider a decision by unanimity on the transfer of any funds de-committed from ACP projects funded out of the 9th and previous EDFs into the reserves of the 10th EDF.” This does not affect the sunset clause, and all funds from the 9th EDF still need to be committed by the end of 2007. Underspends may occur on some projects and so the Government believes that it is useful to retain the possible option of rolling over these funds to the 10th EDF. At the Council meeting in Papua New Guinea, the ACP highlighted costs related to the implementation of Economic Partnership Agreements and structural adjustment as priority areas for any rolled over funds.

On 28 June COREPER agreed the Internal Agreement on Financing following several months of negotiation. It is set to be formally signed at the 17 July GAERC. The document sets out the operational modalities for MAFF. The Government secured a number of changes to the original Commission text to reflect development best practice. Discussions on the Financial Regulation and the Implementation Regulation linked to the Internal Agreement on financing have not started. I attach a copy of the texts agreed by COREPER on 17 May and 28 June. Relevant documents will be submitted to Parliament later in the year for ratification.

6 July 2006

RESTRICTIVE MEASURES AGAINST DEMOCRATIC REPUBLIC OF CONGO (12256/06)

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

I am writing to let your Committee know of plans to amend EU Common Position 2005/440/CFSP concerning restrictive measures (sanctions) against the Democratic Republic of Congo (DRC). This amendment would take account of recent United Nations Security Council Resolutions (UNSCRs) which allow the imposition of targeted sanctions on political and military leaders of armed groups operating in the DRC who obstruct the demobilisation of those groups, and on individuals responsible for the abuse and recruitment of children in situations of armed conflict in the DRC.

The UK already implements the relevant UNSCRs by way of national legislation, but some other EU member states rely on EU Common Positions and Regulations for their implementation. It is important for the effectiveness of the targeted sanctions (particularly the asset freeze) that all states have the necessary legislation in place before the UN designates the individuals to be targeted. Since there is a chance that the UN may designate individuals for targeted sanctions pursuant to the relevant UNSCRs in the coming month, it is desirable that the EU agree the amendment to the Common Position no later than the meeting of the GAERC on 14 September 2006.

This will unfortunately mean that there is not enough time for your Committee to scrutinise the amendment to the Common Position. In light of the need to support effective EU implementation of UN sanctions on the DRC, I hope the Committee will understand if I decide to agree to the amendment before scrutiny has been completed.

4 September 2006
RESTRICTIVE MEASURES AGAINST OFFICIALS OF BELARUS (8015/06)

Letter from Rt Hon Douglas Alexander 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 10 April 2005. At this meeting Foreign Ministers are expected to agree a Common Position setting out restrictive measures against certain officials of Belarus following the Presidential election on 19 March. An Explanatory Memorandum is attached (not printed).

Unfortunately it has not been possible before now to submit this draft Common Position for scrutiny. Owing to the Easter recess, this would have required depositing the text by 23 March and the draft Common Position was not ready by then. It was also unclear at that point precisely what restrictive measures EU Member States would agree.

We are keen to send a strong message to the Belarus Government as quickly as possible and are reluctant to hold up agreement at the Council. I will therefore have to agree to this Common Position at the GAERC before scrutiny can be completed. I hope you will understand our reasons.

7 April 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter and Explanatory Memorandum dated 7 April 2006. The documents were considered by Sub-Committee C by written procedure during the week commencing 17 April.

We accept the need for an override in this instance due to the need to impose further restrictive measures as soon as possible following the Belarusian elections in March.

We also note the fact that this override occurred during the Parliamentary recess. However, the Explanatory Memorandum was sent on Friday 7 April and the GAERC took place on Monday 10 April therefore it would have been impossible for us to conduct scrutiny of this item even had Parliament being sitting. We accordingly take this opportunity to emphasise that the FCO should continue to make strenuous efforts to ensure that during Parliamentary sittings Explanatory Memoranda are deposited in sufficient time to allow for proper scrutiny.

24 April 2006

RESTRICTIVE MEASURES AGAINST SUDAN

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

On 29 March 2005, the UN Security Council adopted resolution 1591 (2005) imposing restrictive measures against Sudan and rebel groups involved in the Darfur conflict. The Resolution imposed a travel ban, arms embargo and asset freeze, owned or controlled, directly or indirectly by the persons designated by the UN Sudan Sanctions Committee. In response the EU adopted Common Position 2005/411/CFSP and implementing regulation No 1184/2005. This brought together into a single instrument the EU’s existing comprehensive arms embargo on Sudan with the measures that the EU took to implement the assets freeze and travel ban imposed by UNSCR. The scope of the EU’s embargo is wider than that imposed by UNSCR 1591 (2005), which is concentrated on the Darfur region. The Government strongly supports the measures contained in UNSCR 1591 (2005) and in the Common position.

Article 8 of Common Position 2005/411/CFSP states that the measure imposed by the Common Position shall be reviewed 12 months after its adoption (or earlier in the light of the determinations of the Security Council regarding the assets freeze and travel ban imposed by UNSCR 1591 (2005)) and only repealed if the Council deems that their objectives have been met. I am writing to inform you that in line with Article 8 the relevant geographic working group has determined that the objectives of the Common Position have not been met and therefore they should not be repealed.

I would also like to take this opportunity to inform you that on 25 April 2006 the UN Security Council, based on a UK proposal, adopted resolution 1672 (2006) which designated four individuals as subject to the travel restrictions and assets freeze imposed by paragraph 3 of resolution 1591 (2005). These individuals will be added to the Annex of targeted individuals attached to Common Position 2005/411/CFSP by Council Decision on 29 May.

21 May 2006
RESTRICTIVE MEASURES AGAINST UZBEKISTAN

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

Thank you for the Explanatory Memorandum dated 20 October 2005 which Sub-Committee C considered at its meeting on 27 October. The Sub-Committee cleared the document from scrutiny.

We note, however, the limited application of the proposed restrictive measures and hope that further consideration will be given to extending them to those politically responsible for the events in Andizhan in May 2005.

10 November 2005

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 10 November asking for further consideration to be given to extending the list of those subject to the EU travel ban in respect of Uzbekistan.

The conclusions of the 3 October General Affairs and External Relations Council reflected the Council’s view that the EU should take firm action against those directly responsible for the indiscriminate and disproportionate use of force in Andizhan on 12–13 May, while at the same time keeping the lines of communication with the Uzbek authorities open. The Council has not ruled out future extension of the list of those subject to restrictions on admission. As indicated in the Council conclusions, this matter will be kept under close review.

13 January 2006

SCRUTINY OVER THE SUMMER RECESS

Letter from Rt Hon Hilary Benn MP, Secretary of State, Department for International Development to the Chairman

I am writing to you about scrutiny over the parliamentary summer recess and to forewarn your Committee about upcoming items subject to scrutiny. The recess period will affect the scrutiny of items going to the General Affairs and External Relations Council (GAERC) on 15–16 September. I also want to flag up items subject to scrutiny which are likely to be taken at the development section of the 16–17 October GAERC and at other Council meetings in the autumn.

Firstly, the Council Common Position on the European Parliament 1st reading report on the Development Cooperation Instrument (DCI) will be taken at either the September or October GAERC (my letter of 26 June 2006 contained further details on this). Following on from my letter, we informed your Clerks that the DCI would now be accompanied by two new instruments, and not three as envisaged at the end of the Austrian Presidency: one for cooperation with industrialised countries and one for democracy and human rights. The FCO will lead on the former, and we have already submitted an EM for the latter. These instruments will be agreed in first reading before the end of the year, but we are as yet unclear about the detailed decision-making points for these dossiers.

We have been negotiating the draft Common Position on the DCI over the last few weeks in Council working group and managed to reach a political agreement at the Committee of Permanent Representatives (COREPER) meeting on 18 July. This included provisions for financial allocations. We are broadly content with what was agreed— The Common Position will now be scrutinised by EC lawyers over the summer break. The next step is for the Common Position to be formally adopted by Ministers in Council and it will then pass officially to the European Parliament (EP) for its Second Reading.

I understand that you will next sift documents on 7 September, but that the Sub-Committees will not start meeting again until your 9 October Sift. The final Common Position text has not yet formally issued and when it does we will complete an EM on the document, ready for your return.

However, if the Common Position is adopted at the September GAERC we may be unable to obtain scrutiny clearance before agreement in Council. In this eventuality I hope that your Committee will understand the exceptional circumstances and, if this happens, I will write after the Council meeting to inform you of the outcome.

19 Refer to letter included under ‘EU External Relations Budget: Update and Outline Plans for 2006’.
On the other hand, the Common Position may be taken at the 16–17 October GAERC, in which case I hope it will be possible for you to consider the EM before the GAERC. We will liaise with your Clerks as necessary over the summer and inform them if the Common Position is to go to the October GAERC.

Several other non-legislative items are on the provisional agenda for the development session at the October GAERC, on which Council Conclusions will be agreed. Currently, these are:

— European Consensus on Governance in Development Cooperation; and
— Infrastructure Partnership for Africa.

An EM was submitted to your Committee on the Annual Report Communication (10875/06, dated 11 July 2006). We are currently completing an EM on the Infrastructure Partnership for Africa. The Communication on the European Consensus on Governance has not yet issued and when it does we will complete an EM and send it to you over the summer. If your Committee’s agenda allows I would be grateful if you could also give attention to these before the October GAERC.

To the best of our knowledge there are not currently any other upcoming items, subject to scrutiny, which you should be aware of. However, I do want to bring to your attention the likely Council progress of the following EMs, which we have submitted to your Committee recently, but which you have not yet considered:

— Special Report No. 3/2006 of the European Court of Auditors: European Commission Humanitarian Aid Response to the Tsunami (11200/06);
— Proposal for a Council Decision granting a Community guarantee to the European Investment Bank against losses under loans and guarantees for projects outside the Community (11006/06);
— Report from the Commission to the European Parliament and to the Council on operations conducted under the External Lending Mandate of the EIB and future outlook (11003/06); and
— Proposal for a Regulation of the European Parliament and of the Council on establishing a financing instrument for the promotion of democracy and human rights worldwide (European Instrument for Democracy and Human Rights) (11038/06);

These items will be taken in Council in the autumn. The Finnish Presidency are keen to deal with the renewal of the EIB External Lending Mandate at the ECOFIN meeting on 7 November. The Democracy and Human Rights Instrument will be discussed in the European Parliament and in Council working group after the summer recess and will be taken at Council before the end of the year. Finally, the Special Report on the Tsunami will be considered in working group in the autumn, but we do not yet know when it will go to Council.

I hope this explains the scrutiny situation for upcoming Council meetings. As mentioned, we will stay in touch with your Clerks over the period to ensure your Committee is up-to-date on its return.

27 July 2006

SECURITY SECTOR REFORM

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

Thank you for your Explanatory Memorandum dated 21 June which Sub-Committee C considered at its meeting on 6 July. The Sub-Committee agreed to clear the document from scrutiny.

We agree that the principles outlined in this Communication are essential for strengthening the EC contribution to overall support for security sector reform (SSR), and also agree with your statement that “the key challenge is to ensure that the Communication is translated into practice” (paragraph 12, EM).

Whilst stressing the importance of a greater focus within the EU on SSR, your Explanatory Memorandum does not fully address some of the Commission’s proposals which relate to defining “the Community’s role in the wider framework of EU external action in the area of SSR.” In particular we would like to receive your views on the following Commission proposals:

— the use of a coordinated planning approach across the three-pillar structure to ensure better coherence of all EU actions;
— the strengthening of coordination and complementarity between EU actions by the EC, the EU in the framework of CFSP/ESDP and Member State’s bilateral programmes at headquarters and field level;
— the prioritisation of support for SSR under the new Financial Instruments; and
— the strengthening of cooperation with regional and multilateral organisations, including the UN, OECD, Council of Europe, OSCE and AU, and with civil society organisations and other NGO donors.

We note that this Communication was published by the Commission on 24 May 2006 and considered by the General Affairs and External Relations Council on 12 June. We therefore request a full explanation for the delay in sending the Explanatory Memorandum which we did not receive until 21 June, and ask for reassurance that further documents relating to both SSR and disarmament, demobilisation and reintegration (DDR) will be deposited in sufficient time for proper scrutiny to take place.

6 July 2006

Letter from Gareth Thomas MP to the Chairman

Your Committee met on 6 July 2006 and discussed the Explanatory Memorandum on the European Community Concept for Security Sector Reform (SSR). The Committee cleared the document but asked for our views on a number of the specific proposals made by the Commission. I am pleased to set these out below and, as requested, explain why the document was not submitted within the appropriate timeframe.

To begin with, we fully support the use of a coordinated planning approach across the three-pillar structure. This is consistent with the “whole of government” approach promoted by the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC) Good Practice Guide on SSR, in recognition of the need to draw on development, diplomatic and defence expertise and instruments in supporting SSR.

In the UK, this is achieved through the joint DFID/FCO/MOD Global Conflict Prevention Pool (GCPP) SSR Strategy, and through country SSR programmes funded by the GCPP and the Africa Conflict Prevention Pool. In the EU, a coordinated approach will need to be based on an assessment of the comparative advantage of the respective pillars. Such an approach will help ensure a smooth transition in post-conflict environments when leadership on SSR moves from one pillar to another as the situation on the ground changes.

Ensuring a coordinated approach across all EU action on SSR will also make easier the task of promoting greater complementarity between EU actions and Member State’s bilateral programmes. A key focus of current international work on SSR is on bridging the gap between what is now a common conceptual understanding of SSR and actual practice on the ground. As was mentioned in the Explanatory Memorandum, an “Implementation Framework for SSR” (IF) is being developed through the DAC. This is intended to be a guide for country governments and all their local and international partners to conducting SSR assessments and designing, implementing, monitoring and evaluating SSR programmes. The IF should therefore be a key means of ensuring that international support to SSR is coherent and co-ordinated, but it will only achieve this if donors, including all pillars of the EU, use it. The Commission is a member of the team (led by the UK) which is taking forward work on the IF, and we will work hard to ensure that they commit to utilising it as they take forward work on SSR. There are already positive signs in this regard: we understand that the EC will use the draft IF to plan post-election support to SSR in the Democratic Republic of Congo.

Applying the framework in this way should also serve to strengthen EU co-operation on SSR with civil society, and with the regional and multilateral organisations highlighted in your letter. Within the UN in particular, there are a number of different institutions working on or with an interest in SSR. As we have done with the EU, the UK is currently supporting the development of a UN-wide SSR concept and adoption of the IF.

Effective action on SSR clearly requires appropriate and timely financing. We support the proposal to ensure timely and appropriate support for SSR under the new Financial Instruments, in particular from the new Stability Instrument. As the Communication makes clear, this support should be driven by an effective assessment of needs and priorities in any particular country; and based on the vision of SSR set out by the Commission and the priorities of the partner government. SSR will not be a priority in every country.

Separately, I am sorry you were not provided with sufficient time for scrutiny on this occasion. The delay in submitting the document was due to a combination of reasons which are set out in my letter of 12 July to Jimmy Hood, which is also copied to you. I can confirm that we will continue to work hard to submit all documents for scrutiny within the appropriate time frame.

18 July 2006
SEVENTH FRAMEWORK PROGRAMME FOR RESEARCH: TECHNOLOGICAL DEVELOPMENT AND DEMONSTRATION ACTIVITIES 2007–13 (8087/05)

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

Thank you for your letter of 28 June 2005.

We noted your concern over areas of the Framework Programme proposal relating to security research. I believe that the Home Secretary will be writing to your committee before the end of August addressing these and other concerns in this area.

We will endeavour to keep you up to date on developments on these issues and others relating to the documents above.

Undated August 2005

SIXTH REVIEW CONFERENCE OF BIOLOGICAL AND TOXIN WEAPONS CONVENTION (BTWC) 2006

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

Thank you for the Explanatory Memorandum dated 8 February 2006 which Sub-Committee C considered at its meeting on 16 February. The Sub-Committee agreed to clear the document from scrutiny.

In our Report on the EU Strategy against the proliferation of WMD (European Union Committee, 13th Report of Session 2004–2005, HL Paper 96) we recommended that the EU “should vigorously study and support ways of strengthening the BTWC, whether by verification arrangements, security assurances, improved standards of material safeguarding, or otherwise.” (paragraph 51).

We commend the EU for proposing to agree a Common Position on the Sixth Review Conference, but believe that further concrete proposals to be taken forward at the Conference should be adopted, in particular on verification mechanisms. Will the EU adopt any such proposals prior to the Conference?

Further to this, we would like you to set out the Government’s objectives for the Conference in terms of verification mechanisms, and state how you propose to gain the agreement of EU Member States and other States Parties to the Convention, especially the United States, to such mechanisms.

16 February 2006

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 16 February concerning the Explanatory Memorandum dated 8 February 2006 on the Common Position adopted by partners on the Biological and Toxin Weapons Convention (BTWC). I am pleased that Sub-Committee C cleared the document on 16 February 2006.

I am aware of the recommendations in relation to the adoption of a verification mechanism for the BTWC made in the Select Committee’s report on the EU Strategy against the proliferation of WMD. I would like to assure you that both the UK and EU remain ready to support a verification mechanism for the BTWC. However, we have not seen any indications to date that the international climate has changed enough to permit agreement on verification, given the need for the Review Conference to operate by consensus.

It is our belief that to be effective, any verification mechanism would have to be universally adopted. We could not support the adoption of a verification mechanism where States could opt out as we believe that this would weaken the BTWC. Furthermore, a verification mechanism that is not adopted by all States Party would be likely to put UK/EU industry at a disadvantage with no concomitant security gain.

Our approach to the Review Conference therefore is based on the identification and formulation of specific, practical, and feasible ways to take the Convention forward, which have a good prospect of securing consensus. We believe it is vital to maintain the relevance of the Convention in the period 2006 through to 2011 (Seventh Review Conference). As belits the UK role as a Co-Depositary of the Convention, one of its leading supporters, and our commitment to international law, the UK will seek to lead other States Party to agree an outcome with practical effect. In doing so, we will of course consult closely with the EU, the United States and other key States Party.

7 March 2006

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter dated 7 March 2006 which Sub-Committee C considered at its meeting on 16 March. In your letter you state that “It is our belief that to be effective, any verification mechanism would have to be universally adopted. We could not support the adoption of a verification mechanism where States could opt out as we believe that this would weaken the BTWC.” We do not agree with this statement. As demonstrated by the Nuclear Non-Proliferation Treaty, there is value to be found in verification mechanisms even though significant states are not parties to that Treaty. Furthermore, the UK and EU ought to be pressing more strongly for a verification regime in order to demonstrate a commitment to the process, and to encourage those states which do not agree to reconsider their position.

20 March 2006

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 20 March concerning my letter dated 7 March on the Common Position adopted by partners on the Biological and Toxin Weapons Convention (BTWC).

HMG’s views on a verification regime for the Biological and Toxin Weapons Convention are well known. While we continue to attach importance to a verification mechanism in the long term, we believe that it is better to concentrate at this year’s Review Conference on measures that are achievable and will allow States Party to strengthen national implementation of the Convention.

Review Conferences of the BTWC operate on a consensus basis. There are no signs that the positions of States Party have changed enough to permit consensus to be reached on pursuing a verification protocol at the forthcoming Review Conference. Although the intersessional programme between 2003 and 2005 was adopted as a fallback, it is our belief that the programme has been a success, due in part to significant engagement by a large number of States Party.

The Sixth Review Conference in 2006 will consider the work of the intersessional meetings and decide upon any further action to strengthen the Convention. This is why our approach to the Review Conference this year is based upon the identification and formulation of specific, practical and feasible ways to take the Convention forward which have a good prospect of securing consensus. We believe that building on the intersessional work programme will provide the best opportunity for a positive outcome at the Review Conference.

6 April 2006

STABILISATION AND ASSOCIATION AGREEMENT WITH SERBIA AND MONTENEGRO

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

I am writing to advise of the European Commission’s proposed course of action with regards to the Stabilisation and Association Agreement (SAA) negotiating mandates for Serbia and Montenegro following the dissolution of the State Union of the two republics.

You will recall that my predecessor, Mr Alexander, wrote to you on the 14 October 2005, informing you that the Council had authorised the Commission to begin SAA negotiations with Serbia and Montenegro (SaM) on 3 October. You will also recall that on 10 June 2005 an Explanatory Memorandum was deposited on a Commission Communication on the preparedness of SaM to negotiate a SAA with the EU. This was cleared by the scrutiny committees in both Houses.

On 21 May 2006, in a referendum assessed as free and fair by the international community, the Republic of Montenegro voted for independence from SaM. Independence was formally declared on 3 June and the UK recognised Montenegro as an independent sovereign state on 13 June. On 5 June, the National Assembly in Belgrade declared the Republic of Serbia to be the continuing international personality of SaM. This was in accordance with the SaM Constitutional Charter and is a position which the EU and UK accept.

The European Commission now proposes to amend the SaM SAA negotiating mandate in order to continue negotiations with Serbia. This is a technical process, which involves replacing references to SaM with references to Serbia and removing references to Montenegro. In its proposal, the Commission also makes clear that this revision does not affect EU Enlargement Commissioner Olli Rehn’s decision to freeze the SAA negotiations. In other words Serbia still needs to demonstrate that it is co-operating fully with the ICTY before its SAA negotiations can actually resume.

The European Commission is also proposing a new separate negotiating mandate for Montenegro. The European Commission is proposing the same text for Montenegro’s SAA as was used in the SaM SAA, including all the same conditions, such as the requirement to co-operate fully with the ICTY. In order not to have to start negotiations from scratch the European Commission is also proposing to include information on the progress that Montenegro made in its SAA negotiations as part of SaM.

Officials would be happy to provide electronic copies of the European Commission’s proposals and copies of the draft SAA mandates for Serbia and Montenegro. Please do not hesitate to contact my office if this would be helpful.

13 July 2006

WESTERN BALKANS: CONSOLIDATING STABILITY AND RAISING PROSPERITY (5773/06)

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

Thank you for the Explanatory Memorandum dated 8 February 2006 which Sub-Committee C considered at its meeting on 16 February. The Sub-Committee agreed to clear the document from scrutiny.

We are pleased to see that the Commission is continuing its work on ensuring the smooth progress of the Western Balkans towards eventual accession of the EU. We believe that the prospect of future accession is essential to the stability of the region.

We welcome this Communication and ask to be kept updated as further new developments arise.

16 February 2006

Letter from Rt Hon Douglas Alexander MP to the Chairman

I thought you would welcome an update on developments within the European Union Monitoring Mission (EUMM) in the Western Balkans.

Following the review carried out by SG/HR Solana in September 2005, PSC has agreed that the presence in Albania will be reduced to two monitors, based in the capital Tirana, by 21 May 2006. These monitors will concentrate on issues relating to Kosovo. The presence in Bosnia and Herzegovina will remain unchanged at least until the elections later this year.

Overall, the number of monitors has decreased by 14 since September 2005—a reduction which we welcome. Further plans will reduce the number of monitors to 68 by the end of 2006 (that figure was 88 in September 2005). These reductions will reflect cuts made in the HQ and in Albania. As in previous years, there will be an annual review towards the end of 2006 which will consider further reductions as part of an exit strategy and in light of the situation in the Western Balkans at that time.

28 March 2006

Letter from Rt Hon Douglas Alexander MP to the Chairman

I wrote to you on 8 February enclosing the Commission Communication, “The Western Balkans on the road to the EU: consolidating stability and raising prosperity.” You subsequently cleared the document, but the House of Commons European Scrutiny Committee requested further information on the discussions and conclusions of the Gymnich Informal EU-Western Balkans Ministerial meeting which took place on 11 March. I am copying this update to you too.

The Informal Ministerial was a useful exchange of views and the UK was pleased that the meeting reaffirmed the EU’s full support for the agenda set out at the Thessaloniki Summit in 2003. The meeting provided an opportunity for the countries of the Western Balkans to report on the progress they have made since. Thessaloniki, and for the EU to reiterate that more needs to be done for the Western Balkans to fully meet EU conditions, particularly co-operation with the ICTY. The EU also expressed its intention to take forward the package of hearts and minds incentives set out in the recent Commission Communication, “The Western Balkans on the road to the EU: consolidating stability and raising prosperity.” These include concluding free trade agreements, conditions based visa facilitation, increasing the number of scholarships for students and researchers, and twining programmes to support institution building.

24 April 2006
Annex A

SALZBURG EU/WESTERN BALKANS JOINT PRESS STATEMENT

1. The Ministers of Foreign Affairs of the Member States of the European Union, the acceding states, the candidate states, the potential candidate countries of the Western Balkans, the Secretary General of the Council/High Representative, and the European Commissioner for Enlargement met in Salzburg at the occasion of the informal Foreign Ministers’ meeting. The High Representative/EU Special Representative for Bosnia and Herzegovina, the SRSG for Kosovo, and the Special Co-ordinator of the Stability Pact for South Eastern Europe were also present.

2. The participants reaffirmed their full support for the agenda set out at the Thessaloniki summit in 2003, as well as for the Stabilisation and Association Process which will remain the framework for the European course of the Western Balkan countries. In this respect, the EU confirms that the future of the Western Balkans lies in the European Union. The EU recalled that a debate on the enlargement strategy is due in 2006 as set out by the Council conclusions of 12 December 2005. The EU also notes that its absorption capacity has to be taken into account. The participants agreed that each country’s progress towards the EU continues to depend on individual merits in meeting the conditions and requirements set forth in the Copenhagen criteria and in the Stabilisation and Association Process, including full cooperation with the International Criminal Tribunal for the former Yugoslavia.

3. The Western Balkan countries have achieved considerable progress in the areas of stability, democracy and economic recovery. All have in the last year made significant steps along their road towards the EU, with EU membership as ultimate goal in conformity with the Thessaloniki Declaration. They must now increasingly focus in adopting and implementing European standards and in fostering conditions for sustainable stability and prosperity throughout the region. The countries of the region committed themselves to continue and accelerate the reforms furthering these objectives. All participants agreed on the importance of good neighbourly relations and on the need for finding mutually acceptable solutions on outstanding issues with neighbouring countries.

4. Preserving peace, and enhancing stability and security in the Western Balkans remains a common European interest. The participants agreed that every effort should be made to achieve a negotiated settlement of the status of Kosovo, mutually acceptable to the parties concerned, and expressed their full support for the work of the UN Special Envoy and his team. They recalled the importance of continued and effective standards implementation.

The EU strongly urged both Belgrade and Pristina to work towards a lasting Kosovo Status Agreement that promotes a multi-ethnic and democratic society and good neighbourly relations within the region.

5. The participants welcomed the Commission’s Communication “The Western Balkans on the road to the EU: consolidating stability and raising prosperity”, and expressed their intention to take forward its implementation. The EU will continue assisting the Western Balkan countries through practical measures to make the European perspective more tangible. In this context, the participants encourage regional cooperation, including a free trade area building on CEFTA, and look forward to the Commission’s proposals on people to people contacts, including visa facilitation in line with the common approach, as well as on adequate financial assistance. In order to master the challenges that the region faces in 2006 and beyond, the EU is determined to fully implement the commitments given in the Thessaloniki agenda.
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 update you on the outcome of the European Parliaments second reading of the proposal to apply the Aarhus Convention to European Community institutions and bodies.

My letter to you of 24 January 2005 set out the basis for the UK’s agreement to the amended proposal. The published common position text was sent to the Clerk to the European Union Committee in September 2005. During the UK Presidency, we concentrated, in co-operation with Council and the Commission, on consultations with the European Parliament, with a view to resolving any outstanding differences.

The European Parliament completed its second reading of the Regulation on 18 January 2006, and the attachment to this letter sets out the outcome in detail. The Government considers it is satisfactory in some respect, but not in others. Problematic amendments to the common position text relating to the internal review and access to justice provisions of the Regulation were not adopted. However, the European Parliament did pass a number of amendments that, in our view, make the text less transparent and less consistent with the Aarhus Convention. This applies particularly to amendments relating to the Regulation’s access to information provisions.

These amendments would extend provisions of Directive 2003/3 on access to environmental information, applying to Member States, to the European Community institutions and bodies. The approach taken in the common position text is to adapt provisions of Regulation 1049/2001 regarding public access to the European Parliament, Council and Commission documents to bring them into line with the Convention’s requirements. This approach has the considerable advantage in terms of transparency and helpfulness to the public of creating a single regime for access to both environmental and non-environmental information held by Community bodies.

Council is currently discussing the scope for compromise with the European Parliament on these unhelpful amendments with a view to avoiding the need for conciliation if at all possible.

15 February 2006

Letter from Elliot Morley MP to the Chairman

I am writing to update you on the progress of the European Parliament’s second reading of the proposal to apply the Aarhus Convention to European Community institutions and bodies.

My letter of 15 February 2006 updated you on the European Parliament second reading of the Regulation. Subsequently, the Commission, Council and European Parliament have entered into discussions in trialogue to make progress on the outstanding issues.

Good progress has been made to date. For example, mutually acceptable compromises seem to be within reach on the Regulation’s treatment of public participation in environment “policies”, the information given about “infringements” of environment law, and the European Parliament’s wish that NGOs should be “law abiding”. More work is required on how information relating to “banking” is covered. However, this and other issues seem likely to be settled in the final global package. A further trialogue is foreseen for the last week of April.

I will inform the Committee of any further significant developments.

7 April 2006

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

I am writing to update you on progress with completion of conciliation negotiations between Council and the European Parliament on the above proposal.

Elliot Morley’s letter of 7 April 2006 informed you that there remained only a few issues requiring further conciliation discussions. These issues have now been settled in line with the UK government’s objective for a proportionate approach to this Regulation that does not go significantly beyond what is necessary to meet the Community’s obligations under the Arhus Convention.

The Conciliation Committee approved a final draft of the Joint text on the Regulation at the meeting held 2 May 2006. This stage concludes the legislative process to apply the Arhus Convention to the European Union Institutions and its bodies. A copy of the text is attached.

12 June 2006

AGRICULTURAL PESTICIDES (10930/06–10937/06)

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

Sub-Committee D (Environment and Agriculture) has considered these proposals together with your Explanatory Memorandum.

We support the stance which the Government is proposing to take—that six of the eight pesticides in question should be cleared for use on an unrestricted basis but that the remaining two (Azinphos-methyl and methamidophos) should not be cleared for use at all on the grounds that their safety has not been satisfactorily demonstrated. We note also your Department’s view that further significant changes along the lines you are proposing will be difficult, and perhaps impossible, to secure and that, if the Council cannot reach agreement, the Commission’s view will prevail as the default position.

Nonetheless, we are concerned over the implications of releasing onto the market the pesticides whose safe use, in your Department’s view, has not been demonstrated. We propose therefore to keep the proposals in respect of Azinphos-methyl and methamidophos under review and we would be grateful if you would provide further information on the reasons why these two pesticides, both of which we note are organophosphates, are considered to be unsafe. In particular, we would be interested to know to what uses these two pesticides would be put if their usage were to be allowed, what scope there would be for their leakage into the food chain and on what independent research evidence your conclusions are based.

20 July 2006

Letter from Lord Rooker to the Chairman

Thank you for your letter of 20 July concerning the Commission’s proposals for two pesticide active substances (azinphos-methyl and methamidophos).

These compounds are being considered as part of a European Community review of active substances under Council Directive 91/414/EEC. The Directive provides for the establishment of a positive list of active substances (Annex 1) that have been shown to be without unacceptable risk to people or the environment. Companies supporting compounds through the review must submit a comprehensive dossier of data for each of them, which is evaluated by a designated rapporteur member State on behalf of the Community. Each dossier generally contains around 200 scientific studies covering, for example, the compound’s physical and chemical properties, its toxicology and ecotoxicology, its residues in food, and its fate and behaviour in the environment. Rapporteurs may also consider other relevant published data, as well as evaluations carried out by regulatory authorities in other countries or by international organisations.

Since neither compound is approved in the UK, we have relied to a large extent on the Rapporteurs’ evaluations. In concluding that safe use has not been demonstrated, we are particularly concerned about the possible effects of azinphosmethyl on non-target arthropods and of methamidophos on operators, birds and mammals. This is not to say, however, that these compounds are necessarily unsafe; only that we believe a safe use of them has not been demonstrated by the data which the companies have provided.

The Commission’s current proposals would, if adopted, initially restrict use of both compounds to potatoes. However, should the companies wish to market either compound in the UK, we would have the opportunity to look more closely at the above areas of concern and would refuse an application if we were not satisfied. This leave the question of residues in food should treated produce be imported into the UK. We have a double
reassurance on this point. First this was not an area of concern for either compound during the review process. Second we would not expect quantifiable residues of either to occur in tubers. The government’s Pesticide Residues Committee has looked for both compounds in potatoes as part of its monitoring programme, and found neither of them. In principle, applications could be made to extend their use to any other crop once they were included in Annex I to Directive 91/414/EEC. Such applications would require an additional dossier of supporting data and we would have an opportunity to assess the implications for consumers in each case.

There have, however, been developments in the Council’s consideration of these proposals. Following discussions between attachés, only two of the proposals—for azinphos-methyl and vinclozolin—are subject to a qualified majority against and the Commission will have to reconsider its position on these compounds. For the remaining six (which would include methamidophos), there is a non-opinion which should lead to adoption of the proposals by the Commission under comitology rules. The Presidency has indicated that it will ask Ministers to confirm the position on all eight proposals at the September Council. In the circumstances (and given that we have the safeguard of a further national evaluation before methamidophos could be approved in the UK), I hope you will be able to lift your reserve on these proposals.

8 August 2006

AGRICULTURE AND FISHERIES COUNCIL—DECEMBER 2005

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Thank you for your letter of 19 December 2005 in advance of the December Fisheries and Agriculture Council. Sub Committee D (Environment and Agriculture) considered your letter at its meeting on 18 January.

We very much appreciate the efforts which you have made to aid the Committee in their scrutiny of EU fisheries legislation. The Committee found your evidence to us on 7 December particularly helpful in advance of the Council. It is still regrettable however that the proposal 14919/05 regarding fishing TACs and quotas for the Baltic was not deposited before the Council, resulting in a scrutiny override.

You know that we are particularly keen to increase the time available for the consideration of fisheries proposals before each December Council in order to avoid overrides in the future. We commend the United Kingdom Presidency’s action in making proposals to the Commission to change how the decision-making process works. What representations have you made to the Austrian Presidency regarding implementation of the revised timetable in 2006? We would be pleased to be informed of the Commission’s response to the United Kingdom’s proposal.

19 January 2006

AGRICULTURE AND FISHERIES COUNCIL—JULY 2006

Letter from Rt Hon David Miliband MP, Secretary of State, Department for Environment, Food and Rural Affairs 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 18 July 2006.

I represented the United Kingdom at the July Agriculture and Fisheries Council meeting in Brussels.

The Chairman of the Council began by setting out the Finnish Presidency work programme for the next six months. It includes progressing work on organic food and farming; spirit drinks, work on wine and banana sector reforms; energy crops; forest strategy; Community animal health strategy; fisheries total Allowable Catches and quotas and Common Fisheries Policy simplification.

The Agriculture Commissioner presented the Commission’s Communication on the reform of the wine sector in the EU analysing the situation on the EU wine market and setting out various options for the reform of the current regime. Following the presentation, the Council held its first discussion on the basis of two questions drawn up by the Presidency. I welcomed the Commission analysis stressing that the current regime is unsustainable. I also said that further debate was necessary to achieve a reform that would allow efficient producers to thrive.

The Agriculture Commissioner gave a progress report on the WTO agricultural negotiations. She stressed that the EU offer from last October still remained on the table and underlined that it would be better for EU to achieve a balanced deal now than no deal at all. Along with a number of Member States, I expressed our support for the Commission and its tactics in the WTO negotiations.

The Council held a policy debate on Commission proposal laying down rules for voluntary modulation in light of the December 2005 European Council future financing agreement for 2007–13. This proposal sets out the terms by which Member States can voluntarily modulate from pillar 1 of the Common Agricultural Policy (direct payments) to pillar 2 (rural development). I argued the need for flexibility in the proposal, in particular to allow for voluntary modulation to continue to operate on a regional basis and without a franchise and on whether to apply the rules on minimum spends.

Under any other business; the Fisheries Commissioner updated the Council on developments in the negotiations concerning EC/Mauritania fisheries agreement and asked for Council agreement to a swift adoption process once the agreement has been initialled.

France raised concerns about the social and economic impact of a ban on anchovy fishing in the Bay of Biscay. The Commission reiterated its position that the fishery should remain closed and said that it would examine the possibility of financial aid for affected fishermen.

Austria, supported by 16 other Member States, drew the Council’s attention to various difficulties in the Commission’s proposed changes to the agricultural state aids rules.

The Council took note without discussion of a written update from the Commission on the latest developments with regard to Avian Influenza H5N1.

The Finnish Presidency announced that their informal meeting of Agriculture Ministers would take place from 24–26 September; it will focus on the European Model of Agriculture and CAP reform.

25 July 2006

AGRICULTURE AND FISHERIES COUNCIL—SEPTEMBER 2006

Letter from Rt Hon David Miliband MP, Secretary of State, Department for Environment, Food and Rural Affairs 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 18 September 2006.

I represented the United Kingdom for the morning session and the Deputy Permanent Representative to the European Union represented the United Kingdom for the rest of the day.

The Council held a discussion, based on a Presidency questionnaire, on the Commission’s Communication on the reform of the wine sector in the EU. All Member States agreed the need for reform but there were differences about its scope and depth. I stressed the need for a progressive, liberalising reform to improve competitiveness and sustainability and enable the industry to respond to market needs.

The Environment Commissioner and the Health and Consumer Protection Commissioner presented two proposals on pesticides, designed to enhance the regulatory system governing pesticide authorisation and use.

In the absence of a qualified majority in favour or against, the Council was unable to reach decisions on the Commission’s proposal to authorise the use of a specific type of GM oilseed rape in animal feed. In the absence of Council decisions, therefore, the Commission is now free to implement its proposals under its own competence.

A large number of issues, as follows, were raised under any other business.

The Council took note without discussion of a written update from the Commission on the Avian influenza outbreak.

Belgium asked for consideration to be given to easing the restrictions which apply in the case of a Bluetongue outbreak.

Belgium also informed the Commission of the action it had taken following agricultural damage caused by adverse weather conditions in July and August.
Denmark, supported by 11 other Member States including the UK, argued that the current school milk scheme needed reforming to encourage consumption of low fat milk and dairy products to bring it into line with modern nutritional advice. The Commission said the scheme was under review.

Greece supported by Spain, requested help for olive growing areas affected by July’s forest fires. The Commission recommended that both Member States apply to the EU solidarity fund or use provisions in the Rural Development Regulation.

Lithuania, supported by eight other Member States, asked to re-open the debate on the Commission’s communication of 2005 on risk and crisis management in agriculture.

France expressed concerns about WTO agricultural negotiations. The Agriculture Commissioner reported that there had been no significant developments since the suspension of the negotiations.

Hungary supported by six other Member States expressed concern about the Commission’s proposed plans to tighten the quality standards for maize bought into Community intervention.

Germany raised concerns about the draft text of the Rural Development Implementing Regulation, specifically the requirements relating to the payment of Member State top ups.

The Finnish Presidency announced that their Informal meeting of Agriculture Ministers would take place from 24–26 September; it will focus on the European Model of Agriculture and the future of the CAP.

30 September 2006

AIR POLLUTION (12735/05, 14335/05)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Thank you for your Second Supplementary Explanatory Memorandum of 15 May 2006 which Sub Committee D (Environment and Agriculture) considered at its meeting yesterday.

Action to combat air pollution is to be welcomed but there is a risk that the measures to be introduced by the proposed Directive are not as robust as they could be. The proposal would introduce a non-mandatory provision to reduce PM2.5 by an average of 20% across each Member State at urban background locations by 2020. It will be important for the Government to work with other Member States to ensure mandatory reduction requirements are introduced in the future.

The proposed Directive also contains a provision which would allow Member States up to five years further to comply with existing limit values. This could potentially weaken the public health protection offered by the existing air quality standards. Member States must ensure its use is carefully controlled.

We note that the proposal indicates that a new monitoring network will need to be in place by 2008 to assess compliance with the proposal. We would be grateful for clarification as to whether monitoring by each Member State will be mandatory.

15 June 2006

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 15 June informing me of the Committee’s decision to clear the proposed Directive on Ambient Air Quality and Cleaner Air for Europe and, the Air Thematic Strategy from scrutiny.

This Government remains committed to protecting the public from the harmful effects of air pollution. The UK and a few others pushed for an outcome more sensitive to the human health implications of air pollution during these negotiations but were not entirely successful in achieving that objective. As you may know during Council Working Group negotiations, we championed the exposure reduction approach for fine particulate matter and pushed for mandatory obligations to be defined (subject to a review of scientific evidence). However, we faced strong opposition to our proposals since there appears to be very little political appetite in most Member States to take this step despite a significant body of scientific evidence.

However, our negotiating position has helped to raise awareness and the Directive will eventually lead a health improvement for a wide section of the population. Exposure reduction moves away from the current approach of controlling air pollution in highly localised hotspots such as street corners where there may be few people, or where people do not spend long periods of time. It focuses on percentage reductions in concentrations of fine particulate levels in areas where most of the population lives, and therefore will lead to better air quality for a wider section of the community.
The draft Directive introduces new standards for fine particulates, and requires air quality monitoring in urban background areas. Turning to your question, it will be mandatory for Member States to compulsorily increase the number and types of air pollution monitoring equipment currently in place in order to be able to comply with the reporting requirements of the Directive.

28 June 2006

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter of 28 June in reply to my letter of 15 June regarding the Directive on Ambient Air Quality and the associated Thematic Strategy. Sub-Committee D (Environment and Agriculture) considered your letter at its meeting on 19 July.

We welcome the agreement on new air pollution limits but support your assertion that mandatory obligations should be defined. We recommend that the Government should continue to work with the European Parliament and the other Member States to ensure that mandatory obligations for fine particulate matter (PM$_{2.5}$) are set in regulation as soon as the reliable measurement of such matter is established as technically possible.

20 July 2006

ALPINE CONVENTION—MOUNTAIN FARMING (8705/06)

Letter from Barry Gardiner MP, Minister for Biodiversity, Landscape and Rural Affairs, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to update your Committee on the Explanatory Memorandum recently submitted by my colleague, Lord Rooker, on the Protocol on Mountain Farming attached to the Alpine Convention.

The Explanatory Memorandum noted a number of concerns with the Convention. We have received reassurances from the Commission that has allayed our concerns. In particular, that the Protocol will not be binding on the Community as a whole, that it will not in any way constrain the future development of EU policies (and in particular, will not hinder future reform of the Common Agricultural Policy), and will not have any implications on EU expenditure.

In light of these reassurances, we are therefore now proposing to support the Convention.

I appreciate that a letter updating the Explanatory Memorandum is not standard practice, and apologise for any confusion that may have been caused to the Committee, which has been as a result of a clerical error.

23 May 2006

ANIMAL WELFARE (5734/06)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Thank you for your Explanatory Memorandum of 9 February 2006 which Sub-Committee D (Environment and Agriculture) considered at its meeting on 8 March 2006.

The Committee decided to clear the Communication from scrutiny. We would be grateful to know how the EU proposals set out in the Communication would integrate with the objectives of the UK Animal Welfare Bill currently before Parliament.

8 March 2006

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 8 March 2006 on the Commission Communication concerning a Community Action Plan on the Protection and Welfare of Animals 2006–10. You have asked for clarification as to how the proposals in the Action Plan will integrate with the UK Animal Welfare Bill.

The EU Action Plan and the Animal Welfare Bill are of course very different. The Bill is a piece of legislation that sits in the framework of our Animal Health and Welfare Strategy and applies to England and Wales; the Action Plan is a strategic document that sets out the EU’s proposed actions on animal welfare until 2010, only some of which are legislative. The Bill covers most animals that are not wild, although its main impact will be on non-farmed captive animals; the Action Plan is largely focussed on the welfare of farmed animals although it also covers animals used in research and some trade issues.
There are, however, also some common themes. For example both are intended to improve animal welfare and to ensure that satisfactory minimum legislative standards are in place. Both also aim to simplify and consolidate existing legislative controls. The Action Plan aims to ensure animal keepers and the general public have information about animal welfare so that they understand their role in protecting the welfare of animals. The Animal Welfare Bill provides for codes of practice to ensure that those responsible for animals have the necessary knowledge to ensure their animals’ welfare. The EU Action Plan includes the aim of improving enforcement across the EU; the Bill introduces a more coherent approach to enforcement in England and Wales.

I do not regard them as comparable or equivalent documents. But the two are mutually consistent.

I hope this is helpful.

27 March 2006

AQUACULTURE: ALIEN AND LOCALLY ABSENT SPECIES (8296/06)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

When your Committee considered the above mentioned Explanatory Memorandum at their meeting of 24 May 2006, it was retained under a scrutiny reserve pending submission of a Regulatory Impact Assessment (RIA). I am writing to update you on the progress of this work.

We recently conducted a consultation with the industry in which we asked them to give us their views on the proposal and for information that we could use to draft a RIA. We had a very limited response, and most agreed with the line Government were taking. There are some concerns about our suggestion that the industry should pay for the risk assessment, and that the Regulation would be applied retrospectively. There is also concern about the classification of Rainbow Trout as an exotic species. This fish has been present in the UK for over 100 years, and is found and farmed extensively throughout the European Union. Clearly the imposition of a permit on each movement would be prohibitive on the industry. However, none of the responses gave us enough information to be able to draft a RIA.

We are concerned about the bureaucracy of the proposal and we have mentioned this to the Commission. Following the consultation, we will write again to the Commission reiterating our view about this and repeat our suggestion that this should be recast as a Directive. We will also raise this when the proposal is discussed at Working Group. We continue to believe that it is proper for the industry to shoulder the costs of risk assessment. There are enough safeguards to ensure that the financial burden will not be too onerous. One key element will be to try and persuade the Commission that the Regulation should not be applied retrospectively. We accept that rainbow trout are widely farmed in the European Union but we cannot regard them as native to UK rivers and would therefore wish to see any new farms wishing to exploit this species kept within the scope of the Regulation.

In conclusion, since it is hard to assess the full financial impact this proposal will have on the industry due to the lack of available information, we are not proposing to prepare a RIA at this stage. Should such information become available at a later date then we will re-examine this issue.

6 July 2007

AVIAN INFLUENZA

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

I am writing to all peers to bring to their attention important information relating to avian influenza (“bird flu”) and seeking your co-operation in making this information available to other interested groups and individuals where relevant.

Avian influenza is a disease of birds, not humans. People can become infected but rarely are. There are many strains of avian influenza viruses which vary in their ability to cause disease. The most severe form of the disease (highly pathogenic) is a notifiable disease which was last confirmed in the United Kingdom in 1991. Recent outbreaks of a new form of the virus, H5N1, have arisen in the Far East, Eastern Europe, Africa and most recently in EU member states such as France and Germany (though mainly in wild birds in Western Europe).
Defra has been following the global situation on avian influenza very closely. Following the increasing number of outbreaks in EU member states, Defra recently published an updated Qualitative Risk Assessment on its website. The conclusions of that assessment confirm that following confirmation of the virus in eastern France there is an increased likelihood that highly pathogenic H5N1 avian influenza virus may be found in the UK.

We have existing robust surveillance measures in place and have taken over 3,500 samples from wild birds, which so far have not detected H5N1 in the UK. Surveillance will continue at a high level and the general public can play its part by reporting to the Defra helpline on 08459 33 55 77, any unusual wild bird deaths.

On the basis of current scientific evidence, the Food Standards Agency advises that avian flu does not pose a food safety risk for UK consumers. This is because for people, the risk of catching the disease is from being in close contact with live poultry that have the disease and not through eating cooked poultry, game or eggs.

Defra has worked closely with the UK poultry industry, independent experts and other stakeholders in Government and beyond to ensure the UK is thoroughly prepared to prevent an outbreak of avian influenza and have robust plans in place to contain and eradicate it if it does occur.

We believe that swift detection, stamping out, good biosecurity practices and the imposition of movement controls around the infected premises is the most effective and efficient approach to disease control. There is a danger that using current vaccines may delay the time taken to detect disease by concealing the virus but not preventing its spread and may put non-vaccinated birds and even poultry workers at risk of disease; the vaccines currently available require individual injection of each bird and can take between 1–3 weeks to build immunity (with booster doses possibly required). However, Defra is exploring the potential role of vaccination against Avian Influenza as technology and circumstances develop and will keep the situation under close review.

Defra is working closely with a wide range of stakeholders, including the poultry industry, processors, retailers, consumers and conservation groups, and has reached a broad consensus that there are limited circumstances, such as zoo birds, where we may wish to vaccinate in an increased level of risk.

Our work with stakeholders has also helped to agree practical measures and guidance for poultry keepers including arrangements for isolating birds from wild birds in the event the risk is assessed as “high”.

One of these measures is the Great Britain Poultry Register which opened on 9 December 2005. Defra, the Scottish Executive and the Welsh Assembly Government have developed the GB Register to gather essential information about poultry, game and other birds for the purposes of risk assessment, disease prevention and control.

If we have up-to-date information on where birds are and how many there are, we will be able to manage a disease outbreak by targeting resources where they are needed most and help communicate with bird keepers more quickly.

By law, only keepers of 50 or more poultry, game and certain other types of bird needed to have registered by 28 February 2006. However, we are encouraging all owners of flocks of fewer than 50 birds to register voluntarily to enhance the value of the register to all concerned, both in terms of improving contingency planning and improving our ability to communicate with poultry keepers. The register remains open to capture voluntary registrations, and to allow those who have already registered to amend their details if necessary.

I would be grateful if you could share this information with interested groups and individuals who keep poultry, game or other birds. I would also like to seek your help in encouraging bird keepers to register (or find out more) as soon as possible by calling freephone 0800 634 1112.

There are a number of avian influenza-related publications available which have been agreed in consultation with stakeholders about how to improve biosecurity and minimise contact with wild bird populations. An order form has been included with this letter(not printed). Copies of all these materials, including bilingual Welsh/English versions, can be requested by calling 08459 55 6000.

6 April 2007

The Department of Agriculture and Rural Development for Northern Ireland is also capturing data about poultry premises but on a separate database.
BATTERIES AND ACCUMULATORS (15494/03)

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

Further to my letter of 31 July 2005, I am writing to inform you of the latest position on this proposal.

The European Parliament completed its second reading of the draft Directive on 13 December 2005 and voted to maintain a number of key provisions in the Council’s Common Position, all of which were of importance to the UK. This was a good outcome for the UK and is likely to facilitate early agreement at conciliation, expected to begin in March/May under the Austrian Presidency.

Among the key provisions upheld were collection targets for spent portable batteries of 25% of average annual sales after four years, rising to 45% after eight years; a partial ban on the marketing of portable nickel-cadmium batteries; with an exemption for their use in cordless power tools (around 70% of total sales); and a dual Treaty base for the draft Directive.

The Parliament also adopted a number of other amendments to the Common Position and, although less significant for UK, these prevented agreement at Second Reading. Among these further amendments was a mandatory requirement for distributors of portable batteries to provide instore collection facilities for spent product. The UK is opposed to this amendment in its present form since, if adopted, it would require all retailers of portable batteries, including corner shops and market stalls, to collect spent batteries. This would undermine the UK’s ability to take a multi-stakeholder approach to battery collection and could negate any environmental gains made from the collection and recycling of spent consumer batteries. I am however aware that there is some support in the Council for mandatory retailer takeback from those Member States with established collection schemes.

The Parliament further adopted a provision requiring all batteries in consumer appliances to be readily removable by the consumer when spent. The UK believes such a requirement is unnecessary as the Waste Electrical and Electronic Equipment (WEEE) Directive, due to enter into force in the UK in 2006, already requires the removal of batteries from separately collected appliances. This view is reflected in the Council.

Other amendments include compulsory provisions for Member States to promote research and encourage the development of batteries with improved environmental performance, and new recycling technologies. I am aware that whilst some Member States support the principle behind these provisions, a majority of the Council believe they should be placed in the preamble of the draft Directive.

Early indications are that these amendments are likely to constitute some of the key areas for discussion at conciliation.

14 February 2006

Letter from Malcolm Wicks MP to the Chairman

Further to my letter of 14 February 2006, I am writing to inform you of the latest position on this proposal.

On 2 May 2006, the day of the official opening of conciliation between the Council and European Parliament, regarding the draft Battery Directive, agreement was reached in the Conciliation Committee. The agreement must now be formally adopted by the European Parliament and Council. It is anticipated that this will take place in July.

As noted in my previous letter, the European Parliament’s second reading of the draft measure represented a good outcome for the UK, as it upheld a number key provisions in the Council’s Common Position including reasonable collection targets for portable batteries, limited scope of the partial ban on nickel-cadmium batteries, and a dual Treaty base for the draft Directive, all of which were important issues for the Government. I also highlighted some less significant proposals put forward by the European Parliament, to which the UK and other Member States were opposed, which prevented agreement at second reading.

The Austrian Presidency was keen to conclude negotiations on the dossier, and both the Council and the European Parliament supported this aim. To this end, delegations were urged to be flexible in their positions with regards to non-critical European Parliament amendments. The Joint Text reflects this approach.

In addition to the key provisions mentioned above, the Joint Text contains a number of new provisions, adopted by the Council as part of the “package” in conciliation, including:

— Portable batteries to be labelled with their capacity. The detail of this provision, whose aim is to inform consumer choice, will be decided through comitology. The UK saw difficulties with this
proposal since battery performance depends on the appliance in which the cell is used, and measurement and testing regimes would seem to be necessary. However, other Member States did not support this position. The UK will work through the TAC to try to ensure satisfactory design of any labelling system.

Distributors (including retailers) of portable batteries to take back spent portable batteries from end users, at no charge. As stated in my previous letter, the UK was opposed to this amendment as it could undermine the adoption of a multi-stakeholder approach to battery collection. However, we secured some flexibility, permitting Member States with equally effective collection systems to side-step this provision. As part of its investigation, WRAP has set up a pilot kerbside portable battery collection scheme covering some 350,000 households in the UK. It is anticipated that this scheme will be expanded over the coming months to include retailer take back and collection at civic amenity sites.

— Appliances to be designed to allow spent batteries to be readily removed. The UK is of the opinion that this provision is superfluous as the Waste Electrical and Electronic Equipment (WEEE) Directive already requires the removal of spent batteries from waste appliances prior to recycling. Since we feel too that the proposal has the potential to cause internal market difficulties, my officials have written to the Commission asking them to develop guidance for Member States.

— *De minimis* rule for small producers. The UK successfully argued for this provision which allows Member States to exempt small producers from the financing requirement of the Directive.

— Common information requirements for producers across all Member States. The UK supported this provision, as it will reduce the administrative burden on producers.

The Joint Text may not emerge ahead of formal adoption by the Council. In light of this, I am willing to submit a copy of the Joint Text (with an Explanatory Memorandum) if the Committee would find this helpful.

28 June 2006

Biodiversity: Halting the Loss (9769/06)

Letter from the Chairman to Barry Gardiner MP, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs

Sub-Committee D (Environment and Agriculture) has considered the Commission’s Communication on this subject, together with your Explanatory Memorandum.

In our view this is a subject of considerable importance and we are pleased to see that there is broad consensus among Member States on the need for action and that the Government’s response to the proposed strategy is generally favourable, with most of the key actions it recommends being already provided for in existing UK policy instruments. We are content therefore to clear the document, noting that the Commission will report annually on progress. We would wish to be kept informed of progress and of other developments.

20 July 2006

Cattle and Egg Regulations

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

I am writing to let you know that we have today made a technical amendment to the Cattle Identification Regulation 1998, the Cattle Database regulation 1998 and the Egg (Marketing Standards) Regulation 1995. These amendments make no procedural changes, and the rules which cattle keepers and egg producers and retailers need to follow will not be changed in any way. They simply update the cross-references to the European Union legislation that the three Regulations implement, following changes to the European legislation.

The effect of not having updated the cross-references has been challenged in court. I do not want to take any unnecessary risks when it comes to enforcing this legislation, which is designed to protect public health, and so I am now closing that gap and making it absolutely clear what offences are punishable under the legislation. The powers for enforcement of the egg Regulations are subject to the same consideration. It is particularly important that cattle keepers comply with EU law on the identification and movement of cattle if public health is to remain protected. The step change in performance by the British cattle industry has been recognised in
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the lifting of the export ban, and rigorous enforcement of the rules has been a factor in getting the ban lifted. It is right that the enforcement powers be updated now by these minor amendments.

These amendments will put future prosecutions on a solid legal foundation. That leaves a question over how sound previous prosecutions have been since the domestic and EU legislation got out of line with each other. I understand that there have been around 250 successful prosecutions during that time under this legislation, in which the courts have interpreted the references to the EU legislation as being references to the updated EU legislation. The legal effect of the mis-match has not been tested until now. It is now for the court to decide what the effect has been and what consequences flow from that decision in respect of those who have already been convicted.

I must emphasise, however, that these convictions will have been obtained in respect of actions that breached the EU legislation designed to protect public health. I am satisfied that our enforcement procedures have been, and will continue to be, rigorous. Public and animal health has been protected by the work of our inspectors, and will continue to be so.

14 June 2006

COMMON AGRICULTURAL POLICY: RURAL DEVELOPMENT FUNDING 2007–13 (10016/06)

Letter from the Chairman to Barry Gardiner MP, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your Explanatory Memorandum of 9 June 2006 which Sub Committee D (Environment and Agriculture) considered at its meeting yesterday.

We consider it unsatisfactory that the Committee was asked to consider the proposal a matter of days before the June Council at which it is due to be adopted. Analysis of the role that will be played by rural development funding during the next Financial Perspective was a key part of our report The Future Financing of the Common Agricultural Policy (HL 7, Session 2005–06). The Committee therefore considers it extremely important to scrutinise carefully the revised rural development budget which has been proposed for 2007–13.

We stated in our report that the lack of fixed ceilings for the rural development budget (unlike the ceilings set for Pillar 1 under the 2002 Brussels Agreement) means that it is vulnerable to bearing any cuts required from the CAP budget as a whole. This view has proved to be accurate as the proposal indicates that actual rural development funding will be cut from the Commission’s proposed figure of €88.8 billion to the European Council’s agreed amount of €69.75 billion. Given that the Government made clear to us in their evidence to the inquiry that they consider the future of European agriculture to lie within the growth of Pillar 2 (Future Financing, vol 2, p 30), it is particularly disappointing that it will be Pillar 2 which will bear the brunt of cuts in CAP spending.

The Committee agreed to clear the proposal ahead of the Council meeting. However, we intend to scrutinise the impact the reduced budget figures will have on rural development spending. In order to aid this scrutiny, we ask for answers to the following questions:

— From 2007–13, automatic modulation of 5% of Pillar 1 to Pillar 2 funds will operate. Do the figures in the proposal take account of this; how much in euros will be modulated each year; and how will the mechanism operate?

— Matched funding arrangements exist whereby the EU provides half the funding and national funds make up the rest. Do the figures in the proposal take account of this; and how much in euros is estimated to be matched during 2007–13 in (i) the EU-15 and (ii) the UK?

— Will the revision of the UK rebate have any impact upon the amount of CAP funding that will be allocated to the UK, or the mechanism through which the level of funding will be agreed?

15 June 2006

Letter from Barry Gardiner MP to the Chairman

Thank you for your letter of 15 June 2006 regarding the above proposal and accompanying explanatory memorandum.

I welcome the importance the Scrutiny Committee has attached to this proposal, and regret that we were unable to submit the explanatory memorandum for your consideration any earlier. As you may know, the proposal implements the specific rural development budget amounts for 2007–13 agreed in the December 2005
European Council by the Heads of State and Government for the 25 Members of the European Union. However, the Commission could not issue a formal proposal for a Council Decision until after the conclusion of a new Inter-Institutional Agreement with the European Parliament. This meant that the proposal did not issue until the end of May. It was then necessary for it to be formally adopted promptly by the Council in order to facilitate planning for the new programming period.

During the June Agriculture Council the proposal was adopted by all Member States without further amendment. On behalf of the UK, David Miliband made clear that the UK supported the proposal which correctly implemented the December settlement but was disappointed with the methodology established by the Commission for determining Member States’ share of the Rural Development Budget, which continued to be based on historic performance.

The Government shares the Committee’s disappointment that the overall amount agreed in December for rural development support in the forthcoming financial perspective was reduced from the proposed €88.8 billion to €69.75 billion. However, the December budget negotiation was a complex, multi-faceted discussion and reaching agreement was a difficult and protracted process for the UK Presidency. Achieving a higher ring-fenced amount for rural development would have required reductions in other budget headings, such as Pillar 1, which other Member States refused to contemplate.

I hope that you would agree though, that having an agreement in place is preferable to the uncertainty that would have existed had there been no agreement. We could have been faced with annual, rather than 7-year, budgets which would have made strategic planning of rural development programmes practically impossible. It is also important to remember that the provisions from the December agreement relating to voluntary modulation allow Member States the flexibility to top up their rural development spending through transfers from Pillar 1 budgets to Pillar 2 if they choose to. The Commission have also now issued a draft proposal covering the detailed rules for the operation of voluntary modulation, which is the subject of Explanatory Memorandum 10014-06.

You asked three specific questions in your letter. The first concerned mandatory (or compulsory) modulation. The budget figures contained in the Commission’s proposal do not include the 5% mandatory transfers from pillar 1 to pillar 2 under the compulsory modulation mechanism. Approximately €7 billion will be transferred into EU15 rural development spending under this mechanism during 2007–13, and this must be match-funded by Member States in accordance with the co-financing ceilings established in the Rural Development Council Regulation (No 1698 of 2005).

Compulsory modulation is managed at European budget level, with the Commission calculating the value of receipts to be taken from Pillar 1 for each Member State after the application of the franchise arrangements (which exempts from modulation the first €5,000 of each direct payment). These receipts are then shared out amongst the EU15 Member States according to an objective allocation key based on agricultural area, employment and GDP per capita indicators. The UK qualifies for 9.9% of these receipts, although this allocation is increased to around 11% because of the rule that no Member State can receive back less than 80% of what they put in. The Commission increase Member States’ annual rural development budgets by way of a formal decision, and the funds from compulsory modulation are made available for use on rural development in the year after they are deducted from Pillar 1 budgets. Based on current ceilings for direct payments (as set out in regulation 1782/2003), approximately €965 million Euros per year will be generated by 5% compulsory modulation across EU15 for expenditure on rural development.

Your second question concerned match-funding arrangements. The figures in the proposal concern the European funds only and so exclude any domestic match funding. The Rural Development Regulation sets limits on the amount of European funds which can be used to co-finance rural development payments. For Axis 1 and 3 measures, this limit is 50%, whilst for Axis 2 and 4 measures, this limit is 55%. The minimum contribution of European funding for rural development payments is 20%, but within these limits Member States can choose at what level to match-fund. Until all programmes have been approved it will not be possible to say how much match-funding will be provided across the EU15 as it will be, approximately, somewhere between 45% and 80% of the overall amount of planned expenditure.

Final decisions on financing the new Rural Development Programme for England are yet to be taken, but it is likely to follow these upper limits for the EU contribution. Consequently, it will not quite be the case of half and half in terms of EU and domestic funding. Different arrangements were agreed for voluntary modulation funds as part of the December agreement whereby Member States have the flexibility to decide at what rate to match-fund.
Your final question concerned the impact of the revision of the UK rebate. Changes to the financing of the European Union budget, including the abatement mechanism, have no impact on the allocation of expenditure to individual policy areas or member states.

28 June 2006

Letter from the Chairman to Barry Gardiner MP

Thank you for your letter of 28 June in reply to my letter of 15 June regarding Proposal 10016/06 to lay down the amount of Community support to rural development for the period from 1 January 2007 to 31 December 2013. Your clarification on the relation of compulsory modulation, match-funding and the abatement mechanism to the budget agreed proved most helpful to Sub-Committee D (Environment and Agriculture) in its consideration of the rural development budget for 2007–13.

We continue to be concerned at the effect the reduced budget will have on rural development policies and we ask that you take note of the views we express in this letter. We stated in our report The Future Financing of the Common Agricultural Policy (HL 7, Session 2005–06) that “market support and direct subsidies to farmers will become of declining importance . . . the restructuring of rural areas on the other hand, has become of paramount importance” (paragraph 105); yet the agreements made by the European Council in December 2005 and the Council of Agriculture Ministers in June 2006 indicate a continuance of the traditional approach to agricultural funding with its emphasis on maintaining support of markets and direct subsidies at the expense of rural economic development.

LESS FUNDING BUT MORE MEMBER STATES

The European Council budget agreement of December 2005 allocated €69.75 billion for rural development funding over 2007–13. This is 21.4% (€18.95 billion) less than the European Commission’s original proposal of €88.7 billion. The amount of money available for rural development spending in this period will actually decrease compared with current spending. Total rural development funding will be lower in each year of the next financial perspectives than in 2006.

We are concerned that the reduced amounts resulting from the December 2005 budget agreement will impose serious limitations on those policies considered most essential: namely the Axis 2 and 3 and Leader + policies designed to improve environmental protection and to encourage diversification out of agriculture and the development of the non-agricultural rural economy. The reduction will be even more severe in terms of allocation per Member State, given that the 2007–13 budget must encompass spending not only in the new Member States, but also in Bulgaria and Romania which are due to accede to the EU in 2007.

PILLAR 1 MAINTAINED TO THE DETRIMENT OF PILLAR 2

We consider that the reduction in funds casts considerable doubt on the claimed desire of the Government, the Council of Ministers and the European Commission that a change of emphasis should take place in EU rural and agricultural policy away from the subsidised support of farmers and agricultural markets towards the economic and social development of rural areas. While spending on direct subsidies and market support will remain unscathed by the December 2005 cuts, the cash available for these important alternative policies has been reduced by over one fifth.

HISTORIC DISTRIBUTION OF FUNDS

Furthermore, and we note from your letter that you share our disappointment on this point, the subsequent agreement on rural development funding by the Council in June determines Member States’ of the funding on an historical basis rather than according to need. This distribution follows the pattern of the past rather than directing funds to those economically most disadvantaged rural areas where the need is greatest. The UK, with 11% of the EU 15’s agricultural output, 8% of its rural population and around 7% of its rural area, will receive only 3.5% of the available funds. The decision to retain the historical distribution principal therefore means the UK will continue to receive relatively small payments.
DECREASE IN COMPULSORY MODULATION

We appreciate that there is scope to supplement rural development funds through increased modulation from Pillar 1. However, while the Council has agreed that up to 20% of the Single Farm Payment may be transferred voluntarily in this way to rural development spending, it seems likely that only the UK Government will follow this upper limit for funding. We regret the agreement of the Council to 5% compulsory modulation from Pillar 1 to Pillar 2 rather than the Commission’s original draft proposal of 10% compulsory modulation. As the Regulation now stands, and as you confirm in your letter, the 5% compulsory modulation will allow the transfer of less than €1 billion to rural development funding each year.

LACK OF SUPPORT FOR THE FUTURE OF AGRICULTURAL POLICY

By allocating only 23% of the total EU Agriculture funds to rural development we consider that the Council and Commission have failed to fulfil their claimed objective of radically changing the policy emphasis from farm support to wider rural economic development. If declared policy aims are to be fulfilled the Council needs to take a conscious decision to ensure a substantial transfer of funding from traditional farm support to rural development. Given the limitations imposed by the 2002 Brussels agreement on CAP financing, the 2008 mid-term review should envisage a substantial increase in compulsory modulation in order to achieve this objective.

We concluded in our report that “a prosperous and broad-based rural economy is... vital for the long term survival on the land of most EU farmers. Thus a meaningful budget for rural development in the EU, predominantly targeted at economically backward regions, is the most sustainable way of supporting traditional landed communities throughout the EU-25” (paragraph 97). We believe the reduction in available funds resulting from the December 2005 budget agreement will hinder this process.

We ask that you take note of our views. We will wish to monitor the progress of the legislation to implement the 2007-13 budgetary agreement, and therefore ask that you ensure documents are deposited for consideration with the Committee well in advance of the relevant Council meeting.

20 July 2006

COMMON AGRICULTURE POLICY: SIMPLIFICATION ACTION PLAN (13494/05)

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

In November 2005, Sub Committee D (Environment and Agriculture) scrutinised the Commission’s Communication on Simplification and Better Regulation from the Common Agricultural Policy (CAP) (doc 13494/05) and cleared the report from scrutiny. The Communication had recommended that a CAP simplification action plan should be drafted during 2006 and this was subsequently agreed to at the December Agriculture and Fisheries Council. The Committee agreed that it would wish to submit its views to the Government during the preparation of the Action Plan.

The Committee welcomes the Commission’s initiative to simplify the CAP. We consider that this would make a significant contribution to the wider Better Regulation agenda. During evidence to the Committee’s inquiry into the future financing of the CAP (2nd report of Session 2005-06, HL Paper 7), Mr Mark Thomasin-Foster, President of the European Landowners’ Organization, suggested that farmers faced an inordinate level of bureaucracy in order to claim their single farm payment (QQ 87-88). The Committee concluded that it would be extremely disappointing if the benefit to farmers of receiving a consolidated single farm payment was negated by the time and paperwork required in applying for it (paragraph 60).

The Committee would therefore welcome concrete moves to cut the administrative burden for farmers. The Action Plan must be practical. It should set out tangible ways for Member States to measure “red tape” burden accompanied by reduction targets. It is important that the words “Better Regulation” should not be interpreted by the Commission to mean “More Regulation”. It will also be important for the Action Plan to suggest a method to monitor and review the impact on farmers.

We welcome the opportunity to submit views to the Action Plan preparation process and look forward to receiving the final Action Plan in due course.

2 February 2006
Letter from Lord Bach to the Chairman

Thank you for your letter of 2 February following the consideration of the CAP Simplification dossier by Sub Committee D (Environment and Agriculture). I entirely agree with the Committee that this process must be practical, cut administrative burdens for farmers, and examine the options for measuring such burdens and setting targets for their reduction. It is essential that this process does not lead to “more regulation”, and that it goes beyond a simple tidying up exercise.

I am very pleased that under our Presidency we were able to adopt Conclusions at December Agriculture Council requesting the Commission to explore options for establishing measurable targets for the reduction of the administrative burden of EU regulation in the Agriculture Sector, and to produce a roadmap within its Action Plan.

The measurement of administrative burdens is a key element of the Commission’s Better Regulation agenda. But DG Agriculture now has the opportunity to be the first sector of the Commission to take this forward. For them to do so, it is essential that the Member States provide support by sharing information and analysis. My Department will play a leading role in this exercise, and we are in discussions with the Commission and Member States on how we would do this.

The Council Conclusions also request the Commission to report annually to Council on progress. We understand that preparation of the Action Plan will entail: regular meetings of an “Expert Group” (Government representatives of the Member States), which began on 17 February; discussion of a draft Action Plan at an international conference of stakeholders in the Autumn; and final publication of the Action Plan by the end of the year.

I would be happy to keep you informed of progress, and to come and talk to the Lords Committee, in order to hear your views, as work on the Action Plan develops.

27 February 2006

COMMON AGRICULTURAL POLICY: VOLUNTARY MODULATION (10014/06)

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

Sub-Committee D (Environment and Agriculture) has considered the proposed Council Regulation on this subject (10014/06), together with your Explanatory Memorandum.

The increased flexibility which voluntary modulation will provide is to be welcomed. We are concerned however at the conditions which are being attached to this measure, which was agreed by the European Council last December. In particular, the requirement to maintain the internal rigidities which would preserve minimum funding for Axes 1 and 3 appears to fly in the face of the Council’s agreement that additional funds resulting from voluntary modulation shall not be subject to the minimum-spending-per-axes rules which are applied to the rural development budget as a whole. We consider that this condition should be firmly challenged by the Government, together with the requirement that there should be one national modulation rate, which appears to us to be at variance with existing practice. We hope therefore that the Government will adopt a robust stance on these two issues at least.

We wish to keep this matter under review and ask that you keep us informed of progress.

20 July 2006

COMMON FISHERIES POLICY (8142/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to give you details of the above proposal, which is scheduled for political agreement as an A point at the Agriculture and Fisheries Council due to be held on Monday 22 May.

I am also writing to update you on developments regarding Explanatory Memorandum 8142 of 23 May 2005 on a proposal establishing Community financial measures for the implementation of the Common Fisheries Policy. I last wrote to you about this proposal on 9 November 2005.5

Agriculture and Environment (Sub-Committee D)

Since then, several discussions have taken place in the Internal Fisheries Group, the most recent of which was on 30 March. in the light of these discussions the Austrian Presidency produced a final compromise proposal (Doc 7133/2/06 REV 2), a copy of which is enclosed (not printed). The details of the changes made are set out in the Annex to this letter.

In the circumstances it is dearly 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.

22 May 2006

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter dated 22 May 2006 which EU Sub-Committee D (Environment and Agriculture) considered at their meeting on 7 June.

The proposal was deposited with the Committee in May 2005. The accompanying Explanatory Memorandum provided little information on the Government’s negotiating stance as much depended on the ongoing EU budget negotiations. You wrote further on 9 November 2005 to provide more detail, but, given that the next Financial Perspective still remained undecided, the Committee decided to retain the proposal under scrutiny pending further developments.

The budget was agreed by the European Council in December 2005 and we note from your most recent letter that the above proposal was adopted by the Agriculture Council before scrutiny clearance had been given. We note that the proposal was adopted on the same day that your letter was dated. We consider it particularly disappointing that you were unable to write to the Committee at an earlier stage to alert Members to developments in the Internal Fisheries Group.

We ask that due account be taken in future to alert to the Committee to possible consideration of legislation in Council in order that the Committee’s scrutiny role can be fulfilled before the proposal is considered in Council. The Committee decided to clear the proposal from scrutiny.

14 June 2006

Community Fisheries Management (9898/06)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Sub-Committee D (Environment and Agriculture) has considered the proposals outlined in your Memorandum on the above.

These proposals certainly represent a step in the right direction, and we have noted that they seek to build on proposals put forward at the end of last year by the UK Presidency. We therefore support what is proposed, noting in doing so that this is in line with earlier suggestions of ours.

We note also however that, while efforts will be made to increase the number of fish stocks to which Spring ICES advice can be applied, the timing of TAC proposals in respect of stocks which will remain subject to Autumn advice will remain unchanged. It is not clear to us to what extent this will alleviate the position for agreeing TACs in respect of those stocks which are most interest to UK fisherman. We therefore wish to keep the position under review and would be grateful if you would keep us in touch with developments on this issue.

20 July 2006

Cyprus: State Aid for Agricultural Debt

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

I am writing to you with regard to a proposal by the Republic of Cyprus to grant 23 million Cyprus Pounds (around UK £27 million) of State aid to enable Cypriot farmers to pay back debt accumulated following the Turkish military intervention in 1974. Although most proposals to grant State aid are notified to and approved by the Commission, Article 88(2) of the Treaty also allows the Council to make such a decision where there are exceptional circumstances.

It has now become clear that the Republic of Cyprus may press for a vote at Council on 23 January.
This issue has come to a head very quickly after the draft Decision was previously withdrawn in December owing to opposition from other Member States and little progress being made during the Christmas holidays. However, Article 88(2) of the Treaty only allows for the Council to take decisions on State aid matters within three months of a proposal being put before the Council and, while the February Council might just be in time, the Republic of Cyprus is reluctant to let it slip.

It is not yet sure that a vote will be taken. However, if this happens, scrutiny procedures will not be completed before the vote. While this is unfortunate, given the circumstances I wish to inform the Committee of the Government’s decision to proceed.

20 January 2006

ELECTRONIC RECORDING AND REPORTING OF FISHING ACTIVITIES (14181/04)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

Your letter of 26 January 2005,6 setting out your Committee’s findings on Explanatory Memorandum 14181/04 on a proposal for a Council Regulation on electronic recording and reporting of fishing activities and on other means of remote sensing, asked to be kept informed of developments.

In October 2005 the Commission prepared a non-paper which set out their thinking on the subject and also the basis for their assumption in regard to possible costs of an electronic recording system. The paper was based on the results of a questionnaire sent to Member States asking for their opinions in relation to electronic logbooks and further brief discussion at other meetings with Member States. Representatives from several Member States encouraged the Commission to prepare a detailed proposal to assist further discussion. This has yet to be issued. A summary of the Commission paper is enclosed for your information. The draft agenda for the April Agriculture and Fisheries Council meeting shows that this item is due for discussion and vote. We await the Presidency compromise text. I hope this is helpful and I will ensure that the Committee is kept informed of any further developments or proposals.

22 February 2006

Annex A

SUMMARY OF COMMISSION NON-PAPER ON ELECTRONIC RECORDING SYSTEMS AND REMOTE SENSING

E-LOGBOOKS

Frequency of transmissions

— Daily transmissions for data but with a provision for Member States to be allowed to request more frequent transmissions if it wished, provided that data was gathered on a daily basis.

— The information to be collected would not go further than that currently required in the paper logbook. However restrictions would not be placed on Member States to request further data especially if that information were to allow industry to manage all required data for control and avoid duplication between a computerised procedure for catch data and the persistence of paper documents for others.

— The E-logbook should also cover data which was not covered by the original logbook but which is now been made mandatory by various texts, especially for effort data or stock recovery plans.

Access to data by control Authorities

— Daily transmission of catch data to the FMCs offers advantages over a system where the logbook is seen to be held on the vessel, as it could allow FMCs to share relevant data with inspectors (own and other Member States) to ensure more targeted inspection and more accurate or “unchallengeable” data to be available.

— Receipt messages (a message back to the vessel to show that a catch report has been received and read by the FMC) would offer a practical and simple solution to protecting data against tampering risks.

**Discussion on the Possible Costs of Systems**

*Setting up cost to FMCs*

— Capital costs of servers are thought to be around €130,000 and software costs around €400,000. Due to current requirements to record logbook, landing declaration and sales note data along with VMS data, it was acknowledged that some Member States would not incur the full costs outlined above.

*Setting up cost to industry*

— Fishing vessels that already had on-board PCs integrated into communication systems may not incur any additional costs for hardware. For those without suitable equipment, costs in the region of €1,500–€2,000 were foreseen. Software costs were thought to be around €1,000 per vessel.

*Transmission costs*

— Transmission costs to industry are estimated to be in the region of €1.70–€3 per message (dependant on communication provider used). Annual transmission costs for vessels fishing for 250 days per year should amount to between €425 and €750. Costs to Authorities for sending return messages would vary according to the size of their fleet and communication provider used.

**Letter from the Chairman to Ben Bradshaw MP**

Thank you for your letter of 22 February, and attached summary of the Commission non-paper on the proposed Regulation, which Sub-Committee D considered at its meeting on 15 March.

We were disappointed at the apparent lack of progress made by the Commission in preparing a detailed proposal as a basis for further discussion. We would be grateful if you could continue to keep us informed of any developments in this area as and when they occur. In the meantime the Committee agreed to retain the proposal under scrutiny.

17 March 2006

**Letter from Ben Bradshaw MP to the Chairman**

Further to your letter of 17 March I would like to bring you up to date with progress on this dossier.

I have now received a copy of the latest compromise text prepared by the Austrian Presidency and enclose a copy for your information (not printed). There are three clear aspects to the proposals:

— electronic recording of information currently required to be recorded in paper logbooks, landing declarations and transhipment declarations;
— electronic recording and submission of sales note data by those involved in the sale and purchase of first sale fish; and
— use of remote sensing of fishing vessels by Member States.

I am broadly supportive of these measures which will help to improve compliance and offer opportunities to reduce administrative burdens on industry. The Committee commented on their disappointment at the apparent lack of progress made by the Commission in preparing detailed proposals as a basis for further discussion. As you will see, the revised proposal still contains no details of what the systems must/should do, it simply provides the obligation on Member States to use electronic recording systems for fishing activity. Detailed implementing rules will be agreed subsequently by Management Committee procedure. The UK’s main point of concern with this text has been with the implementation date, set in Article lc at six months after the detailed implementing rules have been agreed. We and several other Member States do not believe that this would allow sufficient time for the necessary hardware and software to be installed, both on board fishing vessels and in administrations’ Monitoring Centres, and have pressed for this to be extended to 12 months.
Further discussion of this proposal has not been possible in Fisheries Council but I understand that it is now the intention to have the proposal adopted as an A point before the summer. I will keep you informed of any further information provided by either the Commission or the Council.

14 June 2006

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter dated 14 June which Sub-Committee D (Environment and Agriculture) considered at its meeting on 5 July.

The Committee notes the Government’s concern regarding the development of this proposal and the concerns expressed that the lead time for implementing the new arrangements may be insufficient. The Committee does however support the introduction of electronic recording and reporting of fishing activity and is content to clear the proposal.

We ask that you will ensure that the Committee is informed of progress in advance of the relevant Council meeting.

10 July 2006

ENERGY END-USE EFFICIENCY AND ENERGY SERVICES (16261/03)

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

I previously wrote on 22 December 2005 to inform you of the second reading deal on the Energy End Use Efficiency and Energy Services Directive. I am now pleased to be able to write to you after Energy Council formally approved the adoption of the Directive on 15 March. The Directive, as agreed and approved, should be published in the Official Journal at the end of April and sets out the following key provisions:

— **A general energy end-use savings target of 1% per year** for 9 years, covering the period from 2008 until 2017. The overall target of 9% is to be met by the ninth year and will include an intermediate target covering the third year of application of the Directive. An intermediate target will also be set by each Member State for year 3 of application.

— **Member State public sectors shall fulfil an exemplary role** including a number of obligations to contribute to reaching the overall savings target. This includes the application of at least two requirements relating to the mandatory use of public procurement guidelines to purchase energy-efficient equipment, vehicles, buildings and other end uses. Alternatively, they may choose to use energy audits and apply the resulting recommendations or apply financial instruments such as energy performance contracting.

— Energy distributors and retail energy sales companies will have to ensure (either directly or indirectly through a third party) that their **customers are offered competitively priced energy efficiency improvement measures or services** when they are supplied with energy. 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** is 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.

— **A harmonised methodology for calculating improvements in energy efficiency** with indicators and benchmarking between Member States will be developed by the Commission and a committee composed of Member States’ experts.

I believe that the Directive represents an ambitious yet realistic set of measures to increase energy efficiency throughout Europe and is a positive step in developing the EU’s long term energy policy. The energy saving

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agriculture and environment (sub-committee D)

measures proposed in the directive. will link in to future work on the Green paper on energy efficiency and subsequent Energy Efficiency Action Plan, that will lay a path for a 20% reduction in energy consumption throughout the EU by 2020.

29 March 2006

EU/ANGOLA: FISHERIES AGREEMENT (16101/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to bring you up to date on developments on the draft proposal to terminate the EU/Angola Fisheries Agreement and to derogate from certain measures on provision of Community structural assistance in the fisheries sector.

I sent you an Explanatory Memorandum on the original proposal on 30 January 2006. This Explanatory Memorandum has now been cleared. However, there have been developments since then of which your Committee should be aware. By way of background, under the original proposal, fishing vessels which would be affected by the termination of the Agreement would not have had to pay back any tie-up aid or construction aid. Nor would they have had to demonstrate continuous fishing activity in Angolan waters in the year preceding the termination. The UK and certain other Member States objected the proposed derogation which would exempt these vessel owners from having to repay funding received.

By way of compromise, the Presidency have proposed Spanish vessels which received aid and which are planning to be flagged as Angolan vessels will be allowed to keep it. However, Spain will not be allowed to replace the vessels which have moved to Angola. If the aid had been reimbursed it would have gone to the Spanish government and there would have been no implications for the EU budget. As such, we can support the compromise because it will not lead to an increase in fleet capacity.

It is regrettable that this compromise has come forward so late in the day so your Committee has not had an opportunity to examine it properly.

28 June 2006

EU EMISSIONS TRADING 2008–12 (5055/06)

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 of 26 January 2006 which Sub-Committee D (Environment and Agriculture) considered at its meeting on 8 March 2006.

The Committee would be interested to know how successful you consider the ongoing first phase of the EU emissions trading scheme to have been so far. As we noted in our 21st Report Including the Aviation Sector in the European Union Emissions Trading Scheme (HL paper 107), installations are fined ƒ40 per tonne of carbon emitted for which allowances have not been surrendered. How effective has this system of fines been? We would also be pleased to receive information regarding how effective sanctions are against those Member States not meeting their emission targets. Who has responsibility for notifying the Commission of Member States’ performance?

We look forward to receiving a full response to the Committee’s report in due course. In the meantime, the Committee decided to clear the document from scrutiny.

9 March 2006

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

Thank you for your letter of 9 March 2006 concerning the success of Phase I of the EU Emissions Trading Scheme (EU ETS). I am responding to you as the new Minister of State for Climate Change and the Environment. Please accept my apologies for the delay in responding. I was waiting for year 1 results to be published and analysed.

The EU ETS Directive requires Member States to set an emissions cap at a level which is in line with their emissions reduction targets under the Kyoto Protocol. If a Member State fails to implement the Directive or meet the implementation requirements of the Directive they risk infraction proceedings for being in breach of
Community law. In terms of compliance obligations, the onus is on the installations covered by the Scheme to surrender sufficient allowances to cover their emissions, rather than requiring each Member State to remain within their cap. If insufficient allowances are surrendered by the deadline it is the installations that incur the penalty, and to make up the shortfall in the following year. The European Commission is able to assess the performance of installations and Member States through the Community Independent Transaction Log (CITL).

The publication of the results of the first year of the EU ETS on 15 May 2006 by the EU provided the first opportunity to review installations’ 2005 emissions in comparison to their Year 1 allocation. In the UK, compliance with the Scheme in the first year has been excellent with 99.7% of operators submitting their verified emission reports and surrendering allowances on time. Installations that did not meet the deadline for surrendering sufficient allowances to cover their emissions are now being investigated by the regulators. Enforcement action may be taken and the operators may incur penalties. However, at this stage no penalties have been levied against UK installations. EU data indicates that 849 EU installations did not comply fully with the Directive’s requirements to report emissions and surrender allowances equivalent to emissions. All Member States are required by Article 21 of the EU ETS Directive to respond to a European Commission questionnaire by 30 June, this includes details of penalties applied. The Commission publishes the results of the questionnaire later in the year. These should provide an explanation of the reasons for non-compliance and whether penalties have been imposed upon installations.

The Commission now estimates that around 65 million more allowances were allocated to installations than CO₂ emitted in 2005 (though we are still awaiting data from some Member States such as Poland). This represents around 3.5% of the total EU allocation for 2005. We are currently assessing the reasons for lower emissions than allocations. These could include increased energy efficiency, issuance of allowances above actual need, changing patterns fuel usage or unusually low production in 2005.

The UK is one of the few states to have allocated fewer allowances compared to their total emissions in 2005. Overall, the UK’s emissions were 27 million tonnes CO₂ above the allowances issued in 2005. This was broadly in line with our expectations, as the Electricity Supply Industry (ESI) sector were allocated less than their projected need over Phase I in order to provide incentives for abatement. They emitted 37 million tonnes CO₂ more than their allocation. Other sectors were allocated on the basis of projected need and emitted 10 million tonnes CO₂ less than their allocations.

Overall, Year 1 results show that across the EU the Scheme has got off to a good start, with the infrastructure functioning well and forming a sound basis to build on for the future. During 2005 we saw the emerging carbon market develop with substantial increases in volumes traded, the start of effective monitoring and reporting of carbon dioxide emissions, and the first compliance period involving the surrender of allowances from 9,500 installations across the EU so far. With these results, Member States and the Commission have demonstrated that it is possible to develop and implement a ground breaking policy against a very challenging timetable.

It is important to remember that Phase I is a learning Phase. It is still very early days for the EU ETS and we consider it to be too early to draw firm conclusions on whether it has brought about emissions reductions. We are currently in the process of analysing the data and further analysis of the results will be posted on the Department for Environment, Food and Rural Affairs’ website over the coming weeks.

28 June 2006

Letter from the Chairman to Ian Pearson MP

Thank you for your letter of 28 June in reply to my letter of 9 March regarding the success of Phase I of the EU Emissions Trading Scheme (EU ETS). Sub-Committee D (Environment and Agriculture) considered your letter at its meeting on 19 July.

We are grateful for your detailed response which aided our consideration of the Communication. We acknowledge that it is still early days for the EU ETS and therefore firm conclusions regarding its effectiveness cannot be drawn. We therefore ask that you provide further analysis when it is available in order to assist our evaluation of the success of the scheme.

20 July 2006

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8 Environment Agency In England and Wales, Scottish Environmental Protection Agency in Scotland, the Department of Environment, Northern Ireland and the Department of Trade and Industry for Offshore installations.
EXCEPTIONAL MARKET SUPPORT MEASURES (7933/06)

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

I am writing to inform you of an issue which is to come before the Agriculture and Fisheries Council on 25 April. This concerns a proposal for a Council Regulation amending Regulations (EEC) No 2771/75 and (EEC) No 2777/75 as regards the application of exceptional market support measures.

An Explanatory Memorandum was prepared and submitted on 12 April. The Explanatory Memorandum has been cleared by the Commons Scrutiny on 18 April but it has not proved possible to obtain scrutiny clearance from the Lords ahead of the vote in Council on 25 April.

This proposal would provide a legal basis on which special emergency support measures for the poultry industry could be exercised to help alleviate the number of challenges resulting from avian influenza.

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 that it is long established UK policy not to use public funds to underpin changes as a result of market evolution. However we recognise these are exceptional times, and may demand exceptional measures. We are therefore considering the UK’s response to the EC’s proposal to legalise special emergency measures to respond to such challenges. We anticipate the Council of Agriculture Ministers voting on this on 25 April.

21 April 2006

FISHERIES: TOTAL ALLOWABLE CATCHES AND QUOTAS

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

The Committee has commented in the past that the timetable for the annual fisheries negotiations does not provide adequate opportunity for scrutiny of the Commission proposals. We have discussed this in the past and the UK is continuing to pursue improvements to the process. However, I have also undertaken to provide the Committee with information and papers, which would assist you in scrutinising fisheries issues to be decided by the December Fisheries Council.

I am therefore writing to send you a copy of a European Commission policy statement entitled Fishing Opportunities for 2007. This informal document sets out in general terms the approach that the Commission will take to the negotiations both on setting Total Allowable Catches (TACs) and the related measures such as setting days at sea limits for boats catching cod. Although the paper inevitably does not provide specific figures for TACs or quotas because quantitative stock assessments and forecasts will not be available until mid October, I hope that the Committee will find it useful in formulating its views.

We are currently consulting with stakeholders on the implications of the Commission’s policy statement. We shall provide further information to the Committee once we have consulted with the Fishing Industry and formulated this year’s UK priorities to take forward to the December Council.

31 August 2006

Annex A

DRAFT

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Fishing Opportunities for 2007
Policy Statement from the European Commission

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1. INTRODUCTION

Commission Communication No . . . “Improving consultation on Community fisheries management” sets out
a new working method for the European Community to decide on annual fishing opportunities. As part of
this new approach it is foreseen that the Commission will set out in the first half of each year its intentions
concerning its proposals for TACs and quotas for the following year in the form of an annual policy statement.
In order to achieve broad involvement of stakeholders at all stages of fisheries policy development and
implementation, the Commission presents in this document its intentions in proposing fishing opportunities
for 2007.

No specific figures are proposed for TACs or quotas at this stage, because quantitative stock assessments and
forecasts will not be available for many stocks until the latest survey data are analysed in the third quarter.
This Communication, therefore, sets out the views of the Commission in the absence of scientific advice on
the state of the stocks for 2007. Therefore, the statements made in this Communication will be restricted to
questions of principle concerning the setting of TACs and effort levels. These principles will then be applied
when the definitive scientific advice becomes available. However, should unforeseen circumstances arise when
the definitive advice is provided, the Commission may formulate its proposals on the basis of such advice.

Forecasts cannot be made two years ahead for the many species where catches depend heavily on the
abundance of the immediately recruiting year classes. Where fish stocks are more appropriately exploited
(such as many pelagic species) an earlier discussion on TACs might be held in future years. This paper sets
out basic principles for proposing TACs and associated conditions for 2007 based on the results of scientific
assessments and forecasts that will become available during 2006.

1.1 Guiding principles for decision-making under the Common Fisheries Policy

Annual fishing opportunities should be set in accordance with the objectives of the Common Fisheries Policy9,
that is, to achieve the exploitation of living aquatic resources that provides sustainable economic,
environmental and social conditions. As economic and social sustainability requires and presupposes a
fisheries activity that is sustainable, the highest priority must be given to the conservation and sustainable
exploitation of marine resources.

9 Article 2, para 1 of Regulation 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources
These objectives should be met by applying the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing opportunities on marine eco-systems. The Community should aim at a progressive implementation of an ecosystem based approach to fisheries management and contribute to efficient fishing activities within an economically viable and competitive fishing and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers.

Economic and social sustainability depends on biological sustainability: there are no fisheries where there are no fish. The Commission therefore places biological sustainability at the heart of decision-making in fisheries.

However, the Commission does not always directly translate scientific advice on sustainability into proposals for regulations, for two reasons. Firstly, scientific forecasts are at times quite uncertain and their direct application would then result in substantial changes in fishing opportunities from one year to the next, which could often be greater than those necessary to achieve the needed conservation benefits. The second reason is of a political nature. Although many fish stocks are substantially depleted and overfished, the Commission and Member States have considered that it is acceptable to take a relatively high biological risk by allowing more fishing than is sustainable in the short term, in order to maintain a certain continuity of fishing activity. Remedial measures to redress overfishing should be implemented gradually, provided that fishing mortality is steadily and gradually reduced.

1.2 International commitments

In addition to commitments under the Common Fisheries Policy, EU decisions on annual fishing decisions should take account of international policy commitments, such as the obligation to rebuild stocks to levels at which a maximum sustainable yield can be taken.10 While the implementation of this commitment is still under discussion and is the subject of a separate Commission Communication11, it is necessary to take steps to ensure that some progress is made towards this political commitment, or at least that Community decisions do not contradict it.

In some regional fisheries management organisations, as well as in some bilateral and multilateral contexts, some long-standing commitments have been developed to which the Community has subscribed. Examples include the effort reductions concerning deep-sea species agreed at the North-East Atlantic Fisheries Commission, the recovery arrangements concerning Greenland Halibut adopted in the Northwest Atlantic Fisheries Organisation, and the long-term management arrangements subscribed to by the European Community and Norway. Decisions made by the Community concerning fishing opportunities should respect such commitments.

1.3 Further specific commitments

In addition to these long-standing commitments, the Commission and the Council have recently made a number of declarations that are relevant to fishing opportunities in 2007. These include:

— the Council’s statement of December 2005 inviting the Commission to propose a reduction in fishing effort on deep-sea species in line with the Community’s international commitments and to propose a multiannual strategy to progressively reduce effort to a sustainable level; and

— the Council’s statements of December 2005 and 2004 reaffirming the Council’s commitment to sustainability and to further annual adjustments in the direction indicated by scientific advice in order to bring all stocks within safe biological limits.


For 2007 the Commission intends to prepare three separate proposals for “fishing opportunities” regulations. Proposals concerning deep-sea fisheries and for fish stocks in the Baltic Sea will be presented in September 2006. They will take into account the advisory report from ICES (scheduled for mid-June 2006) and the STECF opinion on it, as well as subsequent consultations with stakeholders. Fishing opportunities concerning the remaining stocks will be covered by a proposal to be presented in late November 2006.

10 UN World Summit on Sustainable Development, Johannesburg, September 2002.
3. Priority for Long-term Planning

Managing fisheries requires taking decisions that balance immediate benefits against longer-term benefits. The appropriate way to do this is through the development of long-term plans wherein long-term goals are defined and a way to reach those goals is set out. Recovery plans are a special case of long-term plans where the immediate goal is to rebuild stocks to safe biological levels. As a priority, long-term plans must be implemented on an annual basis. Where recovery, plans, long-term plans or management plans are adopted in Community legislation, they should be followed on an annual basis and TACs will be proposed that correspond to these plans. The same is true of long-term management arrangements developed with third countries, such as Norway.

The Commission will continue the development and proposal of long-term management arrangements.

4. A Consistent Basis for Decision-making Concerning TACs

Advice to the Community on biological sustainability is provided by the Scientific, Technical and Economic Committee for Fisheries (STECF). This Committee may use information from relevant regional scientific organisations as appropriate, in particular, the International Council for the Exploitation of the Sea (ICES). The Commission therefore relies heavily on scientific advice provided by that Committee on the fishing opportunities consistent with biological sustainability.

Management measures should be in proportion to the biological risk that is to be mitigated. They should also be equitable with respect to various stakeholders and fishing communities. The Commission has therefore classified stocks into a small number of categories after considering the level of biological risk that is perceived by STECF. For each of these categories, similar management measures are proposed. The main categories are discussed in turn below, together with worked examples of what the results would have been if this methodology had been applied to scientific advice for 2006.

For all stocks in a category, the Commission intends to propose fishing opportunities based on the guidelines described in each section, subject to any mixed fishery interactions. In some cases it will be necessary to make an adjustment to fishing opportunities on account of the conservation needs of another stock that is caught in the same fishery, for example in the plaice and sole fishery in the North Sea and the fisheries for Southern hake and Nephrops (see section 6.2). Mixed fisheries catching herring and sprat will continue to be managed on the basis of a by-catch limit.

As a general rule, the Commission attempts to stabilise fishing opportunities by limiting changes in TACs to no more than 15% from one year to the next. This may not be possible in cases where particularly stringent and urgent conservation measures are needed to save a fishery from collapse, but this is an exceptional occurrence. Should the definitive scientific advice recommend particularly stringent and urgent conservation measures to save a fishery from collapse, the Commission will formulate its proposals taking into account such advice.

4.1 Stocks exploited consistently with maximum sustainable yield

Description: These are fish stocks where the annual fishing mortality rate is assessed as being consistent with that delivering the highest long-term yield. For these stocks the fishing mortality should be kept close to current levels, but the TAC would not be changed by more than 15% from one year to the next.

Community stocks likely to be concerned: plaice in Area VII, megrims in VIIIc and IXa.

Fishing possibility for 2007: a TAC set:
— to the forecast catch established by STECF as corresponding to an $F_{msy}$ proxy, but not more than 15% higher or lower than the TAC in 2006.

Comments: herring in IV and IIIa, saithe in IV, VI and IIIa (N), and haddock in IV and IIIa would also have been placed in this category but are subject to a joint management plan with Norway which will have a similar effect (arrangements for North Sea haddock are under review in 2006).

2005 EXAMPLE: Megrims in VIIIc and IXa. Advice for this stock was that fishing mortality in relation to highest yield is “appropriate”. This places the stock in the category “exploited consistently with MSY”. The forecast catch for continuing to fish at the same rate was 1,181t, compared to a TAC of 1,336t in 2004 (of which only 1,140t were caught). In this situation the Commission would propose a TAC of 1,181t, because this is consistent with unchanged fishing mortality at MSY levels and is a less than 15% change in the TAC from the previous year.

$F_{msy}$ The fishing mortality that, in the long term, will result in the maximum sustainable yield from a stock.
4.2 Stocks overexploited with respect to maximum sustainable yield but inside safe biological limits

**Description:** This category covers stocks that are not at risk of depletion due to recruitment failure in either the short or the long term but are exploited with a fishing mortality that is higher than F\textsubscript{msy}. It also includes those stocks which are inside safe biological limits but for which it is not yet possible to identify the fishing mortality in relation to that delivering the highest yield, and those stocks that are overexploited with respect to maximum sustainable yield but for which safe biological limits have not yet been defined. For these stocks, fishing mortality should not increase and the TAC should be kept within 15% bounds. An increase in fishing mortality would be in contradiction to both the Johannesburg Implementation Plan and the precautionary approach.

**Community stocks likely to be concerned:** whiting VII\textsubscript{e}-k, herring in the Baltic Sea, sole in III\textsubscript{a}, anglerfish in VII\textsubscript{e} and IX\textsubscript{a}, herring in the Baltic Sea Management Unit 3, sprat in Baltic Sea subdivisions 22–32.

**Fishing possibility for 2007:** TAC set:

- to the forecast catch established by STECF as corresponding to the higher value of (a) an F\textsubscript{msy} proxy or (b) unchanged fishing mortality, but:
- not more than 15% higher or lower than the TAC in 2006.

**2005 EXAMPLE:** Whiting in VII\textsubscript{e}-k. Advice for this stock was that fishing mortality in relation to highest yield is “overexploited” but the stock is at “full reproductive capacity”. The forecast catch for continuing to fish at the same rate was 108,40t, compared to a TAC of 27,000t in 2004 (of which only 14,000t were caught). A suitable proxy for F\textsubscript{msy} here could be F\textsubscript{0.1} (= 0.181) for which the corresponding catch is 4,420t. The three values are therefore:

- TAC for F\textsubscript{msy}: 4,420t.
- TAC for unchanged fishing mortality: 108,40t.
- TAC for 15% reduction from the 2005 TAC of 21,600t: 18,360t.

The Commission would propose the highest of these figures, being **18,360t**.

4.3 Stocks outside safe biological limits

**Description:** This category covers stocks that are at risk of depletion due to recruitment failure in either the short or the long term: either fishing mortality is above F\textsubscript{pa} or the stock size is below B\textsubscript{pa}, or both.\(^\text{13}\) This category also includes species for which few data are available but where there are strong indications based on life-history parameters and fishery characteristics that current levels of fishing are unsustainable.

However, three separate special sub-categories are defined. Firstly, species with such a short life-cycle that an in-year adaptation of fishing opportunities is necessary. Secondly, species with such a long life-cycle that they are highly vulnerable to exploitation and special measures are necessary, i.e. deep-sea species. Thirdly, stocks that are so far outside safe biological limits that recovery measures are necessary are placed in a separate category. (Measures addressing stocks in these categories are described in Section 5, 4.5, 5.3 and 4.4 respectively).

**Community stocks likely to be concerned:** sole in VI\textsubscript{d}, demersal elasmobranchs in IV, III\textsubscript{a} and VII\textsubscript{d} (thornback ray, common skate, Angel shark), anglerfish in VII\textsubscript{b}-k and VIII\textsubscript{a}b, megrim in VII\textsubscript{b},c,e-k and VIII\textsubscript{a}b, plaice in VII\textsubscript{f}g, plaice in VII\textsubscript{e}, sole in VII\textsubscript{f}g, Celtic Sea herring, herring in V\textsubscript{a}S and VII\textsubscript{bc}, herring in Baltic Sea Divisions 25–29 and 32 (excl Gulf of Riga).

**Fishing possibility for 2007:** TAC set:

- as a general rule, to the forecast catch established by STECF as corresponding to bringing the stock inside safe biological limits in 2008, but no more than 15% higher or lower than the TAC in 2006; and
- however, the TAC will in no case be set at a level that will lead to an increase in fishing mortality nor to a decrease in spawning biomass, even if this means a bigger reduction in the TAC than 15% (doing so would be counter to the Council and the Commission’s commitments on the gradual approach to sustainability, see section 1.3).

**2005 EXAMPLE 1:** Sole in VII\textsubscript{f}g. Advice for this stock in 2005 was that fishing mortality in relation to highest yield is “overexploited”, the stock is at “Full reproductive capacity” but fishing mortality presents an “increased risk” (i.e. the stock is outside safe biological limits with respect to fishing mortality).

TAC for returning within safe biological limits: 880t.

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\(^{13}\) The fishing mortality (F\textsubscript{pa}) and spawning stock biomass (B\textsubscript{pa}) that the International Council for the Exploration of the Sea advises as consistent with the precautionary approach.
TAC for 15% reduction from the 2005 TAC of 1,000t: 850t.

The Commission would have proposed the highest of these figures, being 880t, after checking that this TAC would not correspond to an increase in fishing mortality nor a decrease in biomass.

2005 EXAMPLE 2: Sole in VIIId. Advice for this stock in 2005 was that fishing mortality in relation to highest yield is “overexploited”, the stock is at “full reproductive capacity” but at risk of being harvested unsustainably (ie the stock is outside safe biological limits with respect to fishing mortality).

TAC for returning within safe biological limits: 5,720t.

TAC for 15% reduction from the 2005 TAC of 5,700t: 4,845t.

TAC for no increase in fishing mortality: 5,780t.

The Commission would have proposed a small increase in the TAC to 5,720t corresponding to returning the stock to safe biological limits.

4.4 Stocks subject to long-term plans

Description: this category includes stocks under long-term management arrangements, including recovery plans for the stocks at highest biological risk, ie stocks which are (or have recently been) at very high risk of suffering reduced reproductive capacity. Where the Commission has proposed or the Council has adopted a recovery plan or long-term plan, the Commission will propose a TAC that is consistent with that plan. Similarly, where the Community has entered into long-term management arrangements with third countries, those arrangements will usually govern the choice of TAC.

Community stocks concerned: cod in areas VIIa, VIa(N), IIIa(N) and IIIaS(Kattegat); Northern and southern stocks of hake; sole in VIIIab and sole in VIIc; Norway lobster in VIIc and IXa; cod in the Baltic Sea (Divisions 22–24 and 25–30); plaice and sole in IV.

Shared stocks concerned: saithe in IV, IIIa and VI; haddock in IV and IIIa, potentially plaice in IV; herring in IV, VIIId and IIIa.

Fishing possibility for 2007: Fishing opportunities should be set in accordance with the relevant recovery plans (or, where recovery plans are not yet adopted by the Council) in accordance with the Commission’s proposals.

Comment: Where scientific advice is insufficiently complete to allow the recovery plan to be applied quantitatively, as is likely in the case of several cod stocks, another approach would have to be followed. The cod case is discussed in section 5.1.

2005 EXAMPLE: Northern Hake. Advice for this stock in 2005 was that fishing mortality in relation to highest yield is “overexploited”, the stock is at “increased risk” in relation to precautionary limits, but is harvested sustainably in relation to fishing mortality (ie the stock is outside safe biological limits with respect to spawning stock biomass). The stock is subject to Council Regulation (EC) No 811/2004 establishing a recovery plan for the Northern hake stock.

TAC for returning within safe biological limits: 43,900t.

TAC for a fishing mortality of 0.25 (Article 5(1) of the recovery plan): 43,900t.

TAC range for a 15% change from the 2005 TAC of 42,600t (as specified in Article 5(5) of the recovery plan): 36,210t to 48,990t.

TAC for no decrease in stock size (Article 5(3)): ca 47,500t.

STECF and ICES advise that a TAC consistent with the recovery plan is 43,900t, which is consistent with a fishing mortality of 0.25, a less than 15% change in the TAC, and does not correspond to a decrease in stock size.

The Commission therefore proposed a small increase in the TAC to 43,900t corresponding to the application of the recovery plan.

4.5 Naturally short-lived species

Description: some stocks of small-sized fish are subject to high levels of natural mortality such that the fished stock is mostly constituted of a single year-class. Managing such species requires rapid in-year decision-making, where the annual fishing opportunities are adapted according to the strength of the incoming year-class.
Community stocks likely to be concerned: sandeel in IV, anchovy in VIII, anchovy in IX, sprat in IV, Norway pout in IV and IIIa.

Fishing possibilities for 2007:

For sandeel in the North Sea, the Commission will again propose to repeat the in-year assessment and review procedure as adopted for 2006 (Annex IIId of Regulation 51/2006), subject to possible improvements after consultation.

For anchovy in the Bay of Biscay, the Commission will propose an initial TAC based on maintaining the spawning stock size at a precautionary level (Bpa) at spawning time in 2007, with an in-year re-examination of the TAC based on spring survey data.

For anchovy in IX, the Commission will propose a TAC at the same level as that adopted for 2006 unless a conservation problem arises later in 2006.

For sprat in the North Sea, the Commission will propose to continue the in-year review of fishing possibilities based on spring survey data. To that end, a TAC for 2007 will be proposed at the same level as that adopted for 2006 after the in-year review, but this will be subject to a further in-year review in 2007.

For Norway pout, the stock assessment is more dependent on autumn survey data and the Commission will base its TAC proposal more directly on the advice received in the autumn. An in-year review during 2007 may also be included in the proposal.

4.6 Stocks whose status is unknown but which are not at high biological risk

Description: for many stocks a deterioration in the accuracy of commercial catch data has led to high uncertainty about the state of the resources, to the extent that they cannot be assessed. Some other stocks—usually of minor economic importance—are little studied and may be caught either as by-catches in other fisheries or in fisheries of local importance only. Pending better knowledge of the state of such stocks, some interim guidelines should apply.

Community stocks likely to be concerned: whiting in IIIa, whiting in IV and VIId, plaice in IIIa, plaice in VIId, all stocks of horse mackerel, sandeel in IIIa, cod in VIIe-k, haddock in VIIe-k, plaice VIIh-k, plaice VIIbc, all stocks of pollack.

Fishing possibility for 2007: Consistent with the precautionary approach, the Commission will propose measures to prevent the expansion of fisheries in situations of high uncertainty. Where recent catch levels by all Member States are substantially lower than corresponding quotas (and there is no evidence that expansion of a fishery would be sustainable) the Commission will propose a reduction in TACs towards recent catch levels. This reduction will be proposed at a rate of 20% per year, though where scientific agencies propose a different approach (such as a recent average historic catch level) this will be taken into account.

2005 EXAMPLE: Horse mackerel in CECAF 34.1.13 (Azores waters). There is no scientific advice concerning this stock. Quota uptake in 2004 was 8% by Spain, the only quota-holder.

The Commission proposed a 20% reduction in TAC from 1,600t to 1,280t.

5. Special Cases

5.1 Cod stocks covered by the cod recovery plan

As of December 2005, there had been no detectable reduction in cod mortality in most areas and no significant recovery of the stock. As management arrangements have not been greatly more stringent in 2005 or 2006 than in 2004, the Commission anticipates that this situation is likely to continue into 2006. The existing cod conservation measures should therefore be reviewed, and should be strengthened while the review process is underway.

For 2007 the Commission will propose fishing opportunities for cod stocks that are consistent with the provisions of the recovery plan if STECF is able to provide quantitative estimates of stock size and fishing mortality to allow the direct application of the plan. If no such estimates are available, the Commission will propose a reduction of 25% in both TAC levels and in all types of fishing effort that catches cod, and will require stronger safeguards concerning cod conservation when considering derogations to the days-at-sea regime.

The review process will begin in 2006 with a new evaluation by STECF of the development of fishing effort, catches, and discards.
5.2 Cod stocks in the Baltic Sea

Concerning stocks of cod in the Baltic Sea, the Commission will shortly present its proposal for the recovery and long-term management of these two stocks. While this is under discussion (and to be consistent with that proposal), the Commission will propose TACs for 2007 corresponding to the higher of a) 10% reduction in fishing mortality and b) 15% limit on TAC changes.

**2005 EXAMPLE: Cod in the Eastern Baltic.** Advice for this stock was that fishing mortality in relation to highest yield is “overexploited” and the stock is at “Reduced reproductive capacity”. The forecast catch for continuing to fish at the same rate was 72,400 compared to a TAC of 42,800t in 2005. The Commission would propose a TAC as follows:

- TAC for 10% reduction in fishing mortality: 66,985t.
- TAC for unchanged fishing mortality: 72,400t.
- TAC for 15% increase from the 2005 TAC of 42,800t: 47,080t.

The Commission would propose the figure corresponding to the 15% limit on TAC changes being **47,080t**.

5.3 Deep-sea species

For deep-sea species, a separate proposal will be presented in September 2006. Deep sea fish are long-lived and slow growing, such that these stocks have a very low productivity. The Commission supports a progressive approach to returning stocks to sustainable conditions based on scientific advice. However, for deep-sea stocks the scope for graduality is limited because of their vulnerability to over-fishing and the very slow rates of stock recovery.

The scientific advice for these stocks has been consistent, namely that current exploitation rates should be significantly reduced and that new fisheries should not be allowed to develop unless supported by data to show that they are sustainable.

The extent to which TACs and fishing effort should be reduced depends on the stocks concerned. For some, for example blue ling and deep-water sharks, there should be no targeted fishery at all and by-catches should be kept to a minimum. For others, such as roundnose grenadier, scientists have been advising reductions in effort of about 50%.

For 2007 the Commission will propose substantial reductions in the TACs for deep-sea species with a view to bringing fishing mortality down to sustainable levels as rapidly as possible. The TAC reductions will not be limited to 15% per year but will be as large as thought necessary to achieve target levels of fishing mortality within a period of three years. The Commission believes that reducing the TACs more gradually than this would carry an unacceptable risk of long-term damage to the deep-sea ecosystem.

The proposed reductions in TACs for deep-sea stocks should be complemented by proposed effort reductions on the fleets that exploit them. The Commission is currently preparing a review of the effort management measures on deep-sea stocks, which is likely to lead to a proposal to revise or replace Regulation 2347/2004 in order to introduce a more efficient effort regime. To this end, ICES has been asked to identify distinct fleets and fisheries for deep-sea stocks so that effort reductions can be better targeted to reflect the changes in the TACs.

5.4 Mixed Fisheries

Although some fisheries are highly targeted activities that make “clean” catches of a single species, many fisheries take a mixture of several species even though only a few may be of economic interest. Quantifying these interactions is still a developing science, but some mixed fisheries are so well understood that it is clear that ignoring these interactions would clearly be incompatible with responsible fisheries management.

Examples include the flatfish fishery in the southern North Sea, (where most plaice are caught as a by-catch in the beam-trawl sole fisheries for sole, although there is a separate targeted fishery for plaice in the central North Sea), the mixed fishery for hake and Nephrops in the Iberian Atlantic area, and the mixed fisheries for sprat and herring in the North Sea and in the Skagerrak and Kattegat (managed by a herring by-catch quota).
For the flatfish fishery and the hake and Nephrops fishery the Commission’s proposals concerning TACs, quotas and effort will conform to the relevant Council Regulation (or Commission proposal, if the Regulation is not yet adopted) concerning the relevant fisheries. The Commission will propose that herring and sprat fisheries continue to be managed with a by-catch quota.

**2005 EXAMPLE: Plaice and Sole in IV (based on 2005 advice).** The Management Plan proposal would have provided for TACs as follows:

### Plaice

The values relevant to the management plan proposal are:
- TAC for 10% reduction in fishing mortality: 60,030t.
- TAC for fishing mortality = 0.3 : 38,200t.
- TAC for 15% reduction from the 2005 TAC of 59,000t: 50,150t.

The Commission would have proposed the highest of these figures, being **60,030t**.

### Sole

The values relevant to the management plan proposal are:
- TAC for 10% reduction in fishing mortality: 12,400t.
- TAC for fishing mortality = 0.2 : 8,300t.
- TAC for 15% reduction from the 2005 TAC of 18,600t = 15,810t.

The Commission would have proposed the highest of these figures, being **15,810t**.

### Days at Sea

The Commission would have proposed a 10% reduction in the days-at-sea for beam-trawl gear, from 156 to 140 days-at-sea.

### 5.5 Nephrops stocks

Advice is provided every two years for Nephrops stocks. Apart from the Nephrops in IXa which is covered by the Southern Hake and Nephrops recovery plan, the Commission will for 2007 propose the same TACs for Nephrops in 2007 as were adopted for 2006.

### 5.6 Blue whiting

The Commission has begun an exchange of views with Member States on the allocation of blue whiting. The TAC proposal for this species will reflect the application of the Coastal State agreement on multi-annual management concerning this stock, and an allocation of the TAC will be proposed that takes account of the discussion with Member States.

### 5.7 New TACs

Occasionally scientific advice highlights a conservation need for new species at relatively short notice. The Commission will follow up this advice and consult relevant Member States and interested parties, particularly on the issue of allocation. Further discussion will be held concerning bass and porbeagle in 2006. The Commission will not propose new TACs unless a prior discussion has been held.

### 6. Technical Measures

A review of technical measures for fisheries in Atlantic waters began in 2005 and is not likely to be completed by 2007. Therefore the Commission intends to further prolong the transitional technical measures defined in Annex III of Regulation No 51/2006, subject where necessary to revision and updating.
7. **Effort Management**

Annual changes to permissible fishing effort are required by several recovery plan regulations. The Commission will propose adjustments to fishing effort (as permissible days-at-sea in Annex II of the “fishing opportunities” proposal) as follows:

Annex IIa (Cod recovery): Days-at-sea to be adapted in line with the approach outlined in Section 5.1, i.e. according to the requirements of the cod recovery plan. Should scientific advice fail to indicate a recovery of the cod, a minimum 25% reduction in relevant days-at-sea should apply. The Commission will look further into the possible causes of a failure of the recovery plans, especially the conditions for the application of derogations.

The Southern hake and Nephrops recovery plan (Council Regulation 2166/2005) requires a 10% reduction in days-at-sea for the relevant gear types and areas.

The Commission proposal concerning a recovery plan for Western channel sole (COM(2003) 819) is still under discussion. Unless the discussion is finalised prior to the end of 2006 with a different conclusion, the Commission will also propose the 10% reduction in fishing effort that is included in this proposal.

The results of these calculations for 2007 are set out below.

Annex IIb (Southern hake and Nephrops): 216 days-at-sea for gear groups 3.a.i to 3.c. (10% reduction from 240 days-at-sea in 2006). The Commission will review the conditions for the scope of the regulation to ensure that all the vessels developing the major part of fishing mortality on southern hake are included.

Annex IIc (Western Channel sole): 194 days-at-sea for gear groups 3.a. and 3.b. (10% reduction from 216 days-at-sea in 2006). Fishing with static nets of mesh size over 120mm when less than 100Kg of sole are taken will continue to be unlimited.

A report to be submitted to the Council and the European Parliament on the effectiveness the existing effort regime applicable for deep-sea stocks is being prepared by the Commission services. A new effort management regime for deep-sea stocks will be proposed in the light of the conclusions of that report.

8. **Conclusion**

The greatest difficulties in fisheries management are centred on achieving a recovery of cod, where despite recent efforts neither significant falls in fishing effort nor increases in stocks can be detected. For other species the situation is more positive, although the growing number of stocks for which data provision is inadequate for an assessment is a cause for concern.

The Commission will continue to work on the development of long-term plans, which should be the main instrument for developing fisheries policy. Those plans which are adopted should be applied. While further plans are being developed, this Communication provides management guidelines for the stocks that are not yet covered by them. The purpose of the Commission’s approach is to provide as much stability as possible for the fishing sector, while ensuring that stocks rebuild or maintain their productive potential.

While this policy approach is applicable to Community stocks, similar principles should guide the Community’s actions in Regional Fisheries Organisations and in bilateral agreements. Here too, the development of long-term management measures should be a priority.

**FLEGT LICENSING SCHEME FOR TIMBER IMPORTS**

**Letter from Jim Knight MP, Minister for Rural Affairs, Landscape and Biodiversity, Department for Environment, Food and Rural Affairs to the Chairman**

I am writing to inform you that the Council reached political agreement on the negotiating directive authorising the Commission to open negotiations for Forest Law Enforcement, Governance and Trade (FLEGT) Partnership Agreements in November 2006 and adopted the supporting Regulation (13660/05, 15102/05, 15068/05 add 1) in December 2005.

This will allow the EU to negotiate and enter into legally binding partnership agreements with timber producing countries and provide them with assistance to tackle illegal logging. This assistance will include
setting up a licensing system designed to identify products and license them for export to the EU. The Regulation provides EU Customs officers with powers to deny access to unlicensed timber and timber products from partner countries.

22 February 2006

FLFLOOD MANAGEMENT (5540/06)

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

Thank you for your Supplementary Explanatory Memorandum of 2 June 2006 which Sub Committee D (Environment and Agriculture) considered at its meeting yesterday.

We share the Government’s concerns on this proposal and ask that you ensure that your concerns are raised during the upcoming Council meeting. As you point out in your Regulatory Impact Assessment, the existing Water Framework Directive already requires the consideration of possible environmental damage from flooding as part of water management planning. Furthermore, the definition used for flooding is too wide in scope.

15 June 2006

FLUORINATED GASES AND EMISSIONS FROM MOTOR VEHICLES AIR CONDITIONING SYSTEMS (12179/03)

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 you to inform you about the conclusion of the negotiations on these dossiers. Final agreement was reached between the Council and the European Parliament at the Conciliation Committee meeting on 31 January 2006.

The Commons scrutiny debate was on 14 January 2004 and I provided further information on 25 April, 13 July, Lord Whitty wrote on 24 August 2004 and I wrote again on 28 July 2005. In my most recent letter of 14 December 200514 wrote to provide an update on the EP’s Second Reading and to provide a final account of the progress made during our Presidency of the European Union.

At the Conciliation Committee meeting, agreement was reached on a compromise package, taking account of the amendments proposed by the EP at their second reading. The Council rejected EP amendments intended to enable Member States to go further in their national legislation than the Treaty allows, which could have led to distortion of the internal market. As a compromise, the Committee agreed a new paragraph 3 in article 9, which provides for a time limited derogation (until 31 December 2012) from the placing on the market provisions, for those Member States that had stricter national measures in place as at 31 December 2005. Such existing stricter national measures must be compatible with the Treaty. Further additional text (new article 14) permits Member States to maintain or introduce more stringent measures in relation to use and placing on the market prohibitions and labelling but these measures must again be compatible with the Treaty.

The Council accepted other EP amendments or negotiated satisfactory compromises on a range of technical amendments. The Council was also successful in developing compromises that addressed Member States’ concerns about the possible introduction of disproportionate and unjustified Regulatory burdens.

One amendment to the Directive was agreed. A new paragraph 6 to article 5 permits Member States to promote alternative (ie those that do not use f gases) mobile air-conditioning systems which are efficient, innovative and further reduce the climate impact. Such action must however be without prejudice to relevant Community law.

The agreed texts now have to be formally adopted by the Council and the European Parliament before they are published in the Official Journal of the European Union.

The outcomes are in line with UK objectives, including on the legal base of the Regulation, and on the technical amendments. While the UK was unable to conclude this negotiation during our Presidency of the EU, the Austrian’s thanked the UK for their work towards setting up the final agreement in the Conciliation Committee.

The main body of the provisions in the Regulation are set to apply from mid 2007 (one year and 20 days after its publication in the Official Journal of the European Union), with further provisions applying from one or two years after that date. Defra will lead on the implementation of the Regulation while DfT will transpose and lead on implementation of the Directive.

25 March 2006

GENETICALLY MODIFIED MAIZE (8635/05, 10785/05, 11834/05, 14423/05)

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 11 January which Sub-Committee D (Environment and Agriculture) considered at its meeting on 15 February. The Committee notes that this proposal may be debated in the March Agriculture Council. However, the use of Genetically Modified Organisms (GMOs) in Europe remains controversial, and, given our continuing concerns over this issue, the Committee decided to continue to hold the proposal under scrutiny.

The proposal is similar to a number of other proposals scrutinised by the Committee which aim to place GMOs on the EU market. In the majority of cases the Committee expressed concerns over the environmental implications of the proposals and decided to hold the proposals under scrutiny.

The Committee continues to have a number of concerns regarding these proposals upon which we would be grateful to receive information from you. What regulatory impact assessment is made of proposals for consent to place GMOs on the EU market? What monitoring takes place of the environmental implications of GMOs placed on the market? We would also be pleased to receive an explanation of why it was agreed that Decisions for consent would be considered through the comitology procedure.

Given the Committee’s concern regarding these proposals we would be most grateful if you were able to meet with the Committee in person to discuss the policy and method of GMO consent. I hope you will agree that this would be an important opportunity to discuss the Government’s stance on these proposals with the Committee and my office will be in touch with your department to arrange.

We understand that the following proposals have been adopted by the Commission and the Committee therefore agreed to clear the proposals from scrutiny:


11834/05 Proposal for a 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.

16 February 2006

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

Thank you for your letter of 16 February addressed to Lord Bach headed “GM Maize” but also referring to the unnumbered Explanatory Memorandum of 11 January regarding a proposal to approve the placing on the market of a GM oilseed rape product (Ms8, RF3 and MS8 x RF3) which your Committee considered at its meeting on 15 February. The heading on your letter referred to an earlier proposal for GM maize line 1507.

I am responding as the minister with responsibility for genetic modification issues. I shall be happy to meet with your Committee to discuss the policy and method of GMO consent and look forward to receiving details in due course. In the meantime I will answer the questions you raised.
With regard to your first question, Regulatory Impact Assessments are not required for individual approvals of GM products. This situation is not specific to GM products, the same applies to the approval of other products, such as medicines and pesticides. A Regulatory Impact Assessment was completed in 2002 on the implementation of Directive 2001/18/EC. A copy of this document can be found on the Defra website at: http://www.defra.gov.uk/environment/gm/eu/pdf/implement_ria.pdf

A further Regulatory impact Assessment was completed before the new GM food and feed and traceability and labelling regulations came into force in 2004. A copy of this document can be found on the Food Standards Agency website at: http://www.food.gov.uk/multimedia/pdfs/gmria.pdf

In your second question you ask what monitoring takes place of the environmental implications of GMOs placed on the market. All applicants are required to supply a post-market monitoring plan setting out how the proposed release will be monitored for effects on the environment. There are two main objectives of the monitoring plan. The first is to confirm that any assumption regarding the occurrence and impact of potential adverse effects of the GMO or its use in the environmental risk assessments (also a requirement) are correct. The second is to identify the occurrences of adverse effects of the GMO or its use on human health or the environment which were not anticipated in the environmental risk assessment. Directive 2001/18/EC outlines the general principles and design of the monitoring plans the applicant should provide but all post market monitoring plans will be tailored to the particular GMO under consideration. The plan should include general monitoring and case specific monitoring when applicable. Any consent issued for the placing on the market of a GMO will include the specific monitoring requirements and obligations to report to the Commission and the Member State Competent Authorities. Following the placing on the market the applicant must ensure that monitoring and reporting on it are carried out according to the conditions specified. If any risks to human health or the environment are identified as a result of the monitoring, the applicant is required to notify the Competent Authority. Safeguard action can be taken by Member States to prohibit any further use of the product until the Commission and Member states have assessed the new information and decided to amend or terminate its use.

Finally, you asked why it was agreed that Decisions for consent would be considered through the comitology procedures. Decisions about which GMOs can be consumed or grown in the EU as a whole have been taken by Member States collectively under a regime of safety testing, monitoring and control which dates back to 1990. Member States recently agreed to strengthen this legal framework. Member States and the European Parliament have agreed that where the Council is unable to reach a final decision on a product by Qualified Majority, the Commission will take the decision on its behalf, in line with scientific advice. This is a procedure which is in force in many other policy areas, not just in the area of GMOs. We think it is the best way of resolving cases where Ministers are unable to reach a conclusion on a particular dossier.

27 March 2006

GROUNDWATER POLLUTION (12985/03)

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

I am writing to update you on the latest developments on the above directive.

You may recall that Elliot Morley wrote to you on 31 May last year, following the European (Parliament’s) First Reading, and again on 20 June and 20 July—shortly before and after the June 2005 Environment Council. He outlined the proposed text agreed at Environment Council, and reported that it provided a flexible, risk-based approach to groundwater protection.

On 12 June this year the European Parliament, at its Second Reading, voted through 41 amendments to the Council text. A copy of these is attached. Since most are unlikely to be acceptable to Council, it is anticipated that Conciliation between the European Parliament and Council will commence in September.

Since the key issue of contention on this proposal—whether or not to have common European groundwater standards for most substances—was resolved to the UK’s satisfaction at First Reading, a number of the
Second Reading amendments address points of detail which we expect to be satisfactorily addressed during Conciliation. However, several more significant issues, in similar vein to those addressed in the run up to the 2005 Environment Council, arise as follows:

— a requirement at Amendment 22 for Member States to prevent absolutely all inputs of hazardous substances to groundwater, although this is impossible to achieve in practice;

— a new definition at Amendment 12 of “deterioration” which would confuse the objective in the Water Framework Directive (WFD) for Member States to prevent deterioration of groundwater from “good” to “poor” chemical status (i.e., a significant quality change for a large area of groundwater), and simultaneously impose an obligation to control all trivial and temporary fluctuations in quality;

— changes in Amendments 18 and 19 to the way standards and threshold values are used for assessing whether groundwater bodies are at “good” or “poor” chemical status, which would result in the application of arbitrary or inappropriate standards and departure from the WFD’s risk-based approach; and

— deletion at Amendment 36 of specific wording in the Council text aimed at clarifying that the Nitrates Directive is used as a “basic measure” to address agricultural sources of nitrates (as intended in the WFD).

These issues are likely to generate the most discussion at Conciliation. Our overall objective will continue to be to attain a “flexible, risk-based instrument” which will protect groundwater in a cost-effective way, and we will be specifically looking to avoid the introduction of any conflicts with the Nitrates Directive and the Water Framework Directive.

I shall write to you again when the outcome of Conciliation becomes clear. In the meantime, if it would be useful to discuss any of the issues informally with Defra officials, they should be happy to attend at the Committee’s convenience.

4 August 2006

HEALTH REQUIREMENTS FOR AQUACULTURE (11880/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

When the above mentioned Explanatory Memorandum was considered by Sub Committee D on 9 November 2005, it was retained under scrutiny pending further developments. I am writing to update you on progress on this dossier.

The Committee may wish to be aware that during the UK Presidency officials chaired five working groups and good progress was made in resolving a number of key areas of concern to Member States. I attach a letter to interested parties from my officials issued on 26 January 2006 outlining the key outcomes of negotiations during the UK Presidency. A further three working groups were held during the Austrian Presidency under Finnish Chairmanship (as part of a Presidency twinning exercise) and the Finnish Presidency have indicated their intention to submit the dossier for political agreement or adoption in September 2006.

Turning to the specific concerns of the Government, we pressed hard for Gyrodactylus salaris (Gs) to be included in the list of non-exotic diseases in Annex III of the proposal but a majority of Member States opposed that and our fall back negotiating position to include specific reference in the body of the draft Directive to the importance of controlling Gs in order to safeguard wild salmon populations. However, we succeeded in amending the generic provisions in Article 43 of the draft proposal permitting national provision for diseases like Gs not listed in the draft Directive where they constitute a significant risk to wild aquatic animals as well as aquaculture animals. Provision has also been made in Recital 29 and Article 63 of the proposal for the continuation of current safeguard measures for Gs and certain other diseases granted in Commission Decision 2004/453/EC, pending the adoption of measures under the new Directive. Moreover, Commissioner Markos Kyprianou has, in correspondence with UK Members of the European Parliament, declared that it is the intention of the Commission within the framework of the draft Directive to ensure future protection of UK rivers against Gs in line with the internationally accepted risk mitigation currently laid down in Decision 2004/453. We have therefore succeeded in maintaining current health guarantees and a mechanism for their continuation.
In order to address concerns about a lack of transparency in devolving to a Member State the facility to declare zones and compartments within its territory disease-free, we succeeded in writing into Article 50 of the proposal a mechanism whereby Member States will have 60 days to consider the evidence supporting the declaration of a disease free zone or compartment before that declaration can take effect. If Member States have significant concerns about the evidence, the period may be further extended by 30 days and, in the event of continuing concerns, the matter may be referred to arbitration under the auspices of the Commission. If the declaration is found to be based on defective evidence, provision has also been made to suspend it via comitology. This procedure should enable Member States, like the UK, with high fish health status, to ensure that movements of fish from newly declared disease-free areas are based on robust risk mitigation principles and requirements.

The prime objective during negotiations has been to develop a proposal that is likely to present no greater risk of disease introduction to the wild and farmed environment than current controls. The new measure contains most of the necessary risk mitigation mechanisms to help achieve this including provision in Article 17 for preventing the spread of the listed diseases via species of fish capable of acting as vectors for those diseases. However, a number of areas remain to be elaborated by the secondary legislative process and the success of the new regime in terms of maintaining the high health status of the UK will depend on the progress officials are able to make in negotiating robust measures as part of that process once the Directive has been adopted.

It was noted in the EM that the cost of the measure and its likely impact on businesses and government cannot be assessed fully at this stage because much of the detail of the new regime will be elaborated through secondary legislation to be adopted by the Commission. That remains the position. However officials involved in negotiations during this secondary phase are under instruction to minimise cost and adverse economic impact where it will be both practically possible and consistent with adequate risk mitigation to prevent disease transmission.

The Committee may wish to know the outcome of Government consultations on the draft Directive. Officials wrote to stakeholders inviting comments on the draft Directive when it was published in August 2005. Comments were received from a number of interests including bodies representing environmental, aquaculture and ornamental trade interests. A number of comments were generally supportive but others were concerned that the new measures could result in a lowering of fish health standards. Discussions also took place with a range of stakeholders at meetings of the Scottish Executive’s Aquaculture Health Joint Working Group and Defra’s Committee for Aquaculture Health.

Finally, the Government remains broadly content with the main thrust of the proposal and we are satisfied that we have achieved as much as we could in the time allocated for discussion on the proposals in Brussels.

10 July 2006

Annex A

NEW DIRECTIVE ON FISH AND SHELLFISH HEALTH

1. The purpose of this letter is to provide an update on progress made during negotiations on the proposal for a new fish and shellfish health Directive, during the UK Presidency. As you may recall, I wrote on 25 August 2005 informing you of the publication of the proposal (COM (2005) 362, 11880/05) and inviting comments on it.

BACKGROUND


— authorisation of aquaculture businesses;
— risk based animal health surveillance system;
— provision for centralised electronic recording of live fish movements within a Member State;
— provision for Member State to self declare-disease freedom for areas of their territory; and
two lists of diseases (exotic/non-exotic) for EU wide control with provision for Member States to draw up national provisions for diseases not listed that constitute a significant risk for fish species or the environment (eg Gyrodactylus salaris).

3. The documents also include a proposal for amending Council Decision 90/424 on expenditure in the veterinary field to enable Member States to access funding for controlling/eradicating certain fish diseases via the European Fisheries Funding mechanism, and a Commission Staff Working Document on the potential impact of the proposals (11880/05 Add1).

PROGRESS IN NEGOTIATIONS

4. Five Working Groups were held during the UK presidency. The first two were dedicated to a detailed read-through of the text and the Commission’s supporting impact assessment to improve understanding of the various changes and new concepts. At the end of these sessions, Member States were invited to outline their key areas of concern. The most notable included—disease listing, risk based surveillance, traceability, placing on the market, compartmentalisation, self-declaration of disease-free areas, authorisation of businesses, introduction of non-susceptible species and expenditure in the veterinary field.

5. The three remaining meetings concentrated on finding solutions to major issues and there was consensus on the following:

— amendment to Article 4 to address concerns about the cost of “authorising” small scale farmers. The change will allow Member States to “register” rather than “authorise” such establishments engaged in the direct supply of small quantities of fish for human consumption;

— amendment to Article 14 (with a consequential change to Article 8) to remove a requirement to record all fish movements internal to Member States on the Community’s TRACES system, and provision for a legal basis to give Member States the option of requiring movements electronically on a national register;

— amendment to Article 15(1) no longer to require a movement standstill where there has been increased mortality or clinical outbreak of any disease within 31 days prior to placing on the market. The proposal will instead require a standstill in the case of clinical outbreak or any unresolved increased mortality at the time of placing on the market;

— amendment to Article 50 (with consequential changes to Articles 59 and 61) to specify the procedure by which Member States may in future self-declare freedom from disease for a zone or compartment so that there is sufficient oversight of the process by the Commission and all other Member States; and

— amendment to Annex V Part II to clarify the process for seeking approval of compartments in the coastal zone to overcome difficulties relating to marine strains of certain diseases occurring in wild fish populations; and provision for the developments of standards on the inactivation of pathogens in water for use in disease free compartments.

6. A number of changes have been made to the text of the draft Directive to incorporate these amendments, a compromise proposal for Article 17 that has yet to be discussed and numerous editorial amendments. This latest version of the proposal (document 14117/2/05 Rev 2) may be accessed from the following internet link along with the original version of the proposals referred to in paragraphs 1 and 3 above:

http://www.defra.gov.uk/fish/fishfarm/info.htm

NEXT STEPS

7. Some of the key issues that remain include the disease listing (Annex III and Article 43), the outline of risk based animal health surveillance (Article 10 and Annex IV) and the treatment of non-susceptible species (Article 17). All three issues have already been discussed compromise proposals are being considered.

8. Working Groups will continue during the Austrian Presidency under Finnish Chairmanship (as part of a Presidency twining-exercise). At least three further Working Groups are scheduled during February and March and there is likely to be pressure for political agreement on the dossier by the summer.
Annex B

LIST OF STAKEHOLDERS CONSULTED ON FISH HEALTH DIRECTIVE NEGOTIATIONS

Anglers Conservation Association
Angling Foundation
Angling Trade Association
Animal Transportation Association
Association of London Government
Association of Port Health Authorities
Association of Salmon Fishery Boards
Association of Sea Fisheries Committees
Atlantic Salmon Trust
Barton & Hart
British Association of Canned Food Importers and Distributors
British Animal Transporters Association
British Association of Fish Processors
British Association of Local Government
British Association of Salmon Fishery Boards
British Conservation Association
British Freshwater Ecology
British Frozen Food Federation
British Marine Fishermen's Association
British Waterways
Burnham Oyster
Calshot Oyster Fishermen Ltd
Carp Society
Caviar House Ltd
C-Export-Ltd
Chartered Institute of Environmental Health Officers
Coarse Fish Farmers and Traders Association (CFFTA)
Cold Storage and Distribution Federation
Commercial Coarse Fisheries Association
Consumer's Association
Conway Mussel Fishermen's Association
Country Land and Business Association
Crown Estates Office
CWS (Trade Association)
English Carp Heritage Organisation
English Nature
European Anglers Alliance
FACT (Fisheries and Angling Conservation Trust Ltd)
Federation of British Aquarist Societies
Federation of British Ports
Federation of British Wholesale Fish Merchants' Association
Fish Producers Organisation
Fish Veterinary Society
Fishmonger's Company
Food and Drink Federation
Halal Food Authority
Holmes Frozen Seafoods Specialist
Independent Food Retailers' Confederation
Institute of Fisheries Management
Institute of Freshwater Ecology
Isle of Man Fish Processors Association
Joint Nature Conservation Committee
Lacors
Landauer Seafoods Ltd
Leatherhead Food Ra
Local Government Association
London Port Health Authority
Manning Impex Ltd
Marr Foods Ltd
National Angling Alliance
National Association of British Market Authorities
National Association of Fisheries and Angling Consultatives
National Association of Specialist Anglers
National Consumer Council
National Farmers Union
National Federation of Anglers
National Federation of Anglers, Fisheries and Conservation
National Federation of Consumer Groups
National Federation of Fish Fryers Ltd
National Federation of Fishmongers
National Federation of Inland Wholesale Fish Merchants
National Federation of Sea Anglers
New England Seafood
Northern Ireland Fish Processors and Exporters Association
OATA—Ornamental Aquatic Trade Association
Pet Care Trust
Prepared Fish Products Association
Professional Koi Dealers Association
Ray Seafoods Ltd
SACN
Salmon and Trout Association
Sea Fish Industry Authority (SFIA)
Seachill Ltd
Seafood Processors Association Ltd
Severn Fisheries Consultative Council
Shellfish Association of Great Britain
South West Rivers Association
South West Wales Angling Federation
Specialist Anglers’ Alliance
Specialist Anglers’ Association
The Carp Society
UK Association of Frozen Food Producers
UK Fish Merchants and Processors Association
Water Companies Association
Welsh Development Agency
Welsh Salmon and Trout Angling Association
Wye Salmon Fishery Owners Association Gram Ltd
Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter reporting on the progress of negotiations on a new Directive on the animal health conditions under which aquaculture animals and products may be placed on the market. Your officials kindly submitted a supplementary note setting out the current state of consultation with Stakeholders.

Your letter suggests that you have made progress towards securing the objectives which your Department set out in its Explanatory Memorandum last autumn, though it does appear to have been something of an uphill process.

The supplementary note provided by your Department records that there is a general acceptance among Stakeholders that the negotiating process has probably been taken about as far is realistically possible. On this basis, and noting that the Finnish Presidency proposes to submit a revised Directive, incorporating the compromises you have negotiated, for agreement in September, we are content to release this proposal from scrutiny.

20 July 2006

HORMONES IN STOCK FARMING (12173/03)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman


That letter also updated you on the progress of the Working Group of the UK’s independent Veterinary Products Committee (VPC), which was set up late in 2002 to examine the latest scientific evidence underpinning the EU ban. This, as you know, is a matter of contention between the EU and US/Canada and is currently being considered by a WTO Hormones Panel. Their report is now expected in spring 2007.

Since my last letter there have been a number of developments and this letter outlines the latest position.

I explained that I had agreed that officials should hold a consultation exercise on a draft GB Statutory instrument amending the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 to reflect the requirements of Council Directive 2003/74/EC. (This, in effect, extends the EU’s ban on the use of hormonal growth promoters in food-producing animals by placing prohibitions on some of the uses of 17ß-oestradiol and its ester-like derivatives.) Following consideration of the relatively few responses I gave agreement to the SI coming into effect on 6 April 2006 (SI 2006/755).

You will recall that the Council Directive also contained provisions for a study to be carried out into alternatives to products containing 17ß-oestradiol, which was underway when I wrote last September. This has now been completed and presented to the Commission and European Parliament. The outcome was described in Explanatory Memorandum 13556/05 of 16 January 2006. Although the UK Government had expressed concerns over the loss of existing 17ß-oestradiol products, particularly for therapeutic purposes, this concern was not reflected in the responses received from the majority of other Member States’ Regulatory Authorities that replied, or independent veterinary surgeons. They considered that acceptable alternatives, such as prostaglandins, were available and in use. The report therefore concluded that the unavailability of 17ß-oestradiol would have minimum adverse economic and animal welfare effects overall. It is expected that EU proposals will be put forward shortly to phase out the remaining permitted therapeutic uses of 17ß-oestradiol products. I will keep you informed of developments.

Last September I also enclosed the draft report from the Working Group set up by the independent Veterinary Products Committee on the Risks Associated with the Use of Hormonal Substances in Food-Producing Animals, which was also out to consultation at the time. You will recall that this Working Group was set up to consider the latest scientific evidence in this area, including the outcome of the studies used by the European Commission to underpin the EU ban. Seventeen responses were received to this consultation, which were circulated to all members of the Working Group with an invitation to comment on their contents. In addition the Chairman of the Working Group produced a commentary on the responses, which was also seen by all Working Group members.

17 Correspondence with Ministers, 10th Report of Session 2003–04, HL Paper 71, p 190.
18 Correspondence with Ministers, 10th Report of Session 2003–04, HL Paper 71, p 190.
The Working Group saw no need to amend the draft report in the light of the consultation responses. Accordingly, the draft report, the consultation responses and the commentary on the responses were submitted to the VPC’s meeting in January 2006. The meeting agreed that all of the documents should be submitted to Defra Ministers with the recommendation that they should be published.

I should draw to your attention that one member of the Working Group, Mr John Verrall, who is also a member of the VPC, indicated at that point that he was minded to dissociate himself from the Report. This is in spite of the fact that he signed up in May 2005 to the Report going out to consultation in the same form as it is now. Although he agrees with much that is in the body of the report he is concerned that the conclusions and recommendations do not reflect his concerns sufficiently. From the perspective of the Working Group and the VPC, the report sufficiently reflects Mr Verrall’s minority views about the carcinogenicity of 17ß oestradiol. However, the Working Group and the VPC took the view that accepting all of the changes he wished to make would have distorted the views of the other fully independent members, thereby upsetting the balance of the report and affecting its integrity.

The matter was discussed further at the March meeting of the VPC, where Mr Verrall produced a document setting out his minority views and received some support from one other VPC member—Professor Diana Anderson. The VPC agreed by a large majority not to accept Mr Verrall’s paper, which some members intimated was a “cherry-picked” selection of quotes from papers which supported his views rather than a logically argued scientific paper. At the May 2006 meeting the report was approved and recommended again for publication. Mr Verrall and Professor Diana Anderson did not approve all of the conclusions of the Report but the VPC re-confirmed its belief that their minority views, expressed in relation to the precautionary principle being applied where the scientific data are incomplete and the conclusions of the SCVPH, are included in the Report.

Mr Verrall chose to send his document to me anyway. I have responded to Mr Verrall stating that I have accepted the VPC’s report as a thorough, well researched and balanced document, which also, very valuably, sets out clearly the further work needed to increase our knowledge of this complex and emotive area. My officials will encourage the Agencies with responsibility for commissioning research and development spanning the VPC’s recommendations to look into progressing this work where it is not already being progressed, and if other priorities allow this. Mr Verrall has indicated that he intends to publish his minority views and intimated that he may resign from the VPC. You will wish to note that if this happens there may be particular media interest in his views.

I have agreed to the VPC’s recommendation that its final report, consultation responses and the VPC’s commentary should be published and placed in the Defra main library, and in the library of the House. I have also enclosed a copy of the Defra News Release announcing the publication of the Report from which you will see the combined expertise of the Working Group members advising on this issue.

In respect of the long running trade dispute between the US/Canada and the EU, my last letter noted that a WTO Hormones Panel has been set up to consider an offensive case launched by the EU against the US/Canada’s continued retaliation to the EU’s ban. The panel met in November 2005, but I understand that the planned timetable has been delayed whilst further scientific evidence is sought by the Panel. It is thought that the Panel will issue its report later this year. Again, I will continue to keep your Committee appraised of significant developments in this sensitive area.

Finally, I wish to confirm categorically that whilst our independent scientific advice does not support the EU hormones ban, we nevertheless implement it. As matters stand there is no question of the EU or the UK Government authorising hormonal substances for the purposes of growth promotion in food producing animals.

30 June 2006

HUMANE TRAPPING STANDARDS (12200/04)

Letter from Jim Knight MP, Minister for Rural Affairs, Landscape and Biodiversity, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to update you with developments on the proposal for a Directive introducing humane trapping standards for certain species, to which the above Explanatory Memorandum refers.
The European Parliament Environment Committee on 21 June 2005 gave strong support for rejecting the proposal. The proposal has also been debated on two occasions by the Environment Public Health and Food Safety Committee. The rapporteur proposed to both reject the proposal and also make substantial amendments to the Directive.

The proposal for a Directive was first debated by the European Parliament on 16 November 2005. The European Parliament then voted in plenary on 17 November 2005 to reject the text of the above proposal for a Directive, but did not proceed to vote on the draft legislative resolution. The proposal was instead referred back to the Committee on the Environment, Public Health and Food Safety. At its meeting on 28–29 November 2005, the Committee on the Environment, Public Health and Food Safety held a brief exchange of views and decided to recommend to the plenary to confirm the rejection of the Commission’s proposal.

Without further debate in plenary, the European Parliament voted on 13 December 2005 to adopt the draft legislative resolution and thereby close the legislative procedure.

The European Commission are considering the next steps on this issue and I will write to you again when their intentions become clear.

15 February 2006

Letter from the Chairman to Jim Knight MP

Thank you for your letter of 15 February, which Sub-Committee D (Environment and Agriculture) considered at its meeting on 15 March.

The Committee notes that the European Parliament rejected this proposal. We would be grateful for an explanation as to why, in the Government’s view, the European Parliament took this action. We would also very much appreciate you keeping us informed of the Commission’s next steps on this dossier. In the meantime, the Committee decided to retain the proposal under scrutiny.

17 March 2006

Letter from Jim Knight MP to the Chairman

Thank you for your letter of 17 March regarding the European Parliament’s decision to reject the European Commission’s draft Directive. It may be helpful if I firstly update you with progress on this issue. The European Commission has issued a tender for a two-year euro500k project to identify the state of art research, science and application of trapping standards and methods which reduce pain, distress and suffering as much as technically feasible in order to improve the welfare of trapped animals. (OJEC Ref: (06/S 19-20257/EN)). The project will in particular, identify and use testing methods which reduce as much as technically possible the use of live animals for the testing of trapping methods. Accordingly, the work will focus on improving the protection of the welfare of trapped animals as much as technically feasible and to further foster the development of alternative testing methods to reduce the use of live animals for the testing of trapping methods.

You requested an explanation as to why, in the Government’s view, the draft Directive was rejected. There were a number of areas of concern with the draft Directive which the European Parliament debated before making their decision. There were, for example, concerns that the proposal could contradict other Community legislation, such as the Habitats Directive, and that it was not based on the latest scientific research or did not take into account alternative killing methods. There were also concerns that the Directive would not actually prevent or even reduce animal suffering.

I note the Select Committee’s decision to retain the proposal under scrutiny. I will of course keep the Committee updated should there be any further developments. However in light of the European Commission’s two-year project, mentioned above, I do not anticipate major developments until that project is concluded.

14 April 2006

HYDROCHLOROFLUOROCARBONS QUOTAS (12123/04, 8718/06)

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

Following the recent placing of Council document 8718/06, 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 12123/04, which was cleared, by the House of Commons Committee on 3 November 2004 and the House of Lords on 2 November 2004. Under the proposed legal base (article 57(2) of the Accession Treaty), the European Parliament would have had no legislative role.

Following discussion in COREPER, it was agreed to change the legal base to article 175(1) of the EC Treaty (co-decision) and the Commission confirmed subsequently that it could accept this change and modify the proposal accordingly. The European Parliament’s first reading of this amended dossier was on 27 April 2006 and the Parliament approved the Commission’s modified proposal without amendment. This should enable the Council to adopt the proposal as an A point.

As noted in the Explanatory Memorandum, the dossier will not have any impact on UK law and has only minor effect on the two UK producers of HCFCs.

18 May 2006

INFRASTRUCTURE FOR SPATIAL INFORMATION IN THE COMMUNITY (INSPIRE) (11781/04)

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

Further to Elliot Morley’s letter of 6 September 2005 regarding the above-mentioned dossier, I am writing to inform your Committee of the current position on this dossier.

The European Parliament has completed its second reading, making a number of amendments to the Council Common Position. Given the difference in positions between the European Parliament and the Council, INSPIRE will now go to conciliation, where they will aim to reach agreement. It is expected that conciliation will commence at the beginning of September and will last for up to eight weeks. Whilst the UK supports the Council Common Position, believing it to be practical and proportionate, it will be expected to compromise. However, at this stage it is not possible to be more specific regarding the outcome of conciliation.

5 July 2006

KYOTO: PROGRESS TOWARDS ACHIEVING THE COMMUNITY’S TARGET (15912/05)

Letter from the Chairman to Elliot Morley MP, Minister of State, Department for Environment, Food and Rural Affairs

Thank you for your Explanatory Memorandum of 24 January 2006 which Sub Committee D (Environment and Agriculture) considered at its meeting today.

The Committee welcomes the Report on progress towards achieving the Community’s Kyoto target and recognises the key importance of the Kyoto targets in regulating climate change and averting environmental disaster.

In our report “The EU and Climate Change” (HL Paper 179-1, 30th Report, Session 2003–04), the Committee concluded that the Protocol provides a good initial framework for taking global action to combat climate change, and that the EU’s climate change policy provides a good example of how nations can be encouraged to work together on important and controversial issues. In this respect we share the Government’s concern that the EU should not rely on over-compliance by some Member States to ensure its overall target is met. Instead, all Member States must strive to meet and exceed their targets if the burden sharing agreement is to be successful.

The Committee decided to clear the report from scrutiny.

16 February 2006

NORTH SEA PLAICE AND SOLE (5403/06)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Thank you for your Supplementary Explanatory Memorandum of 15 May 2006 with Regulatory Impact Assessment (RIA) attached which Sub Committee D (Environment and Agriculture) considered at its meeting yesterday.

In your initial Explanatory Memorandum, you accepted the need to reduce fishing mortality for these stocks and to reduce the number of discards. UK beam trawlers (the majority of whom are in fact Dutch owned and based in the Netherlands) would be affected by the proposal. However you pointed out that these vessels are already subject to the days at sea scheme set out in the recovery plan for cod, and it was unclear how the Commission envisaged the schemes would operate together. Has this issue been resolved?

We would be further interested to understand the status of the North Sea Regional Advisory Council (RAC) in this context, and to receive an explanation as to how the European Commission takes account of the advice of the North Sea RAC on this issue.

15 June 2006

ORGANIC POLLUTANTS (8257/06)

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

I am writing to inform you of an issue which is to come before the Agriculture and Fisheries Council on 25 April 2006 as an A item (no discussion). This concerns an uncontroversial Council Decision concerning a Proposal, on behalf of the European Community and the Member States, for amendments to Annexes A–C of the Stockholm Convention on Persistent Organic Pollutants.

An Explanatory Memorandum was prepared and submitted on 18 April 2006 but unfortunately it was not possible to obtain scrutiny clearance from the Lords European Select Committee ahead of the meeting.

The Proposal will nominate pentachlorobenzene, octabromodiphenyl ether and short-chained chlorinated paraffin chemicals for international controls under the Stockholm Convention. Previous risk assessments of these chemicals have shown them to exhibit characteristics of persistent organic pollutants and the production, placing on the market and use of these substances has already ceased or has been severely restricted in the Community.

Scrutiny clearance has previously been agreed for a Council Decision to nominate these substances for addition to the relevant annexes of the 1979 UNECE Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants. The additional nomination of these substances to the Stockholm Convention will have no impact in the UK.

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 Council Decision in order to seek international controls on the production, use and disposal of these hazardous substances.

21 April 2006

ORGANIC PRODUCTION AND THE LABELLING OF ORGANIC PRODUCTS (5101/06)

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 26 January 2006 which Sub Committee D (Environment and Agriculture) considered at its meeting today.

The Committee did not find the Explanatory Memorandum particularly helpful in setting out the Government’s position on this proposal. We would be grateful if you could inform the Committee whether the Government are in favour or otherwise of the proposal for a new regulation on organic production; and whether there are any areas of the proposal which you will seek to amend during negotiations.

The proposal aims to ensure flexibility in the new organic framework by allowing Member States, under the comitology procedure, to apply less strict production rules to account for variation in local climatic, development and specific production conditions. As this mechanism is not mentioned in the Explanatory Memorandum, we would like to receive more information about how the derogations would work and what safeguards would be in place to prevent abuse of their use.
The Committee would also welcome a comparison of how current UK standards on organic production differ with the proposed EU framework of standards as set out in the proposal. In the meantime, the Committee decided to retain the proposal under scrutiny.

16 February 2006

Letter from Lord Bach to the Chairman

Thank you for your letter of 16 February following consideration by Sub Committee D (Environment and Agriculture) of the Explanatory Memorandum on the above proposal. I am of course sorry that the Committee did not find the Memorandum helpful in clarifying the Government’s position. I am also sorry for the delay in replying to you. I hope that this letter will assist the Committee in its discussions, and I attach for your reference a more detailed outline of the UK position.

You raised two areas of particular concern for the Committee: first, the flexibility element of the proposal, and secondly, how the proposal compares with the current regulation.

We support the concept of flexibility. A Community of 25 Member States with widely varying climatic and production conditions cannot realistically seek to apply detailed organic rules with absolute uniformity; there needs to be provision for meeting different circumstances. There must be the capacity to deal with transient emergencies, such as drought or flooding or outbreaks of disease, such as avian influenza. Further, historic production techniques underpinning traditional products in different Member States may need recognition. However, it is clear that providing for flexibility carries with it the risk of trade distortion if there remains scope for it be applied too liberally. Achieving the right balance is a major concern for the UK and for other Member States not only in the context of the proposal currently under discussion but also in relation to the detailed rules which the Commission will propose later in order to put it into effect.

With regard to the comparison of this proposal to the current regulation, we do not think that the framework changes any of the principles underpinning the existing organic standards as contained in Council Regulation 2092/91 which the Commission proposal will replace. However a full comparison cannot be made until we have seen the detailed implementing rules, which are to be laid down at a later date after the adoption of the framework legislation. That said, we have had confirmation from the Commission that their intention is that the majority of the detailed rules are to be translated without technical change from those in Council Regulation 2092/91. These will be adopted by Committee procedure, though the precise form of the procedure, whether regulatory committee or management committee, is one of the issues to be settled in the negotiation on the Commission proposal. Our preference—and that of most other Member States—is for the regulatory committee procedure. It has worked well for the purposes of Council Regulation 2092/91 and in our view provides a proper balance between the need for the Commission to be able to progress matters and the need for an effective role for the Member States.

I hope this and the attached note are helpful to the Committee.

1 May 2006

Annex A

UK POSITION ON COMMISSION PROPOSAL FOR A COUNCIL REGULATION ON ORGANIC PRODUCTION AND LABELLING OF ORGANIC PRODUCTS

Introduction

1. In general terms the UK welcomes the Commission proposal. The proposal implements a number of the actions in the European Organic Action Plan endorsed by the Council in October 2004. By setting out a clear statement of basic principles and operating rules the proposal should establish a firmer basis on which organic standards are to be based. By providing scope for controls to be carried out on the basis of risk, it should reduce their negative impacts and make them more effective. For example, this approach provides the opportunity to apply appropriately light controls to the storage and sale of very low-risk material like pre-packed goods. From the initial discussions at Working Group level it seems that the Commission’s intention is to translate the majority of the detailed rules from the current regulation. We would welcome this.
2. We are still in consultation internally and with the stakeholder groups concerned. In addition, a wider internal consultation on coexistence between GM and other crops is soon to be launched. The Government will not wish to take a firm position on these provisions of the Commission’s proposal—other than to maintain an open mind—until the results of this consultation have been collated, which is not expected to be until late Summer.

**INDICATIVE COMMENTS**

**Title I—Subject matter, scope and definitions**

Article 1

3. There is support within the organic sector in the UK for taking the opportunity created by the Commission proposal to make provision for setting organic standards at EU level in the future for a much wider range of products including textiles and personal care products—on the lines of the approach the Commission proposes for aquaculture. There is also support with the organic sector in the UK for providing for controls on catering establishments providing organic food. More consultation on these issues will be required within the UK before we will be able to take a position on extending the scope of the proposal. However, we have noted the Commission’s view that extending the scope of controls on organic products beyond those proposed for control is not yet appropriate.

**Title II—Objectives and principles for organic production**

Article 3

5. We would like point a (i) to convey a more positive message. We would suggest redrafting Article 3 (a) (i) so that it reads “contributes to the sustainability of the environment”.

Article 5

6. We feel that there should be an addition to (d), to require that recycling wastes must not cause a risk to human or animal health. It would be helpful to know what manner of recycling is to be permitted. Might recycling take place anywhere or is waste from organic farms to be required to be recycled within the organic system as is currently the case for poultry manure? When basing detailed provisions on point (f)—the second one—the particular position of many pig and poultry enterprises which often do not have arable enterprises from which feed can be produced needs to be borne in mind.

**Title III—Production Rules**

Article 7

7. As is noted in paragraph 2 above, the UK is not yet able to take a position on the provisions in the proposal bearing on GMOs. However we feel that the drafting of Article 7 is unclear and needs more work. Suggested wording which might clarify what we understand to be the intention of the proposal is at Annex I to this note. Also, we think that there are questions remaining to be answered on the practicality for farmers of seeking to comply with such a requirement in respect of products produced from GMOs. There are questions remaining to be answered as to what happens if a product is found to have a GM content below 0.9%. In that event, must the product not be used in organic production or is it to be understood that if the GM content is below the labelling threshold, the requirement not to use GMOs is complied with? In other words, is the intention that there should be a threshold of 0.9% for the GM content of organic food?

Article 12

9. The paragraph (a) should be redrafted to read “prior to the first growing season of crops which are to be marketed as organic, products not permitted to be used in organic farming shall not have been used for a period to be defined in accordance with the procedure referred to in Article 31(2)”. This is because products should not be sold as organic from the first point at which organic production methods are applied. Organic production methods have to apply from the start of the conversion period and it is not until after the completion of the conversion period that marketing as organic can commence.
Article 13

10. We welcome the Commission’s confirmation that separation of the production of organic feed from the production of conventional feed can be achieved either in time or space. The UK is unable to accept a requirement for feed for organic livestock to be produced on dedicated feed lines.

Article 14

11. The UK feels that it is too early to remove the possibility of declaring the presence of organic ingredients when the content of organic products of agricultural origin is 70% or more, but is not 95%. This facility assists new entrants to the organic sector as well as the development of new products and so is useful in assisting the further development of the sector.

Article 16

12. Like a number of other Member States we are supportive of providing for the flexible application of organic standards where it is appropriate to do so. But also in common with a number of other Member States we have concerns about the practical effect of applying flexibility and its possible impact in terms of competition.

Title IV—Labelling

Article 18

13. There has been unease in the UK at the proposal that organic products should carry the EU logo or be labelled with the term “EU ORGANIC”. We are reflecting on whether any sort of accommodation can be reached which will deal with these concerns and will be consulting further with consumer groups.

Title V—Controls

Article 22

14. The UK welcomes the risk-based approach to control systems.

Article 23

15. The UK agrees that it should be possible to exempt retailers selling pre-packed products from the inspection system. We also think that there should be a similar possibility to exempt warehouse operators handling only pre-packed goods.

Article 24

16. The UK position on this article is not confirmed as present. We recognise that the proposal aims to improve the functioning of the single market in organics. But we also feel that the wording of this Article is unclear and doubt that it expresses exactly what it is intended to achieve. We have accordingly asked for confirmation of what is intended and clarification of the wording.

The Commission have agreed that this article is not drafted in a way that makes its intentions clear and intend to provide us with a re-draft.
Title VI—Trade with Third Countries

Article 27

17. The possibility of allowing EU control bodies directly to control third country organic producers is acceptable in principle, as is the Commission recognising particular third countries or particular third country control bodies.

18. However, introducing the possibility of basing the assessment of equivalence on Codex Alimentarius is a concern. Codex is a set of international standards for the production of food, designed to facilitate international trade. But these standards are essentially guidelines and anyway there is not yet a complete set of Codex organic standards. Potentially, basing equivalence on Codex will weaken control and allow in products produced to standards less strict than EU standards.

Title VII—Final and Transitional Rules

Article 31

19. We oppose the proposal to change the committee procedure from the use of a regulatory committee to the use of a management committee.

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

Thank you for your letter dated 1 May which Sub-Committee D (Environment and Agriculture) considered at its meeting on 21 June.

Your letter gave a helpful indication of the Government’s emerging position on this dossier. We note your unease at the intention that organic products should carry an EU logo and your continuing concern regarding the clarity of the drafting of the proposal.

Given these continuing issues the Committee decided to continue to hold the proposal under scrutiny. We ask to be kept informed with developments, and in particular would like to receive an update on the Government’s position once the consultation exercise has been completed.

23 June 2006

PERFLUOROOCTANE SULFONATES (15552/05)

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 4 January 2006 which Sub-Committee D (Environment and Agriculture) considered at its meeting on 25 January 2006.

We note that the UK proposals advocated a five-year time limited derogation on certain applications containing perfluorooctane sulfonates, whereas the Commission’s proposals do not specify a time limit. We would like to know whether the UK intends to press for further discussion in this area to ensure the use of derogations in the Directive would be time limited and not open-ended as currently proposed. The Committee decided to clear the document from scrutiny.

26 January 2006

Letter from Lord Bach to the Chairman

Thank you for your letter of 26 January 2006 in which you informed me that the above Explanatory Memorandum had been cleared from scrutiny by Sub Committee D at its meeting on 25 January 2006. However you requested clarification on a specific point.

Our Explanatory Memorandum pointed out that the Commission proposal was based on work carried out in the UK and that the UK Government had developed draft proposals for national regulations prior to the publication of the Commission’s proposals. Given the persistent, bioaccumulative and toxic nature of these substances I recognise the Committee’s concern that the derogations proposed by the Commission in certain uses are open ended rather than time limited. Time limited derogations were a key aspect of the UK proposals for national regulations as the Government believes that time limited derogations would have been the impetus for substitution of PFOS with less hazardous substances. This position on time limited derogations...
was agreed between Departments when drafting the initial UK proposals and will therefore form the core of our negotiating position when the proposal comes up for discussion in the EU. We are in final negotiations with other Government Departments on the exact length of these derogations given more recent evidence in some areas.

13 February 2006

Letter from the Chairman to Lord Bach

Thank you for your letter of 13 February 2006 regarding the above proposal which Sub-Committee D (Environment and Agriculture) considered at its meeting on 8 March 2006.

We note that the Government are seeking for time-limited derogations to apply to the certain permitted uses of perfluorooctane sulfonates envisaged in the proposal. The proposal has already cleared the scrutiny process but we would be grateful if you would keep the Committee informed of the outcome of discussions on the length of the derogation period.

8 March 2006

POTATO CYST NEMATODES (8399/05)

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

I am writing to update you with developments on the proposal for the control of potato cyst nematodes, to which the above Explanatory Memorandum refers.

As anticipated, the Austrian Presidency have held only a single Council Working Group, during which a detailed read through of the text was started. The Presidency made clear their intention to consider the conclusions arising from the UK Presidency’s Impact Assessment as an integral element of this analysis. However, in practice only very limited progress was made in seeking initial reactions to some of the individual Articles in the text and responsibility will now pass to the Finnish Presidency. At this stage, it seems unlikely that the Finnish Presidency will be able to give priority to this issue, so significant progress is likely to have to wait until the German Presidency in the first half of 2007. Germany is the main proponent of the proposal, so will wish to see it moving forward.

While it is too early to gauge the extent to which the Impact Assessment conclusions will be addressed in an adopted text, I can assure the Committee that support for this objective continues to be pursued by the UK. For instance, prior to the most recent Council Working Group, bilaterals were held with a number of Member States who had expressed concerns about the cost:benefit situation. The aim of these meetings was to identify areas of common ground and to discuss strategies for influencing others.

The degree to which these initiatives will bear fruit will become apparent as discussions progress and I propose that I keep the Committee informed of further significant developments. I will of course do this at an early stage, to ensure that the House has an opportunity to react and respond to such developments. As mentioned above, it is most likely that the position will start to become clear during the German Presidency, but should progress be achieved during the Finnish Presidency then I will of course alert the Committee promptly.

The Committee may be interested to know that the consultation exercise, referred to in Willy’s earlier correspondence, has proved helpful in developing the UK strategy regarding this Proposal. Twelve written replies were received in response to the consultation papers and there has also been input through meetings with the main potato trade bodies and individual growers. General concerns were raised about the cost:benefit situation and specific points were made in relation to the measures affecting seed potatoes, ware potatoes and plants for planting, particularly regarding the practicality and proportionality of such measures. Such points are reflected in the Presidency Impact Assessment and also provide the basis for the UK negotiating strategy adopted by my predecessor. We will continue to involve stakeholders as Council discussions progress, particularly as specified amendments are considered.

5 June 2006
Letter from the Chairman to Lord Rooker

Thank you for your letter dated 5 June which Sub-Committee D (Environment and Agriculture) considered at its meeting on 5 July.

It is disappointing that the Austrian Presidency has not progressed further on this proposal, which seeks to improve protection against potato cyst nematode (PCN) in those areas of the EU which as yet remain uninfected. We note that the proposal is unlikely to move forward before the German Presidency and we look forward to receiving an update from you when developments emerge.

We note that your initial Regulatory Impact Assessment concluded that implementation of the new proposal would be likely to result in additional costs for both industry and Government, but recognised that it would also bring benefits in terms of reducing yield losses. We will be particularly interested to scrutinise the cost-benefit aspects of this proposal and ask that you ensure this information is provided when you next update the Committee.

10 July 2006

POULTRY IMPORT REGIME

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

I am writing to let you know that a negotiating mandate was agreed as an “A” point at the Economic and Finance Council on 5 May 2006 authorising the Commission to open negotiations with Thailand and Brazil on the import regime of certain cuts of poultry.

As a result of a World Trade Organisation dispute panel ruling the European Commission will need to amend its description of certain cuts of poultry. In order to avoid this leading to a disruptive increase in imports of poultry into the EU and potential collapse of the EU poultry market, the Commission has proposed that the current bound tariff rate for salted meat (including poultry) be replaced by a tariff rate quota reflecting future trade prospects. The Commission will need to offer Brazil and Thailand compensation for these changes under the General Agreement on Tariffs and Trade. These negotiations will also include prepared or preserved chicken meat to avoid import substitution.

In accordance with the usual procedure, an Explanatory Memorandum will be submitted once the negotiations are completed.

16 May 2006

PROTECTION OF CHICKENS KEPT FOR MEAT PRODUCTION

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Thank you for your Supplementary Explanatory Memorandum of 2 February 2006 which Sub-Committee D (Environment and Agriculture) considered at its meeting on 8 March 2006.

We are concerned that the Commission’s agenda to improve welfare standards in the agricultural industry does not take full account of standards in the international export market. The objective of improving welfare standards within the EU could be undermined by the continued import of chickens produced more cheaply in third countries due to less stringent welfare conditions being imposed. The Committee recognises the potential welfare benefit that could be achieved from adoption of the proposal, but wishes to ensure that third countries which supply chickens to the EU are required to meet similar production standards.

What assurance can be provided to EU consumers that chickens imported from third countries have been reared under welfare standard conditions equal to those proposed by the Commission? What monitoring takes place of conditions in third countries and what sanctions are imposed if standards are found to be failing?

We note that this proposal is due to be considered at Council in May, but given these concerns the Committee decided to retain the proposal under scrutiny at this stage.

16 March 2006
Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 16 March in which you highlight the concerns of the Sub Committee D (following consideration of Supplementary Explanatory Memorandum 9606/05 of 2 February), that any improvements in EU animal welfare standards could be undermined by imports produced more cheaply from third countries due to less stringent welfare conditions.

You ask in particular whether EU consumers can be provided with assurances that chicken imported from third countries has been reared under welfare conditions equal to those proposed by the Commission; details of monitoring of welfare standards in third countries; and sanctions imposed if standards are found to be failing.

There can be no absolute assurances given to consumers. Rules of the World Trade Organisation (WTO) do not allow member countries to ban imports of products which are essentially the same as domestic products apart from in the method by which they have been produced—these are known as “like products” in WTO terms. Discrimination against these products would be a restriction on trade, not allowed under the agreed exceptions to WTO rules, unless the lower welfare standards practised in the exporting country gave rise to safety concerns under Sanitary and Phytosanitary Agreement. However, the EU will continue to press for the acceptance at WTO level of animal welfare as a non-trade concern in agricultural trade.

However Member States and the Commission recognise that increasing the welfare standards in the EU in a manner that merely exports the welfare problem to other centres of production is not consistent with either a sustainable European farming industry or the need for consumers to be appropriately informed on the food they eat.

The Commission’s recently published Community Action Plan on the Protection and Welfare of Animals 2006–10 notes that there is a risk that demanding animal welfare standards in some countries may lead to activities being re-located to countries applying lower standards, or that such countries could be at an unfair competitive advantage. There is limited international consensus on the relative importance accorded to animal welfare and the measures in place in the EU cannot be readily compared with the standards in Third Countries. The Plan acknowledges that a monitoring instrument is required to compare compulsory animal welfare standards applied in the EU with those applied in third countries in order to analyse any possible market effects.

One of the five areas of action identified in the plan is “to continue and initiate further international initiatives to raise awareness and create a greater consensus on animal welfare, including engaging with developing countries to explore trade opportunities based on welfare friendly production systems”.

The EU continues to actively participate in various international fora as a means of increasing awareness and building consensus in the importance of animal welfare. The EU is party or observer to several of the Council of Europe Conventions aimed at improving the welfare of animals. The EU also supports the work of the OIE (World Organisation for Animal Health). It is well placed to build international consensus on the issues of animal welfare and has developed a detailed animal welfare vision and strategy. In May 2002 a specific resolution was adopted which mandates the OIE to elaborate science-based recommendations and standards on animal welfare. Recent achievements include the organisation of the first OIE Global Conference on Animal Welfare and adoption of principles and guidelines on animal welfare.

A key issue for a Commission Communication of 2002 on animal welfare legislation in third countries and the implications for the EU (COM (2002) 626 final), was whether competitive disadvantages arose from disparities in animal welfare measures. The report investigated a number of channels to prevent such a development including, market mechanisms, dialogue at international level, promotion of animal welfare standards in trade arrangements and improvement of labelling regimes.

In respect of the meat chicken proposal, the Commission suggests that further clarification and investigations are needed on the possible socio/economic and trade/legal implications of a mandatory labelling scheme, notably with regard to compatibility with WTO rules, Technical Barriers to Trade etc. The Commission will submit a detailed report to the Council on this issue having undertaken a comprehensive analysis of the considerations in question. This is re-inforced through the Commission’s Action Plan which states that options for EU labelling will be explored in a systematic manner. In addition, the Plan acknowledges that improved marketing, labelling and communication strategies will need to be developed and analysed to ensure that consumers are able to make more informed purchasing decisions.
I hope this re-assures your members that the EU is committed to enabling consumers to make well informed purchasing decisions in respect of animal welfare and that it is pro-active in raising awareness of animal welfare standards on the international front.

23 May 2006

REACH (REGISTRATION, EVALUATION, AUTHORISATION AND RESTRICTION OF CHEMICALS) (15409/03)

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

I am writing to inform you of developments on the above dossier, which achieved Common Position at Environment Council on 27 June. Your Committee considered Explanatory Memorandum 15409/03 of 17 December 2003 and Supplementary Explanatory Memorandum 15409/03 of 17 April 2004 on 6 January and 27 April 2004 respectively and gave scrutiny clearance on 10 November 2005.

My Department last wrote to you on 8 December 2005 outlining the key changes made to REACH as part of the political agreement. These have now been formally adopted on 27 June as a Council Common Position.

REACH remains a high priority for the UK and we will continue to negotiate towards a regulation that protects public health, the environment and industrial competitiveness.

The European Parliament has now begun its deliberations in preparation for Second Reading. The Finnish Presidency has stated that it will aim to broker a deal leading to adoption of the Regulation by the end of 2006. Given the great deal of convergence between the positions of the European Parliament and the Council, I strongly believe that achieving a balanced outcome at this stage, without the need to enter into a lengthy conciliation, is very much in the UK’s interest.

During its development, REACH has been the subject of over 50 impact assessments across the EU. The UK partial impact assessment estimated direct costs to UK industry would be £515 million over 11 years or just over £47 million per year. We have now updated the partial impact assessment in light of the Common Position. It indicates that the overall savings of the Common Position compared to the original Commission proposal amount to £469 million across the EU, equivalent to savings of £111 million within the UK. A further study that we have commissioned into the indirect costs—which are more problematic to assess accurately—has concluded that the costs of REACH are 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 SMEs. REACH will also lead to simplification of the current regulatory regime by replacing over 40 pieces of existing EU legislation and will result in a harmonised system of chemical management across the EU.

The text agreed in Council last year was an excellent outcome for the UK, with the inclusion of key elements of our proposals including those on “one substance, one registration” (OSOR), and mandatory reviews for all authorisations. Our aim is to maintain the main elements of the current Council text in the forthcoming discussions, in particular by resisting attempts to weaken the OSOR provisions on data sharing or attempts to further reduce the testing requirements at all tonnages.

Registration is the part of REACH most critical to achieving the essential core data around which decisions can be taken about the safe handling and use of substances. 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. The Common Position results in significant savings to industry, largely by incorporating the main elements of our proposal for OSOR and adopting a more risk-based, targeted approach to the registration of lower volume substances. In addition, the benefits have been maximised by focusing on substances that are suspected or known to be persistent, bioaccumulative and toxic (PBT) or very persistent and very bioaccumulative (vPvB) in the first phase of registration.

Authorisation will allow a limited use of an otherwise banned substance. These will be substances of very high concern because of their known effects on human health or the environment, and there is a consensus that the controls on them should be tough but pragmatic. It is these substances that we had already agreed should be substituted whenever practicable, while recognising that in many circumstances it may not be possible to find acceptable substitutes, for instance for certain metals and metal salts. Many of the proposals made by the UK

have been included in the Common Position. These include limiting the need for authorisation to substances of very high concern, using mandatory reviews for all authorisations, and listing the substances meeting the authorisation criteria.

24 July 2006

REFORM OF THE EU SUGAR REGIME (10514/05, 10598/05)

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

I am writing further to my letters of 22 November and 9 December 2005 to bring you up to date with developments on the sugar reform dossier.

We will very shortly be letting you have a formal Government response to the report from Sub-Committee D which Tim Renton forwarded to Margaret Beckett under cover of his letter to her of 9 December 2005.

In the meantime, following delivery of European Parliament Opinions on the original reform proposals on 19 January 2006, the Austrian Presidency has been organising meetings of the Special Committee for Agriculture and its Sugar Working Group to examine three draft legal instruments prepared by the European Commission to give effect to the compromise agreement reached under our Presidency at the November 2005 Agriculture and Fisheries Council.

That process is now virtually complete and the Austrian Presidency’s current plan is to invite Member States to adopt all three Regulations at the Council meeting on 20 February under the “false B” point procedure, which will allow those Member States not in agreement to make short statements explaining their position.

This will therefore take place before your Committee has had an opportunity to consider our response to the report from Sub-Committee D and to complete its own deliberations. In the circumstances, however, and particularly given the need for early legal certainty so that all concerned can take appropriate steps before the new regime takes effect from 1 July 2006, I hope you understand that we will not be able to maintain a scrutiny reservation on 20 February but will need to signify our definitive agreement.

The texts as they now stand do contain some variations from what was agreed in November. These are mainly technical, except in respect of a new power for the Commission to vary quota allocations in the first year of the new regime if this is necessary in order to stabilise the market. Member States are content with this approach, which reflects the Commission’s latest assessment of the likely balance of supply and demand. As with other aspects of implementation, this will be subject to detailed rules to be adopted under Management Committee procedure once the new Regulations are published and take effect.

15 February 2006

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

I am writing to follow-up the commitment given by my predecessor Lord Bach in the debate in the House of Lords on 23 March 2006 regarding reform of the EU sugar regime, to provide to Parliament the Government’s full and final Regulatory Impact Assessment.

This updates and supersedes the analysis provided in the Government’s Partial RIA published in June 2005. As you will see, it now includes the impact of the agreement on reform reached at the November 2005 Agriculture Council and formally adopted in February this year.

23 May 2006

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

I write regarding the above proposal which EU Sub-Committee D (Environment and Agriculture) scrutinised in their report Too much or too little? Changes to the EU Sugar Regime (18th Report, session 2005–06, HL Paper 80). We note that the proposal was adopted in February.

We would be grateful to receive an update as to the EU funding and other measures that will be made available for each of the years 2007–13 to Sugar Protocol countries affected by the reform of the EU sugar regime. We note that the proposal aimed to establish country-specific adaptation programmes with each of the countries

affected to ensure that the funding provided is tailored to each country. We would be pleased if you could provide details of the programmes that have been agreed, and could give an overall assessment of the progress made in offering financial and technical assistance to Sugar Protocol countries.

5 June 2006

RESTRICTIONS ON MERCURY DEVICES (6693/06)

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 15 March 2006 which Sub-Committee D (Environment and Agriculture) examined at its meeting on 29 March.

The Committee are concerned that implementation of the proposal could have a significant impact on businesses who specialise in supplying mercury-containing instruments to the domestic market. We have received views from a specialist in restoration of mercury barometers which we enclose (not printed). What impact would the proposal have on those businesses which restore mercury instruments; and would such businesses be allowed to continue to sell restored mercury instruments to the public?

We look forward to receiving your reply and, in due course, the full Regulatory Impact Assessment. In the meantime, the Committee decided to retain the proposal under scrutiny.

24 April 2006

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

Thank you for your letter of 24 April 2006 regarding the Explanatory Memorandum of 15 March 2006 on the above.

The European Commission state in their revised proposal that the directive would only restrict the placing on the market of new measuring devices and that the restriction would not apply to devices already in use or sold second hand. Specialist firms would therefore be able to continue to restore instruments and sell them to the public, so these aspects of their business would not be impacted.

However, devices imported into the European Union would be affected by the proposal, as they would be considered as “first time onto the market”.

Thank you also for the enclosed letter from Barometer World. My officials have discussed Mr Collins’ proposed licensing scheme with him and have advised him to forward a fully-costed proposal to the European Commission.

2 June 2006

SALMON: ANTI-DUMPING AND ANTI-SUBSIDY MEASURES (8721/03)

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

After submission of EM 8721/03, The European Scrutiny Committee asked to be kept informed about a UK request for trade defence action against imports into the European Community of farmed salmon from Norway, which threatened the livelihood of salmon farmers in the Scottish Highlands and Islands. Douglas Alexander subsequently wrote on 1 March 200522 to update both Committees on recent developments.

As you will recall, the European Commission was conducting an anti-dumping investigation into imports of salmon following Member State opposition to proposed safeguard measures.

I am pleased to be able to tell you that on 22 January 2006, the Council will adopt a Regulation imposing anti-dumping measures on imports of farmed salmon. As you know the DTI has a derogation to submit EMs on Council Regulations imposing anti-dumping measures after their adoption and their publication in the Official Journal. We will of course do so in this case. However, in view of your Committee’s request on this issue, I considered it desirable to send you the latest information as soon as it was available.

The Government has sought to defend indigenous Scottish salmon farmers from dumped imports of farmed salmon originating in Norway, with the aim of bringing stability to the market. The UK supported the anti-dumping complaint submitted by the Scottish (and Irish) salmon farmers and supported the Commission’s proposal to impose definitive anti-dumping measures first presented to Member States shortly before Christmas. These measures impose definitive anti-dumping measures on imports of farmed salmon from Norway in the form of a Minimum Import Price (MIP) of £2.80 per kilo (whole fish equivalent) except for imports from one company, whose dumping was found to be “de minimis”. Under an MIP, duty equivalent to the difference between the price at the Community frontier and the MIP would be payable only if the market price were to fall below the MIP.

This measure represents a small modification of provisional anti-dumping duties imposed by Commission Regulation in April 2005. Initially these took the form of ad valorem duties ranging between 6.8% and 24.5% of the value of the imported products. However, following further discussions with EU processors and Norwegian exporters, and with the agreement of the producers, the measures were amended in July 2005 to a minimum import price (“MIP”). The MIP was set at a level of £2.81 per kilo (whole fish equivalent) with higher MIPs for different presentations eg salmon fillets. The Commission at this time also proposed a three month extension of the provisional measures until 22 January 2006.

Throughout this episode the Government has worked closely with the Scottish Executive, as well as liaising with Scottish producers and EU Salmon Producers Group (EUSPG) and consulting user interests represented by the Food and Drinks Federation.

20 January 2006

SUSTAINABLE DEVELOPMENT STRATEGY—A PLATFORM FOR ACTION (15796/05)

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 9 January which Sub-Committee D (Environment and Agriculture) considered at its meeting on 1 February.

The Committee considers it essential that the revised sustainable development strategy should propose specific targets and implementation dates for achieving progress. It is important that the EU builds on the progress made already by taking concrete action to meet its sustainable development objectives.

The Committee decided to retain the proposal under scrutiny pending receipt of the Regulatory Impact Assessment.

2 February 2006

SUSTAINABLE EUROPEAN WINE SECTOR (10851/06)

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

Sub-Committee D (Environment and Agriculture) has held a preliminary consideration of the above Commission documents, together with your Explanatory Memorandum dated 10 July.

This is in our view an important subject of EU reform and we shall be returning to it after the recess. In the meantime we are grateful to you for referring the Commission’s outline proposals to us, which we wish to retain under scrutiny.

20 July 2006

TOOTHFISH: CATCH DOCUMENTATION SCHEME

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

An Explanatory Memorandum relating to the above was deposited by the Foreign and Commonwealth Office on 7 October 2004, and cleared by the Committee. I am now writing to update you on further developments concerning the UK’s position in respect of the adoption of this draft EC Regulation. Regrettably, we have been unable to resolve some textual difficulties, and therefore intend to abstain when the Regulation is considered at a meeting of the Council of the European Union on 27 June.
The Explanatory Memorandum deposited by the Foreign and Commonwealth Office explained that the proposed Council Regulation 2004/0179 (CNS) amending Council Regulation (EC) No 1035/2001 would be subject to further review at the next annual meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) in Hobart in November 2004. Concerns were in fact raised prior to that meeting over the definitions of certain terms such as “import”, “export”, “re-export”, “trans-shipment” and “landing” which were not defined in the existing CCAMLR Conservation Measure. Draft Council Regulation 2004/0179 was therefore put on hold, pending the agreement of a revised Conservation Measure. Following CCAMLR 2004, an intersessional group of CCAMLR Parties corresponded to define these terms. Definitions were agreed at the CCAMLR meeting in November 2005 and the CCAMLR Conservation Measure was amended accordingly.

To reflect the outcome of the CCAMLR meeting, amendments to the draft text were tabled at expert level in the Council of Ministers. These amendments followed precisely the definitions of the CCAMLR Conservation Measure as amended. The UK argued that this was inappropriate and undesirable, however the Commission stuck by them and received the support of all other Member States.

The UK’s concerns reflect a fundamental principle of the Catch Documentation Scheme which is that the movement of toothfish between Member States, ie internal movement within the Community, or intra-Community movement, has not been considered as an import, export or re-export. Imports are only registered when a consignment (ie of toothfish) first enters the Territory of a Member State of the Community. Only if the consignment subsequently leaves the Community for a third State is an export (or more likely re-export) registered.

The proposed amendments to Council Regulation No 1035/2001 mirror those adopted by CCAMLR in November 2005. However, those definitions cause technical difficulties when applied to intra-Community movements. The terms “export” and “re-export” explicitly refer not just to “the geographical territory under the control of a State”, but also to “free trade zone of landing” and “customs union”. However, the definition of “import” is silent on these latter terms referring instead only to the “geographical territory under the control of a State”. The incorporation of the definitions of CCAMLR into Community law would therefore seem to overturn the practice to date of regarding intra-Community movements as not constituting “imports”.

The UK believes that the principle of free internal movement will be overridden on the face of the draft Council Regulation, if it is adopted in its current form. We believe that the definitions in the Regulation should, as appropriate, have been tailored to the needs of EU Member States. This we believe could easily be accomplished by minor amendments to the draft Regulation without in any way undermining the intent behind the CCAMLR Conservation Measure. The technical drafting problems in the Measure could then be dealt with in CCAMLR if necessary.

Attempts by the UK to reach agreement with other Member States on a more appropriate Council Regulation text have failed. This is of course regrettable. We have received some informal reassurances from the Council Legal Service that the provisions of Community law on free movement of goods will override the requirements of the CDS Regulation to monitor intra-Community imports of toothfish, and that the Commission could not bring infringement proceedings against a Member State which did not implement the Regulation in this respect ie the Regulation can effectively be ignored. We believe the CLS’s approach is correctly argued but unsatisfactory because it will result in apparently conflicting legal obligations, and that it would be preferable to redraw the proposal rather than accept the current text. Since we have no support for this position, the UK now intends to abstain when the draft Regulation is considered by the Council of the European Union on 27 June 2006. Abstention reflects the fact that the UK has no difficulties with the principle of the draft Regulation, but regards some of the technical content of the text as inappropriate.

22 June 2006

TSE REGULATION (15874/04)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to inform your Committee of the current position on this dossier, in particular, that the Austrian Presidency are hoping to broker a First Reading deal with the European Parliament.
When the European Scrutiny Committee last considered this dossier, we informed them that Government was seeking clarification on two elements of the proposal—the re-definition of mechanically separated meat (MSM), and the restrictions to be imposed on holdings where scrapie is suspected.

We were seeking clarification on the definition of MSM as the definition provided would have policy implications. This was because it appeared significantly different from the interpretation provided to the Food Standards Agency in February 2005. We have since received clarification from the Commission and the latest draft of the proposed TSE Regulation is acceptable to the UK as it is in line with our own domestic legislation.

On the restrictions to be imposed on holdings where scrapie is suspected, the Commission has subsequently clarified that these would only apply to sheep and goats. Movements of bovine animals would not be affected. The proposal has been amended to reflect this.

As I have mentioned above, Parliament have proposed amendments to the proposal and the Austrian Presidency has recently presented a compromise proposal, hoping to broker a First Reading deal. The current draft covers the same main areas as the previous draft but there have been some additions, which the UK government believes does not change the main elements of the current Regulation. It maintains the key BSE and TSE controls but does not reduce the level of protection of public and animal health. The European Parliament is due to vote on their final proposals in the week commencing 15 May. It is anticipated that the dossier will then go to Council towards the end of June for a Common Position.

The key areas of the compromise proposal are that it provides the basis for country BSE risk classification (required at the latest by 1 July 2007 when current arrangements lapse) and maintains the current ban on the feeding of fishmeal to ruminants whilst providing for the feeding of fishmeal to calves (subject to strict control measures to be sent by comitology). There is also a requirement to maintain human and animal health protection when changes are made to the Regulations (for example in relation to the requirements for TSE testing).

The UK will be asked to confirm support for the Presidency’s proposed compromise proposal at COREPER on 10 May for a First Reading deal. I have agreed that because of the short timescale needed to give such agreement, the UK will support this proposal. I would be grateful if your Committee could consider the proposals further to indicate support before the Council meeting in June.

8 May 2006

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter of 8 May 2006 which Sub-Committee D (Environment and Agriculture) considered at its meeting on 24 May 2006.

You previously wrote to explain that the Government were seeking clarification on two aspects of the proposal. First, that the proposed change in the definition of mechanically recovered meat should not differ significantly from the current interpretation. Second, that the proposed amendment to restrict the movement of bovine animals on a holding where scrapie is suspected should not be disproportionate to the risk. We are pleased that a satisfactory resolution to these concerns has now been found. However, we would be interested to know whether the National Sheep Association were consulted on these issues, and whether they agree with the Government that they have been satisfactorily resolved.

The Committee cleared the proposal from scrutiny in June 2005. Your letter provided a useful update on progress of the proposal.

25 May 2006

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 25 May requesting information on whether the National Sheep Association had been consulted on issues arising from a previous draft of the proposal about mechanically recovered meat (MRM) and the restriction of bovines on premises where scrapie is found.

Defra did not consult directly on the draft of the Regulations, as the amendments were of a technical nature. However, as you know, we did consult on the Commission’s linked TSE Roadmap on the changes to TSE
controls which might be appropriate in the future. There was no previous definition of MRM in the EU TSE Regulation but there was a definition in the UK’s domestic Regulations. The new proposed EU definition is in line with the current domestic definition so in this case there is no change to consult upon.

The latest text whereby restrictions are only imposed on sheep and goats on a holding where a case of scrapie is suspected reflects current wording in Annex VII of the TSE regulation with which the National Sheep Association is content.

11 July 2006

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter of 11 July concerning the consultations which were carried out on the draft of these Regulations. Sub-Committee D (Environment and Agriculture) took note of the position at its meeting on 19 July.

20 July 2006

TSE ROADMAP (11408/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to you to update your Committee about progress on this dossier following my letter to you of 28 November of last year. The UK Presidency worked closely with the Commission, Council and European Parliament to draw together views from Member States on the TSE Roadmap. The Council’s view of the Roadmap was presented on 19 December. The Council agreed that the key objectives of consumer protection and control and eradication of TSEs must be maintained; that any change must be underpinned by a sound scientific basis; and that the justification for any changes must be carefully and effectively communicated to consumers and other interested groups. The general view was that the areas covered by the Roadmap would be the basis for discussions on changes but that there were some higher priority areas than others.

The Austrian Presidency has been focusing on making changes to the TSE Regulation, I reported on progress with this in my letter to you of 8 May and has not further discussed the Roadmap. However, EU Chief Veterinary Officers are due to discuss the priorities for change arising from the Roadmap at a meeting on 8 June.

Two areas covered by the Roadmap have been taken forward separately. These are the lifting of the UK export ban and the increase in the age at which bovine vertebral column must be removed and destroyed as Specified Risk Material (SRM). The age threshold was increased from 12 months to 24 months with effect from 1 January 2006 except in the UK where we continued to remove vertebral column only in cattle aged over 30 months under the pre-existing EU derogation. However, when the EU export ban was lifted on 2 May, the UK was required to harmonise our SRM controls with the rest of the EU and vertebral column in cattle aged over 24 months became SRM. These changes were subject to consultation and I attach the associated Regulatory Impact Assessment, a signed copy of which has been placed in the House.

In line with advice from SEAC, the UK is pressing the Commission to bring forward proposals to increase the EU age limit for vertebral column removal to 30 months.

I will continue to update your Committee on progress on this dossier and to provide Regulatory Impact Assessments when significant specific proposals come forward for changes to BSE controls arising from the Roadmap.

22 May 2006

Annex A

FULL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

BSE: lifting the ban on the export of bovines and bovine products and harmonising Specified Risk Material (SRM) controls applicable in the UK with those in other EU member states.

2. Purpose and Intended Effect

Objective

Legislative action to:
— enable the resumption of exports from the UK of eligible bovines and bovine products by repealing the Bovines and Bovine Products (Trade) Regulations 1999 (SI 1999/1103) and amending the TSE (England) Regulations 2006; and
— harmonise controls on bovine vertebral column, head meat and other SRM with the EU requirements that apply in other EU Member States by amending the TSE (England) Regulations 2006.

Background

BSE was first identified in the UK in 1986. More than 183,000 cases have been confirmed in the UK to date, of which more than 95% were detected before 2000. In March 1996, the EU imposed a comprehensive, worldwide ban on the export of bovine and bovine products from the UK due to fears about the risks to human health posed by BSE. The GB legislation which currently implements the EU ban is the Bovines and Bovine Products (Trade) Regulations 1999 (SI No 1103). This legislation applies to live cattle, beef, beef products, bovine by-products and mammalian meat and bone meat. Parallel legislation implements the ban in Northern Ireland. Under this legislation, beef from animals slaughtered in the UK can only be exported under the Date Based Export (DBES) Scheme, and products made from imported beef can only be exported under the XAP (eXport APproved) Scheme. Both these Schemes are onerous to implement. Only relatively small quantities of UK beef have been exported under DBES.

On 8 March 2006, the EU Standing Committee on the Food Chain and Animal Health (SCoFCAH) adopted unanimously a favourable opinion on a proposed European Commission Regulation to lift the embargo on UK exports of live cattle, beef and beef products. The Commission Regulation comes into effect on 2 May 2006. The Regulation includes some restrictions on exports that had previously been discussed with UK industry who had agreed that these were acceptable to achieve a speedy lifting of the ban with the support of all Member States.

Under the Commission Regulation, the UK is required to ensure that the following conditions are met:

1. cattle born before 1 August 1996 must not be exported;
2. products from any cattle slaughtered before 15 June 2005 must not be exported;
3. beef containing vertebral column, or any product derived from vertebral column, from cattle slaughtered before 2 May must not be exported; and
4. SRM controls already applicable in other Member States must be implemented. These are as follows:
   — vertebral column shall be classified as SRM in cattle aged over 24 months (at present the UK has a derogation to classify vertebral column as SRM only in cattle aged over 30 months at slaughter);
   — the skull, excluding the mandible but including the brain and eyes shall be SRM from 12 months of age (at present the entire head is SRM from six months of age);
   — spinal cord shall be SRM in animals over 12 months of age (at present the spinal cord is SRM in animals over six months of age); and
   — trigeminal ganglia, thymus and spleen shall no longer be classified as SRM.
EU legislation requires Member States to remove vertebral column in licensed cutting plants but includes a derogation permitting them to allow removal of vertebral column at authorised, monitored and registered butcher’s shops. Similarly, EU legislation requires removal of head meat at slaughterhouses but permits Member States to allow removal at authorised licensed cutting plants. The FSA Board agreed on 9 March to allow the removal of vertebral column at butcher’s shops but for the time being to restrict the removal of head meat to slaughterhouses. The possibility of allowing the removal of head meat in cutting plants would be reviewed in the summer.

Rationale for Government intervention

BSE was first identified in the UK in 1986. More than 183,000 cases have been confirmed in the UK to date, of which more than 95% were detected before 2000. The epidemic peaked at an annual total of more than 37,000 clinical cases in 1992 and the number of new clinical cases is currently at the lowest level since recording began. There were 39 clinical cases and 186 cases detected through testing in 2005, the vast majority in cattle born before August 1996. The UK’s reinforced feed controls which banned mammalian meat and bone meal from feed for all farmed livestock, effective from 1 August 1996, have led to a particularly sharp fall in BSE cases in cattle born after July 1996.

In 1995, the last full year before exports were banned, UK exports of beef and bovine products were valued at almost £600 million and exports of live cattle were valued at almost £78 million. From the time that the export ban was applied, it has been Government policy to seek its removal for products permitted for sale on our domestic market.

UK legislation must be brought into line with EU legislation as soon as possible after the EU legislation comes into force. If this is not done, the Bovines and Bovine Products (Trade) Regulations 1999 will remain on the statute book but will be open to legal challenge and judicial review.

Unless the TSE (England) Regulations 2006 are amended it will not be possible to enforce a 24 months age limit (as opposed to the current 30 months age limit) for the removal of vertebral column or to make use of the derogation allowing removal in specifically authorised butcher’s shops.

Similarly, it will be necessary to amend the TSE (England) Regulations 2006 to enable the UK to enforce the less restrictive (other than for vertebral column) list of SRM that will apply given the change in the UK’s BSE risk status.

Some 2.4 million UK cattle are expected to be slaughtered for human consumption per year. This includes an additional 0.4 million cattle aged over thirty months (OTM) that became eligible for sale for human consumption from 7 November 2005 when the OTM rule that excluded them from the market was replaced by BSE testing for cattle born after July 1996. It is especially important to allow exports in the light of additional supplies of UK cattle on the UK market, and also to apply the new SRM controls as soon as possible.

3. Consumption

The consultation on the anticipated changes to UK legislation began on 12 October 2005 with a closing date for comments of 4 January 2006.

During the consultation period, a supplementary consultation on the export of cattle from the Irish Republic through the UK (the “UK landbridge”) was launched on 14 December 2005 with a closing date of 27 January 2006.

The EU Regulations will affect those who keep and sell cattle, hauliers, abattoirs, cutting plants, the meat processing industry, renderers, incinerators, independent butchers and other retailers, the catering industry, consumers, port authorities and those who would wish to export, or transport for export, beef, bovine products and live cattle. It will also be important to those concerned with the welfare of cattle and live exports. All these interest groups were consulted.

The consultation documents and the summary of responses have been placed online on the Defra website. A total of 74 responses were received to the main consultation and four to the supplementary consultation.
Responses to the consultation

Responses to the consultation relating to lifting the export ban were very strongly in favour of allowing trade in beef and bovine products to resume. Responses from farming organisations, cattle breeders and cattle exporters were in favour of lifting the ban for the export of cattle. This was opposed by animal welfare groups and others who are opposed to the principle of exporting live animals and who are concerned about the potential for cattle to be subject to longer journey times than would otherwise arise. Some respondents to the consultation exercise expressed concern that the Partial Regulatory Impact Assessment did not take sufficient account of the welfare of animals undergoing export.

Responses to the consultation exercise were overwhelmingly in favour of allowing vertebral column from cattle aged 24–30 months to be removed in authorised butcher’s shops which are monitored and registered for that purpose. There is no intention to make use of the option provided in the EU Regulation to allow vertebral column from cattle aged over 30 months to be removed in butcher’s shops because the Food Standards Agency’s Independent Advisory Group on replacing the OTM rule by testing recommended that vertebral column from OTM cattle should be removed in licensed cutting plants only.

Opinion was divided on the derogation for head meat to be removed at specially authorised licensed cutting plants. The Food Standards Agency has decided not to implement this derogation for the present; it will be reviewed in summer 2006.

4. Options for Achieving the Policy Objective

Option 1—Do Nothing

Now that the EU has agreed to allow the resumption of exports of UK cattle born after July 1996 and of beef and bovine products from bovines born or reared in the UK after this date (subject to the exceptions set out under “Background” above) the UK must make the necessary implementing legislation. If this is not done, existing UK legislation in relation to both exports and SRM controls will be open to legal challenge and judicial review and there would be a period of legal uncertainty. Were the matter to come before a Court, the probable consequence of failure to reflect at national level the lifting at EU level of the export ban would be that inconsistent national legislation would be held unenforceable. The UK would be unable to enforce the removal of vertebral column from cattle aged over 24 months (instead of 30 months as now) and there would also be legal uncertainty about whether UK industry could sell head meat for human consumption.

Option 2—Amend UK legislation to administer and enforce EU legislation without making use of EU derogations

This would involve repealing the Bovines and Bovine Products (Trade) Regulations 1999 and amending the TSE (England) Regulations 2006 to reflect EU legislation. However, the UK would not allow either vertebral column from cattle aged 24–30 months to be removed in authorised butcher’s shops or head meat to be removed in authorised licensed cutting plants. Instead, vertebral column from all cattle aged over 24 months would need to be removed in cutting plants additionally licensed for this purpose and head meat could be removed only at abattoirs.

Cattle born before 1 August 1996 will remain permanently excluded from the food chain and from export. No product from any animal slaughtered before 15 June 2005 would be exported, and no beef containing vertebral column, or any product derived from vertebral column, from any animal slaughtered before 2 May would be exported.

Option 3—Amend UK legislation to administer and enforce EU legislation, making use of EU derogations

This would involve repealing the Bovines and Bovine Products (Trade) Regulations 1999 and amending the TSE (England) Regulations 2006 to reflect EU legislation as above but in addition including the permitted derogations to allow vertebral column from cattle aged 24–30 months to be removed in authorised butcher’s shops and head meat to be removed in authorised licensed cutting plants.

Option 3A—Amend UK legislation to administer and enforce EU legislation, making use only of the EU derogation to allow vertebral column to be removed in authorised butcher’s shops

As at Option 3 above but head meat could be removed only in abattoirs.
5. Costs and Benefits

Sectors and groups affected

The EU Regulation will affect those who keep and sell cattle, hauliers, abattoirs, cutting plants, the meat processing industry, renderers, incinerators, independent butchers and other retailers, the catering industry, consumers, port authorities and those who would wish to export or transport for export beef, bovine products and live cattle. It will also be important to those concerned with the welfare of cattle and live exports. There will also be implications for enforcement agencies dealing with the meat industry and exports.

There are implications for small businesses particularly in rural areas because, if the derogation allowing the removal of vertebral column in butcher’s shops is not implemented for cattle aged 24–30 months, the EU Regulation would adversely affect farmers who keep slow maturing grass fed cattle and small abattoirs without cutting plants who currently supply craft butchers with half or quarter carcasses. Craft butchers who currently purchase half or quarter carcasses to mature and bone out in their shops would also be affected if they wished to continue to sell meat from cattle aged 24–30 months but it had to be de-boned in cutting plants. Consumers would also be unable to buy T-bone steaks derived from cattle aged over 24 months although T-bone steaks from cattle aged less than 24 months would continue to be available. Some 50% of cattle aged under 30 months currently slaughtered for human consumption are aged over 24 months.

There are no significant human health implications either in increasing controls on vertebral column or, assuming compliance with EU rules to avoid contamination, in reducing controls on head meat.

The EU Regulation does not have any race equality impacts.

Analysis of Cost and Benefits

Option 1—Do Nothing

Costs

Industry would be denied the opportunity to export beef, bovine products and live cattle without breaking UK law. Thereby, industry would potentially be denied access to improved returns either directly from overseas markets or as a function of strengthening of the whole UK market because surplus domestic supplies can be exported. This is particularly important now that the Over Thirty Months (OTM) rule has been replaced by BSE testing from 7 November 2005, which has released additional supplies of beef from older cattle onto the UK market.

Those who currently export UK beef from eligible cattle aged 6–30 months under the Date-based Export Scheme (DBES) or beef of foreign origin under the eXport APproved (XAP) Scheme would continue to face the significant additional costs of exporting under these schemes. For DBES, these costs include approval and inspection costs (currently £3,200 in first year and £2,160 thereafter); eligibility checks at about £1.75 per animal; and the costs of additional Meat Hygiene Service (MHS) inspection, currently about £1,000 per DBES period. For the XAP Scheme, there are parallel approval and inspection costs (currently £560 per year) and the costs of additional inspection by the Meat Hygiene Service (MHS) or Local Veterinary Inspectors (LVIs). In addition, plants operating DBES or XAP incur high overheads due to the onerous conditions for these schemes, including separate slaughter runs and cleandowns for DBES and segregated preparation areas for XAP. Both schemes require a high level of official supervision.

The Government would face legal costs if it were to try to maintain a ban on the export of beef or live cattle or to refuse to allow industry to reclaim head meat contrary to EU law. The Government would also be vulnerable to challenge in the European Court if it failed to enforce an EU requirement to remove vertebral column as SRM from cattle aged 24–30 months. Other Member States might also then refuse to accept imports of UK beef products. The industry would—as above—be denied the opportunity to sell head meat until the legal position had been clarified. We estimate that the value could be about 30p per carcase or £0.6 million assuming head meat is reclaimed from about 2.0 million of the 2.4 million cattle currently sold for human consumption per year. The costs of disposal as SRM would be saved but these costs are relatively small.

In addition, the industry would be required to remove and destroy a longer list of SRM than other EU Member States (except vertebral column from cattle aged 24–30 months—see below).
Benefits

The Government prefers a trade in meat to the long distance transport of live animals to slaughter, whether in the UK or across borders and would like to see a lower limit for journey times. However, the decision to lift the ban means that the UK must implement EU law and cannot place a unilateral ban on the export of cattle including calves, because to do so would contravene free trade rules and would be illegal under EU law. If the ban were not lifted, the Government would not incur the costs of checking the welfare of live cattle during transport or the costs of policing any demonstrations.

The UK would not apply new restrictions to vertebral column from cattle aged 24–30 months. This would enable farmers and those in the meat trade to continue selling bone-in beef to butchers from animals aged 24–30 months.

Option 2—Amend UK legislation to administer and enforce EU legislation without making use of EU derogations

Costs

The Government would incur the costs of checking the welfare of live cattle during transport and the costs of policing any demonstrations. There would also be social costs in that protestors, local residents, and those involved in the trade would also be affected by protests. The Government portal surveillance checks would continue in a modified form, to monitor exports of beef and bovine products for illegal items eg beef or products from animals slaughtered before 15 June 2005.

Application of SRM controls to vertebral column from cattle aged over 24 months would be most unwelcome to farmers, abattoirs and butchers, but the industry has agreed that securing exports is the priority. However, industry has also pressed hard for the UK to make use of the EU derogation to allow removal of vertebral column in butcher’s shops. With some 50% UK cattle aged under 30 months likely to be finished by 24 months, there should be enough cattle of sufficient (if not ideal) quality to allow trade to continue. The main difficulty with a 24 months limit is the impact it could have on:

- farmers producing slower maturing grass-fed cattle;
- about 110 small slaughterhouses without linked cutting plants;
- about 30 further abattoirs with cutting plants that cannot accommodate all the cattle they slaughter; and
- traditional butchers.

Although significant in presentational terms, sales of T-bone steaks account for only 0.2% retail sales or about £4 million per year, and 0.5% catering sales or about £5 million per year. Rib roasts could still contain the rib. If the UK were to require vertebral column to be removed in licensed cutting plants, small abattoirs will be unable to provide sides, quarters or primary cuts containing vertebral column direct to butchers for boning out unless these are derived from cattle aged under 24 months. Carcases from cattle aged 24–30 months would need to be routed via the nearest cutting plant, which might be some considerable distance away. This would not be a practical option for many abattoirs. The impact would be greatest in the north and west where more meat is sold through traditional butchers.

There are some 7,000 independent butchers in the UK. Not all trade in meat is in carcase form but it is estimated by the Meat and Livestock Commission that some 26% of all beef sold from abattoirs to trade customers is traded as bone-in hind or forequarters of beef. Butchers who currently buy beef in carcase form would be unable to buy such carcases from cattle aged 24–30 months containing vertebral column, but meat from older grass fed cattle is often the most desirable. Whilst butchers in general are increasingly buying boneless meat, there are many well established small craft businesses that bring valuable custom to small towns. Without traditional butchers, such custom might go elsewhere.

Most vertebral column from cattle aged 24–30 months is already removed in cutting plants. The costs for cutting plants of staining and disposal of vertebral column as SRM rather than lower category waste are expected to be slightly higher. These costs will vary according to throughput and might amount to an increase of perhaps £200,000 per year. There will also be additional enforcement costs.

Consumers may find it difficult to understand why a ban on vertebral column from cattle aged 24–30 months is being reintroduced at a time when the BSE epidemic is in sharp decline and why consumer choice is being restricted. This could affect consumer confidence in beef if not carefully explained.

Industry would not be able to reclaim head meat in any cutting plants.
Benefits

The export trade could resume.

The tables below show the tonnage and value of beef and live cattle exported during 1994 and 1995, the last two full years of trading before the export ban was imposed. Under the Date Based Export Scheme only small quantities of beef have been exported to several EU member states.

### BEEF AND BOVINE PRODUCTS

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<th>Value</th>
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<td>£486,221,000</td>
<td>245,093</td>
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### LIVE CATTLE

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<th>Value</th>
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<th>Value</th>
</tr>
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<tbody>
<tr>
<td>481,000</td>
<td>£89,716,000</td>
<td>450,000</td>
<td>£77,624,000</td>
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</tr>
</tbody>
</table>

Trading conditions, particularly exchange rates, are very different today and it would take time to rebuild the beef and bovine products export trade, which may never reach pre-1996 levels. The MLC estimate that in 2006 UK exports could be about 40,000 tonnes divided equally between prime beef and cow beef. The value of this might be about £60 million but should increase rapidly in future years.

There is strong overseas interest in high quality breeding stock and in calves, many of which are currently shot at birth. The UK would apply all the provisions of EU law relevant to normal trade between Member States, including rules to protect the welfare of cattle during transport. It is estimated that high value breeding stock worth some £5 million and 200,000 calves worth some £20 million might be exported during 2006. These figures would be expected to increase in future years.

Industry would benefit being able to reclaim head meat albeit only in slaughterhouses. This trade could be worth some £0.6 million based on 30p per head x 2 million (out of 2.4 million) cattle slaughtered for human consumption per year.

On the basis of a scientific risk assessment by the Spongiform Encephalopathy Advisory Committee (SEAC) the public health benefits of applying a lower age limit to the removal of vertebral column are assessed to be negligible.

**Option 3—Amend UK legislation to administer and enforce EU legislation making use of EU derogations**

Costs

Additional enforcement costs associated with supervising exports of live cattle: as for Option 2 above.

Social costs associated with exports of live cattle: as for Option 2 above.

Portal surveillance costs to check compliance with EU restrictions on exports: as for Option 2 above.

Butcher’s shops would have to arrange and pay for disposal as SRM of vertebral column from cattle aged 24–30 months if they chose to apply for authorisation. Disposal costs would vary according to local circumstance from nothing where waste is already incinerated at a plant approved to incinerate SRM to about £100 per week.

Additional enforcement costs incurred by local authorities would be minimal because no separate special visits to butcher’s shops are required and checks could be carried out as part of routine LA inspections of butcher’s shops. There would be no increase in risk because current UK legislation allows butchers to handle and sell without restriction vertebral column from cattle aged under 30 months.

As most vertebral column will continue to be removed in licensed cutting plants, additional enforcement costs will be incurred in cutting plants too. It is expected that these will be similar to those in Option 2 as the number of plants processing vertebral column from cattle aged 24–30 months is likely to be similar.

Additional MHS staff would be required to audit the removal of head meat in cutting plants.

Consumer confidence—as for Option 2 above.
Benefits

For exports—as for Option 2 above.

For SRMs—butcher’s shops could apply for authorisation to remove vertebral column and thus could continue to handle beef from cattle aged 24–30 months in carcase form. Cutting plants could apply for authorisation to remove head meat and would welcome the flexibility and potential cost efficiency of being able to do so, especially when a cutting plant is co-located with an abattoir.

UK would apply a shorter list of SRMs (except that vertebral column from cattle aged 24–30 months would become SRM).

Option 3A—Amend UK legislation to administer and enforce EU legislation, making use only of the EU derogation to allow vertebral column to be removed in authorised butcher’s shops

Costs

As for Option 3 above but with no additional MHS costs associated with checking that the requirements for the removal of head meat in authorised cutting plants have been met. Cutting plants would continue to be unable to remove head meat.

Benefits

As for Option 3 above but avoiding any risk of contamination of head meat with brain tissue during transport to cutting plants and enabling head meat to be removed at abattoirs where the Meat Hygiene Service is always present.

Summary of costs and benefits

<table>
<thead>
<tr>
<th>Option</th>
<th>Costs</th>
<th>Benefits</th>
</tr>
</thead>
</table>
| **Option 1—Do Nothing** | 1. Industry denied the opportunity to export UK beef, bovine products and live cattle—£85 million in 2006, but expected to increase.  
2. Costs of exporting under DBES and XAP schemes would continue—£10,000 per plant per year (but depends on throughput).  
3. Legal costs to Government if it tries to maintain the ban contrary to EU law.  
4. Industry denied the opportunity to sell head meat—£0.6 million.  
5. Industry required to remove a longer list of SRM than other EU Member States. | 1. Savings on the cost of policing demonstrations against live exports.  
2. Farmers and those in the meat trade can continue to sell bone-in beef to butchers from animals aged 24–30 months.  
3. Government continues to pay for portal surveillance for non-DBES and XAP approved exports. |
| **Option 2—Amend UK legislation to administer and enforce EU legislation without making use of EU derogations** | 1. Government incurs the costs of checking the welfare of live cattle during transport and of policing any demonstrations.  
2. Social costs for those involved in protests—demonstrators, local residents, those involved in the trade.  
3. Government incurs the costs of portal surveillance checks for bovine material from cattle slaughtered before 15 June 2005 and vertebral column from cattle slaughtered before 3 May 2006. | 1. The export trade in beef, beef products and live cattle would resume—£85 million in 2006 but expected to increase rapidly. DBES and XAP costs cease.  
2. Industry would be able to remove a shorter list of SRMs and reclaim head meat, albeit only in slaughterhouses—£0.6 million. |
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<th>Option</th>
<th>Costs</th>
<th>Benefits</th>
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<td>4. 24 months limit for vertebral column</td>
<td>without derogation could have an adverse impact on farmers,</td>
<td>1. For exports—as for Option 2 above.</td>
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<td>slaughterhouses and butchers.</td>
<td>2. For SRMs—as for Option 2 but butcher’s shops could apply for</td>
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<td>authorisation to remove vertebral column and thus could continue to</td>
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<td>handle carcases from cattle aged 24–30 months.</td>
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<td>3. Additional MHS staff would be required to oversee removal of head</td>
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<td>meat in cutting plants.</td>
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<td>7. Industry would be unable to reclaim head meat in cutting plants.</td>
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<td>5. Potential drop in consumer</td>
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<td>confidence due to ban on vertebral column from cattle aged 24–30</td>
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<td>6. Additional enforcement and SRM</td>
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<td>disposal costs for removal of 24–30 months</td>
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<td>7. Industry would be unable to reclaim head</td>
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<td>meat in cutting plants.</td>
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</table>

Option 3—Amend UK legislation to administer and enforce EU legislation making use of EU derogations
1. As for Option 2 above.
2. Butcher’s shops would have to pay for disposal as SRM of vertebral column from cattle aged 24–30 months: costs could range from nothing to £100 per week depending on local circumstances.
3. Additional MHS staff would be required to oversee removal of head meat in cutting plants.

Option 3A—As Option 3, but not allowing head meat to be removed in authorised cutting plants
As for Option 3 but cutting plants would continue to be unable to remove head meat.

As for Option 3 but avoiding (a) any risk of contamination of head meat with brain tissue during transport to cutting plants and (b) additional MHS costs arising from the need for a greater MHS presence in cutting plants in cutting.

NB: All figures are best estimates, subject to wide margins of error.

Costs and benefits checklist

Option 1—Do Nothing

Economic impacts

The proposal will:
- not result in receipts or savings to the Government;
- affect the availability of goods or services in that it will not be possible to export beef, beef products or live bovines from the UK;
- not result in new technologies;
- not result in a change in the investment behaviour both into the UK and UK firms overseas and into particular industries;
- not impact on levels of competition within the affected sector;
- impact on the public sector, including the resources of front-line delivery staff, in that the Government will have to continue enforcing the Regulations;
- not impact on business, charities and voluntary organisations;
- impact on foreign consumers because the export of beef, beef products and live bovines from the UK will not resume.
Social impacts
No change from current situation and no impact.

Environmental impacts
No change from current situation and no impact.

Options 2, 3 and 3A

Economic impacts
— Government will incur savings in enforcing the current export ban with the abolition of the DBES and XAP Schemes but will incur additional costs in relation to the live export trade and in enforcing the removal of vertebral column in cattle aged 24–30 months.
— The proposal will affect the availability of goods or services in that it will enable the export of beef, beef products and live bovines from the UK. The extent of these benefits will depend on the nature and extent of the export trade.
— The proposal may result in new technologies related to the removal of vertebral column.
— The proposal will not result in a change in the investment behaviour both into the UK and UK firms overseas and into particular industries.
— The proposal may impact on levels of competition within the affected sector in that some farmers, food companies and exporters may be able to take advantage of the lifting of the export bans before others are ready to do so.
— The proposal will impact on the public sector in relation to enforcement costs.
— The proposal will not impact on charities and voluntary organisations.
— The proposal will impact on foreign consumers because the export of beef, beef products and live bovines from the UK will resume.

Social impacts
There are implications for small businesses particularly in rural areas if the derogation in relation to the removal of vertebral column in butcher’s shops is not implemented. The EU Regulation will affect farmers who keep slow maturing grass fed cattle and small abattoirs without cutting plants who currently supply craft butchers with half or quarter carcases. Craft butchers who currently purchase half or quarter carcases to mature and bone out in their shops would also be affected if they wished to continue to sell meat from cattle aged 24–30 months but it had to be de-boned in cutting plants. Consumers will also be unable to buy T-bone steaks derived from cattle aged over 24 months although they can buy T-bone steaks from cattle aged under 24 months.
Some 50% of cattle aged over 30 months currently slaughtered for human consumption are aged under 24 months.
There are no significant human health implications either in increasing controls on vertebral column or in reducing controls on head meat.

The EU proposal will also have a potentially significant social impact because it will allow the resumption of the export of live bovines. This is opposed by animal welfare groups and others who are opposed to the principle of exporting live animals and who are concerned about the potential for cattle to be subject to longer journey times than would otherwise arise. Some respondents to the consultation exercise have expressed concern that the Partial Regulatory Impact Assessment did not take sufficient account of the welfare of animals undergoing export.

If live exports resume, they are likely to be met by protests which could have a considerable impact on the lives of those committed to this movement. Before live exports were banned in 1996, a protestors was killed in an incident at Coventry airport. Such demonstrations, and their policing, would also have an impact on local residents and those travelling in the areas targeted for protest.

The EU proposal will not have any race equality impacts.
Environmental impacts

The 24 month limit for vertebral column removal may encourage some farmers to slaughter more cattle before they reach the age of 24 months which may encourage more intensive rearing and make slower maturing traditional breeds less attractive. This could have an adverse impact upon the British countryside. Respondents to the consultation exercise have expressed their concern that many native British breeds do not mature sufficiently quickly to be slaughtered at 24 months and that the proposed 24 month limit is likely to place additional restrictions on extensive cattle grazing systems at a time when they are already very vulnerable. Farmers may move away from slow-maturing grass fed cattle. Many Sites of Special Scientific Interest and Environmentally Sensitive Areas depend upon cattle grazing to ensure that they are maintained in a favourable environmental condition. Some cattle breeds could be lost to farming use, representing a loss to the UK’s genetic resources.

However, the lifting of the Over Thirty Months (OTM) rule on 7 November 2005 may encourage other farmers to rear less intensively. The most likely outcome is that fewer cattle will be slaughtered in the 24–30 month age band.

6. Small Firms Impact

There would be implications for small businesses. We have consulted the Small Business Service (SBS) and have had face to face discussions with representatives of the National Federation of Meat and Food Traders, the Association of Independent Meat Suppliers, the National Beef Association, the Food and Drink Federation, the British Meat Processors Association, the International Meat Trade Association, the Pet Food Manufacturers’ Association and the farming unions who all attend regular stakeholder meetings with Defra and the FSA. Trade organisations believe that smaller scale farms in more remote areas, smaller scale abattoirs and independent butchers would all be disproportionately affected by a requirement to remove the vertebral column as SRM in cattle aged 24–30 months, especially if the UK were to require this to be done only at cutting plants. All the organisations above have pressed for the UK to make use of the EU derogation that allows vertebral column to be removed in authorised butcher’s shops. They have underlined the importance to small abattoirs of being able to handle all the cattle a farmer wishes to slaughter and the importance to craft butchers of selling a high quality product, differentiated from the majority of beef sold in supermarkets. Respondents to the consultation exercise were overwhelmingly in favour of implementing this derogation (Option 3 and 3A above).

However, opinion was divided on the derogation for head meat to be removed at specially authorised licensed cutting plants. The Food Standards Agency has decided not to implement this derogation for the present: it will be reviewed in summer 2006.

7. Competition Assessment

The proposals are essentially deregulatory. They would affect a large number of small and mid-sized firms and a number of large firms, none of which dominate the marketplace. None of the measures prevent entry into the market by new firms and none would lead to higher ongoing costs compared to existing firms for new or potential entrants to the market. Smaller abattoirs without co-located cutting plants or with small cutting plants will be affected more than large abattoirs with co-located cutting plants. Independent craft butchers who bone out carcase beef will be affected but butchers who deal in or purchase only boneless beef will be unaffected.

8. Enforcement and Sanctions

The proposals are deregulatory except in relation to new controls on vertebral column from cattle aged 24–30 months. A new authorisation and enforcement regime has been developed for Option 3 and 3A for the removal of vertebral column from cattle in the 24–30 months age group using local authorities for enforcement in authorised butcher’s shops. Most vertebral column would continue as now to be removed in licensed cutting plants. This would require a small amount of additional input from the MHS who enforce SRM controls in cutting plants.

Sanctions would be applied for non-compliance. It is proposed that a person guilty of an offence under these Regulations is liable:

(a) on summary conviction, to a fine not exceeding the statutory minimum or to imprisonment for a term of three months or both; or
on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

9. Implementation and Delivery Plan

It is proposed that the requirements of the EU Regulation shall be implemented by means of amendment to the TSE Regulations 2006, as the TSE (No 2) Regulations 2006.

The UK, as responsible authority, will require producers and exporters to ensure that beef and bovine products exported comply with the exclusions laid down in the EU Regulation. Consignments will be monitored and selected for backtracing by the State Veterinary Service (SVS). If any infringements are detected, the importing country and the Commission will be notified immediately so that the illegal goods can be detained and either returned or destroyed.

The SVS will be responsible for checking the welfare of live cattle destined for export and for ensuring compliance with animal welfare legislation.

The MHS will enforce SRM controls in abattoirs and cutting plants. Local authorities will enforce SRM controls in butcher’s shops.

10. Post-Implementation Review

Legislation, procedures for enforcement and compliance for exports of beef, bovine products and live bovines and for SRM controls will be kept under close review. In addition, the FSA will consider in the summer whether to make use of the derogation that allows the removal of head meat in cutting plants. The EU Food and Veterinary Office is expected to inspect UK controls in December 2006.

11. Summary and Recommendation

Option 1: Do Nothing

This option should not be supported because it would fail to reflect the changes in EU legislation and would leave the UK legislation open to judicial challenge. UK industry would be denied the opportunity to export beef, bovine products and live cattle until the legal situation was clarified.

Option 2: Amend UK legislation to administer and enforce EU legislation without making use of EU derogations

This option should not be supported because it would fail to make use of the EU derogation to allow removal of vertebral column in butcher’s shops. This would have an adverse impact upon farmers producing slower maturing grass-fed cattle, on about 110 small slaughterhouses without linked cutting plants, on about 30 further abattoirs with cutting plants that cannot accommodate all the cattle they slaughter, and on traditional butchers.

Option 3: Amend UK legislation to administer and enforce EU legislation, making use of EU derogations

This option should not be supported because the FSA Board have decided that for the time being head meat should be removed only in abattoirs. This position will be reviewed in summer 2006 and was taken in the light of responses to the consultation and to avoid possible contamination of head meat during transport of heads and removal of meat in cutting plants.

Option 3A: Amend UK legislation to administer and enforce EU legislation making use only of the EU derogation to allow vertebral column to be removed in authorised butcher’s shops

This option should be supported because it allows UK exports to resume on, as far as possible, the same basis as for other EU Member States. It also allows butcher’s shops to continue to remove vertebral column from cattle aged 24–30 months and is in line with FSA’s decision not to allow cutting plants to remove head meat for the time being. This is the option favoured by the majority of consultees.
RECOMMENDATION

It is recommended that the Secretary of State approve Option 3A. This option will implement the changes in EU legislation in domestic law and enables the resumption of exports of beef, bovine products and live bovines with the minimum of inconvenience to the domestic beef industry.

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter dated 22 May with Regulatory Impact Assessment (RIA) attached which Sub Committee D (Environment and Agriculture) considered at its meeting yesterday.

The Committee is pleased to be kept up to date with progress on the TSE Roadmap. We welcome the lifting of the UK export ban which took place in May. We were also pleased to be given the opportunity to scrutinise the RIA which considered the impact of resumption of exports of bovine products and moves to harmonise controls on bovine vertebral column, head meat and other Specific Risk Material with the EU requirements that apply in other EU Member States. We fully support Option 3A identified in your RIA which amended UK legislation to administer and enforce EU legislation making use only of the EU derogation to allow vertebral column to be removed in authorised butcher’s shops.

15 June 2006

VERIFICATION OF AGRI-ENVIRONMENT EXPENDITURE (12921/05)

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

Thank you for your letter of 10 November 200524 to Jim Knight regarding “Special Report No 3/2005 concerning rural development—verification of Agri-Environment Expenditure”. I am replying as the Minister responsible for this area, and I am sorry for the long delay.

I agree that the Court of Auditors’ conclusions are of concern and that, while the Court of Auditors’ report did not extend to an assessment of the environmental benefits of spending, such an assessment is essential. It is for this reason that Defra has a budget of approximately £1.3 million per annum for the monitoring and evaluation of agri-environment schemes in England (agri-environment schemes in Scotland, Wales and Northern Ireland are the responsibility of the relevant administrations, who may wish to offer their own replies). Our budget is used to fund projects that monitor the performance of agri-environment schemes against their environmental objectives as well as other criteria, such as economic and administrative effectiveness. Defra also has a budget of approximately £2.4 million to fund research to support the delivery and development of agri-environment schemes. Details of research and monitoring projects funded from these budgets can be found on the Defra website at http://www2.defra.gov.uk/research/project_data/projects.asp?SCOPE=0&MO=MPSA&VF=EP%3A150. This information is currently being updated.

To inform the Review of Agri-Environment Schemes in England, completed in 2004, two review projects were commissioned; the first involved a review of agri-environment monitoring and research outcomes; and the second an economic evaluation of the schemes. The results of these evaluations of CSS and ESAs were generally positive but some improvements were needed and these were taken into account in developing ES. The reports from these reviews are available on the Defra website at http://www.defra.gov.uk/erdp/schemes/elas/monitoring/default.htm and http://statistics.defra.gov.uk/esg/evaluation/agrienv/default.asp respectively.

Following the Agri-Environment Review, a new scheme, Environmental Stewardship (ES), was launched in March 2005. This has some novel aspects and involves significant public expenditure. It is therefore vital that it is closely monitored and changes made to the scheme if necessary. Various projects have already been commissioned to monitor the environmental effectiveness of ES. An important current project, which will allow an initial evaluation of ES over its first 18 months, involves: an analysis of the uptake of the scheme and options within it; interviews with scheme participants and non-participants; field surveys to form baseline assessments of the condition of environmental features; and modelling of the environmental outcomes that should be delivered based on the uptake of management options. Another project is establishing on-farm plots which will allow a comparison of the biodiversity benefits of Entry Level options with ES, with management which just meets the requirements of cross-compliance.

These projects will form part of an Evaluation Plan for ES for the coming years, which is currently being developed. The Plan will set out how the various elements of the scheme will be monitored and evaluated against various criteria to ensure that it is effective, efficient and represents value for money. The Plan will be published on the Defra website in the next few months.

The principle of ensuring that agri-environment schemes meet their objectives goes beyond the UK, of course, and is an important element of our approach to EU policy on this expenditure. We have pressed for a more strategic approach to the EU rural development budget, including greater clarity on the policy objectives which it seeks to attain. I am pleased that, as part of that approach, we have secured the Agriculture Council’s provisional agreement (pending the European Parliament’s opinion) to a set of Community Strategic Guidelines for expenditure in the 2007–13 period; and we will encourage the Commission to ensure that it monitors the impact of this expenditure effectively.

26 January 2006
Law and Institutions (Sub-Committee E)

ANTITRUST RULES (5127/06)

Letter from the Chairman to Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry

The Green Paper was considered by Sub-Committee E (Law and Institutions) at its meeting on 8 February. We are grateful for the information provided in your Explanatory Memorandum and agree with the Government firstly that private enforcement should be kept in perspective and should not divert resources from public enforcement and, secondly, that the options in the Green Paper need careful consideration on the basis that they might feed into draft legislation in the future.

We note that under the heading “Legal and Procedural Issues” you say that there are none because the Green Paper is not proposed for legislation. But as the possibility of legislation cannot be discounted, it would be helpful to have the preliminary reactions of the Government on two matters. First, what powers exist in the Treaty to take forward the options set out in the Green Paper, many of which would require uniform or harmonised rules to be put in place in the civil procedures of Member States? Do the Government believe that Article 83 would provide a sufficient legal base? Or would it be necessary to rely on Article 65? Or would resort have to be made to Article 308? Second, if the Treaty does provide the vire, how desirable would it be to have uniform or harmonised rules of civil procedure in this area?

Finally, you do not indicate whether the Government will be responding formally to the Green Paper. If you do so, we would be grateful if you would provide a copy to the Committee.

The Committee decided to retain the Green Paper under scrutiny.

9 February 2006

Letter from Gerry Sutcliffe MP to the Chairman

I am writing to provide you with more information on the above EM as requested following your Committee’s meeting on 8 February.

The Committee has noted that the options in the Green Paper may feed into draft legislation at the EC level in the future and has considered the scope for uniform or harmonised rules of civil procedure in this area. The European Commission are keen to identify the obstacles to private damages actions in the jurisdictions of the Member States, recognising in this the need for effective private enforcement of EC competition rules in all 25 Member States.

The situation in respect of private actions in Member States is very uneven and while a few, like the UK and Germany, have introduced measures within their own jurisdiction there is considerable room for other Member States to take steps to ensure that their businesses and consumers have comparable scope to bring private actions. This may raise issues in respect of the different legal systems in the Member States but we believe that the emphasis should be on comparable rules as opposed to standardised or harmonised rules of civil procedure. Comparable rules respect the diversity of approach of civil procedures and are an attainable goal in order to provide for effective private enforcement in all 25 Member States.

The Committee has noted that the choice of legal base for any secondary European legislation to implement the proposals gives rise to some interesting questions. The Committee will appreciate that, in the absence of a specific measure, any comments on the choice of legal basis tend to be speculative because the legal base must be based on objective factors, in particular the aim and content of the measure.

Article 83 may be relied upon where the draft regulation or directive gives effect to the principles set out in Articles 81 and 82. Provisions relating to private damages actions in competition cases do not, however, appear to fall within the headings set out in paragraph 83(2). Article 65 refers to “eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil
procedure applicable in the Member States”. The primary object of Article 65 would appear to be judicial cooperation in civil matters having cross border implications. Whereas the proposals in the Green Paper would apply to private damages in competition cases generally and are not limited to cases with cross border implications.

As the Committee has suggested Article 308, would provide a backstop where the “Treaty has not provided the necessary powers” but we suspect that there might be reluctance to make use of this given that this may only be relied upon where the Council acts unanimously on a proposal from the Commission and after consulting the European Parliament.

In this context, we note that Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, which requires Member States to provide for the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights and contains provisions on, inter alia, evidence, right of information, injunctions, damages and legal costs, was made under Article 95 of the Treaty. Article 95 provides that “The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.”

The Commission has drawn some parallels between their approach to intellectual property and competition suggesting that procedures and remedies should be dealt with at an EU level on a sector by sector basis. At this stage, however, the Commission has not provided any formal indication of the possible legal base should they initiate legislation.

The Green Paper invites responses from, principally, the 25 Member States by 21 April and we, in conjunction with the Department for Constitutional Affairs and the Office of Fair Trading, are working to reply by this deadline. I will, of course, ensure that a copy of the UK response is sent to your Committee.

24 February 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter of 24 February which was considered by Sub-Committee E (Law and Institutions) at its meeting on 8 March. We are grateful for the clarification of the Government’s view and also for your comments on the question of the choice of legal base for any Community legislation which may flow from the Green Paper. Thank you, in particular, for drawing our attention to Directive 2004/48/EC on the enforcement of intellectual property rights. The background to that Directive was, as you will recall, somewhat different, namely the existence of the TRIPS agreement. It will be interesting to see what legal base the Commission put forward should they initiate legislation pursuant to the Green Paper.

The Committee decided to clear the Green Paper from scrutiny. We look forward to receiving the Government’s response to the Commission.

9 March 2006

Letter from Gerry Sutcliffe MP to the Chairman

I indicated in my previous correspondence with you on this issue that I would send the Committee a copy of the UK response to the Commission’s Green Paper consultation. I now have pleasure in enclosing a copy, which was sent to the Commission by their deadline of 21 April for replies.

The UK’s position is set out in broad terms in the introduction to the response. Principally, that we support the wider aim of encouraging and facilitating private damages actions and that the UK has enacted legislation with this aim in view. We have also stressed the arguments for action at Member State level, especially where this relates to matters of substantive or procedural law. Naturally, we remain open to new ideas and experience in other countries and to considering these and the issues arising from the Green Paper exercise in discussions with the Commission and other Member States.

I will of course ensure that the Committee is kept informed as this initiative develops.

26 April 2006
COMMISSION GREEN PAPER ON DAMAGES ACTIONS FOR BREACH OF THE EC ANTITRUST RULES

INTRODUCTION


2. The Green Paper suggests a number of options for consideration and possible action by Member States in respect of their legal systems as applied to competition disputes, and for possible action at the Community level. We would like to underline that we see this consultation as a very useful means of clarifying the issues, options and possible actions for in-depth consideration by the Member States.

3. The UK Government supports the wider aim of the paper, namely to encourage and facilitate private damages actions to those (consumers and businesses) who have suffered loss due to infringement of competition rules. In recent years, the UK has enacted legislation with exactly this aim in view. We are, therefore, in favour of effective private enforcement of the EC competition rules in all the 25 Member States, while recognising the need to avoid creating a litigation culture.

4. Public enforcement is currently the primary means of enforcing competition law. It is important not to compromise that, or divert resources from it. Private actions are however a very important complementary limb of an effective competition regime. Private actions allow those who have suffered loss to be compensated and, alongside other means, can in practice provide an important additional deterrent to those who may cause loss. [suggest we retain this last sentence] Deterrence can also be achieved by other means such as fines or imprisonment and disqualification of company directors.

5. The possibility of private enforcement of competition law—injunctions to prevent or halt infringements, and actions to obtain compensation for breach of competition law—is an important element in the competition law scheme. It supplements the resources available to the Member States for enforcement of the law.

6. The UK has taken a number of measures at national level aimed at encouraging and facilitating the bringing of claims, as have a number of other Member States. We shall be pleased to share our experiences and exchange ideas with the Commission and other Member States in considering possible steps which can help further to facilitate private actions.

7. Naturally, most of the options outlined in the Green Paper touch on matters of domestic civil law. The implementation of some of the options would therefore mean changes which would either affect the whole domestic civil law system or create special rules for competition issues only. There would need to be a very clear justification for making domestic rules applicable to competition law distinct from other areas of law.

8. In order to safeguard consistency with national laws and national competition law generally there are strong arguments for action being taken at Member State level rather than at Community level, particularly where these arguments relate to areas of substantive law such as damages and liability or to procedural law dealing with disclosure, costs and access to evidence. In each system, there are different sets of checks and balances in place, in order to retain a balance between claimants and defendants.

9. Any debate about how to facilitate private actions will have to consider carefully the interaction of provisions including access to evidence and burden of proof, the role of public enforcement and the availability of damages as well as how to treat leniency applicants. Therefore, there needs to be discussion among the

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1 These include the introduction of provisions on follow on actions (after public law enforcement) before the Competition Appeal Tribunal by the amendments to the Competition Act (CA) 1998 made by the Enterprise Act (EA) 2002; the ability of consumer bodies to bring claims pursuant to the amendments to the Competition Act 1998 made by the Enterprise Act 2002; and the binding effect of decisions (before the CAT and the ordinary courts) and section 16 of the Enterprise Act 2002 on provisions on transfer of proceedings between the High Court and the CAT.
Commission and Member States to increase understanding, disseminate and encourage best practice in this area, and consider what further action may appropriately be dealt with at the Member State level and at Commission level.

10. In considering the options put forward by the Commission, we are open to consider any possible improvements and ideas that may help to facilitate private actions in the UK and other Member States and we hope that all Member States will be encouraged to look at and discuss how the effectiveness of procedures for private actions could be improved.

11. This paper examines the options set out in the Green Paper and the extent to which they match, overlap with or differ from the current UK law position.

**Question A**

*Should there be special rules on disclosure of documentary evidence in civil proceedings for damages under Articles 81 and 82 EC? If so, which form should such disclosure take? (Options 1–5)*

**Option 1:** Disclosure should be available once a party has set out in detail the relevant facts of the case and has presented reasonably available evidence in support of its allegations (fact pleading). Disclosure should be limited to relevant and reasonably identified individual documents and should be ordered by a court.

12. The purpose of Option 1, as described in paragraphs 34 and 89 to 90 of the Commission Staff Working Paper, is to allow the claimant access to evidence in the possession of someone else, be it the defendant or a third party. This is intended to address the problem that a claim for damages may be unsuccessful because the claimant is not able to provide sufficient evidence of the constituent elements of a damages claim. The Green Paper’s proposal for a limited form of court-ordered disclosure of relevant and reasonably identified documents is designed to avoid excessively broad disclosure.

13. In the UK, competition cases may be heard in the ordinary civil courts or the Competition Appeal Tribunal (“CAT”), depending on the circumstances. The rules of disclosure, which are contained in the Civil Procedure Rules (“CPR”) are, in practice, also applied by the CAT under the Competition Appeal Tribunal Rules 2003.2 There are extensive rules requiring the disclosure of documentary evidence in civil proceedings both by the parties, in the ordinary course, and when required by a court or tribunal.

14. In Scotland the court has a statutory power under section 1(1) of the Administration of Justice (Scotland) Act 1972 to order the production and recovery of documents which may be relevant to any proceedings before the court or which are likely to be brought before it. The Rules of the Court of Session in Scotland contain provisions regarding the production of documents founded on by a party in a case, and the recovery and preservation of documentary evidence during or in anticipation of litigation. These rules are broadly similar in effect to the rules for England and Wales set out here.

15. The normal procedure for disclosing documentary evidence is “standard disclosure” which is set out in the CPR. Each party is required to disclose documents on which it relies and which adversely affect or support either party’s case, and as required by a relevant practice direction.3 Disclosure against third parties is also possible provided certain conditions are satisfied. Irrespective of whether disclosure is sought from a party to the proceedings or a third party, disclosure may be required pre-action.

16. The court has, in addition, a broad discretion to order additional disclosure since it may, at any time, on the request of a party or of its own initiative, give such directions as it thinks fit “to secure the just, expeditious and economical conduct of the proceedings”.

17. Option 1 limits disclosure to “relevant and reasonably identified” individual documents. This formulation would appear to be narrower than that required by the standard disclosure rules.

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2 SI 2003/1372.
3 CPR Rule 31.6.
4 CPR Rule 19.
Option 2: Subject to fact pleading, mandatory disclosure of classes of documents between the parties, ordered by a court, should be possible.

18. The purpose of Option 2, as described in paragraph 91 of the Commission Staff Working Paper is to address the obstacle to claims posed by limited disclosure requirements and the limited powers of national courts in many Member States to order production of documents.

19. The rules governing disclosure in the UK are described above in response to Option 1. In the UK a party which is dissatisfied with the extent of his opponent’s disclosure can obtain a court order requiring the opponent to give further specific disclosure or conduct a further search.5

20. The UK experience has shown that the disclosure of documents by order of the court is a useful component of disclosure.

Option 3: Subject to fact pleading, there should be an obligation on each party to provide the other parties to the litigation with a list of relevant documents in its possession, which are accessible to them.

21. The purpose of Option 3, as described in paragraph 92 of the Commission Staff Working Paper, is to facilitate the identification by the parties of relevant documents in the possession of another party.

22. In the UK, the standard disclosure procedure6 already requires the mandatory disclosure of a list of documents so that adoption of Option 3 does not appear to be necessary in the UK.

Option 4: Introduction of sanctions for the destruction of evidence to allow the disclosure described in Options 1 to 3.

23. The purpose of Options 4 and 5, as described in paragraphs 93 and 94 of the Commission Staff Working Paper, is to preserve evidence and ensure that it is not withheld from the proceedings.

24. A party dissatisfied with the extent of his opponent’s disclosure can obtain a court order requiring the opponent to give further specific disclosure or conduct a further search.7 If such an order is made, failure to comply can amount to contempt of court and may have serious consequences including the dismissal of a party’s claim or judgment being entered against him.

Option 5: Obligation to preserve relevant evidence. Under this rule, before a civil action actually begins, a court could order that evidence which is relevant for that subsequent action be preserved. The party asking for such an order should, however, present reasonably available evidence to support a prima facie infringement case.

25. In the UK the courts have the power to make an order for pre-action disclosure against the likely defendant.8 An order is limited to such documents as the defendant ought to disclose by way of standard disclosure.9 In addition, the Court has a similar power to order a third-party to produce documents before trial.10

Comments

26. The UK acknowledges that limited powers on the part of a claimant to demand the production of evidence may constitute an obstacle to successful claims.

27. As pointed out above, however, in the UK there is an extensive set of rules in place requiring the disclosure of documentary evidence in civil proceedings.

28. The proposals give rise to the general question whether it is appropriate to create specific rules applicable to competition cases only and, moreover, whether it is appropriate for EU law to amend the Member States’ general rules of civil procedure (except in certain specific targeted areas). The Commission describes its rationale for such an amendment, in paragraph 52 to 53 of the Commission Staff Working Paper, to be that civil litigation in the field of competition touches upon a particular public interest and offers a number of specific aspects that mean that the bringing of an action is unusually difficult.

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5 CAT Rules 19(2)(k) and in CPR Rule 31.12.
6 CPR Rules 31.5, 31.6, 31.8 and 31.10.
7 See above, CAT Rule 19(2)(k) and in CPR Rule 31.12.
8 Supreme Court Act 1981, section 33(2) and the County Court Act 1984, section 52(2).
9 CPR Rule 31.16(4) and (5).
10 Supreme Court Act 1981, section 4(2) and the County Court Act 1984, section 53.
29. We agree that the claimant in a competition case may face difficulties proving his claim. However, the UK believes that the Member States have the means to deal with this problem within their rules of evidence. This has to be done in a way that does not adversely affect the balance of the domestic legal system. Therefore, in order to maintain consistency with national laws, we consider that the rules of access to evidence are best dealt with at the Member States level.

30. Since UK law already addresses most of the issues raised in Question A in a comprehensive way, there seems to be no need for amendments to the current law.

**Question B**

*Are special rules regarding access to documents held by a competition authority helpful for antitrust damages claims? How could such access be organised? (Options 6–7)*

Option 6: Obligation on any party to proceedings before a competition authority to turn over to a litigant in civil proceedings all documents which have been submitted to the authority, with the exception of leniency applications. Issues relating to disclosure of business secrets and other confidential information as well as rights of the defence would be addressed under the law of the forum (ie the law of the court having jurisdiction).

31. Question B appears to go wider than Options 6 and 7 suggest. The question (whether special rules regarding access to documents held by a competition authority may be helpful for antitrust damages claims) raises a number of difficult issues, including where the balance should be struck between (i) promotion of private enforcement and avoiding wholly speculative claims; (ii) promotion of private enforcement and protection of leniency applicants; and (iii) the burdens borne by the claimant and the competition authority respectively. These issues will need to be considered in detail.

32. The purpose of Option 6, as described in paragraph 73 to 77 and 95 of the Commission Staff Working Paper, is to address the heavy evidential burden on the claimant and improve his access to evidence in cases often involving a strong asymmetry of information without losing the protection of business secrets.

33. Option 6 has two aspects: (a) the requirement to disclose documents which have been made available to a competition authority and (b) the proposal that the law of the forum should apply to determine the disclosure of business secrets.

34. The first aspect of Option 6 appears to be a less appropriate solution than standard disclosure. The proposed test could lead to disclosure of a large number of documents which are not relevant to the proceedings or, equally, non-disclosure of documents which are relevant but which have not been submitted to a competition authority.

35. In the UK, documents held by a competition authority are not, as a general rule, available to claimants in a damages claim due to the restrictions on disclosure contained in Part 9 of the Enterprise Act 2002, in particular. Part 9 stipulates, *inter alia*, that information which relates to the affairs of an individual or any business of an undertaking must not be disclosed unless certain conditions are met. Information which has on an earlier occasion been disclosed to the public may be disclosed, provided that certain conditions are met. Information may be disclosed if the individual concerned or the person carrying out the business and the person who provided the information consents. However, a competition authority must comply with any court order requiring disclosure (see legislation outlined above).

36. When a case is before the CAT, parties wishing to claim confidential treatment of documents or parts of documents, including business secrets, may apply to the CAT to have those documents excluded from disclosure provided certain conditions are met. The request has to be made in writing within 14 days of sending the document to the Registrar and must indicate the relevant passages and the figures or passages for which confidentiality is claimed and must be supported in each case by specific reasons.11 Whether particular information is to be regarded as confidential is a matter for the Tribunal to decide in the individual case.

37. Confidentiality in the ordinary courts follows CPR Rule 5.4(7). On the application of a party or any person identified in the claim form, the court can restrict the persons or classes of persons who may obtain a copy of the claim form, order that they may only obtain a copy if it is edited in accordance with the directions of the court or make such other order as it thinks fit.

11 See CAT Rule 53. It applies to claims for damages as well as to other proceedings before the CAT (see CAT Rules 3 and 30).
Option 7: Access for national courts to documents held by the Commission. In this context, the Commission would welcome feedback on (a) how national courts consider they are able to guarantee the confidentiality of business secrets or other confidential information, and (b) on the situations in which national courts would ask the Commission for information that parties could also provide.

38. Option 7 suggests providing national courts with access to documents held by the Commission. The purpose of Option 7, as described in paragraphs 73 to 77 and 96 of the Commission Staff Working Paper, is to gather feedback on how national courts would themselves like to co-operate with the Commission.

39. We do not anticipate substantial difficulties in our national courts guaranteeing the confidentiality of business secrets or other confidential information. In the UK, there is a working system of rules and principles dealing with the treatment of confidential information in the courts. Although confidentiality is not a bar to disclosure, the court can conduct hearings in camera, impose reporting restrictions or limit access to court documents, for example. Before the CAT, confidential matters are not disclosed unless they are essential for the decision. Furthermore, in the CAT a confidentiality ring can be defined, eg restricting disclosure to the legal representatives, who are subject to professional codes of conduct, while the parties themselves may be excluded. More generally, in the ordinary courts, the court can make various provisions on the treatment of confidential information, eg conduct hearings in camera, impose reporting restrictions or limit access to court documents.

Comments

40. In relation to Option 6 we do not feel that there is particular merit in an obligation being placed on any party to proceedings before a competition authority to turn over to a litigant in civil proceedings all documents which have been submitted to the authority, with the exception of leniency applications. As the second part of Option 6 suggest, however, issues relating to disclosure of business secrets and other confidential information as well as rights of the defence should be addressed under the law of the forum (ie the law of the court having jurisdiction).

41. We understand that the situation set out in Option 7, in which national courts would ask the Commission for information, is not expected to arise very often in practice in the UK because the courts would generally seek information from the parties rather than from competition authorities. It is, however, conceivable that a national court would ask the Commission for a copy of any statement of objections issued by the Commission in a case where the Commission has for some reason not proceeded to a decision.

42. It is possible that the CAT might wish to obtain information from the Commission in the event of a follow on action for damages under section 47A CA 1998 but we should have thought that, in general, the CAT would seek the information from the parties.

Question C

Should the claimant’s burden of proving the antitrust infringement in damages actions be alleviated and, if so, how? (Options 8–10)

Option 8: Infringement decisions by competition authorities of the EU Member States to be made binding on civil courts or, alternatively, reversal of the burden of proof where such an infringement decision exists.

Option 9: Shifting or lowering the burden of proof in cases of information asymmetry between the claimant and defendant with the aim of redressing that asymmetry. Such rules could, to a certain extent, make up for the non-existent or weak disclosure rules available to the claimant.

Option 10: Unjustified refusal by a party to turn over evidence could have an influence on the burden of proof, varying between a rebuttable presumption or an irrebuttable presumption of proof and the mere possibility for the court to take that refusal into account when assessing whether the relevant fact has been proven.

43. The purpose of Options 8–10, as described in paragraphs 36, 78 to 87 and 98 to 100 of the Commission Staff Working Paper, is to alleviate the claimant’s burden of proving the infringement of competition law, in view of the difficulties often faced by claimants arising from the unavailability of evidence.

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12 Paragraph 1(2) of Schedule 4 to the EA 2002 which applies to the CAT, CAT Rule 16(8), see also CPR Rule 5.4.
13 See CPR Rule 5.4.
14 See CPR Rule 5.4.
44. Option 8 has two alternatives. The first suggests that the civil courts should be bound by a decision of the competition authorities of other Member States. The second proposes a reversal of the burden of proof from the claimant to the defendant where such a decision exists. Option 9 argues for a reversal or lowering of the burden of proof in cases of uneven access to information. Option 10 considers a range of consequences for the defendant in case he refuses to turn over evidence without justification.

45. Under UK law the burden of proof of a breach of a statutory duty is on the claimant. The civil standard of proof (balance of probabilities) applies. OFT/EU Commission decisions are binding on the CAT, assuming that all relevant time-limits for appeal have expired or that any appeal has been completed.16 OFT decisions as to infringement and CAT decisions (on appeal from OFT decisions) are binding in damages actions before the ordinary courts under broadly similar conditions.16

COMMENTS

46. In the UK decisions of the OFT and the EU Commission are binding in follow-on cases before the courts and the CAT.17 It follows from this that Option 8 would mean a widening of the scope of Section 47A and Section 58 CA 1998 to decisions of competition authorities of other Member States.

47. German law18 already reflects the first alternative of Option 8 by making the findings of the German and EC competition authorities, as well as those of other Member States’ competition authorities, binding on courts dealing with private law damages actions.

48. The UK is open to consider this aspect of Option 8. The binding effect of a decision of a competition authority appears to be an adequate recognition of the imbalance of power between claimant and defendant. If it can be shown that a rule similar to the German one has positive effects on the bringing of private actions, amendments of the domestic law could be considered. However, detailed requirements would be needed in relation to relevant time-limits for appeal. They should have expired or any appeal should have been completed before decisions of other Member States’ competition authorities become binding on civil courts.

49. In relation to the alternative in the second part of Option 8, ie changing the burden of proof, there has to be a balance between the rights of the claimant and the rights of the defendant, which could be jeopardised in such a situation. Any changing of the burden of proof could raise issues under Article 6 of the European Convention on Human Rights (ECHR) relating to the right of the defendant to a fair trial.

50. Although we understand the problems Option 9 aims to address, we foresee considerable practical problems with its implementation. The option does not define what degree of “asymmetry” would be required for triggering a reversal of the burden or lowering of the standard of proof. In order to be useful, a certain threshold of information asymmetry seems to be required but the definition of this would appear to be difficult. Moreover, it is unclear how the standard of proof could be lowered further when the existing standard of proof is “on the balance of probabilities”. Generally, effective disclosure rules such as those in the UK should obviate the need for any change in the burden of proof. Furthermore, any lowering of the standard of proof could increase the risk of gaming by claimants and unwarranted intervention.

51. We understand that under German law the claimant only has to adduce prima facie evidence of an abuse of dominance before this gives rise to a rebuttable presumption in his favour.19 However, considering the strong domestic rules of disclosure, we do not see the need for any such provision in the UK.

52. Option 10 raises questions of proportionality if a case can turn on the refusal to provide one piece of evidence. One would also have to put forward criteria for defining when a refusal to turn over evidence is “unjustified”.

53. It is preferable for the domestic courts to have a discretion as to the management of a case. For example, in the UK, the refusal to hand over evidence may, at the court’s discretion, have similar adverse consequences to the destruction of evidence eg failure to comply with an order of the court can amount to contempt of court and may have serious consequences including the dismissal of a party’s claim or judgment being entered against him. The emphasis should therefore be on dealing with the failure to provide evidence by means, for example, of contempt proceedings which would be more effective than altering or reversing the burden of proof. Again any changing of the burden of proof could raise Article 6 ECHR issues. In practical terms, it would be necessary to prove that the evidence existed before any shift in the burden of proof would be appropriate, which could be very difficult.

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15 Section 47A (6) and (7) of CA 1998 (inserted by Section 18 EA 2002).
16 Section 58A(2), (3) and (4) of CA 1998.
17 See above.
18 Section 33 (4) of the German Act against Restraints of Competition (“Gesetz gegen Wettbewerbsbeschränkungen”, GWB).
19 Section 20(5) Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, “GWB”).
QUESTION D

Should there be a fault requirement for antitrust-related damages actions? (Options 11–13)

Option 11: Proof of the infringement should be sufficient (analogous to strict liability).

Option 12: Proof of the infringement should be sufficient only in relation to the most serious antitrust law infringements.

Option 13: There should be a possibility for the defendant to show that he excusably erred in law or in fact. In those circumstances, the infringement would not lead to liability for damages (defence of excusable error).

54. The options suggest strict liability (Option 11), strict liability in the most serious cases only (Option 12) and strict liability but with a defence that the defendant excusably erred in law or fact (Option 13). The purpose of Options 11–13, as described in paragraphs 32 and 109 to 111 of the Commission Staff Working Paper, is to facilitate private damages actions by removing fault as a condition of liability for a breach of competition law or to consider that the infringement itself constitutes the fault.

55. Article 81 is partly effects based as an agreement is prohibited if it has as its “object or effect the prevention, restriction or distortion of competition within the common market”. Article 82 requires “the abuse by one or more undertakings of a dominant position within the common market or a substantial part of it”.

56. Under English case law, breach of Articles 81 and 82 EC constitutes a breach of the statutory duty created by section 2(1) of the European Communities Act 1972. The cause of action for breach of statutory duty is generally considered to impose strict liability, ie there is no requirement of fault.

57. UK law does not contain a provision equivalent to option 13, under which there would be no liability if the defendant excusably erred in law or fact.

COMMENTS

58. UK domestic law reflects Option 11 in that it imposes strict liability for breach of Articles 81 and 82 EC. The UK therefore belongs to the large group of Member States where the fault requirement does not form an obstacle to private enforcement of competition law. Option 12 does not, therefore, reflect the position in the UK.

59. Since it appears that it is only a minority of Member States that do have a fault requirement,20 the UK feels that there might be a case for the relevant Member States to amend their rules rather than for action to be taken at a European level.

60. Both the content and context of any proposal along the lines of Option 13 would require careful consideration because it would import a concept of excusable error, which would be a new development in the UK.

QUESTION E

How should damages be defined? (Options 14–17)

Option 14: Definition of damages to be awarded with reference to the loss suffered by the claimant as a result of the infringing behaviour of the defendant (compensatory damages).

Option 15: Definition of damages to be awarded with reference to the illegal gain made by the infringer (recovery of illegal gain).

Option 16: Double damages for horizontal cartels. Such awards could be automatic, conditional or at the discretion of the court.

Option 17: Prejudgment interest from the date of the infringement or date of the injury.

61. Options 14–17 suggest compensatory damages, recovery of illegal gain, double damages for horizontal cartels and prejudgment interest respectively. The purpose of Options 14–17, as described in paragraphs 112 to 124 and 147 to 151 of the Commission Staff Working Paper, is to consider the effects of the definition of damages on incentives for claimants to bring a case before a court.

20 See paragraph 102 of the Commission Staff Working Paper.
62. UK courts apply general principles of foreseeability and quantum where loss of profits is claimed to restore the claimant to the position he or she would have been in but for the unlawful conduct (see *Crehan* and *Arkin* cases).

63. Civil damages in the UK are primarily focused on providing compensation for the actual loss suffered by the claimant, and not on deterring or punishing the defendant. In addition to purely compensatory damages, the courts also have the power in certain circumstances to award aggravated damages (which compensate the victim of a wrong for mental distress or injury to feelings) or restitutionary damages (which aim to strip away some or all of the gains by a defendant arising from a civil wrong), or, in very limited circumstances, exemplary damages.

64. Damages must be assessed at the date of the loss.

65. In cartel cases, a party claiming to have been affected in the market by the existence of the cartel will generally claim the "overcharge", i.e. the amount by which the price of the goods or services in question have been inflated over and above the price that would have been charged had there been no cartel.

66. Pre-judgment interest is already available at the discretion of the court. This can potentially extend to interest from the date of the infringement. Interest may additionally be awarded on the judgment debt at the rate for the time being specified under section 17 of the Judgments Act 1838 (currently 8%).

**Comments**

67. The UK’s overarching position is that the availability, nature and calculation of damages are matters of substantive law which should be left to Member States. We do not believe that there is a need for a special regime to be established at Community level or for competition law cases to be treated differently from other damages cases.

68. In relation to the specific options on which views are sought, Option 14 is generally available and Option 15 is possible under the law in England and Wales but would go against the general principles of damages in Scottish law.

69. However, we feel that the recovery of illegal gain proposed in Option 15 may, in practice, give rise to difficulties of proof, not least because the information is with the defendant rather than the claimant, and could give rise to further difficulties of how to divide the illegal gain among claimants from different levels of the supply chain.

70. Option 16 proposes double damages for horizontal cartels. While there is some scope in the UK for punitive damages, they are only available in very limited circumstances and there is no decided competition case where punitive damages have been considered. The Government’s current policy is that there should be no further lessening through statute of the restrictions on the availability of punitive damages in civil proceedings. This reflects the view that the primary purpose of civil law on damages is to provide for loss, and not to punish.

71. Option 16 could also raise practical difficulties, for example, additional arguments might arise between the parties as to whether a particular fact situation constitutes a cartel and, therefore, gave rise to double damages. This could add to the cost and length of proceedings.

72. Deterrence for the formation of cartels may also be achieved by fines, imprisonment and disqualification of company directors. It is important to consider how best to achieve effective deterrence.

**Question F**

*Which method should be used for calculating the quantum of damages? (Options 18–20)*

Option 18: What is the added value for damages actions of use of complex economic models for the quantification of damages over simpler methods? Should the court have the power to assess quantum on the basis of an equitable approach?

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24 Section 36 et seq CA1998 (penalties); section 188 et seq EA2002 (cartel offence); Company Directors Disqualification Act 1986.
Option 19: Should the Commission publish guidelines on the quantification of damages?

Option 20: Introduction of split proceedings—between the liability of the infringer and the quantum of damages to be awarded—to simplify litigation.

73. Options 18–20 ask three questions. Their purpose, as described in paragraphs 125 to 146 and 152 to 155 of the Commission Staff Working Paper, is to demonstrate the variety of techniques available for quantifying damages and to collect views as to the suitability of the described methods in damages quantification before civil courts.

COMMENTS

74. The UK’s overarching view is that the quantification of damages is a matter of substantive law which should be left to the courts of Member States to determine on the basis of the evidence provided to them. We do not believe that it would be appropriate or helpful to adopt uniform levels of damages or to require the use of complex economic models to determine quantum.

75. In relation to Option 18, we are keen for the courts to continue to calculate damages by reference to the loss suffered by the claimant. The compulsory use of complex economic models would be cumbersome and impractical, as over time the efficacy of any particular model may be called into question and different considerations may apply in different cases. In addition, we are wary of imposing an extra layer of complexity and expense as a result of the need to employ economists to prepare the complex economic models.

76. It is unclear what is envisaged by the “equitable approach”, suggested at the end of Option 18. In the UK the courts will determine what is fair compensation in an individual case on the basis of all the evidence and the loss that the claimant has suffered. It is our view that a court should be able to apply the Member State’s rules for assessing damages so that decisions have the merit of consistency and fairness between cases and between claimants and defendants and may, if necessary, be readily reviewed by a superior court.

77. In relation to Option 19, we have doubts that the publication of Commission guidelines on the quantification of damages would be helpful. It is unclear exactly what kind of guidelines are envisaged or what status they would have. The damages that are appropriate in an individual case will depend on the loss that the claimant has suffered, and any prescriptive models as to how these should be quantified or tariffs would risk either over- or under-compensating the claimant.

78. In relation to Option 20, we do not feel that split proceedings should, as a general rule, be compulsory. It is already possible for the courts in England and Wales to determine liability prior to deciding quantum if that appears appropriate in an individual case. However, it would not be desirable to introduce prescriptive provisions requiring this to occur in every case or to attempt to define the circumstances in which it will be appropriate.

QUESTION G

Should there be rules on admissibility and operation of the passing-on defence? If so, which form should such rules take? Should the indirect purchaser have standing? (Options 21–24)

Option 21: The passing-on defence is allowed and both direct and indirect purchasers can sue the infringer. This option would entail the risk that the direct purchaser will be unsuccessful in claiming damages as the infringer will be able to use the passing-on defence and that indirect purchasers will not be successful either because they will be unable to show if and to what extent the damages are passed on along the supply chain. Special consideration should be given in this respect to the burden of proof.

Option 22: The passing-on defence is excluded and only direct purchasers can sue the infringer. Under this option direct purchasers will be in a better position as the difficulties associated with the passing-on defence will not burden the proceedings.

Option 23: The passing-on defence is excluded and both direct and indirect purchasers can sue the infringer. While the exclusion of the passing-on defence renders these actions less burdensome for the claimants, this option entails the possibility of the defendant being ordered to pay multiple damages as both the indirect and direct purchasers can claim.

Option 24: A two-step procedure, in which the passing-on defence is excluded, the infringer can be sued by any victim and, in a second step, the overcharge is distributed between all the parties who have suffered a loss. This option is technically difficult but has the advantage of providing fair compensation for all victims.
79. Options 21 to 24 set out different possibilities of allowing or disallowing the passing-on defence and giving or denying standing to indirect purchasers. The purpose of Options 21–24, as described in paragraphs 38, 39, 156 to 180 and 181 to 187 of the Commission Staff Working Paper, is to examine the possible benefits and disadvantages the passing-on defence and indirect purchaser standing could have for private enforcement of competition law.

80. The Commission Staff Working Paper draws attention to the need to weigh the problems of proof posed by tracing an overcharge through the hands of a potentially long chain of purchasers against the desirability of having an effective recovery mechanism available to all affected purchasers.

81. Neither the “passing-on” defence nor “indirect purchaser” standing is the subject of settled case law in the UK. The broad language of the ECJ in the Crehan case25 suggests that indirect purchasers may have standing when the Court says that “all” individuals harmed by infringement of Article 81 EC can sue for loss. However, they will have to prove loss and causation, among other things, as in any other claim.

82. Different models can be discerned from a comparative law perspective that may help to illustrate some of the arguments.

83. The recent 7th Amendment of the German Act against Restraints of Competition26 stipulates, in section 33(3) GWB, that damages are not excluded simply because the goods or services have been sold on. Although theoretically it is possible to invoke passing-on as a defence, practically this can only be done within the very narrow framework of the German civil law concept of “Vorteilsausgleichung”, ie mitigation of damages by benefits received. Thus, in principle, German law has not ruled out the passing-on defence, but it has effectively made it very difficult to use.

84. Under Federal US law the passing-on defence is not available to a cartelist. A majority of the US Supreme Court ruled against the passing-on defence in Hanover Shoe Inc. v United Shoe Machinery Group.27 The court held that measuring the impact of passing-on and having to calculate the total overcharge was too complex and, to go beyond this and apportion overcharge along the chain of purchasers would increase the complexity and cost of competition enforcement. Possibly, the passing-on defence could lead to an enrichment of the cartelist who would not have to fear claims by indirect purchasers from further down the chain because they would not be interested in suing considering the small loss they might have suffered. In Illinois Brick,28 a majority of the US supreme Court stressed that allowing the passing-on defence would cause massive efforts to apportion the overcharge along the supply chain. This again would increase the complexity of damages suits, thus seriously undermining their effectiveness.

85. In Illinois Brick, the majority of the Supreme Court also restricted the class of potential claimants, so that only those who are direct purchasers from the cartelists may sue. We understand, however, that around 30 states have reversed the effect of the Supreme Court’s judgment as far as actions in their state courts are concerned.29

86. The restriction on indirect purchasers suing in US Federal law was justified as a necessary adjunct to disallowing the passing-on defence so as to prevent multiple liability being imposed on the cartelist. It was also considered more likely to facilitate successful private enforcement of competition law if the damage could not be laid off to a more dispersed (and proportionally less affected) class of claimants who will have less incentive to bring the necessary claims to hold cartelists to account. Another argument put forward was that cartelists should not benefit from the potential difficulties of proof for an indirect claimant in tracing overcharge.

87. To permit indirect purchasers to sue could also lead to over-recovery from the infringer. (Consolidation of claims might, however, be used to reduce or eliminate the risk of this.) Advocates of indirect purchaser standing30 have argued that allowing indirect purchasers to sue might promote a strong form of deterrence against the infringer.

Comments

88. There might be cases where the loss of an indirect purchaser can be quantified and is sufficient to justify a case, such that confirming the standing of indirect purchasers could result in action. This could be especially useful if a direct purchaser is reluctant to sue an infringer because it might jeopardise their relationship with suppliers, particularly when the supplier has a dominant position in the market.

26 Gesetz gegen Wettbewerbsbeschränkungen ("GWB").
89. The argument of the US Supreme Court that double recovery should be avoided requires careful consideration, together with an examination of what may be done to reduce the risk. However, the requirement of a direct casual link between the Article 81 infringement and the damage caused, among other things, already provides a limitation on the class of persons who can claim. In addition, the claimant still has to show an overcharge and the amount of it, that he has suffered loss caused by the breach, that it is not too remote, etc. We believe that consumers and other end-users should have the right to sue as they bear the brunt of infringements and, therefore, a marked disadvantage of Option 22 is that it would appear to preclude claims by consumers and other end-users.

90. We feel that more work needs to be done to quantify the risk together with the complexities involved, especially concerning proof and costs. The difficulties involved in recognising passing-on and indirect purchasers’ standing needs to be balanced against improving the effectiveness of private enforcement of competition law.

**QUESTION H**

*Should special procedures be available for bringing collective actions and protecting consumer interests? If so, how could such procedures be framed? (Options 25–26)*

**Option 25:** A cause of action for consumer associations without depriving individual consumers of bringing an action. Consideration should be given to issues such as standing (a possible registration or authorisation system), the distribution of damages (whether damages go to the association itself or to its members), and the quantification of damages (damages awarded to the association could be calculated on the basis of the illegal gain of the defendant, whereas damages awarded to the members are calculated on the basis of the individual damage suffered).

**Option 26:** A special provision for collective action by groups of purchasers other than final consumers.

91. Option 25 sets out three aspects that require consideration in the context of collective actions. These are standing, distribution and quantification of damages. Option 26 suggests considering some form of group action for groups of litigants other than final consumers. The purpose of Options 25 and 26, as described in paragraphs 31, 198 to 200 and 201 of the Commission Staff Working Paper, is to indicate the scope to introduce additional means of collective consumer redress in those Member States that do not have specific legislation on the issue.

92. The UK agrees with the Commission that there may in principle be merit in encouraging claims by final consumers, because these contribute directly to the overarching aim of compensating those who have suffered loss and, moreover, that it will be very unlikely for practical reasons that consumers and purchasers with small claims will bring an action for damages for breach of competition law under present conditions.

93. As the Commission acknowledges in paragraph 197 of the Commission Staff Working Paper the UK has already introduced the possibility for bodies specified by the Secretary of State for Trade and Industry to bring actions for damages on behalf of two or more individual consumers before the CAT.\(^{31}\) So far the only body to be designated to do this is *Which?* (formerly the Consumers’ Association), who were awarded these powers as from 1 October 2005.

94. In order to be specified to bring claims on behalf of consumers, bodies must meet the following criteria:

- The body is so constituted, managed and controlled as to be expected to act independently, impartially and with complete integrity;
- The body is able to demonstrate that it represents and/or protects the interests of consumers. This may be the interests of consumers generally or specific groups of consumers; and
- The body has the capability to take forward a claim on behalf of consumers.

95. Additionally, some consumer bodies also operate trading arms. The criteria for designation note that the fact that a body has a trading arm will not disqualify it from being able to bring consumer group claims, provided that the trading arm does not control the body, and any profits of the trading arm are only used to further the stated objectives of the body.

96. Any claims can only be brought as follow on actions, ie on the back of an infringement decision made by either the OFT or the EU Commission: Section 47A(5) and (6) CA 1998.

\(^{31}\) Section 19 EA 2002 amending the CA 1998 by inserting new sections 47B and 47A.
97. Section 47B(6) CA 1998 stipulates that the damages awarded in respect of a consumer claim must be awarded to the individual concerned, but the Tribunal may with the consent of the specified body (consumer organisation) and the individual order that the sum awarded be paid to the specified body.

98. There are several requirements to be met for a specified body to bring a claim. As with other claimants, formal requirements include the submission of a claim form containing the name and address of the claimant, the defendant and the specified body etc. In addition, the claim form has to contain a concise statement of the relevant facts and identify the relevant findings in the decision of the competition authority on the basis of which the claim for damages is being made.

99. As a matter of general law, there is a possibility of Group Litigation Orders (GLOs) under Part 19 of the CPR. These Orders are subject to strict supervision by the court and may only be made with the consent of a senior judge. They are likely to be made when more than one party has the “same interest” in a claim and there are common issues of law or related fact. In relation to Scotland, there is no direct equivalent to this in the Rules of the Court of Session, although it is possible to arrange administratively for cases to be dealt with together, provided parties agree.

**Comments**

100. The UK needs to observe the functioning of its rather recent legislation before any evaluation or conclusions can be drawn. So far there have not been any cases brought by Which? under section 47B CA 1998. However, these are still early days and there appear to be no reasons why Which? will not bring an action in due course. Additionally, recent reforms in respect of conditional fees have, to some extent, addressed any potential issues of funding and may provide a suitable mechanism for designated bodies wishing to bring claims.

101. We shall be happy to share the UK experience with the Commission and other Member States that are interested in passing similar legislation. We feel, however, that it would be premature for action at Community level at the moment that would instigate change to the UK systems which have just been put into operation.

102. Actions being brought by authorised organisations have the potential advantage of saving time and money for the parties. We believe that a number of elements are important in any such system. For example, claims should be brought only by authorised bodies, to ensure that the organisation bringing a claim is reputable, suitable and capable of bringing the action. Also, the court’s permission should be sought before a claim is brought to avoid spurious or tactical claims being brought against businesses.

103. The cost and complexity of competition cases and the need for proportionality would support a de minimis rule, eg where the effective loss to the individual is minimal.

104. There is a view that collective actions brought other than by a consumer organisation are complex, costly and time consuming without bringing particular benefits. These criticisms would have to be taken into account in the design of any possible rules on such collective actions.

**Question 1**

*Should special rules be introduced to reduce the cost risk for the claimant? If so, what kind of rules? (Option 27)*

Option 27: Establish a rule that unsuccessful claimants will have to pay costs only if they acted in a manifestly unreasonable manner by bringing the case. Consideration could also be given to giving the court the discretionary power to order at the beginning of a trial that the claimant not be exposed to any cost recovery even if the action were to be unsuccessful.

105. Option 27 suggests considering special cost rules for competition-related damages claims, including giving special discretionary powers to the court to order—under certain conditions—that the claimant need not pay costs even if he loses the case. The purpose of Option 27, as described in paragraphs 43, 214 to 220 of the Commission Staff Working Paper, is to prevent the disincentive effect of the “loser pays” principle, especially in those competition-related damages claims in which the outcome cannot be clearly assessed at the outset of the action or in cases in which very small amounts of damages are being claimed. This option seeks to confine the application of the loser pays principle in relation to the claimants to cases where it was manifestly unreasonable to being an action.

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32 See CAT Rules 30 to 33.
106. The central principle that applies to costs in the UK is that the unsuccessful party will normally be expected to pay the costs of the successful party, but the court has discretion to order otherwise. In determining what costs order is appropriate the courts have a wide discretion to consider all the circumstances of the case, including the behaviour of the parties and the way that they have conducted the case (for example whether it was reasonable for a claimant or a defendant to have made or defended a particular allegation or issue in the proceedings). In most cases, the parties will agree between them the amount of costs which should be recoverable. If agreement cannot be reached, it is open to either party to apply to the court for it formally to assess the amount of the costs. In the case of the CAT, the Tribunal has discretion in relation to costs. The CAT has exercised this discretion so as not to award costs against an unsuccessful claimant in a number of cases, with the policy intention of not discouraging appeals against decisions of the UK competition authorities.

107. Generally speaking, contingency fees as understood in the USA are not available in England and Wales. Contingency fees usually work on the basis that the lawyer charges a percentage of the compensation awarded. Contingency fees are currently illegal for contentious business (proceedings before a court) but can be used in non-contentious business (probate, tribunals and claims up to issue of proceedings) where settlement is the ultimate objective. Solicitors’ practice rules allow the use of contingency fees in non-contentious business but barristers cannot use them at all.

108. Conditional Fee Agreements (“CFAs”), introduced by the Courts and Legal Services Act 1990, are the primary form of agreement between clients and solicitors. The Act made provision for agreements in which it was explicit that part or all of the solicitor’s fees were payable only in the event of success. CFAs can be used in all civil proceedings other than family. CFAs are not permitted in criminal proceedings.

109. CFAs allow a solicitor to take a case on the understanding that, if the case is lost, he will not charge his client for the work he has done (or he will charge at a lower rate). However, if the case is successful the solicitor can charge a success fee on top of his normal fee, to compensate him for the risk of not being paid. That success fee is calculated as a percentage of his normal fee and the level at which the success fee is set reflects the risk involved (the success fee can be up to 100% of the agreed or taxed expenses paid by the losing side). The success fee is recoverable from the losing side. In Scotland, conditional fees and success fees are also now permitted, but the success fee is paid by the client, not the other side. It is open to a party to take out insurance against the possibility of being ordered to pay the other party’s costs.


comments

110. The UK recognises that the high cost risks involved in competition actions may operate as a disincentive to bringing private actions. CFAs go someway to reducing this disincentive.

111. The UK also holds the view that it is particularly difficult to assess the prospects of a case before trial. However, we believe that, as a matter of domestic law, cost rules in private damages claims following competition law infringements should not be treated any differently from other civil cases, in order to keep the domestic cost rules consistent and fair to all concerned.

112. It is important that the courts have the discretion to reach a decision on costs in individual cases that is fair to both parties in all the circumstances of the case, and we would not support any prescriptive provision which would restrict that discretion. It is also important to recognise the interests of the defendant—for example, Option 27 suggests that even a successful defendant should have to pay costs if the claimant has not acted “in a manifestly unreasonable manner” in bringing the case. This may be unfair to a defendant who has successfully resisted a claim.

113. The first part of Option 27 entails other potential disadvantages. For example, it is a very high burden and possibly unfair for the defendant to have to prove that the claimant “acted in a manifestly unreasonable manner” and the need to prove this might well result in further costs and legal argument while this is being resolved; also, even if the defendant succeeds in the main action and in proving the “manifestly unreasonable manner” the claimant may prove not to have sufficient financial resources.

114. In competition cases, the courts and the CAT have discretion to decide on the costs that should be awarded, although they do not do this at the beginning of the trial. Hence, the suggestions made in the second part of option 27 are (at least partly) realised in the UK. However, it may be unreasonable in private law proceedings for the court to decide at the beginning that the claimant does not have to pay any costs at all.

115. There are certain other risks involved in amending the costs rules, for example, that a reduced cost risk could increase the number of ill-founded actions being brought. A proliferation of ill-founded actions could result in a significant increase in the costs to business.

34 CAT Rule 55.
116. We would not, therefore, support any prescriptive provision in this area. Rather than overriding the general principles of cost recovery in each Member State, other proposals in the Green Paper may be more effective, such as providing for a body like Which? to bring actions for damages on behalf of consumers, as discussed in our response to Question H.

**Question J**

*How can optimum co-ordination of private and public enforcement be achieved? (Options 28–30).*

Option 28: Exclusion of discoverability of the leniency application, thus protecting the confidentiality of submissions made to the competition authority as part of leniency applications.

Option 29: Conditional rebate on any damages claim against the leniency applicant; the claims against other infringers—who are jointly and severally liable for the entire damage—remain unchanged.

Option 30: Removal of joint liability from the leniency applicant, thus limiting the applicant’s exposure to damages. One possible solution would be to limit the liability of the leniency applicant to the share of the damages corresponding to the applicant’s share in the cartelised market.

117. Options 28–30 set out a variety of possible ways of dealing with leniency applicants. Option 28 would exclude discoverability of a leniency application. Option 29 contemplates a conditional rebate on any damages against the applicant. Option 30 considers ways of limiting the applicant’s exposure to damages. The purpose of Options 28–30, as described in paragraphs 221 to 236 of the Commission Staff Working Paper, is to ensure optimal co-ordination between leniency programmes and the rules on damages claims.

118. In common with other Member States, the UK regime displays a number of features which are aimed at optimising the co-ordination of public and private enforcement when matters are before the courts. The OFT has the power to act as amicus curiae in private competition law actions and submit observations to a national court on issues relating to the application of Article 81 or 82 EC Treaty. The OFT may, acting on its own initiative, submit written observations to a national court on issues relating to the application of Article 81 or 82 of the EC Treaty. With the permission of the court in question, it may also submit oral observations. For the purposes of the preparation of the OFT’s investigations, the OFT may request the court to transmit or ensure the transmission to it of any documents necessary for the assessment of the case.

**Comments**

119. Leniency is an essential tool in the investigation of cartels. The UK believes that in making it easier to bring private actions, undertakings must not be discouraged from applying for leniency.

120. As regards Option 28, the Commission Staff Working Paper states that “[i]t might . . . be necessary to exclude not only the actual corporate statement but also to disallow that a claimant seeks through disclosure the documents in the form submitted by the leniency applicant to a competition authority.” The UK is open to consider a variant of Option 28, subject to the need to accommodate any exclusion within the existing rules.

121. The UK believes that any exclusion could cover not only the national equivalents of the “Corporate statement”, but all material created to support an undertaking’s leniency application also. In the UK, such material could include transcripts of interviews and witness statements. An exclusion of this type would ensure that leniency applicants do not place themselves in a position worse than that of the other members of the cartel.

122. However, in our view, there should be no blanket exclusion of discoverability of pre-existing documents, as this would confer advantages in litigation which would not have been obtained but for the leniency application—third party rights should, so far as possible, not be affected. That said, it may be that a request in the form of a request for all documents submitted to a competition authority should be rejected.

123. Adoption of Option 29 or 30 would create an additional incentive for an undertaking to apply for leniency but these options could bring some disadvantages. For example, adoption could also mean that a claimant is not fully compensated for his loss and thereby reduce his incentives to bring an action. Also, if

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35 Article 15 of Regulation 1/2003.
other infringers are insolvent, say, the ability of the claimant to recover damages in full from the leniency applicant would be essential. As regards Option 30, claimants are likely to be discouraged from bringing an action if they have to define the relevant market. If market definition is to play a role, it must be for the cartelists, rather than the claimant, to convince the court at their own cost of the correct market definition.

124. As mentioned above, the UK’s view is that policy options should not confer advantages in litigation which would not have been obtained but for the leniency application—third party rights should, so far as possible, not be affected (and certainly not in contravention of the ECHR). A compromise may be to allow third parties to sue and obtain judgment against the leniency application under normal principles of joint and several liability, but allow the leniency applicant, in turn, to seek contributions of up to 100% from the other cartelists if they have sufficient financial resources.

125. Various types of leniency are available in the UK in respect of both horizontal cartels and vertical price fixing. The OFT has the power to grant full immunity or a lesser reduction in the level of fines, depending on (i) whether an administrative or criminal investigation is already under way and (ii) whether undertakings have already come forward. The various types of lieniency available in the Member States would need to be taken into account in any implementation of Options 29 and 30 and we feel that this whole area merits further detailed consideration.

**Question K**

*Which substantive law should be applicable to antitrust damages claims? (Option 31–34)*

Option 31: The applicable law should be determined by the general rule in Article 5 of the proposed Rome II Regulation, that is to say with reference to the place where the damage occurs.

Option 32: There should be a specific rule for damages claims based on an infringement of antitrust law. This rule should clarify that for this type of claims, the general rule of Article 5 shall mean that the laws of the states on whose market the victim is affected by the anti-competitive practice could govern the claim.

Option 33: The specific rule could be that the applicable law is always the law of the forum.

Option 34: In cases in which the territory of more than one state is affected by the anti-competitive behaviour on which the claim is based and where the court has jurisdiction to rule on the entirety of the loss suffered by the claimant, it could be considered whether the claimant should be given the choice to determine the law applicable to the dispute. This choice could be limited to choose one single applicable law from those laws designated by the application of the principle of affected market. The choice could also be widened so as to allow for the choice of one single law, or of the law applicable to each loss separately or of the law of the forum.

126. The purpose of Options 31–34, as described in paragraphs 241 to 254 of the Commission Staff Working paper is to address the specific difficulties that may arise in damages claims following cross-border infringements of competition law. The Commission fears that in subsequent civil action, the laws of several states could be applicable to the claim. We agree with the Commission that this would make litigation extremely complicated and should therefore be avoided.

127. As to handling, Question K is already being debated at the EU level in the context of the negotiations of the proposed Rome II Regulation. We understand that it is likely that political agreement on that Regulation within the Council will be made during the course of the next few months so that we question whether it is necessary for there to be further discussion of Question K in the context of the Green Paper, until the final form of the Regulation is clear.

128. On the assumption that breaches of competition law are to be characterised as being tortious in nature, the applicable UK law in such cases is governed by the Private International Law (Miscellaneous Provisions) Act 1995.37 Under that Act, as a general rule, the applicable law in tort claims is “the law of the country in which the events constituting the tort in question occur”. Where elements of those events occur in different countries, the applicable law under the general rule is to be taken as being “the law of the country in which the most significant elements of those events occurred.”

37 The applicable jurisdiction is determined by EC Council Regulation 44/2001.
129. However, the general rule can be displaced if it appears from a comparison of the significance of the factors which connect a tort with the country whose law would be applicable under the general rule and the significance of any factors connecting the tort with another country “that it is substantially more appropriate for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of that other country”.

130. It is likely that in cases for breaches of competition law, the acts alleged to give rise to the tort and the corresponding injury or damage to competitors, downstream purchasers and ultimately consumers may occur in more than one country. Applying the legislation above, the applicable law would then be determined by reference to where the “most significant elements of the events” constituting the tort occur. This would necessitate looking at the facts of each particular case and consideration of in which countries the conduct causing the harm took place and where the relevant damage occurs. It would then be necessary to assess the significance of those elements.

131. The current UK law has created a system that allows for flexibility in dealing with different circumstances.

Comments

Option 33

132. This is the option favoured by the UK. Stakeholders in the UK have also commented that this approach appears the most workable and likely to lead to greater certainty—those wishing to pursue a damages claim will know that once jurisdiction has been decided under the Brussels I Convention/Regulation 44/2001, the law of the Member State in which the proceedings are being heard will apply. If there is one applicable law, rather than several, the costs of bringing an action will be reduced and may encourage private enforcement of competition rules. The “law of the forum” would always be a Member State—thus avoiding the situation described in Option 31 above where jurisdiction might be in an EU country, but the applicable law may be that of a non-EU country.

Options 31 and 32

133. These options propose that the applicable law should be determined by reference to Article 5 of the proposed Rome II Regulation. The UK has previously expressed concerns about Article 5 of the Rome II proposal. These arise because we think that the proposal may result in more than one applicable law. We consider this an unduly complex result that will not help to encourage claims, or reduce legal costs. In addition, commercial stakeholders in the UK have expressed their concern that the proposal is unworkable.

134. Furthermore, we would be concerned if the law of a non-EU-state were able to determine conditions of competition within the single market. This could occur when an event within the EU caused damage both within and outside the EU. Although an EU country might have jurisdiction the applicable law may be that of a non-EU country. Whether the law of such a country would recognize breaches of competition law in the same way as the EU does is outside our field of expertise.

Option 34

135. The purpose of Option 34 as set out in paragraph 250 of the Commission Staff Working Paper is to avoid the specific difficulties which may arise under Options 31 to 33 and which could render litigation very complex. This would particularly be the case where the court has the power to rule on the entirety of the loss suffered and in cases in which the markets affected are situated in more than one state.

136. We feel that there are some advantages in providing the parties to an action with the freedom to choose the relevant applicable law. It would be “consumer friendly” to provide a claimant who might have a special preference for a particular jurisdiction with a choice. We question, however, whether the ability to choose needs to be confined to claimants—defendants might also have a preference. That said, the ability merely to choose one single applicable law from the laws designated (by the application of the principle of affected market) would facilitate claims for the claimant and the handling of a case for the court dealing with it. We understand, however, that in the context of the Rome II Regulation there is little support among the other Member States for a choice of law to be available in competition cases.
Question L

Should an expert, whenever needed, be appointed by the court? (Option 35)

Option 35: Require the parties to agree on an expert to be appointed by the court rather than by themselves.

137. Option 35 suggests that the parties would have to agree upon an expert, who would then be appointed by the court. The purpose of Option 35, as described in paragraphs 259 to 260 of the Commission Staff Working Paper, is to increase the expertise available in court especially where Member States do not provide for specialist courts. While external experts may increase the expertise available in court they may also boost the costs of litigation. It is on this basis that the Green Paper argues that a provision requiring the parties to agree on an expert to be appointed by the court may serve to both increase the expertise and save costs.

138. In the UK, parties may usually appoint one or more experts to provide evidence before the court on technical issues, provided that the court gives permission. Written questions may be put by the parties on the opponent’s expert report for clarification purposes. The court may direct experts to narrow down issues in proceedings. Single joint meetings are rare. It follows that experts are party-led, not court appointed. The CPR provide that no party may use an expert without the court’s permission, and the court may direct that evidence is to be given by a single joint expert. Joint court appointed experts are not known before the CAT, although the CAT has the power to make such directions.

Comments

139. The UK notes that the Commission has taken up the question of how to increase the available expertise in court. As the Commission Staff Working Paper itself stresses in paragraph 259, this option is particularly aimed at Member States that do not provide for specialist courts or panels. In the UK, competition cases are heard both by the general courts and by the CAT, which was created by the Enterprise Act 2002.

140. For the purpose of ensuring consistency of decision-making by national courts experience of applying Articles 81 and 82 of the EC Treaty will be concentrated in a small number of judges in the Chancery or Queens Bench Divisions of the High Court. The judges in the Chancery Division have been appointed to the panel of chairmen of the CAT.

141. There is, however, a marked reluctance in the UK among the parties to use joint experts and we feel that any requirement for a single, court appointed expert is likely to prove unpopular.

Question M

Should limitation periods be suspended? If so, from when onwards? (Option 36)

Option 36: Suspension of the limitation period for damages claims from the date proceedings are instituted by the Commission or any of the national competition authorities. Alternatively, the limitation period could start running after a court of last instance has decided on the issue of infringement.

142. Option 36 looks at extending the time-limit for bringing claims by suspending limitation periods from the moment a competition authority (Commission or national competition authority) institutes proceedings. The alternative links the commencement of the limitation period to the time of a judgment of a court of last instance. The purpose of Option 36, as described in paragraphs 271 to 272 of the Commission Staff Working Paper, would appear to be to keep the claimant’s right to claim open until administrative proceedings have run their course.

143. In England and Wales, the time limit in which to institute proceedings is six years. The time limit starts on the date the wrongful act caused the damage in issue, subject to fraudulent concealment. The equivalent time limit in Scotland is determined by the prescriptive period of five years as laid down by section 6 of the Prescription and Limitation (Scotland) Act 1973. The time limit runs from when the loss occurs, but any delay in raising an action that is caused by fraud or the inducement of error, or the legal disability of the claimant, will not count towards this period (section 6(4) of the 1973 Act).

144. Damages claims to the CAT must be brought within two years of the OFT/EU Commission decision relied upon under section 47A CA 1998 (see CAT Rules of Procedure).

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38 CPR Rule 35.4.
39 CAT Rule 19(h).
40 Section 2 Limitation Act 1980 (LA 80) (dealing with tort damages).
41 Section 32 LA 80.
COMMENTS

145. We appreciate that suspension of the limitation period may be appropriate in certain cases. However, the UK’s view is that any suspension of the limitation period should only be available in certain narrowly defined cases and there is a need to avoid open-ended liability which could create uncertainty and unfairness. We believe limitation periods are best dealt with at Member State level.

QUESTION N

Is clarification of the legal requirement of causation necessary to facilitate damages actions?

146. The purpose of Question N, as described in paragraphs 273 to 276 of the Commission Staff Working Paper, is to consider a possible clarification of the legal requirement of causation in order further to facilitate damages actions. The Commission Staff Working Paper refers to the diverse approaches different legal systems of the Member States adopt, such as “foreseeability”, “direct cause” and “adequate cause” but concedes that, arguably, these will not lead to diverging results.

147. The principle of causation requires a causal link between the tort and the injury or loss suffered and that the injury or loss is not too remote because it is not reasonably foreseeable. In order to prove causation, in the UK the claimant must show that it is more likely than not that the damage would not have occurred “but for” the breach of duty. In other words, if the damage would have occurred irrespective of the infringement, the “but for” test would not be satisfied.

COMMENTS

148. The requirement of causation is a core element of any domestic law of damages. The legal principles governing causation are very well-established and form a central part of the common law in the UK. It is a fundamental principle that the loss suffered by the claimant must have been caused by the act or omission of the defendant.

149. Any modification in one particular area of the civil law would have implications for the civil law generally. As this is an area of substantive law, it should be a matter for the courts of each Member State, and provisions at Community level would be inappropriate.

150. The potential obstacles to private actions stem from the problem of obtaining evidence to show that in a given case the requirement of causation is fulfilled, rather than from each Member State’s formulation of principles of causation. Given that the principles of causation are already clear in UK law and that very wide rules of disclosure of information address the problems of evidence, we do not feel the need for any further action in this area.

QUESTION O

Are there any further issues on which stakeholders might wish to comment?

151. There are no further issues on which the UK would wish to comment.

CONCLUSION

152. The UK has taken a number of measures to strengthen the means of private enforcement of competition law in recent years. The Competition Act 1998 and especially the Enterprise Act 2002 in particular have introduced new mechanisms for bringing private actions on an individual and a collective basis.

153. We believe that where Member States (including the UK) are facilitating private actions it must remain open to those Member States to take full stock of the experience gained. Before further changes are made, therefore, the Member States must have the opportunity to evaluate their relatively new systems.

154. We are aware that there is a significant amount of variation among the 25 Member States as regards the shape of a system for damages claims for infringements of competition rules. The questions raised in the Green Paper correctly identify the issues which will have to be considered in any debate about private damages actions for breach of EC competition law.

42 For details please refer to the discussion of Question A.
155. Any such debate will have to consider carefully the individual civil law systems of the Member States and how issues such as access to evidence and the burden of proof, the role of public enforcement, the availability of damages and how to treat leniency applicants interact. We support the general aim of facilitating and strengthening private enforcement of competition law by way of private actions for damages throughout the whole of the European Union.

156. We feel that the next steps should be detailed discussion of the key issues in order to increase understanding, to disseminate and encourage best practice and to consider what further action might be taken by the Member States and by the Commission.

ASSET RECOVERY: CO-OPERATION BETWEEN OFFICES OF MEMBER STATES
(6589/2/06, 6589/3/06)

Letter from the Chairman to Paul Goggins MP, Parliamentary Under Secretary of State, Home Office

This proposal was considered by Sub-Committee E (Law and Institutions) at its meeting of 3 May 2006. We note that you will be submitting a new draft of the proposal for scrutiny shortly, and will respond in more detail once we have received this. In the meantime, we have decided to hold the proposal under scrutiny.

4 May 2006

Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office

This proposal was considered by Sub-Committee E (Law and Institutions) at its meeting of 24 May 2006. The proposal raises three principal concerns and we deal with these below.

NORTHERN IRELAND

We note that the Assets Recovery Agency and the Scottish Drug Enforcement Agency are likely to be the designated Asset Recovery Offices for the purpose of this proposal. Your EM explains that Northern Ireland is covered by the Assets Recovery Agency. Does this arrangement take adequate account of the special features of the Northern Irish criminal system and law enforcement structures?

DATA PROTECTION

Article 30(1)(b) TEU allows for the exchange of information between law enforcement authorities “subject to appropriate provisions on the protection of personal data”. Article 6(1) of the proposal requires Member States to ensure that “the established rules on data protection are applied” to exchanges of information under the proposed Framework Decision. Article 6(2) stipulates that the data protection rules of the receiving State will apply and that personal data exchanged will be protected in accordance with Council of Europe standards in this field.

As you know, a proposed Framework Decision on data protection in the Third Pillar is currently under discussion in the Council, although progress appears to have stalled. We consider it important to ensure that an overarching framework for data protection is in place and we are concerned about the ad hoc approach to data protection in recent Third Pillar proposals. Do you consider the protections of the present proposal to be sufficiently stringent to ensure proper protection of personal data? Would it not be prudent to secure the agreement of the data protection proposal prior to the conclusion of further Framework Decisions dealing with information exchange?

LEGAL BASE

We are wary of proposals which are made under the Third Pillar but seek to have effect in civil proceedings as well as criminal proceedings. However, the civil proceedings in this case are concerned with recovery of proceeds of crime, and one of the primary aims of such proceedings is the prevention of crime. We note that the Government believe that there is a valid argument to justify the proposal’s application to cooperation between Asset Recovery Offices in civil proceedings in these circumstances.
We understand that Ministers may seek to reach agreement on this proposal at the June JHA Council meeting. Accordingly, despite our reservations regarding the position of Northern Ireland and data protection issues, we have decided to clear the proposal from scrutiny. We take this opportunity to emphasise, however, the importance which we attach to data protection in measures which deal with exchange of information in the Third Pillar. We hope for a prompt response to the concerns we outline above in this respect.

25 May 2006

Letter from Vernon Coaker MP to the Chairman

Thank you for your letter of 25 May concerning the proposed Framework Decision mentioned above. I note that this proposal was considered by Sub-Committee E (Law and Institutions) at its meeting on 24 May 2006 and cleared from scrutiny.

You asked whether the proposed arrangement for the Assets Recovery Agency to act as the designated Asset Recovery Office to cover Northern Ireland’s requests took adequate account of the special features of the Northern Irish criminal system and law enforcement structures.

The Assets Recovery Agency (ARA) and the Scottish Drug Enforcement Agency (SDEA) currently sit as the contact points under the existing informal co-operation arrangements on asset recovery, known as the Camden Asset Recovery Inter-Agency Network (CARIN). ARA’s remit covers England, Wales and Northern Ireland. The SDEA covers Scotland. The Framework decision would allow us to continue with these procedural arrangements.

You also asked about the protection of personal data under this proposal. The Government’s view is that the present proposals are indeed sufficiently robust to ensure proper protection of personal data. We agree on the importance of progressing the Data Protection Framework Decision as quickly as possible, but do not believe it is necessary to delay progress on other Third Pillar instruments on exchange of information. It necessarily takes time to work through such detailed dossiers as the Data Protection Framework Decision, not least due to the very different police and judicial structures in place across the EU, but I can assure you that there is a great deal of commitment on the part of the UK to move this issue forward.

Finally I note your comments on the legal base of the proposed Framework Decision.

I hope this information is of assistance.

8 June 2006

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 8 June 2006 which was considered by Sub-Committee E (Law and Institutions) at its meeting of 21 June 2006. We note in particular what you say about data protection. While we would prefer to see an overarching Framework Decision in place before agreement of measures such as these, we are reassured by your commitment to moving forward with the data protection Framework Decision.

You will have seen the articles which appeared in The Times of 14 June 2006 on the subject of the Asset Recovery Agency. We are sure you will agree that the figures quoted in one of those articles, if correct, are rather concerning. The figures provided show that, despite an annual spend of £19.8 million in 2005–06, the Agency recovered just £4.34 million. Given that the Agency was expected to collect sufficient money to cover its budget by 2005–06, this seems to be a significant underachievement. Is it wise to link asset recovery offices across the EU before being satisfied that we have the best structure in place domestically to ensure maximum recovery of the proceeds of crime?

22 June 2006

Letter from Vernon Coaker MP to the Chairman

Thank you for your letter of 22 June about the proposed Framework Decision set out above.

I have noted your comments on data protection.

You question whether it is sensible to link asset recovery offices across the EU before being satisfied that we have the best structure in place domestically to ensure maximum recovery of the proceeds of crime. On this point, I announced last month that police, customs officers and other public agencies had recovered a record £96 million of criminal assets in 2005–06. This is double the amount being seized three years ago and is a significant effort towards maximising asset recovery.
On the performance of the Assets Recovery Agency (ARA), in my Written Ministerial Statement of 14 June I explained that the Agency had exceeded its targets last year in terms of the value of assets restrained (£85.7 million against a target of £25 million), the numbers of new civil recovery/taxation cases adopted (108 against 100), and the number of adopted criminal confiscation cases (38 against 20). However, legal challenges, outside the control of the ARA, have slowed down the progress of civil recovery cases to final completion.

On the international front, both ARA and the Scottish Drug Enforcement Agency (SDEA) currently sit as the contact points under the existing informal co-operation arrangements on asset recovery, known as the Camden Asset Recovery Inter-Agency Network (CARIN). ARA plays an active role in this international network. The Framework Decision on asset recovery offices would allow us to continue with these procedural arrangements if that is what the UK decided.

A firm decision on which bodies will act as the nominated Asset Recovery Offices will be taken in due course after further consultation with the bodies currently tasked with asset recovery work.

This is a significant area of co-operation in the international arena. The Framework Decision should lead to faster tracing of criminal assets, an essential component in the successful freezing, seizure or confiscation of the proceeds of crime across the EU.

I hope this information is of assistance.

6 July 2006

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 6 July 2006.

We note what you say about the improving performance of the Assets Recovery Agency and trust that any future decision on nominated asset recovery offices under the Decision will be made after full consideration of their ability to participate effectively in the network.

25 July 2006

COMITOLOGY (9087/04)

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

The proposal is currently held under scrutiny in Sub-Committee E (Law and Institutions). As you may know the proposal was put on the backburner on the conclusion of the Constitutional Treaty but the rejection of that Treaty by the French and the Dutch caused the matter to be put back on to the order of business and during the UK Presidency the Government took the opportunity to reignite discussion of the Commission’s proposal.

Your predecessor wrote to the Committee on 21 November 2005 advising that a “Friends of the Presidency” Group had been established and that discussions were being taken forward in that context. I replied on 8 December 2005 expressing the interest of the Committee in hearing the outcome of the work of that group.

We note that in its recent paper, “Institutional improvement based on the framework provided by existing Treaties”, the French Government have taken the view that the conclusion of the review of Decision 1999/468 would help to improve the position of the European Parliament by providing it powers of scrutiny over implementing measures taken on the basis of acts adopted under the co-decision procedure. We also understand that comitology may be discussed at next month’s European Council.

We would therefore be grateful if you could provide the Committee with a note setting out the current position in the negotiation including a statement of the outcome of the work of the Friends of the Presidency Group and explaining how it is proposed to take forward the initiative of the French Government.

18 May 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 18 May. I am writing to update you on the negotiations to reform Comitology Procedures and to request that your Committee release this proposal from scrutiny in light of the latest developments. I apologise for not writing sooner.

As you know, the UK Presidency set up a Friends of the Presidency working group last September to discuss reform of comitology procedures. The working group took as its starting point the Commission’s proposal of 2002, revised in 2004, to amend the 1999 Comitology Decision. Our main aim was to reach a reform that would give the European Parliament more of a say in implementing co-decided legislation.

The Austrian Presidency has taken forward negotiations, assembled a compromise text and discussed it with MEPs. In summary, the main points of the new “regulatory with scrutiny” procedure are as follows:

— It shall apply when the implementing measures are amending non-essential elements of the basic instrument.
— The scrutiny procedure differs depending on whether the Committee has approved these measures.
— If it has, the draft measures go to the Council and the Parliament and either institution can oppose them on certain grounds within three months.
— If the draft measures are not approved, the measures are sent to the Council and Parliament at the same time but the Council must first decide whether it has any objection to them within two months. If it has no objection, the Parliament has four months from receipt to oppose the measures on certain grounds.
— There is provision for the time limits to be extended by one month or to be shortened.
— The Council and Parliament can make provision for implementing measures to have provisional application on grounds of urgency.

I believe this text meets the UK’s principal objectives for comitology reform, namely:

(a) **There is no change to the management procedure.** The Member States agreed early in the negotiation to a limited reform dealing with quasi-legislative measures which are to be found in the current regulatory procedure.

(b) **To prevent the Commission going ahead with a proposal over the objections of the Council or the European Parliament.** Under the Presidency proposal, the Commission will need to submit an amended draft or a legislative proposal if either the Council or Parliament objects to its draft. It is possible, however, for the Council and Parliament to provide for application of an urgency procedure where the time limits for scrutiny cannot be met. This would allow the Council to give the measure provisional application and also to maintain it in force after objection by either the Council of Parliament until replaced by a definitive instrument. The safeguards on this latter power are that the Committee must have approved the draft and keeping the measure in force has to be justified on health protection, safety or environmental grounds.

(c) **To allow the European Parliament to be able to object to measures on the grounds of their substance and not just on the grounds that proposals may be “ultra vires”**. The Presidency proposal provides that the Parliament and Council can oppose draft implementing measures on the grounds that the measures exceed the implementing powers, or are not compatible with the aim or content of the basic instrument or do not respect proportionality or subsidiarity. We understand from the Presidency that the Parliament is content with this which is our primary objective.

In addition, the amended Decision provides for the European Parliament to be informed by the Commission of committee proceedings on a regular basis following arrangements which ensure that the transmission system is transparent. The Presidency has also negotiated a minutes statement to be made jointly by the Council, Parliament and Commission. The current draft indicates that implementing powers will normally be conferred on the Commission without time limit and so sunset clauses should no longer be routinely included in Lamfalussy measures (which are related to EU directives on financial services). It will also list those existing measures which should be adjusted to the new procedure as a matter of urgency although the content of this list has not yet been settled.

There is general agreement among Member States on the text of the proposal and the details of the minutes statement are close to being finalised and agreed with Parliament and the Commission. However, one Member State has raised an issue concerning the voting requirements in the Council in that it wants a simple majority of Member States to be in favour of the implementing measures before they can be adopted. This would overturn the current practice that the Council requires a qualified majority to oppose the Commission’s proposal. We are content to keep the current practice and believe such concerns are best addressed by ensuring that the most politically sensitive matters are dealt with through the normal co-decision procedure rather than through comitology.

I hope that this outstanding issue can be resolved shortly so that Parliament can be re-consulted on the text and agreement reached.
In your letter of 18 May, you refer to a French paper “Institutional improvement based on the framework provided by existing Treaties”. We agree that the reform meets our objective of giving the EP more of a say in implementing co-decided legislation.

I shall update you further when the outstanding issues are resolved.

1 June 2006

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 1 June which was considered by Sub-Committee E at its meeting on 15 June. We are grateful for the description of the compromise text being proposed by the Austrian Presidency, which appears to confirm the accounts that have appeared in the press.

It is clear that the proposal has undergone substantial change and we find it difficult to understand why you have not provided a copy of the text for examination by this Committee and also by our sister Committee in the Commons. As soon as we receive that text we will examine it carefully and sympathetically. I say “sympathetically” because, as you know, this is a matter on which there is a large degree of coincidence in views between the Government and this Committee, not least as regards the increased involvement of the European Parliament.

You say nothing about the role of national parliaments and in particular how you see the proposal affecting the scrutiny work of the Select Committee and its Sub-Committees. As you will recall, it has been a matter of long standing concern that the Government have not provided sufficiently for parliamentary scrutiny of comitology measures. In practice all we have received are proposals which, having failed to be approved in the Committee, have been referred to the Council for decision. We question whether these are the only measures which have political significance and merit scrutiny in this Parliament. Accordingly we would be grateful if, when you provide the Austrian Presidency text, you would let us have a note as to how you see the new procedure impacting on the work of the Scrutiny Committees.

The Committee have decided to retain the proposal under scrutiny.

16 June 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 16 June. As requested, I am writing to provide you with the final text of the proposal, agreed at Coreper on 8 June subject to a UK Parliamentary reserve, for a Council Decision amending Commission Decision 1999/468/EC on Comitology. I also attach associated statements which were agreed at Coreper on 22 June (not printed). Although the text of the amended proposal is not yet publicly available, I am depositing an Explanatory Memorandum so that your Committee may consider lifting your scrutiny reserve on this item. I will of course formally deposit the document next week once it becomes publicly available.

For the reasons set out in my letter to you of 1 June, I believe that the agreement of a revised Comitology Decision meets all the UK’s principal objectives for comitology reform, chiefly giving the European Parliament more say in implementing co-decided legislation. The outcome represents a major success for the Austrian Presidency on an initiative launched during our Presidency last autumn.

In your letter of 16 June you requested information on how I saw the new “regulatory with scrutiny” procedure impacting on the work of the Scrutiny Committees. The Government will of course want to work with Parliament’s Scrutiny Committees to determine the best approach to ensure the effective scrutiny of implementing measures under the proposed new arrangements.

As I indicated in my letter of 1 June, the scrutiny procedure differs depending on whether the comitology Committee has approved the draft implementing measures. If it has, the draft measures go to the Council and the Parliament and either institution can oppose them. If they do not, the Commission can adopt the draft measures. I realise that some of these measures would potentially be politically significant and would thus merit scrutiny by your committee. In these cases, one approach might be to take a light touch and have the proposals sent to the Committee staff informally for them to examine. If the Committee staff felt there were issues to explore they could do so, initially with the lead department concerned and then, if necessary, request that the proposal be deposited with an Explanatory Memorandum for scrutiny in the usual way. This would keep the volume of issues down to a manageable level for both the Committees and the Government. It should be noted, however, that the Council has only three months to object to the measures under this procedure and, after that period, the Commission can adopt them assuming the European Parliament has not opposed them.
In the case of measures under the regulatory with scrutiny procedure where the Committee has not reached agreement, the draft implementing measures would be automatically deposited for examination by your Committee. This would be consistent with the current arrangements although, in these cases, the period for Council consideration is reduced to two months. If you think that it would be helpful I would be happy for officials to meet with your staff to consider this approach more fully.

In my letter of 1 June, I mentioned that one Member State wanted a simple majority of Member States to be in favour of the implementing measures before they can be adopted. The Member State in question was particularly concerned about sensitive areas such as GMO authorisations. These concerns have now been addressed by means of the statements in the Draft summary record of the Coreper meeting at Annex III of document 10125/1/06.

Following agreement in Coreper, the text of the amended Decision is now subject to re-consultation of the European Parliament on 6 July. If approved, it would then go to 17–18 July GAERC for adoption: I would be grateful if your Committee would consider lifting your scrutiny reserve before this date.

29 June 2006

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 29 June and for providing copies of the draft amending Decision and the accompanying statements to be adopted by the Council. They provide very useful clarification of the points made in your letter of 1 June and I can confirm that the Committee has now decided to clear the proposal from scrutiny.

On the important question of the role of national parliaments and in particular how the Scrutiny Committees of this Parliament can be more closely involved in monitoring and scrutinising comitology measures, we agree with your suggestion that it would be useful to try and find a way in which, without burdening officials in Departments or the Clerks here, comitology proposals which have political or other significance can be identified and then deposited for scrutiny. As you indicate, at present we receive only a handful of comitology measures for scrutiny, namely those which, in the absence of agreement in the comitology committee, are referred to the Council for decision. We are therefore pleased to see that the Government now recognise that there may be other measures which should be deposited for scrutiny. What we have to do, as you suggest, is to find a practical way forward. Subject to the agreement of our sister Committee I propose the Clerks get in touch with your officials so that work on your suggested approach can be taken forward as soon as possible.

13 July 2006

COMPANY LAW AND CORPORATE GOVERNANCE (10041/03)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

In May 2003, the European Commission launched an Action Plan on Company Law and Corporate Governance, entitled “Commission Communication: Modernising Company Law and Enhancing Corporate Governance in the European Union”. On 26 June DTI submitted an Explanatory Memorandum (EM 10041/03). The Lords Select Committee on the European Union cleared this EM by a letter to the Minister dated 3 July 2003.44

The Action Plan, containing 24 legislative and non-legislative measures, completed its short-term phase at the end of December 2005. The Commission then launched a consultation on the future direction of the Action Plan (13 measures have yet to be considered) seeking responses by the end of March 2006.

I have formally responded to the Commission in their consultation exercise. A copy of my response (together with the Commission consultation document (not printed)) is attached for your information. In drawing up this response we have consulted a wide range of stakeholders, HM Treasury, Financial Services Authority and Financial Reporting Council. There is certainly no pressure amongst stakeholders for significant additional EU action and there was considerable consensus that the focus of EU action should now move to effective implementation and evaluation of existing measures, particularly in the light of the cumulative impact of recent regulation in the corporate, accounting and financial services sectors.

At the strategic level, our response highlights the following messages:

(a) EU Action should promote competitiveness and follow better regulation principles;

44 Correspondence with Ministers, 10th Report of Session 2003–04, HL Paper 71, p 245.
(b) focus of EU action should be to address cross-border problems; increase market stability across the EU; enhance investment opportunities; help companies set up across borders;

(c) regulation should be used as a last resort—non-legislative solutions are preferable wherever possible; and

(d) we are questioning whether the case has been made for EU action in relation to the majority of measures which have yet to be brought forward by the Commission.

28 March 2006

Annex A

UK RESPONSE: CONSULTATION ON FUTURE PRIORITIES FOR THE ACTION PLAN ON MODERNISING COMPANY LAW AND ENHANCING CORPORATE GOVERNANCE IN THE EUROPEAN UNION

1. THE OVERALL AIM AND CONTEXT FOR FUTURE PRIORITIES

Question 1: Does the Action Plan address the relevant issues and identify the appropriate tools to enhance the competitiveness of European business? If not, please give your reasons and indicate which measures are not appropriate and/or would be desirable. What are your views on the balance of legislative/non-legislative measures proposed? Are you facing particular obstacles in the conduct of cross-border activities to which, in your opinion, the Action Plan does not provide any satisfactory remedy? Please give your reasons.

The UK fully supports the view expressed in the consultation document that the impetus for action at EU level should be:

(a) improving the competitiveness of EU companies; and

(b) better regulation.

The UK no longer considers that the Action Plan of May 2003 generally, and particularly the majority of the medium and long term measures proposed, identifies the relevant issues to enhance the competitiveness of European business. It is important that, to justify regulatory action, any proposal should satisfy cross-border economic criteria and be capable of withstanding robust scrutiny under better regulation principles.

There are three types of cross-border action at EU level that can contribute to the objective of promoting the competitiveness of EU companies:

1. Action to enhance financial stability and market confidence. EU Finance Ministers confirmed in Oviedo in 2002 that all Member States have an interest in the stability of markets across the EU. Any further action should focus on clearly defined cross-border market failures that can be shown to reduce the competitiveness of EU companies.

2. Action to extend investment opportunities across EU borders and increase investment flows (and so improve access to capital for EU companies). In many Member States, investors can be deterred from providing capital across EU borders due to different forms of regulation and variations in disclosure requirements. Further action should focus on clearly defined cross-border market failures that can be shown to reduce the competitiveness of EU companies.

3. Action to make it easier for companies to set up cross-border operations. EU companies should be able to structure themselves across borders as their business demands dictate. Much progress has been made through the development of case law by the European Court of Justice. This has led to competition between the different corporate systems among the Member States, with benefits for companies. Such competition is desirable and makes many of the present Action Plan proposals (or aspects of those proposals) unnecessary. Legislation should be considered only (i) where Member States’ legal requirements still restrict companies’ flexibility to operate throughout the EU and (ii) where there are clear abuses of freedom leading to market failure that cannot first be dealt with effectively through non-legislative means.

All EU company law proposals should be tested against these criteria and should not be pursued if they do not contribute to one or more of them. The criteria are designed to reduce barriers to corporate activity for EU companies, improve access to capital, increase investment flows across borders, and allow higher returns for EU investors.
EU action must recognise the global nature of markets and the need for EU companies to be able to attract capital from third countries. The Action Plan should provide a framework to encourage inward investment and migration of companies into the EU from the rest of the world.

The form that each proposal takes should be carefully examined. The assumption should be that a proposal should take the least regulatory, lowest cost form that is necessary to achieve the desired objective. Non-legislative means should be considered as the first option as this provides the most flexible means of dealing with changing circumstances. In this context, the importance of the role played by shareholders in regulating the affairs of their own companies must be acknowledged; national codes recognise that shareholders, rather than legislators, are often the best custodians of their own interests. Where legislation is required, it should be flexible, coherent, accessible, cover only what is essential and establish high-level standards rather than impose detailed regulation. We consider that the Action Plan as it currently stands contains too many legislative proposals.

We consider, for example, that rather than EU legislative measures in relation to encouragement of disclosure of institutional investors’ voting policies, shareholder democracy and board structures, greater consideration should be given to co-ordination and sharing of best practice. There are existing vehicles for this, such as the Corporate Governance Forum and Advisory Committee. Equally, comparative studies might usefully be initiated by the Commission in these areas. Additionally, as regards proposals in relation to wrongful trading, special investigation right, general squeeze-out and sell-out, groups and pyramids, further pan-European corporate vehicles and the enhanced transparency of other types of corporate vehicle, we do not think that the case for EU action of any kind has yet been demonstrated.

The specific measures under the Action Plan are discussed in response to the further questions in the consultation document.

In terms of specific action that might be taken to address obstacles to cross-border corporate activity not addressed in the current consultation document, the UK considers that there is a need for urgent consideration of the ongoing relevance of the Second Company Law Directive on capital maintenance. The provisions of this Directive inhibit investment opportunities and flows within EU. Additionally, there is scope for consideration of measures that might be taken to improve access to information about companies across the EU. For instance, steps might be taken to facilitate electronic linking of information held at company registries. These issues are further considered at question 14.

Question 2: Do you have any comments on the proposed application of better regulation principles in the area of corporate governance and company law? Are there other ways in which, in your view, the Commission should be seeking to improve its actions in this field?

The UK supports the Commission’s work to ensure full and proper application of better regulation principles in the field of corporate governance and company law. We welcome the real strides forward the Commission has made on Better Regulation and impact assessment with the publication of new guidelines in June 2005. The two public consultation exercises carried out on the shareholders’ rights Directive proposal were good examples of Better Regulation principles being applied in practice. However we believe that the Commission could do even better in this area, in the following three ways:

(a) The form that each proposal takes. This is further discussed at question 1 above.

(b) The process of taking EU action should be subject to clear disciplines. Where a market failure is identified, the most efficient way of dealing with it must be established, including through full consideration of alternatives. The essential tools have already been adopted by the Commission, and must be used in addition to consultation with national Governments (including through the Company Law Experts Group): public consultation; examination by the Advisory Group; the preparation of, and consultation upon, Roadmaps before a proposal is made; and the drawing-up of detailed Impact Assessments that examine costs and benefits thoroughly for discussion in Council Working Groups. Two additional steps would improve the process. First, Roadmaps are currently prepared only after the Commission has committed itself to a proposal in its annual work programme. It would be helpful if Roadmaps were prepared at an earlier stage to assess whether proposals in the Plan should be taken forward. Second, full Impact Assessments should meet the requirements of the Commission’s better regulation guidance for economic criteria for action by using those set out in response to question 1 above.

(c) There should be ex-post evaluation of the effectiveness of individual measures once they have been implemented into national legislation so that measures which are not delivering intended benefits can be repealed or modified as necessary. In addition, the degree to which the Action Plan itself is
delivering its stated objectives should be evaluated at regular intervals and adjustments made as necessary to priorities and overall strategic objectives. The current consultation exercise is welcomed in that context.

It is also important that any legislative proposals are sensitive to the different sizes of companies and the scale of their operations. Consideration should be given to criteria and potentially size thresholds rather than simply adopting the traditional distinction between listed and unlisted companies. This approach would help to target policy objectives more effectively and would remove unnecessary regulatory burden. For example, the increased costs, on purely domestic transactions, of a proposal to facilitate cross-border transactions should be weighed against the likely benefits of that proposal.

We consider, in particular, that the measures in the Action Plan and the current consultation exercise should not be taken forward in the absence of proper empirical evidence.

2. Establishing the Right Priorities for the Action Plan: Medium and Long Term

Question 3: [Shareholder democracy—one share/one vote.] What would be the added value of addressing the issue at EU level?

What would be the appropriate form for any EU instrument? Please give your reasons.

Are there, in your view, specific elements which any such instrument should cover?

It is essential to be clear what problem this proposal is seeking to address. Surely the objective must be to target those corporate structures which entrench management or sustain poor corporate governance practices. It is essential, therefore, at the outset to define precisely what is meant by one share/one vote.

The issue of “shareholder democracy”—in the form of good corporate governance practices through the proper exercise of shareholder rights—is of critical importance in ensuring liquid and deep capital markets within the EU. Investors themselves, assisted by proper transparency, have a key role to play in driving policy on the matter: This must be recognised.

The added value of considering the issue at the EU level is that it could, in particular, expose different practices and highlight the benefits of increased shareholder democracy for encouraging greater investment. Where this leads to greater democratisation of shareholders’ rights, it could extend investment opportunities across EU borders and increase investment flows. In many Member States, investors can be deterred from providing capital across EU borders where shareholder rights are unfamiliar or unsatisfactory.

The principle should be that EU action should be designed to lead to the progressive elimination of distorting or disproportionate voting structures, at least in companies traded on regulated markets. However, no decisions should be taken on the form of such action, or the possible need for legislative intervention, until a thorough study has been undertaken across the EU to include:

- The existing differential voting structures and their prevalence in companies across the EU (including matters such as non-voting shares, multiple voting shares, loyalty shares, pyramid (“Chinese box”) arrangements).
- The possible market benefits of security instruments with differential voting rights (such as preference shares). It must be recognised that voting rights are only one element in an investor’s decision to acquire shares (return on capital and dividends are also key factors).
- The possibility that any variation in voting rights is taken account of in the price which investors pay for non-voting shares.
- Possible public interest justifications for the retention of differential voting rights (for instance, through the holding by national Governments of Golden shares).
- The methodology for compensating the holders of differential shares in existing companies whose rights were overridden.
- Whether a one share/one vote rule (applied only to listed companies) might lead to adverse effects through companies seeking to de-list:
- The importance of the contractual relationship (voluntary and transparent) between investors and companies.

The study should also consider the extent to which market forces may be relied upon to promote the elimination of differential voting shares (or equally how markets may develop financial instruments to maintain differential governance structures). Is any regulatory or other intervention desirable? If such intervention is desirable, how might the market be further empowered through, for instance, codes of practice
or increased transparency? Ultimately, there is a need to conduct a risk/reward balance—do the wider benefits that might be attained in terms of increased proportionality of shareholder risk to voting rights justify the loss in flexibilities that might result from strictly legislating to this effect?

Question 4: [Rights of shareholders: Nomination and dismissal of directors, shareholder communication, special investigations into the conduct of company affairs] What would be the added value of addressing these questions at EU level? Please give your reasons.

Which instrument would be best designed to deal with these matters? Please give your reasons.

Are there, in your view, specific elements which any such instrument should cover?

Aside from the matters currently contained in the draft Directive on shareholder rights, it is not considered that there is presently a need for substantive action at EU level in the field of shareholder rights. Matters such as the appointment of directors and the co-ordination of action by shareholders in nominating board members should be determined by Member States or by agreement between the relevant parties. Such an approach would properly respect the different traditions in Member States. It would also provide scope for market forces and best practice to play a full part in influencing behaviours and raising governance standards. It is appropriate to deal with this issue at national level because of the need to balance it with other particular aspects of the national company law regime.

In particular, the UK does not see value in developing an EU special investigation rule (as proposed in the Action Plan). We are not aware of any demand for such an instrument from investors or others.

Additionally, there are a variety of existing investigations rights available within the EU (some of which may be exercised by shareholders, others involving investigation by a public body, for instance on “public interest” grounds). Any proposal for an EU wide special investigation rule might undermine existing practices within Member States which already operate effectively to protect shareholders, creditors or the public more generally. Such a legislative instrument would add unnecessarily to the amount of company legislation without identified benefits. We do not think the EU should expend further resources on developing such an instrument.

Question 5: [Disclosure by investors of their voting policies.] Is there a need for this issue to be addressed at EU level? What would be the added value of addressing the issue at EU level? Please give reasons for your reply.

What would be the appropriate form for any EU instrument? Please give your reasons.

Are there, in your view, specific elements which any such instrument should cover?

The UK considers that these issues are best dealt with at a Member State level. The disclosure of voting policies by institutional investors is increasingly good practice in the UK as a result of initiatives by institutional investors with encouragement from Government and best practice is still developing. It improves transparency and accountability and supports better engagement by investors with companies. However, we consider that EU legislation would be immensely complex to introduce due to the different investment markets and ownership structures in Member States and consequent definitional problems. In these circumstances, such legislation would run the real risk of creating a bureaucratic (box-ticking) and costly reporting structure which would divert resources away from effective investor engagement. Nevertheless, in order to establish good practice at EU level and encourage better investor disclosure, it might be possible for the Commission, possibly through the Forum, to monitor developments in this area.

Question 6: [Directors’ responsibilities/enhanced transparency of legal entities] Do you consider that:

(a) the question of the wrongful trading rules; and

(b) the issue of directors’ disqualification

should be addressed at EU level? Please give your reasons.

Which instrument would, in your opinion, be most appropriate? Please give your reasons.

If so, are there, in your view, specific elements which any such instrument should cover?

Do you consider that any additional measures are needed to enhance transparency for legal entities and/or legal arrangements (eg trusts)?

(a) The UK does not see value in undertaking further legislative action at EU level in the field of wrongful trading or to enhance transparency of further forms of legal entities. We are not aware of any demand for such legislation from creditors, shareholders or elsewhere and we believe that it would be appropriate to first identify if there is evidence that these are problems that need to be
addressed. Such legislation would add unnecessarily to the amount of company legislation without identified benefits and we do not believe the EU should expend further resources on developing such legislation.

(b) The UK considers that there is scope for EU action on the issue of directors’ disqualification. Such action is justified on the grounds both that it may contribute to enhanced financial stability and market confidence. It would also make it easier for companies to set up cross-border operations by reducing the scope for abuse of Treaty freedoms. Such actions should cover the identification of those who have been disqualified from being a director in different EU jurisdictions. Such persons should not simply be able to entirely evade the consequences of disqualification by forming a company under the law of another Member State and being appointed as a director of that company. This could lead to an abuse of the right of legitimate companies and directors to fully exercise their freedom of establishment rights. We believe it would be useful if the Commission were to explore the available options to address this issue (particularly facilitating disclosure of disqualification orders made in any Member State) and bring forward proposals. Such records of disqualification orders could be made available through national company registries or credit rating agencies.

It is not, however, considered either necessary or feasible to move forward on the basis of substantive harmonisation of directors’ disqualification legislation across the EU. Such disqualification regimes, where they exist, will inevitably be tailored to accommodate the national regimes on directors’ duties and responsibilities, which will differ considerably according to different traditions in Member States. Consequently we believe that the recognition of disqualification regimes is a question for Member States to consider.

Question 7: [Corporate restructuring and mobility] In the light of existing instruments, is there still a need for a directive on the transfer of registered office? Please give your reasons.

Are there, in your view, specific elements which any such Directive should cover?


The UK remains committed to promoting cross-border restructuring opportunities for companies as an important part of the integration of the EU Single Market. In that context, the proposed Directive for the transfer of the registered office of a company may be helpful to companies seeking to adapt themselves in response to changing market circumstances and the location of their customer and client base.

It remains unclear as to the likely take-up of the transfer procedure under the Directive. There will also be a number of technical concerns. The UK could, nevertheless, accept a directive proposal to facilitate the transfer of a company’s registered office within the EU.

Should the Commission decide to make such a proposal, we consider that it should review any available evidence about the effectiveness of:

(a) the cross-border transfer provisions in the European Company Statute; and

(b) the migration provisions (both intra- and outside the Community) in the company law of any Member State that has such existing provisions.

Additionally, the proposal should contain the following elements:

- Scope of the proposal—It should apply to both public and private limited companies (such transfer procedures should be available to small and medium enterprises, as well as large public companies).
- Decision to transfer registered office—Should be made in accordance with the domestic company law of the Member State from which the company proposes to transfer in the same manner in which alterations to the company’s articles are agreed. It must be clear when the company satisfies these requirements. There needs to be clear communication between registries otherwise there is a risk of a company ceasing to exist for a period of time or existing in two places. One potential idea being supported by the European Commercial Registries Forum is that all registries adhere to a standard
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certificate of transfer that would be issued by the old registry. They have already produced a draft which is available at http://www.ecrforum.org/previous/dublin2005/54203%20Certificate%20of%20Continuance%20(7).pdf;

— Employee involvement issues—The proposal should not include provisions on information and consultation of employees which should remain a matter for existing rules (both at EU and domestic level) on this issue. As regards employee participation arrangements, an approach should be adopted which maximises the flexibilities for, and minimises the burdens on, companies. In particular, employee participation requirements should not be extended to companies in circumstances where such arrangements neither exist in the transferring company nor are required under the company law of the country to which the company is transferring.

Question 8: [The choice between the monistic and dualistic types of board structures.] Should the question of the choice of board structure be addressed at EU level? Please give your reasons.

Which instrument would be best designed to deal with this matter? Please give your reasons.

Are there, in your view, specific elements which any such instrument should cover?

The UK does not consider that the issue of board structures should be addressed by EU legislative instrument. This should remain a matter for national law and companies themselves. It is vital that corporate governance practice in relation to boards is able to develop unrestricted by prescriptive legislative rigidities. The principle of “comply or explain” should underpin boardroom practice. We are not aware of a demand from business for additional legislation to increase flexibilities or existing choices as regards board structures across the EU.

In order to examine practice in the boardroom of EU companies, there may be a case for comparative analysis to be undertaken on the operation of board structures across the EU (for instance, the respective roles of committees in the unitary board structure or the balance of responsibilities between the supervisory/administrative boards in a two tier system). Any such work should have as its objective the promotion of dialogue and exchange of ideas with a view to promoting best practice. The views of the European Corporate Governance Forum should be sought as to the possible benefits and scope of any such analysis.

Question 9: [Squeeze out and sell out.] Do you think that a squeeze out and a sell out right should be introduced at EU-level? Please give your reasons.

If so, should these rights be limited to companies which shares are traded on a regulated market (“listed companies”)? Please give your reasons.

Which instrument would be best designed to deal with this matter? Please give your reasons.

No, the UK does not think that a general squeeze out and sell out right should be introduced at EU level.

An appropriate degree of harmonisation on the issue of squeeze out and sell out has already been achieved by the Takeovers Directive which introduces such rights in respect of “listed companies” following a successful takeover.

A general sell out rule could potentially be very costly for companies which did not wish to acquire minority shareholdings. Equally, it would be unfair to provide solely for a squeeze out right without also providing a sell out right as this would leave minority shareholders exposed to being compulsorily bought out by the company with no corresponding right to require the purchase of their shares. Such a squeeze-out right in the absence of a right of sell-out may also raise concerns regarding its compatibility with the European Convention on Human Rights.

There are also considerable practical issues which would have to be resolved concerning a possible general squeeze out/sell out rule, including finding a satisfactory means by which a fair price may be determined in the absence of a takeover and in ensuring that any such rule did not conflict with or undermine the existing provisions in the Takeovers Directive.

We do not consider that any possible benefits of such an EU rule would outweigh the practical and technical problems associated with it. It would also add unnecessarily to EU company legislation and impose further burdens on companies. We do not consider the Commission should further pursue this idea.
Question 10: [Groups and pyramids] Should the issues of framework rules for groups and abusive pyramids, in your view, be addressed at EU-level? Please give your reasons.

Which instrument would be best designed to deal with this matter? Please give your reasons.

Are there, in your view, specific elements which any such instrument should cover?

No—the issue of a framework rule for groups, should not be addressed at the EU level. It is appropriate to deal with this issue at national level because of the need to balance it with other particular aspects of the national company law regime, for instance directors’ duties.

We are not aware of demand for such a rule from companies or other interested parties. It is currently understood that such a group rule only exists in a small minority of Member States and there is, accordingly, extremely limited practical experience to draw upon in developing such a rule. We do not think that the Commission should expend further resource on developing such a rule.

The issue of “pyramids” is dealt with at question 3 (shareholder democracy above). This matter should be considered as an integral part of a study on the one share/one vote principle.

Question 11: [Legal forms of enterprises: the European Company] How useful do you judge the ECS to be in practice? Do you consider any modifications are appropriate and desirable? Please give your reasons.

The European Public Company has not proved to be a useful vehicle in practice for UK business.

Only one such corporate vehicle has been registered in the UK since the European Company Statute came into effect on 8 October 2004. There are a number of issues related to the Regulation which may be the reason why more European Companies have not been incorporated:

— The uncertainty of the legislative regime (divided between European and Member States’ law).
— The fact that the European Company is less flexible than other public limited company forms in relation to matters such as its minimum capital requirements, the location of its head office and arrangements in relation to employee involvement; and
— The complexity of formation methods (it is not possible for individuals to establish a European company directly);
— Differing views amongst Member States and practitioners as to the duty of European companies to register branches set up in other Member States.

Additionally, the provisions in the European Company Statute concerning disqualified directors would be difficult to enforce as there is no way of identifying if someone is disqualified elsewhere in the EU.

The UK does not, however, consider that it should be a priority to make modifications to the Regulation in the light of the limited interest in, or demand for, such a pan-European corporate vehicle from business.

Question 12: [The European Private Company] Do you see value in developing an EPC Statute in addition to the existing European (eg Societas Europaea, European Economic Interest Grouping) and national legal forms? Please give your reasons.

If so, are there, in your view, specific elements which any such statute should cover?

No—the UK does not see value in developing a European Private Company.

We are not aware of any demand for such a vehicle from business. A European Private Company would add unnecessarily to the amount of company legislation without identified benefits. We believe that the EU should not expend further resources on developing such a vehicle. In particular the EU should wait for the mandatory “5 year review” of the European Public Company to be completed before carrying out further work on the European Private Company.

Even though it may be intended that the European Private Company would be entirely optional as a corporate vehicle, its introduction would not be without additional costs to business. The European Private Company would lead to a further complication of the corporate regulatory landscape and costs would be incurred by companies in considering such vehicles and making reports and decisions concerning them. The same applies to other possible pan-European corporate vehicles, such as the European Foundation (see question 13).
Question 13: [The European foundation] Do you consider it useful to carry out an examination on the feasibility of a European Foundation Statute? Please give your reasons.

No—the UK does not see value in further investigating the possible need for a European Foundation. We are not aware of any demand for such a vehicle from business or elsewhere. A European Foundation would add unnecessarily to the amount of company legislation without identified benefits. We believe that the EU should not expend further resources on considering such a vehicle. In particular the EU should wait for the mandatory “5 year review” of the European Public Company to be completed before carrying out further work on the European Foundation.

3. SIMPLIFICATION AND MODERNISATION OF EUROPEAN COMPANY LAW

Question 14: Do you agree that there would be added value in modernising and simplifying European Company Law? Please give your reasons.

Are there, in your view, areas of actual or potential overlap between the Action Plan and other initiatives or measures in related sectors? What, if anything, should be done in order to ensure coherence between the various fields of action? Please give your reasons.

What should be the extent of simplification in the interests of improving the regulatory environment and rendering the text more user-friendly? Please give your reasons.

We recognise that there are potential benefits from modernisation and simplification of outdated and unnecessary elements of the EU company law acquis. However, we have significant concerns about the proposals for a formal codification and recasting exercise. This exercise would distract from the prioritisation of reform of those elements of EU law that impose unnecessary burdens. Furthermore, all legislative changes involve costs to business in assimilating the new legislation and seeking appropriate advice. Such costs would need to be justified in terms of demonstrable benefits arising.

It is right to make sure that EU company law instruments are drafted as clearly and simply as possible, and that they do not contain redundant or obsolete material. It is also desirable to ensure, as far as possible, that provisions on similar subjects are grouped together. But that does not mean that “recasting” or “codification” should be set as general objectives for EU company law. There are a number of reasons not to pursue such objectives:

(a) The EU company law acquis is, and is likely to remain, largely made up of Directives. That means that, most of the time, the vast majority of “users” of EU company law will have to refer to Member States’ implementing legislation rather than the Directives themselves. Given the range of their subject matter and their complex relationships with domestic rules, the arrangement of the Directives will not necessarily have any impact on how Member State legislation is arranged.

(b) Consolidated texts of company law instruments, reflecting all amendments currently in force, are now freely available from a range of sources notably EUR-Lex. This diminishes the need for codification.

(c) Company law does not stand still. The more all encompassing any codification, the sooner it will itself be subject to amendment.

(d) Simplification of the principles underlying regulation is often a good idea, but redrafting substantive provisions just to make them easier to read is only to be undertaken with extreme caution. There is always a danger of inadvertently changing a meaning.

Instead, the simplification and modernisation programme should prioritise those elements of EU law that impose unnecessary burdens. The tests for any proposed reform of existing EU law should be the same as for new proposals; the existing directives should be subject to the economic and better regulation criteria set out in response to questions 1 and 2.

There should be in-depth discussion between the Commission and interested parties on the principles, objectives and methods of the simplification and modernisation programme for company law. The Commission’s inclusion of this issue in the current consultation exercise is welcomed as a starting point for those discussions. This opportunity should be used to seek to achieve real deregulation, removing unnecessary burdens and costs where identified.

We have concerns arising in part from our experience with the negotiations on the October 2004 Commission proposal to “simplify” the Second Directive. The project lacked clear objectives around which there was consensus, failed to adhere to genuine simplification measures (by adding new rules where none had existed
We think there is scope for consideration of simplification, with the aim of reducing burdens on business, in the following areas:

(a) **Fundamental reform of the Second Company Law Directive on capital maintenance** with a view to its possible repeal or replacement, whether on an optional basis or otherwise, by an alternative system of creditor/shareholder protection—such as that based on a solvency test. The UK considers that urgent radical reform of this Directive could extend investment opportunities across EU borders and increase investment flows (and so improve access to capital for EU companies) by removing unnecessary burdens on companies in the restructuring and raising of capital.

Additionally, the Second Directive does not reflect recent developments in the field of accounting (including the adoption of International Accounting Standards at the EU level) which causes considerable uncertainties and costs for business, especially in relation to allowable distributions to shareholders. This is frustrating the wider policy objective of facilitating the assimilation of International Financial Reporting Standards to ensure common accounting standards across the EU.

We consider distributable profits to be a major barrier to convergence to standards based on the principles of IFRS. Taking forward consideration of the case for reform of the Second Directive should be an urgent priority for the Commission. It is important, however, that, as part of any such reform, the adverse impacts on investment from any dilution of pre-emption rights (expressly provided for in the current Directive) should be expressly recognised.

(b) **Simplification of the Third and Sixth Company Law Directives on mergers and divisions.** Restructuring procedures under those Directives are little used within the UK (there were only a total of three mergers registered at Companies House last year) and, consequently, reform of the Third and Sixth Directives is not seen as a priority. There may, nevertheless, be scope for revision of these Directives to reduce costs—particularly through relaxation of controls and safeguards for shareholders where restructuring involves wholly or substantially owned parent/subsidiary operations.

(c) **Review of the 11th Directive on branch registration.** Branch registration is a large burden and hindrance on cross-border business. It forces companies to register in several places, often filing identical registrations albeit, perhaps, translated. In the absence of better information flows between registries and on one point where information on all companies in the EU (perhaps a single list of company names) could be obtained, then arguably there would be no need for branch registration. There are considerable practical difficulties arising from the current operation of the 11th Directive, including problems of definition (such as who might represent a company), co-ordination of practices and procedures between Member States’ registries and ensuring that information registered in relation to the branch reflects any changes made in the registration in the Home Member State.

Additionally, there is scope for consideration of simplification initiatives outside the formal legislative regime. With the increase of the single market and cross-border trade, investors may not know on which company registry to look to for information concerning particular companies. There may be ways of addressing this without legislation for example by use of a website where information on all EU companies can be found in one place akin to the European Business Register (although the EU may like to consider giving statutory backing to such an organisation). The EBR also provides basic information in one place on company types across the EU. Also, the Commission has given-funding to BRITE (Business Register Interoperability Through European) to look into ways that registries can operate together more effectively. These types of measures can make the EU a more attractive place to invest.

Finally, it is critical that, both in any exercise to reform existing law or any new legislative initiative, regulatory activity is properly co-ordinated within the Commission to ensure that duplicatory or conflicting burdens are not imposed on business (for instance, proper account must be taken of other provisions or initiatives such as in the field of financial services, environmental and social reporting, etc).
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

Further to my letter of 31 October 2005 I am writing to inform you that a first reading deal has been achieved between the European Council and the European Parliament to this Directive. I am attaching a copy of the text for your information. As you know, your Committee lifted its scrutiny reserve on this proposal by letter 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 both the 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” (agreement for this Directive to be approved, without discussion, at a forthcoming Council meeting was given by Coreper on 30 March 2006).

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 we consider 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).

10 April 2006

CONFLICTS OF JURISDICTION AND THE PRINCIPLE OF NE BIS IN IDEM IN CRIMINAL PROCEEDINGS (5381/06)

Letter from the Chairman to Rt Hon Lord Goldsmith QC, Attorney General, Office for Criminal Justice Reform, Home Office

Sub-Committee E (Law and Institutions) examined the Green Paper at its meeting of 1 March 2006.

We agree that the Green Paper raises a number of important issues, not least whether there is a need for further action at EU level in this area at all. You point out that the Commission has provided no data to support its assertions that positive conflicts of jurisdiction are occurring more frequently and that existing mechanisms are ineffective in dealing with these. Does the Commission intend to provide further information on this? Do you have statistics on positive conflicts of jurisdiction involving the UK? Do the existing informal discussions lead to delays in criminal proceedings?

PROTECTION OF FUNDAMENTAL RIGHTS

You consider that negotiations on appropriate jurisdiction would inevitably lead to lengthy delays in criminal proceedings. This raises human rights questions, in particular regarding Article 6 ECHR which guarantees a fair trial, and this is a matter which the Committee considers to be extremely important. We trust that you will ensure that regard is had to human rights in future negotiations. We believe that it is for consideration whether any future proposal should contain strict time limits to ensure that delays are minimised. Is there not a case to be made for binding legislation to minimise delays and deal with jurisdiction conflicts within a regulated framework?

BINDING DECISION ON JURISDICTION

You do not comment specifically on the suggestion that a binding decision on jurisdiction might be taken at EU-level. This would require the creation of a new EU body, either to take on the mediation role currently envisaged for Eurojust, or to make the binding decision itself. Should a binding decision be made at EU level? If so, what body should make this decision? How might the problem of judicial review of an EU level decision be resolved?

CROSS-BORDER CASES

It is envisaged that the obligation to inform other Member States of proceedings underway would arise where a case demonstrates significant links to another Member State. How would this be assessed? Is the test being proposed by the Commission workable in practice?

CRIMINAL JUSTICE ACT 2003 AND INTERNATIONAL COMMITMENTS

We note that you do not intend to revisit the provisions of the Criminal Justice Act 2003. Any future proposal would also have to comply with agreed international commitments. It would be helpful if you would describe more fully the implications of any future proposals in this field on the position in domestic and international law.

The Committee has decided to retain the Green Paper under scrutiny.

2 March 2006

Letter from Rt Hon Lord Goldsmith QC to the Chairman

Thank you for your letter of 2 March 2006.

THE NEED FOR THIS PROPOSAL

In your letter, you ask whether the Commission intends to provide evidence to support the introduction of measures on conflicts of jurisdiction. We shall certainly press for this. UK practitioners (liaison magistrates, prosecutors, officials dealing with cross-border cases) concur that there is no evidence of positive conflicts of jurisdiction, and whilst no statistics are available, it seems that where a jurisdiction issue arises, it is solved by informal discussions without undue delay. In some cases, jurisdiction is resolved before the proceedings are commenced, usually where there are proactive investigations.

Our response will make clear that without such evidence the Government cannot support such initiatives as either necessary or desirable.

DELAYS AND POSSIBLE CHALLENGES TO THE ECHR

As pointed out in the Explanatory Memorandum, the various mechanisms suggested by the Commission would lengthen proceedings and undoubtedly lead to an increase in challenges on ECHR Article 6 grounds, likely to give rise to a conflict in case law with the ECJ. These important issues will be exposed fully in the Government’s response. I am doubtful that strict time limits, as suggested in your letter, would solve the problem. Any such timetable for resolving overlapping jurisdiction would have to accommodate 25 different criminal justice procedures, and this would be likely to result in an agreement on a maximum duration for the process. Experience from the implementation of the Framework Decision on the European Arrest Warrant shows that Member States would apply any provision on timing in a way that accommodates existing practice. Stricter time limits would have to be enforced, which prompts questions about the type of sanction for failing to comply with the timetable.

A BINDING MECHANISM

We are not persuaded that binding decisions to resolve conflicts of jurisdiction should be made at Union level. Such a mechanism would be inflexible and remove the discretion of public prosecutors. However, we would support any measures to enhance the capability of Eurojust to facilitate discussions.

A more formal role for Eurojust as mediator, empowered to make binding decision on jurisdiction, would require a thorough examination of its capacity and competence to carry out this role, including the position of the national representatives of the interested Member States within the “college”.

Our response will reflect these concerns and set out the practical inconvenience of the proposed mechanism.
CROSS BORDER CASES AND OBLIGATION TO INFORM

The Green Paper suggests that the “initiating state” should inform the authorities of another Member State that has “significant links” with the case. The proposal does not explain how this would be assessed and we would also be interested in knowing what those “significant links” would mean in practice and how they would be evaluated. These questions also apply, mutatis mutandis, to the notion of “due time” and will be reflected in the Government’s response.

CRIMINAL JUSTICE ACT 2003 AND INTERNATIONAL COMMITMENTS

I note the Committee’s request. We will keep the Committee informed in due course.

I shall write to you again upon deposition of the Government’s response to the Green Paper.

22 March 2006

Letter from the Chairman to Rt Hon Lord Goldsmith QC

Thank you for your letter of 22 March 2006 which was considered by Sub-Committee E (Law and Institutions).

We note that you intend to press the points raised in our letter in your response to the Commission; we look forward to receiving your response in due course.

As regards the agreement of a timetable for resolving conflicts of jurisdiction, we note what you say about the difficulty of agreeing strict time limits. You raise the possibility of an agreement on the maximum duration for the process but do not indicate whether you are in favour of such a measure and whether you will press for a provision of this nature in any future proposals. While we accept that there will need to be discussions on what sanctions may be applied for a failure to meet any deadline agreed, we consider that time limits are important to send a strong signal to Member States that the rights of individuals must be respected. Agreement of an excessively long duration would, of course, be susceptible to challenge before the European Court of Human Rights as well as national jurisdictions.

The Committee has decided to retain the Green Paper under scrutiny.

24 April 2006

Letter from Rt Hon Lord Goldsmith QC to the Chairman

Thank you for your letter of 24 April 2006, in which you express your interest in seeing the UK’s response to the Commission’s Green Paper on Conflicts of Jurisdiction and the Principle of ne bis in idem. Please find the response enclosed, which reflects consultation with stakeholders, including Scottish interests.

You ask in your letter whether the UK would support the introduction of time limits to resolve conflicts of jurisdiction. Such time limits would remove the flexibility that we currently have in the system and open the door to challenges. I understand that conflicts are currently resolved without undue delays, so I see no need for such measures.

The Commission’s public consultation will continue with a meeting of experts on the issues, to be held on 30–31 May 2006. The stated aim of this two-day meeting is to enable Member States to discuss the proposals made by the Commission in its Green Paper and explain their views. The Commission have stated their intention of introducing a legislative proposal, probably in the last quarter of the year.

12 May 2006

Annex A

CONSULTATION RESPONSE TO THE COMMISSION’S GREEN PAPER ON CONFLICTS OF JURISDICTION AND THE PRINCIPLE OF NE BIS IN IDEM

The United Kingdom welcomes this opportunity to comment on the Commission’s proposal of 23 December 2005. This response also takes into account the views of the Scottish Executive, Scottish Executive Ministers and the Scottish Parliament have policy responsibility for the Scottish legal system, an independent jurisdiction within the UK.
On the evidence presented, the UK is not convinced that binding legislation at EU level is necessary. It appears that judicial co-operation, especially in the context of serious organised crime, is functioning satisfactorily on the basis of existing less informal arrangements. The UK is concerned that legislative initiatives could reduce existing flexibilities.

Specific Questions
The response of the United Kingdom to the individual questions is as follows:

Question 1
Is there a need for an EU provision which shall provide that national law must allow for proceedings to be suspended by reason of proceedings in other Member States?

1. The Commission does not demonstrate that such a need exists or that it justifies such action. Factual evidence is not produced to show that existing arrangements are not functioning satisfactorily. The UK’s experience is that, in the rare events where a positive conflict of jurisdiction arises, the mechanisms in place operate satisfactorily, and that jurisdiction is and can be resolved by discussion. Of the very few cases referred to Eurojust, negotiation has resulted in acceptable solutions for the states involved. A key problem seems to be persuading States to investigate and prosecute in cases where they have jurisdiction but are reluctant to do so, usually due to the amount of resources required to handle those and the lack of political interest; frequently so in fraud cases.

2. “Negative conflicts” of jurisdiction (where no State wants to prosecute) do not appear to be addressed by this proposal.

3. A compulsory provision to suspend proceedings would be inflexible and remove the discretion of independent public prosecutors. The paper seems to contemplate the decision being taken by the time that the case is sent to the trial court. This might be possible in some long running investigations but not in cases where the person is arrested at the time that the crime is detected, where the person must be charged and brought before the court. This is especially so in England and Wales where the defendant is charged with an indictable-only offence, for which he would normally be sent to the Crown Court upon his first appearance before the Magistrates’ Court. Similar problems would arise in Scotland, on occasions even more sharply, because of the tighter time scales imposed by the Scottish system in serious cases. The idea of suspending proceedings to permit jurisdiction to be litigated does not fit with the realities of criminal procedure. It would also be difficult to devise a timetable that applies equitably to the EU’s diverse legal systems.

4. The four-step process, especially review of jurisdiction by the trial court and possible referral to the ECJ, risks the possibility of protracted parallel litigation before the trial starts. That process could delay the defendant’s fair trial in any jurisdiction, and its implementation would produce real difficulties in a case where the defendant or another interested party persuades the mediator/the appellate tribunal that the proceedings should take place in another jurisdiction. The evidence will have been gathered by investigators of a Member State in accordance with the law and procedures of that State, which might turn out to be inadmissible under another Member State’s law and procedure. The Member State in question would then have to make a request for mutual legal assistance, for the evidence to be gathered in a form that would be admitted in its courts. The prosecutor would then have to start extradition proceedings, in which the venue of the proceedings could be re-litigated, as could the issue of whether the defendant could be tried in a reasonable time.

5. In the circumstances, it is difficult to see how this proposal would assist prosecutors in tackling serious, organised, cross-border crime. The measure could be at odds with some Member States’ constitutional obligation to prosecute an offence. “National law” in the context of the Commission proposal would therefore mean “constitutional law”, which is traditionally the most difficult national legislation to amend. Even where, as in the UK, there is no written constitutional law as such, the discretion regarding prosecutions may be regarded as of fundamental constitutional importance.

6. Finally, to ensure that prosecutors in Member States were routinely aware that another Member State was interested in proceedings or that a conflict of jurisdiction had arisen, there would have to be some mechanism for exchanging this information routinely, perhaps an EU database, or a centralised “European register” of
prosecutions and/or charges. It is not clear that thought has been given to an efficient and secure mechanism for that purpose. Prosecutors’ experience of mutual legal assistance and the European Arrest Warrant tends to show that the exchange of information could be very protracted in some cases.

**QUESTION 2**

*Should there be a duty to inform other jurisdictions of ongoing or anticipated prosecutions if there are significant links to those other jurisdictions? How should information on ongoing proceedings, final decisions and other related decisions be exchanged?*

7. Early consultation and face-to-face discussion with interested parties to resolve “overlapping jurisdiction” (there is not always a conflict) should be encouraged. A binding duty should not be proposed unless existing arrangements based on co-operation are failing. No evidence is shown of such failure. As presented, the proposal appears more focussed than a general European register or database of prosecutions with a centralised “watch point”, but raises the question of what would be the trigger point for informing. The paper suggests that “a Member State that has initiated or is about to initiate a prosecution in a case which demonstrates significant links to another Member State, must inform the competent authorities of that other Member State in due time”. What would be the definition of “in due time”? It is to be noted that informing countries that might have an interest in the prosecution is one of the guidelines already put in place by Eurojust.

8. The mechanism proposed would entail the exchange of personal data and raise the issue of data protection compliance. Subject to sufficient resources and consistent points of contact in each Member State, information could be transmitted either directly between central authorities, or directly to a centralised database. This is a sensitive subject, which is also addressed by the Framework Decision on Data Protection. The European Data Protection Authorities stated in a recent communication that they “very much welcome[d] the proposed introduction of specific data protection principles in the third pillar to safeguard citizens and encourage the approximation of the laws and regulations of Member States. In this respect, the Authorities requested that some provisions in the draft Framework Decision on Data Protection be clarified, supplemented or amended, and confirm[ed] their readiness to contribute further to the launch of this important instrument”. This shows that any measure in the field of data protection and data exchange would have to be consistent with the other initiatives aiming at regulating data exchange.

9. The guarantees in place in Eurojust, Europol and the European Anti Fraud Office (OLAF) already indicate the difficulties presented by data exchange and storage. The European Judicial Network has put in place a secured access system. Eurojust has implemented an electronic Case Management System (CMS) to maintain an automated data index and has begun installing a secure network for internal communications. It appointed a data protection officer two years ago and unanimously agreed Rules of Procedure on the Processing of Personal Data, approved by the Council in February 2005. The complexities of these arrangements underline the difficulties inherent in any data exchange.

**QUESTION 3**

*Should there be a duty to enter into discussions with Member States that have significant links to a case?*

10. The evidence for a binding duty to enter discussions is unclear. On the negative side, it could lead to delays in the preparation of prosecutions. This measure could cause difficulties in domestic law (eg regarding statutory time limits in custody, as mentioned in paragraph 2 above) and, possibly, violations of Article 6 ECHR. The right to a fair hearing requires everyone who is a party to a case to have a reasonable opportunity of presenting his case under conditions which do not place him at a substantial disadvantage in relation to his opponent. Thus the defendant must be able to show and find out that proper consultation and discussion took place in accordance with an established and transparent procedure. If discussions were put in terms of a “duty”, and prosecution were to take place without any discussion or consultation, or if the defendant could not show that it had, it is possible that it could be considered an abuse of process as the procedure itself could be flawed, even if the defendant could receive a fair trial. Any legal duty in this respect could be exploited by defendants as a means of delaying or frustrating proceedings.

11. This raises similar concerns to the previous question in terms of inflexibility.
**Question 4**

*Is there a need for an EU model on binding agreements among the competent authorities?*

12. There would be no need for a binding agreement since in the UK prosecutors already have authority and a broad discretion to terminate proceedings. The UK cannot see why logically anyone else would want them either. Is it suggested that binding agreements might make a ceding of discretion to EU law more palatable? Even if there were binding agreements, it seems that a prosecutor would still have to exercise discretion to enter into one. How would such agreements help?

**Question 5**

*Should there be a dispute settlement/mediation process when direct discussions do not result in an agreement? What body seems to be best placed to mediate disputes on jurisdiction?*

13. It is desirable to avoid positive conflicts of jurisdiction even in situations where Member States cannot reach an agreement between themselves. As with questions 2 and 3, the UK would support any steps that encourage an open-minded and informed decision as to the appropriate venue for proceedings. A mediation process might be advantageous in exceptional cases, however this should be an option open to the interested parties rather than anything mandatory.

14. Eurojust already has what the House of Lords Select Committee described as “a pivotal role to play in facilitating decisions on where to prosecute cross-border offences”. The Committee’s inquiry into the role of Eurojust in 2004 concluded that “it might be premature to give Eurojust or any other body a power to take binding decisions on which jurisdiction should prosecute”.

15. The United Kingdom’s current national member is Mr. Mike Kennedy, who was elected by the College of Eurojust as its first President. A Scottish procurator fiscal from the Crown Office and Procurator Fiscal Service in Scotland has been appointed as an additional United Kingdom representative. It is particularly helpful to have a Scottish member in the College in view of the differences between the criminal justice systems of England and Wales and Scotland (although the Scottish member does not work exclusively on Scottish cases).

16. However, were Eurojust promoted as the mediator, the UK would probably encourage it to develop its methodology beyond its present guidance to ensure that the college had the appropriate competence to determine these often complex questions of jurisdiction. Eurojust’s skill and experience at facilitating discussions seems quite different from resolving the issue when the parties cannot agree.

**Question 6**

*Beyond dispute settlement/mediation, is there a need for further steps in the long run, such as a decision by a body at EU level?*

17. A case for this has not been made out and similar concerns arise about inflexibility and the resources that would have to be committed to parallel litigation. Were the case made out, Eurojust is the existing European body which appears best placed to evolve from a co-ordinating and mediating role.

**Question 7**

*What sort of mechanism for judicial control or judicial review would be necessary and appropriate with respect to allocations of jurisdiction?*

18. If, which is not agreed, Eurojust were given binding powers to decide which jurisdiction was the most appropriate, it should be subjected to a degree of judicial oversight of such decisions. One possibility suggested by the House of Lords’ European Scrutiny committee was “a specialised EU court of first instance in criminal matters”. Parliamentary scrutiny of Eurojust’s activities would be an added guarantee and could anchor...
Eurojust’s authority more firmly in a democratic legitimacy. This could be done by the European Parliament and Member States’ evaluation of Eurojust’s activities, for example as called for by the Constitutional Treaty at Articles 1-42(2) and III-273.

**QUESTION 8**

*Is there a need for a rule or principle which would demand the halting or termination of parallel proceedings within the EU? If yes, from what procedural stage should it apply?*

19. See the response to question 1. The UK is not convinced that it is necessary or that it would be desirable to abandon the existing informal, flexible arrangements in favour of a regulated, binding, bureaucratic regime. Any rule that would demand the termination of parallel proceedings would add nothing to either the doctrine of double jeopardy or, as is more commonly used in the UK, the power of the court to suspend “in parallel” proceedings, either temporarily or permanently.

**QUESTION 9**

*Is there a need for rules on consultation and/or transfer of proceedings in relation to third countries, particularly with parties to the Council of Europe? What approach should be taken in this respect?*

20. No, there is no need for rules on consultation or transfer: it would be too prescriptive and undermine flexibility. The approach should be to raise awareness of the issues and encourage early, voluntary consultation. Eurojust has a legal personality, which enables it to conclude formal agreements with third parties. Therefore, it is able to deal with third countries that are willing to enter such an agreement without a need for prescriptive rules. This is illustrated by the agreement concluded with Norway, Iceland and Romania and approved by the Council in 2005.

21. Eurojust seeks to enter into discussions with third countries and appoint “points of contact” in other Council of Europe countries. It has worked towards developing relationships wider than Europe and has entered negotiations with the US, Switzerland and Ukraine. An agreement with Russia is likely to start mid-2006. Eurojust has a range of contacts points worldwide, which shows a willingness and ability to cooperate with third countries on a voluntary basis, rendering unnecessary any formal rules for consultation or transfer of proceedings.

**QUESTION 10**

*Should a future instrument on jurisdiction conflicts include a list of criteria to be used in the choice of jurisdiction?*  
(See answer to question 11 below).

**QUESTION 11**

*Apart from Territoriality, what other criteria should be mentioned on such a list? Should such a list be exhaustive?*

22. (Questions 10 and 11 taken together) A list of criteria might be useful as shown by Eurojust’s Guidelines for deciding which jurisdiction should prosecute. However every case is different and any provision should allow for some flexibility to take account of the specific circumstances of a case. This is why such a list should not be exhaustive and should cater for all relevant elements to be taken into account. It would also be very difficult to think of all the elements of a case that could make a difference in deciding the location of the prosecution. For example, if several states are in a position to prosecute, consideration should be given to the timescales of the procedure in each country, i.e. how long it would take for the proceedings to be concluded. It is difficult and would not be desirable to envisage an exhaustive list of criteria.

**QUESTION 12**

*Do you consider that a list should also include factors which should not be considered relevant in choosing the appropriate jurisdiction? If yes, what factors?*

23. No, for the reasons stated above. The Eurojust guidelines advise that all factors should be considered, and it is the UK’s view that nothing relevant should be disregarded. See below.
Question 13

Is it necessary, feasible and appropriate to “prioritise” criteria for determining jurisdiction? If yes, do you agree that territoriality should be given a priority?

24. Strictly prioritised criteria would be difficult to agree, though it is true that some factors are more relevant than others. Again, the guidelines set out by Eurojust are illustrative of the need to reflect the weighting which should be given to each factor will be different in each case”.51

25. In particular, we do not agree that territoriality should be given priority, especially since in some cases offences will have been committed in more than one territory. Prioritising criteria could be far too restrictive.

Question 14

Is there a need for revised EU rules on ne bis in idem?

26. The UK is not persuaded that the case to reopen this topic at this time has been made out. The previous initiative foundered initially basically because of the diversity of cases and criminal justice systems. It is unclear what has changed so as to prevent the same issues resurfacing to defeat further initiatives of this type. The ne bis in idem principle is embedded in most legal systems, at national and international level. The UK has known and applied the basic principle of double jeopardy for centuries but it would be very concerned to ensure that it should not be prevented from operating the present exceptions, such as the provisions applicable to England and Wales where re-trial after an acquittal is permitted where there is new, compelling evidence.

27. As there is no evidence that the current arrangements, which appear to allow a degree of flexibility, are causing any undue difficulty to our citizens, there seems to be no need currently to go beyond the Schengen provisions. Article 58 of the Convention Implementing the Schengen Agreement (CISA) allows Member States in any case to take things further at their individual discretion.

Question 15

Do you agree with the following definition as regards the scope of ne bis in idem: “a decision in criminal matters which has either been taken by a judicial authority or which has been subject to an appeal to such an authority”?

28. This question would appear to overlap with questions 16 and 19. The first question to answer in trying to define the scope of ne bis in idem is the definition of idem. Part of the doctrine holds that idem means same facts, whereas the proposed definition focuses on the authority making the decision. As set out below, a factual approach to idem seems to be broader and fairer, and one consistent with the ECJ jurisprudence on Article 54 CISA.

29. By focussing on the nature of the decision, and limiting it to “judicial” decisions, the principle might not cover all the situations of administrative sanctions, or sanctions taken by administrative authorities, and the specific question of fixed penalty notices. The ECJ in its jurisprudence, in contrast, appears to have adopted a position suggesting that some decisions by administrative authorities can have ne bis in idem effect. A definition of idem would need to factor this in.

30. In the UK, when considering whether a person should be placed in double jeopardy for being prosecuted a second time, consideration is given to whether the evidence necessary to support the second indictment or charge, or whether the facts which constitute the second offence, would have been sufficient to procure a legal conviction upon the first indictment or charge. The focus is therefore upon the “facts” rather than the nature of the authority. This might be considered a sound starting point for considering the scope of ne bis in idem. It should be borne in mind that any definition of a “judicial authority” would need to cover a conviction by a jury.

Question 16

Do you agree with the following definition of “final decision”: “... a decision, which prohibits a new criminal prosecution according to the national law of the Member State where it has been taken, unless this national prohibition runs contrary to the objectives of the TEU?”

31. The definition of “final decision” was one of the most difficult issues during past discussions on double jeopardy and it is doubtful whether Member States would be in a better position to agree on such a definition now. It could also have the unintended effect of harmonising Member States’ criminal laws. It is difficult to construe phrases such as this in isolation; it rather depends on the context. We would wish to consider carefully whether to include non-prosecutorial penalties, such as cautions, conditional cautions, FPNs/PNDs, bindovers, ASBOs and control orders. The UK would wish to ensure that only decisions in the nature of criminal convictions, ie a substantive determination of guilt, are captured. On the last occasion the policy was that “final decision” should refer to there being a “substantive determination of guilt, so that decisions taken on merely procedural grounds are excluded”, and we would wish to take the same line again. We have also taken this line in relation to any definition of “conviction” in the context of the Draft Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

Question 17

Is it more appropriate to make the definition of “final decision” subject to express exceptions? (eg “a decision which prohibits a new criminal prosecution according to the law of the Member State where it has been taken, except when ...”)

32. It would be very important for the UK (see also response to question 14 and 21). It could help to include in the scope of the definition some convictions that are specific to some Member States, such as our fixed penalty notice. It is not a judicial decision, nor an appealable one, even if it can be contested, and yet is a penalty/sanction, and the same careful consideration, as mentioned above, would need to be given.

Question 18

In addition to the elements mentioned in question 16 and 17, should a prior assessment of the merits be decisive on whether a decision has an EU wide ne bis in idem effect?

33. In its staff working document, the Commission bases the decision to prosecute on the merits of a case, ie the legality or illegality of the relevant behaviour. This raises the issue of prescription as well as that of pardon/amnesty. A priori, on the latter, it would seem unjust to re-try someone who served a sentence and was afforded an amnesty. Regardless of the location, the convicted person has been punished according to a Member State’s legislation, and the fact that justice has already been rendered should be recognised in other Member States to prevent punishing that person again.

34. The question seems to suggest that even where a decision was taken by a competent authority in a Member State, this would only be final upon judicial review.

35. Finally, double jeopardy would seem more likely to occur in extradition (surrender) cases. It should be confined to cross-border cases otherwise some domestic cases might be tried twice. Some assessment of the cross-border element seems indispensable.

Question 19

Is it feasible and necessary to define the concept of idem, or should this be left to the case law of the ECJ?

36. The definition of idem would need to be the first step of the exercise but might bring the discussions to a halt again if Member States’ judicial systems remain incompatible. A factual approach to idem seems to be broader and fairer, as suggested at paragraph 28 and 30 above. The role of the ECJ and its case law should be limited to the interpretation of community laws, not extended to creating law: in its recent judgment in case C-436/04, the ECJ gave a useful clarification of the concept of idem. It held that “because there is no harmonisation of national criminal laws, a criterion based on the legal classification of the acts or on the protected legal interest might create as many barriers to freedom of movement within the Schengen territory

52 Reference for a preliminary ruling under Article 35 TEU [...] in the criminal proceedings against Leopold Henri Van Esbroeck, 9 March 2006.
as there are penal systems in the Contracting States”. The Court appeared to give weight to the fact that a situation may, in principle, constitute a set of facts which, by their very nature, are inextricably linked. This would appear to support a “facts” based approach. The Court found that it is ultimately for the competent national courts to determine whether the material acts at issue constitute a set of facts which are inextricably linked together in time, in-space and by their subject-matter.

**Question 20**

*Do you see any situations where it would still be necessary to retain an enforcement condition, and if yes, which ones? If yes, can the condition be removed if a mechanism for determining jurisdiction is established?*

37. As stated in the rest of this response, the enforcement mechanisms in place seem to work satisfactorily and until such a time where there is compelling evidence for its abolition, the UK would like to retain the enforcement condition as laid out in Article 54 CISA.

**Question 21**

*To what extent can the derogations in Article 55 CISA still be justified? Can they be removed if a mechanism for determining jurisdiction is established, or would you see a need for any further measures to “compensate” for a removal of the derogations under these circumstances?*

38. The right to a re-trial in England and Wales has been introduced in the Criminal Justice Act 2003 in Part 10 of the Act, in force since April 2005. It has relaxed the principle of *ne bis in idem* in allowing a re-trial of serious offences when new compelling evidence has appeared. A revision of EU rules on *ne bis in idem* would have to respect the exceptions set out in the Schengen Convention and the declaration made by the UK in that respect. A Framework Decision stemming from this Green Paper could be incompatible with that legislation.

**Question 22**

*Should *ne bis in idem* be a ground for mandatory refusal of mutual legal assistance? If yes, which EU law provisions should be adapted?*

39. The difficulty with this proposal is that, unless there were truly harmonised law on *ne bis in idem*, it would require the authority/State contemplating giving assistance to review whether or not proceedings were barred in the jurisdiction seeking assistance. The UK doubts whether that degree of harmonisation would be desirable or effective. Executing authorities would be likely to require expert evidence on foreign law. This would do little to promote effective and timely mutual legal assistance. The UK entered a reservation to the 1959 Mutual Legal Assistance Convention securing the right to refuse Mutual Legal Assistance on the basis of, effectively, the *ne bis in idem* principle.

**Question 23**

*Is there a need for a more coherent approach on the *ne bis in idem* principle in relation to third countries? Should one differentiate between parties of the Council of Europe and other countries?*

40. The UK tends to agree with the Commission that exceptions similar to Art 55 CISA are justified in an international context and a balanced approach could be beneficial for EU citizens.

**Question 24**

*Do you agree that with a balanced mechanism for determining jurisdiction*

(a) *certain grounds for non-execution in the EU mutual recognition instruments could become unnecessary, at least partly? Which grounds, in particular?*

(b) *certain grounds for optional non-execution should be converted into grounds for mandatory non-execution or vice versa? Which grounds, in particular?*

41. We agreed that this issue should be considered in parallel and that, in principle, the suggestions of the Commission are compatible with the idea of a common area of justice—ongoing prosecution for the same act. A decision not to prosecute, or to halt proceedings, should be mandatory (rather than optional grounds for
non-execution. Territorial aspects should no longer be a ground for such decisions. However it would be premature to attempt to identify grounds for non-execution in advance of clarifying the mechanism and criteria for resolving conflicts of jurisdiction. It appears that the current arrangements for execution are functioning satisfactorily.

Letter from the Chairman to Rt Hon Lord Goldsmith QC

Thank you for your letter of 22 March 2006 which was considered by Sub-Committee E (Law and Institutions) at its meeting of 7 June 2006.

While we welcome your response to the Commission’s Green Paper, it is somewhat disappointing that you do not directly request the Commission to gather and analyse evidence on conflicts of jurisdiction. The Committee wishes to be assured that the current system is adequate and is therefore keen to see that the Commission has factual evidence to inform its position. We would be grateful if you would provide us with any data gathered or provided by the Commission on this matter. We will, of course, pay close attention to any proposal for a Framework Decision adopted by the Commission in due course.

The Committee has decided to clear the Green Paper from scrutiny. As you know, we are also holding document 16258/03 (DROIPEN 89) Proposed Framework Decision on the application of the ne bis in idem principle under scrutiny. Given the current negotiations, it seems unlikely that this proposal will be revived. We would be grateful to receive your assurances that any document forming the basis of discussions for a proposal on ne bis in idem will be deposited for scrutiny at Parliament. If you provide these assurances, we will be pleased to clear this document from scrutiny.

8 June 2006

Letter from Rt Hon Lord Goldsmith QC to the Chairman

Thank you for your letter of 8 June on this subject.

You asked what data the Commission has collected to inform its position on this matter. At the end of May the Commission held an Experts’ Meeting to give Member States representatives and independent experts a second opportunity to express their views and take part in a discussion on the proposals in the Commission’s Green Paper. The UK was represented at that gathering and reiterated points made in our response to the Green Paper.

I have not seen an official report from that meeting. However I understand that a clear majority of Member States took the view that the introduction of a mechanism to resolve conflicts of jurisdiction, along the lines suggested by the Commission, was neither necessary nor desirable. Most Member States advocated direct communication between themselves on these issues, without the need for recourse to an intermediary.

At the same meeting Commission representatives stated their intention to complete a study in the course of this year to “ascertain the size and characteristics of the problem of jurisdiction conflicts”. This, along with the information gathered at the meeting I referred to, could provide data of the kind you rightly indicate is required to justify the exercise.

You asked for an assurance that any document forming the basis of discussions for a proposal on ne bis in idem will be deposited for scrutiny in Parliament, and I am happy to give you this assurance.

12 July 2006

Letter from the Chairman to Rt Hon Lord Goldsmith QC

Thank you for your letter of 12 July which has been considered by Sub-Committee E (Law and Institutions).

We are grateful for the information you provide on the views expressed by Member States’ representatives and independent experts at the recent meeting and look forward to seeing the results of the Commission’s study in due course.

On the basis of the assurances you provided, we have decided to clear document 16258/03 (DROIPEN 89) from scrutiny.

25 July 2006
CONTROL OF THE ACQUISITION AND POSSESSION OF WEAPONS (7258/06)

Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office

Thank you for your Explanatory Memorandum of 22 June. This proposal has been sifted for scrutiny by Sub-Committee E (Law and Institutions) which, as you may know, is currently conducting a detailed inquiry into the Criminal Law Competence of the European Community. We note the position being taken by the Government as regards the Commission’s proposals for criminal offences and penalties in this Directive (the new Article 16).

As you may know, your colleague, Gerry Sutcliffe MP, met the Sub-Committee on 21 June to discuss, *inter alia*, the implications of Case C-176/03. He drew our attention to the present proposed Directive as the first example of the application of the new Council Procedure for dealing with First Pillar legislative proposals containing criminal law provisions. We would be most interested to learn how the negotiation of the present procedure will proceed if the UK, and we presume a substantial number of other Member States, will object to Article 16 in its present form. Unlike the draft Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights (the IP Directive), which would replace an existing Framework Decision by an EC measure, the present proposal, with the possible exception of Article 16, is clearly First Pillar and we note that, with some minor alterations, the Government welcome the proposal.

While it is to be hoped that the European Court will, in Case C-440/05 (Ship source pollution), provide some clarification as to the extent of criminal law competence under the First Pillar, we assume that the present Directive, unlike the IP Directive, cannot simply be kicked into touch for the next year or so until we have the Court’s judgment. We therefore would be grateful if you could tell us what the present state of the negotiations is, whether other Member States share the UK’s concerns about Article 16, and, if so, what steps are being taken to advance discussion of the substance of the proposed Directive without prejudice to the position on criminal law and sanctions.

The Committee decided to retain the proposal under scrutiny and looks forward to receiving the information requested above.

6 July 2006

Letter from Vernon Coaker MP to the Chairman

Thank you for your letter of 6 July about the above proposal. In particular, you wished to know the present state of negotiations on the Directive; whether other Member States share the UK’s concerns on the Directive’s criminal sanctions; and, without prejudice to such concerns, what steps are being taken to advance the proposal. You also refer more generally to criminal law provisions in First Pillar legislative proposals and the UK’s view in regard to these.

With regard to the negotiation of this instrument in light of the current institutional dispute over the extent of competence under the Treaty of the European Community to create obligations for Member States in criminal matters, it is important that the Government ensures consistency of approach. As Gerry made clear to the sub-committee on 21 June, in our intervention in support of the Council in the recently instituted challenge by the Commission to the adopted Framework Decision dealing with maritime pollution, we are going to argue that the effects of the judgment of the European Court of Justice of 2005 in the case concerning the Commission’s challenge to the Framework Decision on the protection of the environment should be restricted to measures to protect the environment only. Accordingly, in line with this argument, our position on this instrument is the same as that adopted in negotiation of the intellectual property instrument and that dealing with a proposed new customs code; and that is that there is no community competence for criminal law provision to be included in the instrument.

As you are aware, negotiation of the Directive on criminal law measures to protect intellectual property rights has been effectively suspended pending JHA Council discussion of the best way forward in light of a significant majority of Member States indicating that they do not favour proceeding with negotiations on the substantive detail until the competence issue is resolved by the judgment of the ECJ in the maritime pollution FD case or at very least until there is some agreement in the Council on a means of proceeding pending that decision.

Negotiations on this weapons Directive have not as yet progressed very far but the UK has already made our position clear during the initial working group discussions. The position of other Member States is as yet unclear. The issue has been raised in negotiations at the expert level and the views expressed have been mixed.
We do not yet know how the Finnish Presidency will handle the issue. The option of referring the matter upwards through Article 36 Committee to the JHA Council is obviously available, in the same manner adopted in the case of the intellectual property dossier. The handling of all this is a matter for the Presidency but it is clear that negotiations on a number of instruments may now stall and a co-ordinated approach would appear to be sensible.

We will, of course, keep the Committee appraised of future progress.

24 July 2006

CRIMINAL LAW COMPETENCE OF THE EUROPEAN COMMUNITY (15444/05)

Letter from the Chairman to Fiona Mactaggart MP, Parliamentary Under Secretary of State, Home Office

The Commission’s Communication was examined by Sub-Committee E (Law and Institutions) at its meeting on 1 February. We note that the Court of Justice has confirmed that, as a general rule, criminal law and criminal procedures are matters which do not fall within the scope of the EC Treaty. However, both the judgment and the Commission’s subsequent Communication raise issues of concern as identified in your helpful Explanatory Memorandum.

We agree with the Government’s cautious approach in this matter, and in particular your response to the Commission’s proposed “quick and easy solution”. At the very least it seems necessary to examine the aims and objectives of each of the legislative instruments listed in the annex to the Communication in order to see whether the imposition of criminal laws and/or sanctions by the Community is essential in order to achieve the aims and objectives of the particular proposal. Certainly not all of the listed Framework Decisions include the sort of recitals contained in the Framework Decision on the protection of the environment and to which the Court appeared to give some weight.

Thank you for your assurance that you will keep the Committee informed of developments. The Committee decided to clear the document from scrutiny.

2 February 2006

DISQUALIFICATIONS ARISING FROM CRIMINAL CONVICTIONS IN THE EU (7162/06)

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office

This Communication was considered by Sub-Committee E (Law and Institutions).

We note that the Government broadly welcome action in this field and would support a sectoral approach to future European legislation. You refer in particular to the Belgian Initiative for a Framework Decision on the recognition and enforcement in the EU of prohibitions arising from convictions for sexual offences against children. This draft Framework Decision was sifted to this Committee in December 2004. We wrote to your predecessor on 16 December 200553 and are still awaiting a reply to that letter, which itself seeks a response to matters first raised in our letter of 27 January 2005.54 Given your support for sector-by-sector legislation on disqualifications, we would be grateful if you would explain your six-month delay in responding to our letter. Are the Government genuinely committed to EU legislation in this field?

We draw your attention to our letter to Lord Goldsmith dated 22 June 200655 in which we referred to problems encountered in the Council in negotiations relating to certain proposals with judicial cooperation in criminal matters. We queried whether Member States remained committed to the Hague Programme. As you know, the Hague Programme called for the agreement of proposals on the exchange of information on convictions relating to sex offenders by the end of 2005. Will this area be revisited in the context of the review of the Hague Programme?

We have decided to hold this document under scrutiny.

6 July 2006

55 See Presumption of Innocence (9128/06).
Letter from Joan Ryan MP to the Chairman

Thank you for your letter dated 6 July 2006 regarding disqualifications arising from criminal convictions in the EU.

Firstly, please accept my apologies for the fact that you did not receive responses to your previous letters, dated 27 January and 16 December 2005. I regret the oversight which caused this delay. As referenced in recent letters we are undertaking a review of the scrutiny process to ensure this does not happen again. I hope this letter addresses all of your concerns.

I can confirm the Government’s ongoing commitment to information sharing on convictions relating to sex offenders. Further to Paul Goggins’ letter to you, dated 5 October 2005, I am, however, sorry to inform you that we have not made as much progress with the Belgian Initiative as we would have hoped. Whilst the United Kingdom is keen to pursue the Initiative this is proving to be more problematic for other Member States.

The main reason for lack of progress is that whilst each EU country is obliged to bar certain people from working with children, each Member State has a different system. The Framework Directive does not prescribe the way barring should be implemented. Some Member States rely on administrative schemes or on employers making decisions based on a criminal record. Finding common ground between those states and those that have judicial schemes has proved to be problematic.

The Working Group on Judicial Co-operation in Criminal Matters met in November 2005 and April 2006. The United Kingdom played an active role in negotiations but regrettably, little progress was made. In order to break the impasse, it was agreed that a new proposal would be drafted to be considered by the Group, hopefully during the course of the current Presidency. This will represent a fundamental overhaul to the original proposal and we expect that there will be substantial changes to the text of the Initiative. As such, many of the points raised in your letter of December 2005 may no longer be pertinent to the redrafted proposal and so I suggest that I write again, once the new Initiative has been prepared.

The Hague Programme Review will be assessing the progress of all proposals agreed and reviewing the priorities it set in 2004. This dossier is one of the UK’s priorities. We will therefore continue to push strongly for the conclusion of this instrument during and beyond this review period.

7 August 2006

EUROPEAN ANTI-CORRUPTION NETWORK (15629/05)

Letter from the Chairman to Fiona Mactaggart MP, Parliamentary Under Secretary of State, Home Office

Thank you for your Explanatory Memorandum of 27 March relating to the proposed Council Decision to establish a European anti-corruption network (EACN). The proposal has been considered by Sub-Committee E (Law and Institutions). The Committee has decided to retain the proposal under scrutiny.

We share the concerns expressed in your Explanatory Memorandum. There would seem to be little merit in the establishment of an EACN which might duplicate, and possibly detract from, the work of GRECO and the WGB. It is therefore imperative, if an EACN is to be established, that its role and activities should be clearly identified and, as you say, that it should add value to the existing network (EPAC).

Like you, we find it somewhat surprising that there is no reference in the proposal to EPAC. As you may recall EPAC, in its Vienna Declaration 2004, welcomed “the idea of a European anti-corruption network (EACN) based upon the existing structures” and “appropriate steps in this direction by incoming Presidencies of the European Union”. It is possibly no coincidence that Austria is one of the Member States promoting the proposed Decision and that EPAC’s address is given as: c/o BIA Federal Bureau for Internal Affairs, Austrian Federal Ministry of the Interior. What stance did those representing the United Kingdom in Vienna take in relation to this Declaration?

We also share your concerns relating to the extent to which the EACN should be involved in training and whether it would be appropriate for the EACN to define minimum standards and make proposals setting up data bases and public-private partnership initiatives. However, we are somewhat perplexed about your references to language skills, given that the Government have accepted similar provisions in the context of the European judicial network in civil and commercial matters.
Finally, we would be grateful to have some clarification of the financial implications. It would appear that EPAC is presently funded, at least in part, by the European Commission through the Aegis Programme. You say that the financial implications for Member States would not be substantial. What sort of figures are involved? If OLAF is to be a member, as is presently envisaged, should there not also be a contribution from the EC budget?

We look forward to your response to the above points.

24 April 2006

Letter from Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Home Office to the Chairman

Thank you for your letter of 24 April, relating to the proposed Council Decision to establish a European Anti-corruption Network (EACN). You have outlined four areas of concern, which I shall endeavour to respond to in the order in which you have raised them.

Firstly, you have shared our concerns over the potential duplication that could occur with the establishment of the Network. However, the intention of this proposal, clarified by the Presidency, is that the Network should legitimise and build upon existing anti-corruption work. The presidency has stated that the proposal will add definite value in three main respects: firstly, it obliges EU Member States to nominate and designate an Asset Recovery Office (or two) as a contact point; secondly it provides for an obligation to ensure cooperation regardless of the internal status of the Asset Recovery Office; and thirdly it provides that Asset Recovery Offices should exchange information on the basis of the (draft) Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the EU Member States. In addition, its establishment will formalise current EU-level work—meeting every six months, producing solid reports and outlining specific objectives that the Network will work towards. Moreover, creating arrangements for staff exchanges and the setting up of and constant updating of a “content catalogue” are undoubtedly benefits that will arise from the Network. I am satisfied that the Network will add value to the existing EU anti-corruption effort.

Following negotiations, it has been made clear that the Network will have a remit to address corruption in a range of areas, and not solely on police corruption. However, in having a wider remit the Network will be able to cover police corruption as part of its overall work.

The text still does not mention the relationship with the existing network (EPAC) and whether or not the EACN will compliment the work of EPAC or if it will replace it. It is our opinion that although not essential it would still nonetheless be helpful if the relationship between the networks was mentioned specifically in the text, and we will continue to push for this in negotiations.

You shared the Government’s view about the appropriateness of the Network taking on a training role. The text as amended following working group negotiations no longer provides the Network with this function, Article 3(2)(b) having been amended in order to reflect our and others’ concerns. The text also no longer outlines the necessity for contact points to have language skills, with Article 2(5) having been removed. We are still of the opinion that first and foremost, when dealing with an issue such as corruption in a criminal context, contact points should be experts in their field above having language skills.

Finally, you have asked for clarification as to the financial implications of the Network. We previously indicated that any such costs were not expected to be substantial, and still believe this to be the case. The Presidency has stated that they would envision two or three members of staff working for the Network. Who should host the Secretariat will be discussed at future working group meetings. Possibilities suggested include OLAF and Europol. As long as OLAF is not distracted from focusing on its own remit the Government is content to support whichever solution is the most practical. However we shall be seeking from the Commission a detailed financial statement, regardless of who will be hosting the Secretariat.

The Presidency had hoped to have completed negotiations on this measure in time for the June JHA Council, which now cannot be achieved. We believe that subject to some minor text amendments and some clarification, the UK can continue to offer qualified support for this proposal.

I hope that this response has gone some way towards answering your questions. Please do not hesitate to contact me if there are any outstanding issues.

30 June 2006
Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter of 30 June which was considered by Sub-Committee E (Law and Institutions) at its meeting on 12 July. We are grateful for the further information you have provided but as is clear from your letter a number of questions remain unanswered and therefore the Committee had decided to retain the proposal under scrutiny.

We agree that it is important that the relationship between the new Network and the EPAC is quite clearly understood and, as you say, preferably set out in the text of the Decision. It would be helpful if you could provide the Committee with a note setting out the Government’s understanding of what the relationship would be and how you see the present text being amended.

You refer to the discussions in the working group which have led to the amendment of Article 3 which now “reflect our and others’ concerns”. We would be grateful for sight of the new text. As you will appreciate it is impossible for us to assess the position without it.

We note that you are seeking from the Commission a detailed financial statement regarding the Network. We hope that you will press for this to be made available at the earliest opportunity.

Finally, it would be helpful to have a statement of the arguments as to whether the Secretariat should be situated within OLAF (in effect the Commission) or Europol (a body which is independent of the Commission and may be more answerable to Member States).

As mentioned, the Committee decided to retain the proposal under scrutiny. We look forward to receiving the further information requested above.

13 July 2006

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman

Thank you for your letter of 13 July, to my colleague Gerry Sutcliffe, regarding the Proposal for a Council Decision on the setting up of a European Anti-corruption Network. I have reviewed your queries and will attempt to respond to them accordingly.

The Austrian Presidency of the EU was keen to emphasise that the relationship between the proposed Network and EPAC was a complementary one. Far from duplicating the work of EPAC, the new Network would build upon this work and add to it—as mentioned in the letter to which you are responding. I agree that it would be beneficial to clarify this in the text, and at the next official Council working group meeting in which this proposal is discussed, the UK would like to table a proposal to add a paragraph into the recital to explain that the Network will build upon the work of EPAC and shall not duplicate its duties.

You have asked to see the new text of Article 3, which I have annexed to this letter. I hope that you find this satisfactory.

I agree that a financial statement would be a useful tool. When one is made available I will ensure that it is sent to your Committee. I would reiterate that the running costs of the Network are not expected to be substantial.

The location of the Secretariat is still uncertain. The most recent discussions took place at the MDG meeting in June. At this meeting four Member States spoke out against OLAF hosting the Secretariat whilst the Presidency believed that OLAF hosting would be the best solution. The Commission refused to be drawn into making a decision either way. No consensus was reached on where the Secretariat should be hosted and the question remains open. The UK is open to the suggestions that are being put forward and is following the debate closely.

The Austrian Presidency had hoped to have the proposal signed by the end of its Presidency. Now that the Presidency has been passed over to Finland it is not clear when the proposal will be discussed next. However, I feel that we should be able to support the proposal and I hope that the UK’s scrutiny position will be able to reflect that.

1 August 2006
Annex A

ARTICLE 3

Tasks of the Network

1. The Network shall contribute to developing the various aspects of the fight against and the prevention of corruption at Union level and shall support anti-corruption activities at national level.

2. In particular, the Network shall, in accordance with existing international arrangements and subject to national legislation:

   (a) facilitate cooperation, contacts and exchanges of information and experience between the national organisations and services of the Network, as well as between these and OLAF, and groups of experts and networks specialising in anti-corruption matters;

   (b) promote further enhancement of international cooperation by various practical measures. These may include the following:

       — regular working meetings of member organisations and services of the Network;
       — arrangements for, and organisation of exchanges of staff between the relevant organisations and services in the Member States to encourage learning and sharing of information and experience;
       — conferences, seminars, meetings and other activities designed to promote international consideration of anti-corruption matters, and to disseminate the results thereof;
       — collect and analyse information on anti-corruption activities, the evaluation thereof and the analysis of best practices;
       — setting up and constant updating of a “Contact Catalogue” covering data and Points of Contact of all the member organisations and services of the Network;

   (c) provide its expertise to the Council and to the Commission, where necessary and upon request, with a view to assisting them in all matters concerning the fight against corruption;

   (d) submit to the Council and the European Parliament a report on its activities every two years, and indicate the areas for priority action in its work programme for the following two years; and

   (e) develop cooperation with anti-corruption organisations and services of candidate countries, third countries with international anti-corruption organisations and services.

EUROPEAN ARREST WARRANT (5706/06)

Letter from the Chairman to Andy Burnham MP, Parliamentary Under Secretary of State, Home Office

The revised report from the Commission was considered by Sub-Committee E (Law and Institutions) at its meeting on 8 March. We note that the Commission has also asked for revised comments from Member States and it is clear from your very full Explanatory Memorandum that the concerns you expressed, when the first version of the report was published, have not yet been addressed by the Commission. It would be helpful if you could let us know the outcome of your discussions with the Commission on this.

May I also take this opportunity to thank you for your letter of 22 February providing the further information requested at the meeting on 18 January. It is very helpful and will be taken into account in the brief Report which the Committee is now preparing and hopes to publish shortly after Easter.

The Committee has decided to clear the Commission’s report from scrutiny.

9 March 2006

EUROPEAN EVIDENCE WARRANT (14246/05)

Letter from Andy Burnham MP, Parliamentary Under Secretary of State, Home Office to the Chairman

Thank you for your letter of 19 January 2006 detailing the comments and concerns of Sub-Committee E (Law and Institutions) on COPEN 174.

The Committee highlighted a few outstanding issues in the proposal. I will attempt to address these in turn.

ARTICLE 19—LEGAL REMEDIES

The Committee urged the Government to include a human rights ground for refusal in any legislation implementing the EEW. I am grateful for the Committee’s comments on this and other issues about the implementation of the Framework Decision. The instrument, once adopted, will require primary legislation and this will need to be laid before Parliament in due course for its consideration. I will of course bear in mind the Committee’s suggestions when we prepare the legislation.

ARTICLE 21—COMPUTER DATA

I am sorry if the explanation of “directly accessible” in my previous letter caused the Committee any confusion. My intention was simply to confirm that your letter of 1 December was correct to suggest that the reference to “electronic data lawfully and directly accessible” covered the situation where information is held on a server in a third State. In our view that should not preclude information being retrieved under an EEW provided that it was lawfully and directly accessible in the executing State. Our intention is that evidence obtained in this way would be subject to the same rights and safeguards under the EEW as evidence located in the executing State.

ARTICLE 10(2)—DATA PROTECTION

I note your comments in respect of the Council considering some form of statement drawing attention to the proposed Framework Decision on the protection of data in the framework of police and judicial co-operation to address the concerns raised earlier by the Committee on this point. I am however satisfied that Article 10 provides adequate safeguards to protect the use of data transmitted via EEWs.

EVIDENCE OBTAINED UNDER TORTURE

You further raised the possibility of EEWs being received for information which may have been obtained under torture in a third country and which may appear in police files here. You asked what would be the response if the authorities in another Member State, not knowing of the existence of torture, sought the documents from authorities in the UK.

A and others v the Home Secretary was concerned with the admissibility of evidence possibly obtained under torture in proceedings in the UK and so does not seek to set out rules about the use of evidence in other contexts. It will not always be apparent to an executing State whether or not information provided to it was the result of torture in a third country. Neither will the executing authority necessarily be in a position to know whether an allegation of torture in a third country is proved. The EEW Framework Decision does not address the issue of evidence obtained under torture in Article 15 which sets out the grounds on which a judge, investigating magistrate or prosecutor can refuse to recognise or execute the EEW. I believe it is unnecessary for it to do so because it would be for the courts to rule on the admissibility of evidence in any particular case in which the prosecution sought to rely on disputed evidence.

6 February 2006

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 6 February which was considered by Sub-Committee E (Law and Institutions) at its meeting on 15 February. We are grateful for the information you have provided and also for your assurance that you will bear in mind the Committee’s suggestions (in particular as regards Articles 2, 12 and 19 of the proposed Framework Decision) when the Government come to prepare implementing legislation. We are, however, disappointed that you are not prepared to take up the Committee’s proposal that the Council should make a statement drawing attention to the importance of the proposed Framework Decision on the protection of data.

As regards evidence obtained under torture in a third country, we are not yet persuaded that the matter should not be addressed in Article 15, which sets out the grounds on which an EEW need not be recognised or executed. We understand, from what you say in your letter, that UK authorities would not use the EEW to acquire evidence obtained under torture but it would be helpful if you could explain more fully the position where the UK is the executing State. You say that the admissibility of evidence under torture would be an issue
for the court of the requesting State. You do not say, however, whether UK authorities in handing over the information would indicate their knowledge or suspicion that it had been obtained under torture. Should they not do so even if the Framework Decision is silent on the issue? If not, why not?

The Committee decided to retain the proposal under scrutiny.

16 February 2006

Letter from Andy Burnham MP to the Chairman

Thank you for your letter of 16 February with the further comments of Sub-Committee E (Law and Institutions) on the proposed European Evidence Warrant.

You re-iterated the Committee’s concerns regarding evidence obtained under torture in a third country and suggested that UK authorities should indicate their knowledge or suspicion about the circumstances in which information was obtained to any State issuing an EEW for such evidence. I can only confirm that the Framework Decision does not make any such requirement and in our view no obligation would exist to comment on the circumstances in which the information was originally obtained from a third country. It is for the courts to determine questions of admissibility if the information is subsequently produced in evidence, at which stage the full protections afforded to a defendant under ECHR will apply.

7 March 2006

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 7 March which was considered by Sub-Committee E (Law and Institutions) at its meeting on 22 March. We have also considered the written statement made by Baroness Ashton of Upholland reporting the outcome of the Justice and Home Affairs Council on 21 February.

In her statement Baroness Ashton refers to a Presidency compromise whereby the EEW would use the same list of (32) offences as in the EAW for which double criminality would not be needed. It appears that the Austrian Presidency is proposing that there be an explanation, in a non-binding Council declaration, of some of the offences. As you will recall from your meeting with Sub-Committee E on 18 January the fact that there are divergent views as to what some of the terms used in the list set out in the EAW are intended to cover it is not surprising that the replication of the EAW list in the EEW has given rise to discussion in the Council. We would therefore be grateful if you could provide us with further information as to which offences have caused difficulty. We fully appreciate that you will not be able to divulge the identity of the Member States concerned. This should not prevent the disclosure of any potential problems to Parliament. We would also be grateful for sight of the non-binding Council declaration proposed by the Presidency. Given the potential importance of that document we would not expect to be able to clear the Framework Decision from scrutiny without having the opportunity to see and consider the declaration being proposed to accompany it.

Finally, on the subject of our most recent correspondence, namely evidence obtained under torture, you will not be surprised to learn that we are disappointed with the reply given in your recent letter. We note that you say, in a handwritten postscript, that you are satisfied with the explanations you have had. Unfortunately we have not had the same explanations or briefing from your officials. It remains a matter of concern to the Committee that authorities in the United Kingdom, knowing that evidence has been obtained under torture, would pass that evidence without comment to the requesting Member State. It would seem to us that there are good arguments relating to the efficiency of the prosecution system in that State and also to the fairness of the accused that such information should be provided even if there is no express obligation to do so in the EEW Regulation. Are you sure that the Government’s policy would not render the United Kingdom complicit in any breach of the ECHR relating to the obtaining or use of the evidence in question?

The Committee decided to retain the proposal under scrutiny.

23 March 2006

Letter from Andy Burnham MP to the Chairman

Thank you for your letter of 23 March with the further comments of Sub-Committee E (Law and Institutions) on the proposed European Evidence Warrant.

You referred to the proposal from the Presidency at the Justice and Home Affairs Council on 21 February to resolve concerns about the scope of some of the offences for which dual criminality would not be required in Article 16(2). No agreement was reached at the Council but the majority of Member States supported the Presidency’s proposal for a Council Statement to guide the interpretation of the offences rather than to define the offences in the Framework Decision itself. The offences in Article 16(2) are generic rather than specific and,
consistent with mutual recognition principles, it is the definition in the issuing state that should apply. The Presidency did not provide a draft text at the Council but the attached draft to accompany the Framework Decision has now been proposed and is currently under discussion. The UK continues to oppose creating binding definitions of offences in the Framework Decision.

You raised again the Committee’s concern about UK authorities executing EEWs for information obtained under torture in a third country. I recognise that the UK should inform an overseas issuing authority where it is known that the evidence requested was obtained under torture. As I indicated in my earlier letter, it will not always be apparent to the executing authority whether or not information provided to it by a third country is the result of interrogation under torture. I do not accept that there should be an obligation on the executing authority to comment on the circumstances in which the information was obtained in a third country. If the information is subsequently produced in evidence, the trial court in the issuing State may make any enquiries it considers appropriate with the third country to determine the admissibility of the evidence and to ensure that the defendant’s rights are safeguarded.

20 April 2006

Annex A

PRESIDENCY PROPOSAL CONCERNING THE LIST OF OFFENCES IN ARTICLE 16(2)

1. The text of the Framework Decision is accompanied by the following Annex II:

“The Council notes that the offences of terrorism, computer related crime, racism and xenophobia, sabotage, racketeering and extortion and swindling, listed in Article 16(2), are subject to different levels of approximation at EU level. While fully acknowledging that the issuing authority in a concrete case bears the sole responsibility for determining whether an offence under its law is a listed offence, the Council recommends Member States to respect the following minimum core criteria:

**Terrorism** as defined in the Council Framework Decision of 13 June 2002 on Combating Terrorism.

**Computer related crime** as defined in the Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems.

**Racism and xenophobia** as defined in the Joint Action of 15 July 1996 (96/443/JAI).

**Sabotage:** Any person who unlawfully and intentionally causes large-scale damage to a government installation, another public installation, a public transport system or other infrastructure which entails or is likely to entail considerable economic loss.

**Racketeering and extortion:** Demanding by threats, use of force or by any other form of intimidation goods, promises, receipts or the signing of any document containing or resulting in an obligation, alienation or discharge.

**Swindling:** The concept of swindling referred to in Article 16(2) encompasses the following constituent elements inter alia: using false names or claiming a false position or using fraudulent means to abuse people’s confidence or credulity with the aim of appropriating something belonging to another person.

2. The text set out under point 1 will be published without footnotes in the Official Journal as Annex II to the Framework Decision.

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 20 April which was considered by Sub-Committee E (Law and Institutions) at its meeting on 3 May.

We are grateful for sight of the draft Annex II to accompany the Framework Decision. Are you content with the text and in particular with the definition of the offences relating to sabotage, racketeering and swindling? The Committee considers that the definition of these offences could be improved in order to make them more intelligible to lawyers in the United Kingdom. For example, in relation to racketeering and extortion, what is meant by the term “receipts” and what is a “document containing or resulting in an obligation, alienation or discharge”? The drafting of the definition of “swindling” might also benefit from critical examination by experts. Although you say that the Government oppose creating binding definitions the text of the Annex will command some authority and we hope you will agree that more attention needs to be given to the detail.

Finally, as regards the question of evidence obtained under torture, we note that you repeat the view that the Government do not accept that there should be an obligation on the executing authority to comment on the circumstances in which information has been obtained, even if it is known to have been obtained by torture
Thank you for your letter of 4 May to Andy Burnham with the comments of Sub-Committee E (Law and Institutions) on the European Evidence Warrant.

First, as you will be aware, on 1 June the JHA Council reached a general approach on the text of the Framework Decision after much intensive negotiation led by the Austrian Presidency to resolve the outstanding issues. I regret that this meant that I was unable to respond to the points raised in your letter in advance of the Council and consequently that the Committee had not completed its consideration beforehand.

The agreement was on the basis of a general approach rather than political agreement. The Government did not believe that it was right to block a general approach as we are content with the instrument but I am sorry for any constraint the Committee may feel as a result.

The two main items discussed at the Council were the definitions of offences listed in Article 16(2) and the ground for refusal based on territorality. Proposals to include definitions of the certain offences listed in Article 16(2) in the Framework Decision itself or in an accompanying annex remained unacceptable to most Member States. The Presidency, having explored a number of alternatives, concluded that agreement at Council was only possible with the inclusion of an opt out for the one Member State which remained concerned about the scope of the offences. The Council therefore agreed that Germany may make a declaration at the adoption of the Framework Decision. This will allow Germany to reserve the right to make the execution of the EEW subject to verification of dual criminality in cases referred to in Article 16(2) relating to terrorism, computer-related crime, racism and xenophobia, sabotage, racketeering and extortion or swindling, unless the issuing authority has declared that the offence concerned falls within the scope of the criteria indicated by Germany in its declaration. This provision will be reviewed within five years of the EEW coming into force. The Council has also agreed to examine the scope of the categories of offences with a view to adopting a horizontal approach on the issue by the end of 2007. We are content with this compromise solution as we believe that, in practice, very few if any EEW requests relating to serious crime would be affected.

On territorality, the Council agreed the ground for refusal under the first indent of Article 15(2)(c) with the amendment of “wholly or for a major or essential part” in place of “wholly or partly”. It also added a requirement that any decision under the first indent of Article 15(2)(c) shall be taken by the competent authorities “in exceptional circumstances and on a case by case basis” and after consulting Eurojust. This provision will also be reviewed within five years of the EEW coming into force.

Your letter of 4 May also repeated your concern about EEWs issued for information that may have been obtained under torture in a third country and asked whether the Government’s position would render the UK complicit in any breach of ECHR. We accept that in certain circumstances it would be proper for authorities responding to an EEW to inform the issuing state about the possibility that information might have been obtained through torture. We see this however as a matter of public policy rather than a legal obligation arising from the ECHR. In our view it would be totally impracticable to include prescriptive rules for handling such cases in the Framework Decision. Article 1(3) ensures that the authorities concerned will be required to act in accordance with the ECHR, as now.

The Government is very pleased that it has been possible to reach a general approach on the text of the Framework Decision and that it now addresses many of the concerns raised by the Committees and the Government with the original Commission proposal. The next stage will be to negotiate the EEW form and the recitals to the Framework Decision. We are most grateful for your constructive contributions during the course of the lengthy negotiation and look forward to this continuing throughout the remainder of the negotiation.

13 June 2006
approach rather than political agreement.” As you may know, the Committee takes the view that such an agreement is nonetheless an agreement for the purposes of the scrutiny reserve resolution and hence the Government have overridden scrutiny.

Thank you for the explanation of the arrangements which have had to be made in order to accommodate the difficulties of certain Member States with the list of offences for which dual criminality is not required and also for dealing with the so-called “territoriality” clause in Article 15(2)(c). We note that both these provisions are to be the subject of reviews and we would be grateful to be kept informed of developments.

Finally, we are pleased to note that the Government now accept that there may be circumstances where it would be proper for authorities responding to an EEW to inform the issuing State about the possibility that information might have been obtained through torture. You say that it is a matter of public policy rather than a legal obligation arising from the ECHR. We are grateful for this clarification of the Government’s position.

The Committee decided to clear the proposal from scrutiny.

29 June 2006

EUROPEAN REGULATORY AGENCIES (7032/05)

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

I am writing in response to your letter of 10 July 2006 concerning the Interinstitutional Agreement (IIA) on the operating framework for the European Regulatory Agencies and the use of Article 308.

I apologise for the delay in replying to your letter of 13 October 2005. In your letter, you requested a copy of any revised IIA text and further clarification of the Government’s position on the use of Article 308.

Since Douglas Alexander’s letter of 19 July 2005, no progress has been made on the Commission’s proposal and the IIA text has not been revised. We will keep the Committee informed of any future developments.

With regards to the debate on the use of Articles 95 of 308 of the EC Treaty, the Government is currently considering its position in light of the judgment of the European Court of Justice in the European Network and Information Security Agency (ENISA) case (C217/04). We will update the Committee when this process is finalised.

25 July 2006

EUROPEAN SMALL CLAIMS PROCEDURE (10160/06)

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Thank you for your letter of 5 July and for submitting a copy of the latest text of the Regulation under cover of an Explanatory Memorandum. The latter is brief in explaining the main changes that have been made since the Committee last examined the proposal. However, in light of the more detailed explanation given in the Government’s Response we have proceeded to examine the new text. There are a number of points on which we would welcome clarification.

First, we note that the new procedure will not apply to “the liability of the State for acts and omissions in the exercise of State authority (‘acta iure imperii’)” (Article 2(1)). What is the purpose of this exclusion? What would be covered by the term “acta iure imperii”? We would be grateful if you would give examples.

We note that a new article (Article 4(a)) has been included to deal with the question of languages. The practical effect of this would seem to be that, for example, a party is suing in England and the documents have to be served on a Lithuanian in Lithuania, then the defendant can require the documentation to be translated into Lithuanian even if he fully understands English. In the Government’s Response, you say that you are continuing to explore possible solutions to the problem of languages and that the forms could be designed to reduce the need for translation eg by the use of tick boxes. But we find very little, if any, evidence of the latter in the forms you have submitted for scrutiny. Further the extent of the obligation in Article 4(a)(2) remains unclear. What progress is being made in relation to this most important aspect of the procedure?

58 Note from Clerk of Sub-Committee.
60 Government Responses, Session 2005–06, HL Paper 182, p 89.
In several instances express reference is made to national law in order to overcome the absence of common definitions or procedures (see eg Recital 8(b)). Further, as a general rule national law will apply to the procedure (Article 17). However, it is not clear from Article 7 that national law will govern the admissibility of evidence. The reference in the first sentence of Article 7(1), in contrast with a number of other provisions, makes no reference to national law.

As you will recall, we have questioned the effect of Article 9 on established rules of English and Scottish law relating to the determination and proof of applicable law. Article 9(2) now provides that the court shall not require the parties “to make any legal assessment of the claim”. A footnote says that legal assessment shall be translated into French as “qualification juridique”. It is our understanding that under the French civil system various courses of action are set out, contract of sale, contract of services etc in specific articles of the Civil Code. Identifying the “qualification juridique” is the process of attaching a particular label to a set of facts, for example when it is decided on the facts presented that the case is concerned with the contract of sale. It would be helpful if you could provide a detailed note on what you believe Article 9(2) means in the context of English and Scottish procedures. We are mindful that the ESCP will be contained in a Regulation, not a Directive. Therefore, ultimately it will be the European Court of Justice who will determine what obligations lie on the court pursuant to Article 9. It would also be helpful if in your note you could explain in more detail the nature of the obligation under Article 9(3), “the duty to inform parties about procedural questions”.

As regards the forms, we have already noted the absence of tick boxes. We also note the absence of any explanatory information relating to Form C (contrast the guidelines, such as they are, relating to Form A). Article 4(2) and (3) refer to standard Form D. Should this not be Form C? You will also recall that the Committee recommended that the claim form include a reference to ADR. The Government agreed to consider this suggestion. Have you raised it in your discussions with other Member States? What have been their reactions? Finally, we look forward to receiving a copy of Form E.

The Committee decided to retain the proposal under scrutiny.

25 July 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 25 July 2006 in response to my letter of 5 July updating the Committee on the progress of negotiations on the European Small Claims Procedure. Having considered the revised text you have indicated that there are a number of points on which you would welcome clarification.

The amendment under Article 2(1) specifies that the Regulation should not apply to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii). Some States were keen to ensure that default judgments should not apply to these acts. Further, as such a provision had been included in the European Order for Payment Regulation it was argued that there was no reason why it should not be included in this Regulation.

As I have explained to the Committee in the context of other proposals the Government is of the view that the effect of this exclusion is very limited as most, if not all, acts this wording would cover do not fall under the meaning of civil and commercial matters—and, what is more, it is improbable that they would be the subject of small claims. Its inclusion, however, is a matter of political importance to several Member States.

I now turn to your observations on the application of Article 4(a) in respect of languages. The clear understanding and intent of the negotiations on Article 4(a) 3 was that it would apply in the same way as Article 8 of the Service Regulation. The purpose of the word “either” is to indicate that a party can only refuse to accept a document if the document is not either in a language he understands or the language of the State addressed.

Article 4(2) should ensure that any additional exposure to costs is limited to where a court is of the view that the translation of a particular document is required, so only necessary documents will be translated. This is important in facilitating access to justice in the cross border context, ensuring a level playing field for all parties involved, and, in this instance, allowing parties to ask for evidence that they do not understand to be translated.

On Article 7, you say that the text makes no explicit reference to the national law as being the law governing admissibility of evidence. We think it is nonetheless clear: the instrument itself makes no rules as to admissibility of evidence, and, as you rightly point out, Article 17 has the effect of making clear that national law will apply where the instrument is silent.
You have asked me for a detailed note on my interpretation of Article 9(2) in the context of English and Scottish procedures. When a legal claim is formulated, one begins with the facts, and then one applies legal analysis to those facts. This analysis fits the facts into a legal framework, from which it can be decided whether or not the facts rise to legal liability and, if so, what remedies might be available. That process is similar to the one you describe in your observations concerning the French expression *qualification juridique*. The meaning of article 9(2) is therefore that, when starting proceedings under the ESCP, the claimant will be required only to state the facts, not the legal analysis of those facts.

On the nature of the obligation under Article 9(3), the objective is to ensure that parties, especially ones which are unrepresented, have sufficient knowledge of the procedures involved in order to participate in the proceedings on an equal basis. We do not foresee this giving rise to difficulties in the UK, where judges are used to giving rise to difficulties in the UK, where judges are used to giving appropriate guidance to unrepresented parties as to the procedure.

With regards to the forms within the revised text, the July meeting was the first occasion at which the forms had been discussed in detail. The Presidency had produced draft forms for that meeting based on those for the European Order for Payment. We, in conjunction with other Member States, have argued that such forms are unsuitable to be completed by litigants in person and small businesses and others. Nor did we consider the guidance for the claimant or defendant adequate.

The forms were subject to considerable amendment following discussions within the Council Working Group. I enclose a copy of the Finnish Presidency’s revised text that incorporates these changes. We take the view that, although the new drafts are a significant advance on the originals, there remains room for improvement when the forms and guidance notes are revisited in September to ensure that they are consistent with the aims of a simplified procedure. To this end the UK will be submitting a paper to the Working Group together with new draft forms for consideration including improved guidance and more use of tick boxes to avoid the need for translation. We will also raise the Committee’s suggestion that there should be a reference to ADR. The error in relation to the letters ascribed to the forms in Articles 4(2) and (3) to form D has been identified will be rectified to reach form C and there has been agreement to delete form D altogether.

30 August 2006

**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**

Thank you for your letter of 16 December61 which was considered by Sub-Committee E (Law and Institutions) at its meeting of 8 February 2006.

The Committee welcomes your assurances that the protection of fundamental freedoms, and in particular freedom of expression, will be given the utmost consideration in the implementation of the Strategy. We will examine carefully all proposals and initiatives which emanate from this Strategy in order to ensure that fundamental rights and freedoms are not eroded.

In order to do this as effectively as possible, it is critical that we have sight of proposals and accompanying EMs at the earliest possible stage. While we accept that time constraints and divergent views within the Council can make it difficult to submit proposals well in advance of adoption, we are sure you will agree that sufficient time ought to be allowed for scrutiny by national parliaments and that the scrutiny reserve should only be overridden in exceptional circumstances. Documents which are most sensitive, and will therefore be the hardest to agree within the Council, are the very documents which this Parliament ought to have the opportunity to examine in detail. Your undertaking to ensure that any legislative proposals or financial initiatives that may emanate from the Strategy in the future will be submitted for scrutiny “as soon as is practicably possible” is helpful. However, it provides limited reassurance where it is not, in the Government’s opinion, practicably possible to deposit the proposal any earlier, as appears to have been the case here.

We urge the Government, in such cases as these, to look at ways of maximising parliamentary participation. A recent Report by this Committee, *Review of Scrutiny: Common Foreign and Security Policy* (19th Report, Session 2005–06, HL 100) looked at scrutiny in second pillar matters. The Committee reported the efforts

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made by the FCO to enable more effective scrutiny to take place. These include advising the Committee in advance of proposals which are expected to be agreed and submitting draft (ie unsigned) EMs at the same time as the proposal. In relation to restricted documents, an unclassified summary is provided to assist the Committee. We invite the Home Office to adopt this practice. We would also encourage the submission of earlier drafts of proposals and delaying the adoption of proposals which are not time-critical.

The Committee decided to clear this document from scrutiny.

9 February 2006

FIGHT AGAINST ORGANISED CRIME (6582/05, 8496/06)

Letter from the Chairman to Paul Goggins MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 19 December 200562 which was considered by Sub-Committee E (Law and Institutions) at its meeting on 18 January. We are pleased to note that you share the Committee’s concern regarding the need for clarity of language in the Framework Decision. We note that the negotiations are ongoing and that there are differences of view among Member States relating to Articles 1 and 2. We thank you for your undertaking to keep the Committee informed of developments.

The Committee decided to retain the proposal under scrutiny.

19 January 2006

Letter from Paul Goggins MP to the Chairman

Thank you for your letter of 19 January 2006 on the above draft Framework Decision. I am writing partly in response to that letter but also to let you know that the Austrian Presidency is moving this dossier forward more rapidly than we had anticipated. The new draft text, upon which the Presidency is seeking general agreement in principle at the JHA Council on 27 April, has only very recently been issued and has been deposited with the scrutiny committees in both Houses. In the Government’s view this text is acceptable as will be explained in the Explanatory Memorandum which will follow shortly. In the circumstances, however, I would like to take this opportunity to bring you up to date and touch on the remaining outstanding issues in our correspondence.

First, I would like to reassure you that the new text reflects your concerns which, as ever, have been very helpful during the course of the negotiations. The Austrian Presidency has focussed on resolving the outstanding questions relating to Articles 2 and 3. As a result there has not been an opportunity to consider your point about whether the language in Article 1 referring to the offences falling within the scope of the instrument needs to be amended to make it clear that it is a reference to national laws only and does not embrace international law.

However, our understanding is that Member States interpret the language as reference to national laws only. Despite the late stage in the negotiations we will seek to raise this point should an opportunity arise. Our current view, however, is that the instrument would be acceptable even if no such amendments were made.

As regards Article 2, the proposed directing offence has now been omitted and the conspiracy option of the Joint Action of 1998 included. Accordingly, Articles 2 and 3 are now to be treated as a package, providing added value by including in Article 3 some approximation of maximum penalty levels, which was of course absent from the Joint Action. We believe that Articles 1, 2 and 3, as drafted in the text just issued, are a proportionate response to the need to ensure that Member States’ laws are adequate to provide a European response to organised crime.

There has not yet been a suitable opportunity to address your concern about Article 9 insofar as it concerns how a TEC instrument should be construed. I understand this concern and we will continue to seek to address the point. If the Article is adopted in its present form it is possible that the reference to TEC instruments may be of no legal effect. This is not very satisfactory from a technical point of view but we do not consider that this potential technical defect in the instrument would justify the UK blocking a general agreement to the present text.

We will inform you of the outcome of the discussion of this dossier at the JHA Council on 27 April.

24 April 2006

Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 24 April which was considered by Sub-Committee E (Law and Institutions) at its meeting on 3 May. It is regrettable that you were not able to inform the Committee of progress of negotiations until just three days before the Justice and Home Affairs Council and that your Explanatory Memorandum on the new draft text has still not been provided to Parliament. We note, however, that, as described in your letter, certain progress has been made and that the Government have been receptive to the points made earlier by the Committee. We look forward to learning from you of the outcome of the discussions at the JHA Council and, in particular, whether scrutiny has been overridden in this case. In the meantime the proposal is retained under scrutiny.

4 May 2006

Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office
to the Chairman

In his letter of 24 April, Paul Goggins indicated that he would write to inform you of the outcome of the JHA Council consideration of this instrument. I have now taken over Ministerial responsibility for this portfolio and am writing to you as promised.

The Council succeeded in overcoming the outstanding issues relating to Articles 2 and 3 and agreed a “general approach”. A number of Parliamentary scrutiny reservations were maintained however, including that of the United Kingdom. I attach the text of the instrument as considered at the Council. This text differs in no significant way from the text (DOC 8496/06 of 20 April) to which our latest EM relates.

As explained in Paul Goggins’ last letter this dossier moved towards agreement more quickly than we had anticipated. Fortunately, in this instance the negotiations produced a text that raised no substantial issues for the United Kingdom. In the circumstances, the Government did not believe that it was right to block a general approach. I would like, however, to offer my apologies for any constraint the Committee may feel as a result of the haste with which the substantive negotiations of this instrument were concluded.

Your points on Articles 1 and 9, touched upon in my letter of 24 April, were raised with the Presidency. As regards Article 1 the Presidency confirmed that the reference to offences in the definition of a criminal organisation was intended to be a reference to offences in national law only and not to embrace international law. The Presidency believes, however, that no textual clarification is necessary as this interpretation is, in their view, the natural reading of the text. As regards Article 12 the Presidency noted the point and indicated that they would consider the case for clarification. No changes to the text were made. As indicated in Paul Goggins’ letter of 24 April the Government takes the view that the technical defect that the current wording may involve is unsatisfactory but unlikely to be of any practical significance.

Finally, I hope that you will now be able to clear this document from outstanding scrutiny in readiness for formal agreement. I am of course open to answer any outstanding questions you may have.

17 May 2006

Letter from the Chairman to Vernon Coaker MP

The revised text of the Council Framework Decision was considered by Sub-Committee E (Law and Institutions) at its meeting on 24 May. The Committee is grateful for your Explanatory Memorandum of 16 May which in part responds to the concerns raised in my letter of 4 May. The Committee decided to retain the proposal under scrutiny.

Two points of concern remain. First, you say that the reference to offences in Article 1 is a reference to offences in national law only and does not embrace international law. This does not appear from the text of that Article or from any of the recitals. We would therefore be grateful for explanation of the reasons for reaching your conclusion.

Second, we note that the text of Article 9 has not been amended. The Government have recognised that Article 9 may be of no legal effect and your predecessor said, quite candidly, that the Government did not regard the presence of Article 9 as a reason for blocking the measure. However, has the Government considered making a minute statement to the effect that the United Kingdom considers Article 9 to be of no legal effect, there being no power in the Treaty on European Union to amend measures made under the Treaty establishing the European Community?

The Committee decided to retain the proposal under scrutiny. We look forward to receiving your response on the points set out above.

25 May 2006
Letter from Vernon Coaker MP to the Chairman

Thank you for your letter of 25 May. I note that the proposal is retained under scrutiny by the Committee. I shall first deal with your two specific points. As regards your point on Article 1, the Government takes the view that whilst Article 1 does not expressly set out the scope of “offences”, this term is intended to be defined by reference to domestic offences only. There is nothing in the text of the Framework Decision to indicate that offences which are not offences in national law should be covered. We have raised the point during negotiations and the understanding amongst Member States is likewise that the word “offences” is a reference to offences in national law only. The Government will accordingly interpret the reference in that way when we come to implement the instrument. As I mentioned in my last letter, when asked about this point directly the Presidency took the view that no clarification is required. In these circumstances, given the late stage in the negotiations, the Government does not propose to press the Presidency further on the point.

Turning to Article 9, I believe that your assessment of the legal impact of the Article, insofar as it purports to provide for the interpretation of EC instruments, is correct. It is, however, as I am sure you agree, very sensible to seek to ensure that the references to participation in a criminal organisation are interpreted in accordance with the new instrument. If the European Court of Justice were called upon to consider Article 9 it may hold that it had no effect insofar as it purported to amend references in Community measures. This would limit the scope of Article 9’s interpretative provision but would not amount to a serious flaw in the legislation with any significant implications for EU or national law. The Government has alerted the Presidency to the point. Although mindful that the position is not ideal the Government is in agreement with the intent of the Article and is therefore not minded to take up the issue in a minute statement.

I hope you find my explanations helpful and that the Committee will be able to clear the document from outstanding scrutiny in readiness for formal adoption of the proposal. I am, of course, available to answer any further questions you may have.

26 June 2006

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 26 June which was considered by Sub-Committee E (Law and Institutions) at its meeting on 12 July. I am sure that you will not be surprised to learn that the Committee is disappointed with the response given by the Government.

On the first point (the scope of “offences” referred to in Article 1) it seems surprising that the Government are prepared to accept the word of the (then) Austrian Presidency as being definitive as to what Article 1 means. You say that “given the late stage in the negotiations” the Government do not propose to press the Presidency further on the point. You will recall that the Committee first raised this issue in my letter of 7 April 2005. As regards Article 9, the Government and the Committee are at one in believing that this provision is ultra vires. We regret that you do not feel able to take up our suggestion that there might be a Council minute statement dealing with Article 9 because “the Government is in agreement with the intent of the Article”. We do not believe that an appropriately drafted minute statement need contradict that position. It need only draw express attention to the fact that Article 9 is ultra vires. You conclude that Article 9 “would not amount to a serious flaw in the legislation”. We consider it to be a thoroughly bad precedent.

We note, however, that the Framework Decision has in effect been agreed. In these circumstances, notwithstanding its remaining concerns, the Committee decided to clear the proposal from scrutiny.

13 July 2006

Letter from Vernon Coaker MP to the Chairman

Thank you for your letter of 13 July. I am very grateful to the Committee for clearing the proposal through scrutiny.

I note your comments on the Government’s response to the Committee’s views on certain aspects of Article 1 and Article 9. As I am sure you agree, I do not think it would be helpful to rehearse the Government’s views on these points once again, although I should add here that I agree that the conflict between EU and EC areas of competence in Article 9 is less than ideal. I share your view that it is an unwelcome precedent. We shall endeavour to ensure that this is not repeated in future instruments.

More generally I share your concerns that the scrutiny process on this instrument has been a little less than satisfactory. I sought to explain in previous correspondence this is partly due to the negotiations proceeding to the end game rather more quickly than officials had anticipated. Furthermore, we are currently undertaking a review of the departmental arrangements for handling EU business, including how to ensure matters such
as our scrutiny commitments are met as efficiently as possible. In any event I apologise for any dissatisfaction experienced by the committee in the handling of this dossier and assure you that we will strive to avoid any repetition of this experience in the future.

Undated, received August 2006

FUNDAMENTAL RIGHTS AGENCY (10774/05)

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

You wrote on 1 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 overburden 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 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

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

As explained to your officials prior to the recent GAERC Council meeting, where proposals have undergone substantial changes following their deposit for scrutiny, we expect them to be re-submitted and cleared from scrutiny before any agreement is reached in the Council. We are disappointed that the revised Fundamental Rights Agency proposal was not re-submitted before the GAERC Council, where it was hoped agreement could be secured. As outlined in our recent report on the Agency, we have been aware for some time of the progress of negotiations and the substantial changes being discussed in the Council and the Parliament. This does not, however, relieve the Government of the responsibility of submitting revised drafts to us. As you know, a similar situation recently arose in respect of the proposal for a European Small Claims Procedure and I understand that you are taking action to address the problem.

In the case of the Fundamental Rights Agency, we agreed on 12 June to waive the requirement to resubmit in order to clear the way for agreement to be reached at the GAERC that day. On this occasion we had seen the revised text and a number of the proposed changes were discussed in the debate in the Chamber on 8 June. This should not set a precedent for future cases and is no substitute for following the correct procedure in future.

We note that the recent GAERC Council meeting failed to reach agreement on the proposal establishing a Fundamental Rights Agency and this has now been referred back to COREPER. Like our sister committee in the Commons, we look forward to seeing the revised proposal under cover of an Explanatory Memorandum.

6 July 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 6 July. I am extremely sorry if there has been any appearance of discourtesy. As you know, I take the process of Scrutiny very seriously and am anxious that we follow both proper procedures, and also the expressed wishes of the House and your Committee.

As you know, we had a very full and useful debate in the House on 8 June of both the Fundamental Rights Agency and the Gender Institute. As a result, your Committee agreed on 12 June to waive the requirement to resubmit in order that agreement could—if possible—be reached at the GAERC meeting that very day. I was very grateful for the co-operative attitude taken by the Committee, which I fully recognise is an exception to normal practice.

I am sorry we did then not formally submit the final version of the Austrian Presidency Proposal to the Sub-Committee. The truth is that there was very little time between receiving the Committee’s agreement and the GAERC meeting. And as things turned out, it was not possible to reach anyway, and the dossier has now passed to the Finnish Presidency, who are aiming to take a revised proposal to the Justice and Home Affairs Committee in October. We are expecting the Finns to produce a revised Regulation and, when they do, we will resubmit it to both Scrutiny Committees, together with a new Explanatory Memorandum, as requested by the Commons European Scrutiny Committee. I hope this clarifies any misunderstanding.

More generally, it seems to me that there might be value in Peter Thompson (the Head of our European and International Division) meeting Chris Kerse to review the way the Scrutiny process is working and to ensure that, in the next Session, we are able fully to satisfy the Sub-Committee’s requirements across the board. Depending upon what progress they make, that might be the precursor to a meeting between the two of us about the way we can make the Scrutiny process work more smoothly.

11 July 2006
Letter from Rt Hon Geoff Hoon MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

Following my Evidence Session before the Committee on 13 July, I promised to respond in writing to the following question.

**Fundamental Rights**

We note the commitment in the Preliminary Agenda for Finland’s Presidency (dated 24 May) to “mainstream human rights policy, incorporating it into all EU policy areas” and to increase its coherence. Is securing agreement on the Fundamental Rights Agency proposal a priority for the Government? Will the UK be prepared to block the adoption of this proposal if other Member States agree on a Third Pillar remit?

We welcome the Commission proposal to establish a European Fundamental Rights Agency (FRA). There are, at present, no EU bodies to assist Community institutions on fundamental rights issues. The FRA will fill this gap. In order to add real value, the Agency should be a fact-finding and opinion-giving body, assisting Community Institutions on fundamental rights issues. It should avoid duplicating the work already done by the Council of Europe and other human rights institutions.

Negotiations by the FRA are still ongoing in Brussels at working group level. The Finnish Presidency hopes to reach agreement on the Agency by October 2006, so that it can start work in January 2007.

It is unlikely, at this stage, that the question of the UK blocking the adoption of the proposal on account of the Third Pillar remit will arise. A number of Member States share our view that there is no adequate legal base in the current treaties that allows the Council to extend the Agency’s remit to Third Pillar matters (police and judicial co-operation). We will continue our efforts to remove the Third Pillar remit from the proposal.

20 July 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

In my letter of 11 July 2006, I stated I expected to receive a revised and final text of the proposal to establish a Fundamental Rights Agency (FRA) in October and to submit an Explanatory Memorandum of the amended proposal to Parliament.

I am writing to you to inform you of the latest developments on the FRA proposal and the proposal to establish a Fundamental Rights and Citizenship Programme (FRCP) which falls under the same Council Working Group. Following the discussions at the Council Working Group, there is as yet no political agreement on both proposals. The main areas of discussion on the FRA proposal are the references to the Charter of Fundamental Rights, the Agency’s geographical scope, the Agency’s role under Article 7 Treaty on European Union and the Agency’s possible third pillar remit. The main points of discussion on the FRCP proposal are the references to the Charter, the limitation of the Programme to Community law, the types of actions listed in the Programme and their geographical scope. This means the current drafts of the proposals, as last amended by the Austrian Presidency, are likely to change again.

The Finnish Presidency is pushing forward the discussions and aims to achieve political agreement at the Justice and Home Affairs (JAI) Council of 5–6 October 2006. Although agreement may still not be reached, as was the case at the June General Affairs and External Relations Council, the Presidency appears to be strongly committed to this deadline. It is, in my judgement, unlikely the Government will be able to postpone it.

The Government expects to have the final versions of the proposals only at the very late stage of the negotiations. In the case of the FRA proposal, the final text could be expected following the COREPER meeting of 27 September or 4 October. For the FRCP, the final text could result from the Council Working Group meeting of 28 September. As my officials have already indicated to the Committee Clerk, this would mean that the Government would be unable to complete the Parliamentary scrutiny process in time for the JAI Council of 5–6 October.

The Presidency’s timetabling is such that the Government may have to override scrutiny either at the JAI Council of 5–6 October or at a later Council as the same problem will re-occur until the Council reaches a definite political agreement. The Government will, of course, provide the Explanatory Memoranda of the final texts of the proposals as soon as they are made available following the JAI Council 5–6 October or a later Council when agreement will be reached.
I am aware of the importance of Parliamentary scrutiny of European legislation and I hope I made it clear in my update to you that the Government has considered very carefully what would be involved in any decision to override the scrutiny process and how the Presidency’s timetabling offers no feasible alternatives to this decision.

I shall keep you informed on the progress of the FRA and FRCP dossiers and I would be happy to meet you to discuss these matters further.

8 September 2006

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW: ACCESSION OF THE EUROPEAN COMMUNITY (15835/05)

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

The proposed Council Decision was considered by Sub-Committee E (Law and Institutions) at its meeting on 25 January. The Committee decided to retain the proposal under scrutiny and would be grateful for your views on the following concerns.

You say that the proposal would not in any significant way affect the practical conduct of negotiations in the Hague Conference. However, we believe that it is a significant step to move from “observer” to “member” status. While this may increase the negotiating strength of the community, as 25 States acting in a bloc, we can also see the potential disadvantage in that a strong common law voice may be lost to the debate. Would the United Kingdom still be able to speak as regards those territories for which it is responsible but which are not part of the European community? To what extent might its advocacy of the common law position be compromised or fettered by the duty of loyal cooperation?

We agree that, as a matter of legal theory, accession to the Convention would not affect the extent or application of external Community competence in the Conference. As you say, the Community’s external competence in this field derives from so-called “internal rules” such as those listed in the Declaration of competences annexed to the draft Decision. The precise extent of community competence in relation to a particular subject or agreement is therefore a matter of concern and conceivably debate between the Commission and the Member States. The matter is of particular relevance to the United Kingdom (and indeed Ireland) who retain the right to “opt-in” to specific Community private international law measures. Can we be assured that the Government will, when it is considering whether to opt-in to a particular measure, have regard to the external competence implications of the proposal?

We have considered the Declaration of competences. It is to be noted that the Commission starts with a general description of its (internal) competence and then goes on to list a number of instruments (the “internal rules”) so far adopted. What the draft Declaration does not indicate is the precise extent of (external) competence resulting from each Regulation or Directive. You will recall that on a number of occasions the Committee has been concerned that a Commission proposal may seek to give the Community rules universal application and not restrict them to intra-Community transactions or procedures. Can we have your assurance that the Government will continue to pay close regard to this point?

A further issue arises from the statement in the draft Declaration that the extent of Community context is “by its nature, liable to continuous development”. It would be helpful if we could have some clarification of this statement. In particular, were a matter to become the subject of a proposal for a Convention of the Hague Conference what would be the effect if the Commission brought forward a proposal on the same or a closely related matter for the Community? Would Member States remain free to discuss and negotiate in the Hague Conference any rule which might also become part of or affect the Community instrument?

We look forward to receive your response to these questions.

26 January 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 26 January. You have expressed concern about the possibility that one consequence of the European Community becoming a party to the Hague Conference is that all the Member States of the EU will, as a result, on many issues be required to act en bloc in the negotiations in that forum and that this will inevitably diminish the force of the United Kingdom’s individual common law voice in those negotiations would make four points in response to this concern. I should say at the outset that even in areas governed by Member State competence a duty of loyal cooperation is imposed on the Member States and operates in external negotiations. This duty is established under Article 10 of the EC Treaty.
My first point is that, as was pointed out in the Explanatory Memorandum, the requirement for the Member States to act en bloc derives, as a matter of Community law, from the existence of external Community competence which in turn arises principally as a result of the adoption of Community legislation. Accordingly the obligation on the United Kingdom in a growing number of instances to conform to Community positions in external negotiations in the Hague Conference derives from the adoption of that legislation, and not from the accession of the Community to the Hague Conference. In this respect the change in the Community’s position from being an observer to being a full member of the Conference will not be significant. In this context I am aware of the recent decision of the Court of justice in Opinion 1/03 in which the Court has in certain ways extended the scope of application of external Community competence. However that development does not in any way weaken my clear view that the EC’s accession to the Hague Conference would not affect the circumstances in which Community competence arises.

My second point is that it was generally agreed during the negotiations on the Community’s accession, that the Member States should continue to contribute to discussions on all matters which are being negotiated at the Conference, whether or not those matters fall within the competence of the Community. The one proviso was that Member States should not speak against any aspect of a Community negotiating mandate. This pragmatic and sensible arrangement was designed to avoid complex legalistic arguments about competence impeding the smooth conduct of the negotiations. It should ensure that the United Kingdom’s voice continues to be properly heard at the Conference and that we remain a major contributing influence there.

My third point is that it is in the United Kingdom’s interest that the Community should be fully and properly participating in the business of the Hague Conference; ensuring that the Community becomes a full member of that organisation is a significant part of that process. In the area of private international law the United Kingdom has long supported the development of world-wide conventions to further the harmonisation of the law in this area. The Conference is the pre-eminent forum for the conclusion of such agreements which, if successful, confer significant commercial benefits and establish important protections for children caught up in international legal disputes.

My fourth point is that the extent to which the United Kingdom’s policy objectives may in future be compromised as a result of external Community competence will depend on the particular dossier and issue in question. Inevitably some compromises will be necessary in order to achieve a common position within the Community, but I can assure you that we will continue to argue as best we can for positions which are in the national interest. On the basis of the latest Hague Convention, the 2005 agreement on Choice of Court Agreements, where there was a substantial element of Community competence and where the overall outcome was satisfactory, I am cautiously optimistic that we can ensure that the new arrangements can generally be made to work to our advantage.

In response to your question the United Kingdom will remain able to speak at the Conference for those overseas territories for which it is responsible but which are not part of the EU. However I do not expect that contributions on this basis are likely to be made regularly.

You have raised the importance for the United Kingdom in this context of the opt-in under the Title IV Protocol to which both the UK and Ireland are parties. I can assure you that in deciding whether the United Kingdom should opt-in to any measure under this Title the Government will give full and proper consideration to the consequences for external Community competence of so doing, although this will, of course, only be one of a number of relevant considerations in making such a decision.

In the context of external Community competence you have also raised the problem, which has arisen on various dossiers, of the lack of any proper limitation on the scope of instruments proposed by the European Commission. As you know we have argued repeatedly for such limitations in order that the requirements in Article 65 relating to cross-border implications and what is necessary for the proper functioning of the internal market should be adequately satisfied.

Finally you have highlighted the reference in the draft Declaration of Community competence that such competence is “by its nature liable to continuous development”.

As I understand this reference, it is merely pointing out that such competence is never finally fixed and will increase whenever an instrument of Community law is adopted by the Council. As a matter of Community law, where a subject area falls within the competence of the Member States, external Community competence arises only in this context at the moment when the Community instrument is adopted and not before.
Accordingly, on the example you give, there would be no such external competence merely on the basis of a proposal from the Commission. In such cases the position of the Member States in negotiations at the Hague Conference, which have already started, would be unaffected. The retention of Member State competence would not prevent the possibility of informal co-ordination between the Member States during those negotiations.

17 March 2006

**Letter from the Chairman to Rt Hon Baroness Ashton of Upholland**

Thank you for your letter of 17 March which has been considered by Sub-Committee E (Law and Institutions). We are most grateful for the full and clear explanations you have given and also for your assurance that the Government will have regard to the potential external competence implications of legislative proposals under Title IV TEC when deciding whether or not to opt-in.

The Committee decided to clear the proposed Decision from scrutiny.

27 April 2006

**ILlicit Trafficking on the High Seas (5382/02, 5563/02)**

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

In my letter of 30 June 2004 I provided you with an update regarding an initiative by Spain relating to the boarding and seizure of vessels on the high seas.

The proposal, first proposed by Spain in February 2002, has made no progress. Successive Presidencies have not tabled the issue for discussion, so the proposal remains extant.

The Government’s view remains unchanged that because of the legal and constitutional problems the best outcome would be the withdrawal of the proposal. Only the Spanish, however, can withdraw the proposal and despite discussion with them they are reluctant to do so. We will continue to informally press them to withdraw the proposal but, without their agreement, there is little else we can do.

24 July 2006

**Information Extracted from Criminal Records (5463/06)**

**Letter from the Chairman to Andy Burnham MP, Parliamentary Under Secretary of State, Home Office**

Sub-Committee E (Law and Institutions) considered this proposal at its meeting of 26 April 2006. We have a number of comments on the proposal which we outline below.

**Number of “Central Authorities”**

The principal tasks of the single “Central Authority” designated under Article 3 seem to be to (1) receive and store information on non-UK convictions transmitted to the UK (as the Member State of nationality) from other Member States; (2) respond, in respect of non-UK convictions, to requests from other Member States for criminal record information; (3) relay requests from other Member States for criminal record information to the appropriate UK authority in respect of UK convictions; and (4) make requests for criminal records information from other Member States. Do you agree that, as the proposal stands, the Central Authority’s tasks are those outlined above? If this is the case, the existence of multiple authorities holding criminal record information in respect of UK convictions appears not to be affected by the proposal: these authorities would be permitted to transmit details of UK convictions to the Member State of nationality under Article 4 and would seem to be able to reply directly to the requests of the Central Authorities of other Member States. What difficulties do you therefore see arising as a result of the proposal?

The main disadvantage we see in creating a body to perform the role envisaged in the proposal is the dispersal of criminal record information on UK nationals across a range of bodies depending on where the conviction was imposed. To what extent does such a dispersal already arise (i.e., through Scottish convictions being recorded in Scotland and English convictions being recorded in England)? What are the potential problems arising from the creation of a single authority? Would it not be preferable to take the opportunity of bringing together this information under one body?

**Data Protection**

Recital 10 refers to the proposal for a Framework Decision on data protection in the third pillar. We consider it important to have a structure in place to ensure that all measures in the third pillar which affect personal data are subject to protections against abuse. Although Article 9 places some conditions on the use of data provided under the present proposal, we do not consider it desirable to deal with data protection issues on an *ad hoc* basis. We are strongly in favour of the agreement of an overarching data protection Framework Decision and urge the Government to make the agreement of future data exchange measures, including this one, conditional upon the conclusion of a robust Framework Decision on data protection.

Article 9(4) requires Member States to take the necessary measures to ensure that personal data transmitted to a third country “are subject to the same usage restrictions as those applicable in Member States under Article 7(1), (2) and (3)”. There do not appear to be usage restrictions in Articles 7(1), (2) and (3); usage restrictions appear in Articles 9(1), (2) and (3) and we would be grateful if you would confirm whether this is merely a typing error.

Article 5(2) obliges the convicting Member State to notify the Member State of nationality of any alterations or deletions to criminal record information. The proposal does not appear to include a provision to ensure that a Member State which has received criminal record information from the Member State of nationality prior to its alteration or deletion is notified of the amendments. Do you agree that a provision of this nature is necessary?

**Content of Information Transferred**

The Commission has also adopted a separate proposal for a Framework Decision on the taking into account of convictions in the Member States, which would require Member States to give a conviction handed down in another Member State equivalent effect to a national conviction. In these circumstances, it is important that the criminal record information retained and transferred between Member States is accurate and comprehensive. We note that you propose retention of “only that information which would fall within the current or future format of criminal records information held on PNC”. What information is currently held on PNC? Is this information, in your view, sufficient to ensure that the operation of this Framework Decision will not lead to unfair or unjust results when combined with the Framework Decision on the taking into account of convictions in the Member States?

**European Index of Offenders**

The White Paper on exchanges of information on convictions and the effect of such convictions in the European Union envisaged a European Index of Offenders. This would be a central database, containing the names of all those with convictions imposed in the EU, and would direct Member States to the Member State(s) involved for further information on the nature of the conviction. This was changed to the model set out in the current proposal following a pilot project carried out by four Member States.

While we are in principle content with the approach outlined in the proposal, we are concerned that the absence of a list of “EU” offenders might result in criminal record information being less comprehensive than it could be. The proposal seems to be based on the implied presumption that the nationality of offenders will be easily ascertainable, presumably through the production of a passport or other identity document. However, individuals with two or more nationalities might “declare” only one nationality (and provide only one passport) leaving the convicting State in the dark as to his other nationalities. One could therefore envisage a situation where different criminal record information on an individual is held by several Member States, as the “Member State of nationality”, each unaware that the individual in question has more than one nationality. Do you agree that this anomaly leaves the proposed system open to potential abuse in this manner? What might be done to prevent such abuse?
THIRD-COUNTRY NATIONALS

The proposal deals only with convictions of individuals holding the nationality of a Member State. The Commission’s Explanatory Memorandum explains that Member States, at the Council meeting of 14 April 2005, were in favour of creating an index of persons convicted within the EU who are third-country nationals. Has the Commission been invited to present proposals on this? If not, how will the criminal record information of third-country nationals be stored, managed and transferred?

We have decided to hold the proposal under scrutiny.

27 April 2006

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman

Thank you for your letter of 27 April with the comments of sub-committee E (law and institutions) on the above proposed Framework Decision. I give below responses to the issues on which the sub-committee raised.

NUMBER OF “CENTRAL AUTHORITIES”

To clarify the roles of the UK Central Authority under Article 3 are as follows:

1. To receive and store information on non-UK convictions transmitted to the UK (as member state of nationality) from other Member States.

2. To transmit information on UK convictions made against a national of another Member State to that Member State.

3. To receive requests from other Member States for criminal record information in respect of UK convictions.

4. To request criminal record information from other Member States.

It is true that under the current proposal role 2 can be undertaken by more than one CA, as can responses to requests made under role 3.

The current Council Decision (CD) also sets the roles of CA’s as above. To implement the CD, officials from ACPO, PSNI and SCRO have reached agreement on how the UK will be best placed to undertake these roles, ensuring that responses and advices to other Member States reflect the whole UK position. These agreements ensure that all communications are done by or with the knowledge of the UKCA so that other Member States avoid confusion on whom they are dealing with. The agreements will also ensure that quality and timeliness standards are set and maintained.

There is currently a dispersal of criminal record information within the UK. In England and Wales the police enter details of all convictions for recordable (and in specific circumstances non-recordable) offences onto the Police National Computer (PNC). In Scotland all convictions are recorded in the Criminal History System (CHS). The vast majority of those records are also sent electronically to create PNC records, but a percentage is recorded only on CHS. In Northern Ireland the PSNI record and maintain all Northern Ireland criminal convictions. At present PSNI only record serious sexual offences on PNC.

The potential problems that this dispersal would create to a single UKCA, are managed through the agreements I referred to earlier.

With regard to the bringing together of this information under one body, ACPO would support the view that all UK conviction records should be recorded on the PNC. The view of the Scottish Executive would not be to support such a move unless it preserved the current arrangements which include additional functionality and capability that the CHS system has over and above being a criminal record.

DATA PROTECTION

Your comments relating to an overarching data protection Framework Decision are noted. During further negotiations, more details will be sought and the Committee advised on progress.

The restrictions contained in Article 9 are the conditions for the use of data under Article 7, and therefore where Article 9(4) refers to usage restrictions under Article 7(1), (2) and (3) the conditions of Article 9 will apply.

With respect of Article 5(2), the provision that you seek is contained within Article 4(4).
CONTENT OF INFORMATION TRANSFERRED

The PNC holds a vast amount of information under a number of general headings including:

- Person/Descriptive
- Occupation
- Alias/name charge
- Nickname
- Alias/charge date of birth
- Local reference number
- Police circulation reference
- Police officer with knowledge
- Passport
- Other references
- Internal cross references
- Warning signal
- Information marker
- Known associate
- Marks scars abnormalities
- Jewellery
- Habits and mannerisms
- Special skills and knowledge
- DNA
- Habitual dress
- Record other details
- Conviction summary item
- Organisation
- Address
- Place frequented
- Arrest summons
- Charge
- Impending/disposal
- Other charged with
- Other cautioned/convicted with
- Court case
- Subsequent appearance
- Remand
- Custody period
- Period in institution
- Release
- Photograph location
- Fingerprints

Of that information only a limited amount of information would be passed between Member States based upon what is required by the Member State according to their entry in the Manual of Procedure.

It will be important to ensure that the information exchanged is consistent throughout the EU and exchanged in the same format. During the negotiations for this FD and the FD on taking into account convictions in Member States, we will consider how best to achieve this.

EUROPEAN INDEX OF OFFENDERS

It is of course difficult to prevent a person from giving different nationality details when they come to the attention of the authorities. Whilst Identity cards and passports assist they are by no means foolproof and the determined criminal will try to find ways of beating the system. Within the UK the use of fingerprints as an identification means is more widespread than it is in the EU. We believe that this subject needs to be explored further in the future.

THIRD-COUNTRY NATIONALS

Convictions are already being exchanged between non EU countries and the UK (and probably other EU Member States) on a limited basis. Where they are received in the UK it is possible that the detail will be entered onto PNC.

15 June 2006

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 15 June 2006 which was considered by Sub-Committee E (Law and Institutions).

NUMBER OF CENTRAL AUTHORITIES

We are grateful for the clarifications you provide regarding the co-operation of existing UK authorities. While it seems regrettable that all UK criminal record information is not currently (and may not in the near future be) stored by a central authority, we welcome the agreement reached by the three different UK authorities as a step in the right direction.
DATA PROTECTION

You say that provision for Member States who requested criminal record information prior to it being amended to be notified of the changes is "contained within Article 4(4)". But Article 4(4) only seems to require the convicting State to advise the Member State of nationality of the change; it does not appear to impose an obligation on the Member State of nationality to advise States which have previously requested information in respect of the individual concerned of the changes. Is this obligation contained elsewhere in the proposal? Should Article 4(5) be read to encompass this obligation? If so, it might be made clearer.

We note that in his recently published opinion on this proposal, the EDPS was, like this Committee, keen to see the proposal linked to the data protection Framework Decision.

CONTENT OF INFORMATION TRANSFERRED

You say that while the PNC holds a vast deal of information, only a limited amount would be passed between Member States based on "what is required by the Member State according to their entry in the Manual of Procedure". We note the references to Manual of Procedures in the Annex to the proposal and would be grateful if you could provide a copy for the Committee. We are interested to ascertain its scope and purpose.

EUROPEAN INDEX OF OFFENDERS

We welcome your suggestion that further attention be given to the matter of identification. We consider that fingerprinting would be a helpful means of establishing the identity of individuals, although ambiguity over their States of citizenship may remain. The provision requiring the Member State of nationality to transfer details of a conviction passed down on its territory to other States of nationality goes some way to addressing this problem. Should there be an obligation on States of nationality regularly to compare records relating to their citizens holding dual nationality with another Member State with the other State of nationality? Might not such an obligation assist in ensuring that records in all States of nationality are comprehensive and up to date?

THIRD-COUNTRY NATIONALS

Do you expect the Commission to produce proposals for an index of convicted persons to cover third-country nationals only? While we note that some details of convictions of third-country nationals may be entered on the PNC in the UK, it seems to us that a more organised system is to be preferred.

SCOPE OF APPLICATION

The EDPS, in his opinion, called for the proposal to be limited to more serious criminal offences. He suggested that the current wide scope of application might exceed the limits set by the principle of proportionality. Have there been discussions in the Working Group on this matter? Would the Government support a restriction to serious crimes? What disadvantages or difficulties might there be if the proposal was so limited?

INTERCONNECTION OF CRIMINAL RECORDS PILOT PROJECT

You are no doubt familiar with the pilot project currently being undertaken by France, Germany, Spain and Belgium. This project operates along similar lines to the proposed Framework Decision, identifying the Member State of nationality as the State responsible for storing criminal record information. While the participants seem to consider the pilot a success, they highlight some of the problems yet to be resolved.

One of the most significant differences of opinion between Member States relates to the amendment of the criminal record in the convicting State. We understand that, under the pilot scheme, Germany will not remove a French conviction from the criminal record of a German national where under French law the conviction has expired. The conviction will only be removed where this is provided for under German law. While it is clear that the State of nationality is the "holder" of the information under the proposal, it is less apparent which State is or ought to be the "owner" of the information, having the right to amend or erase it. What view do the Government take on this issue?

Similarly an offence committed by a German national in France, which is punishable in France by not in Germany, is not recorded in the criminal record information by Germany. This undermines the comprehensive nature of the file held by the German authorities: while the offence may not be punishable in
Germany, it may be punishable in Italy and Italian authorities seeking criminal record information from Germany would wish to be apprised of the previous French conviction. How does the system envisaged under the proposal intend to deal with this contentious matter?

More generally, we are concerned that the lack of similar procedures, and possible substantial divergences in practice, in prosecuting offences and recording criminal record information across the EU may have implications for the position of the individuals concerned and strain the very principle of mutual recognition on which this proposal is based. Do you consider that this is likely to be a problem?

We have decided to retain the proposal under scrutiny.

29 June 2006

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 29 June with the comments of Sub-committee E (Law and Institutions) on the above proposed Framework Decision. I give below responses to the issues on which the Sub-committee raised.

Data Protection

With respect to your first paragraph, the requirements of Article 9 placed upon convicting Member States and Member States of nationality ensure the currency of information. All other Member States who request and receive information can only use it for the purpose requested, so information can only be used in the current context.

The EDPS attended a working group on the Framework Decision on 28 June. He made it clear that as long as Data Protection principles were maintained, this FD need not be dependent upon the Data Protection Framework Decision. Rather, he suggests that the development of the Data Protection FD is considered to avoid the necessity for amendments to align the two FD’s.

Content of Information Transferred

I attach a copy of the Manual of Procedure to this letter for the committee to consider (not printed).

European Index of Offenders

With regard to the suggestion of Member States meeting regularly to compare the records of individuals with dual nationality, that may prove to be time consuming and impractical. If the system works correctly such a scheme should not be necessary.

Third-country Nationals

Since your letter, the Commission have issued a working document on the feasibility of an index of third country nationals convicted in the European Union.

Scope of Application

At the working party meeting of 28 June discussions supported the concept of full exchange to ensure accuracy and relevance. The purpose of the FD is to make full criminal conviction information available to other member states in criminal proceedings. The working party felt that this met with principal of proportionality as recidivism and relevance were a matter for the authorities in receipt of the information.

Interconnection of Criminal Records Pilot Project

With regard to your second paragraph, the current draft of the FD supported by discussions at the working party defines the Data Controller as the convicting Member State, and that the data would be amended or deleted according to their rules.
With regard to your third paragraph, whilst the FD does not directly deal with the contentious matter, the matter is covered by adherence to the principles of Data Protection and my comments above under “scope of application”. The type of scenario that you outline was also discussed at the working party and further underlines the need not to impose the EDPS’s view of restricting the type of offence covered.

25 July 2006

INFORMATION ON THE PAYER ACCOMPANYING TRANSFERS OF FUNDS (11549/05)

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

Thank you for your letter of 8 December 2005 regarding the European Commission’s revised proposal for a Regulation on information on the payer accompanying transfers of funds. I am sorry for the delay in responding.

To begin I think it would be helpful to update you on progress. On 6 December 2005, the Council (ECOFIN) agreed at its meeting that the revised text provided the basis for a General Approach. The report to COREPER and Council noted the UK scrutiny reserve in relation to the revised text. The European Parliament is currently considering the Regulation and the Austrian Presidency is aiming to achieve the adoption of the Regulation following a first reading in the Parliament and the Council on the basis of the General Approach agreed at ECOFIN.

I have attempted to answer the questions raised in your letter below. In looking at the issues you raise, I consider both the aim of the Regulation and the process through which it is agreed in Europe. The Regulation, as you are aware, implements Financial Action Task Force Special Recommendation VII, a key part of international action against terrorist financing. The deadline for implementation of Special Recommendation VII, agreed by the members of the FATF, and applicable around the world is the beginning of 2007. In addition, as you will know, the Regulation is being agreed in the EU under the co-decision procedure, with qualified majority voting in the Council. The combination of these factors means that we place prime importance on agreeing a workable text that implements Special Recommendation VII properly and on-time, while ensuring that it does not interfere with the efficient operation of payments systems or otherwise negatively affect UK interests. In this context, and given our limited negotiating capital, the drafting may not always be as neat as may be desirable. Nevertheless, we believe the content of the Regulation does achieve the objectives above.

Obligations on the Payer’s Payment Service Provider

Turning to the specific issues raised in your letter. You note the repetition in Articles 5(1) and 7. We take your point that the reiteration does not clarify these provisions as would the omission of Article 7(1) and a consequential amendment of Article 7(2). However, as outlined above, we place prime importance on the policy content and timing of the Regulation. As the interpretation of Article 5(1) does not depend on the interpretation of Article 7(1) (and vice versa) and we do not think there is any inherent ambiguity as to how either of these Articles may be interpreted, we do not propose to reopen this issue and risk other parties doing the same, potentially to our disadvantage.

Thank you for welcoming the changes to Article 5. We will be happy to provide a copy of the JMLSG guidance once it is agreed.

Obligations on the Payee’s Payment Service Provider

Your letter again raises the issue of the obligations on the payee’s payment service provider. I acknowledge the logic of your argument. However, we have consulted extensively with industry in the UK, who have made clear that this text allows for a regime that is workable in practice and does not impose unnecessary additional costs. Again I do not believe that reopening this issue would be to our advantage.

You ask about the provisions in Article 9 relating to obligations under national law. The Proceeds of Crime Act 2002 and JMLSG guidance sets out reporting requirements and provisions relating to “tipping-off”. Work to revise the JMLSG guidance in relation to the Regulation will consider if further provisions in the guidance are necessary. Your letter notes again your concern about “repeatedly” in Article 9(2). We continue to believe that given the differences in volume and type of transactions that different payment service providers are involved in, it would not make sense for more detail to be included in the Regulation. We will consider, along

with industry, whether anything need be included in the JMLSG guidance. In general terms however, the Government believes that a risk-based approach, where industry themselves must assess risk in every situation against general principles, is better than the tick-box exercise that can flow from more prescriptive rules.

**Penalties**

The issue of penalties is still under consideration. We acknowledge your point about criminal sanctions. Clarity in these circumstances is, as you note, important.

The change to recital 9, removing the text which attempted to limit the use the information on the payer can be put to in third countries, reflects consideration of the fact that it is not possible to enforce such a provision, as the laws of the third country would take precedence. Article 1 of the Regulation restricts the use the information on the payer can be put to within the Community to use for the purposes of the prevention, investigation and detection of money laundering and terrorist financing. This is consistent with the Interpretative Note for Special Recommendation VII.

**The Presidency Draft**

**Recitals**

I can confirm there have been no further substantial changes to the text. Recital 16(a) does not displace the definition of working day applicable under Regulation 1182/71. Rather it is aimed at making clear that in the time-limit for the provision of information of three working days set out in Article 6, the working days in question are those of the payment service provider of the payer, thus avoiding confusion.

**Scope**

The changes to Article 2(2) both clarify the text in the Commission’s proposal and introduce substantive changes. The changes to the original 2(2) itself are the former, while 2(2a) to 2(2f) are the latter.

The definition of transfer of funds in the proposed Regulation is broad in order that emerging payment technologies will be captured by the Regulation and will not be available to those seeking to circumvent the Regulation. Due to the breadth of the definition a number of categories of payments that do not pose particular money laundering or terrorist financing risks were caught within the scope of the Regulation. These additional changes to scope were necessary to ensure that existing business practices are not unnecessarily adversely effected by the Regulation and therefore that the Regulation does not impose burdens on industry and citizens without correspondingly clear benefits. Specifically, Article 2(2a) reflects the derogation for electronic money in the Third Money Laundering Directive, 2(2b) relates to giro payment arrangements prevalent in some Member States, 2(2c) relates to ATM withdrawals, 2(2d) to direct debits, 2(2e) to truncated electronic images of cheques and 2(2f) to payments to public authorities within a Member State.

**Information accompanying transfers**

We agree that it would be clearer if Article 5(2a)(a) of the Regulation expressly covered paragraph (1) as well as paragraph (2) of Article 8 (by a simple reference to Article 8).

Article 5(2a)(a) refers to the verification of the payer’s identity, and the storage of the information gained by this verification in accordance with the obligations set out in Article 8(2) and Article 30a) 3MLD. However, Article 8(2) does not itself expressly set out any such obligations except by reference to the “requirements [ie obligations] set out in paragraph 1”.

As the text currently stands, we believe that it would be hard to see how else the reference in Article 5(2a)(a) to obligations set out in Article 8(2) could be interpreted than as a reference to the obligations set out in Article 8(1), to which Article 8(2) refers, and Article 8(2) (for the risk-sensitive aspect). Given this, and the delicate balance achieved between Member States’ concerns on the issue of verification, I do not believe that seeking amendments in the drafting of the references to Directive 2005/60/EC would be to our advantage.

In referring to Article 9(6) of Directive 2005/60/EC the Regulation is aimed at ensuring that existing customers’ identity is verified at appropriate times on a risk sensitive basis. To require that existing customers’ identity is verified before the Regulation comes into force would be very costly for the banking industry.
Missing information

Your letter asks about the relationship between Article 7 and Article 8(3). The former sets out the requirements for the information to be sent with batch transfers sent from inside the EU to a payee outside the EU. This requires that the batch file contains the full information and the individual transfers contain the account number of unique identifier. Article 8(3) imposes an obligation on payment service providers of payees to have effective procedures in place to detect a lack of presence of complete information only in the batch file, without placing any requirement in relation to the individual transfers.

Co-operation obligations

Article 14 was changed at the request of a number of Member States.

Once again I would like to express my appreciation of your Committee’s consideration of the issues raised by the Regulation. I hope that this response answers your questions.

I trust that your Committee will now be able to conclude that the Regulation can be adopted on the basis of the text upon which a General Approach was reached.

2 March 2006

Letter from the Chairman to Ivan Lewis MP

Thank you for your letter dated 2 March 2006 which was considered by Sub-Committee E (Law and Institutions) at its meeting on 22 March 2005.

We note that the Government “place prime importance on agreeing a workable text that implements Special Recommendation VII properly and on time”. This objective is apparant throughout your response to the points raised by this Committee in our letter of 8 December 2005. While we appreciate the difficulties of negotiating European legislation, it is regrettable that these should lead to the adoption of legislation which you accept is not as clear as it might be in several places. In particular we note that you agree that the reference in Article 5(2a)(a) of the Regulation should be to Article 8 of Directive 2005/60/EC as a whole, and not merely Article 8(2). It is most unsatisfactory that the Government will not seek amendment of the incorrect referencing on the basis that reference in the Regulation to the obligations set out in Article 8(2) could only possibly be interpreted as reference to the obligations set out in Article 8(1), to which Article 8(2) refers.

We stress once again the need—which you accept—for clarity where criminal sanctions may be imposed. We urge the Government to consider what changes might be made to ensure that at each stage of the process ambiguity is avoided, given that reopening negotiations on agreed drafting is not always possible.

We make the following specific points.

Obligations on the Payee’s Payment Service Provider

We strongly urge the government to include guidance in the JMLSG Guidelines as to what constitutes a “repeated” failure to provide information under Article 9 of the Regulation.

Penalties

We note that the issue of penalties is still under consideration. We look forward to hearing the current thoughts of the Government on this matter shortly. As we have indicated to you previously, we are less tolerant of ambiguities in the Regulation where criminal sanctions are being proposed.

Co-operation Obligations (Article 14)

You say that Article 14 was changed at the request of a number of Member States. At page 2 of your letter, you advise that “Article 1 of the Regulation restricts the use the information on the payer can be put to within the Community to use for the purposes of the prevention, investigation and detection of money laundering and terrorist financing”. We do not agree that Article 1 provides this reassurance. As you note in your letter, Special Recommendation VII, which the Regulation is intended to implement, aims to ensure that information is available for the purposes of identifying suspicious transactions which may be linked to terrorist activity. Although the obligation of PSPs to co-operate applies only to authorities responsible for combating money laundering or terrorist financing, the information provided could be passed by these authorities to other
bodies. The restriction in Article 14 should be retained to prevent improper use being made of information on transfers.

We have decided to retain this proposal under scrutiny. We note that the Austrian Presidency hopes to achieve the adoption of the Regulation on the basis of the General Approach agreed at the EcoFin meeting on 6 December 2005. It would be helpful if you would provide some indication of when the Regulation is likely to be adopted.

23 March 2006

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

I’m writing to update you on progress on the “Payments Regulation”.

As you know, the draft Regulation is an essential part of a global framework to combat money laundering and the financing of terrorism. I am therefore extremely grateful for the helpful and constructive interventions that have been made by your Committee on this UK priority.

Following the Council’s agreement of a general approach in December last year, the Austrian Presidency has coordinated further detailed discussion between the Council and the Parliament. Throughout this time, the government has engaged proactively with industry and member states to deliver a Regulation that is both effective and proportionate.

It now appears that after some uncertainty, this dossier is entering its end-game. Ambassadors met in Coreper on 28 June and, noting the UK scrutiny reserve, reached agreement on a Presidency text. This was then considered by the Parliament on 6 July, which also voted in favour. Consequently, the draft Regulation will now proceed to Ecofin for adoption in the Autumn.

The text represents a finely balanced compromise between a number of national positions both within the Parliament and the Council. We believe that it delivers UK objectives in full and that UK interests, particularly those of industry, are now best served by building support behind it. In order to do so, I hope that the Committee will be able to lift its scrutiny reserve.

Since my predecessor last wrote to the Committee on 2 March this year, the text has developed in certain areas, some of which are particularly relevant to points made in your letter of 23 March. In particular:

(i) there will be a considerably longer lead-in time for Member States to fulfil the Regulation’s requirement for “effective, proportionate and dissuasive” penalties. Such penalties are now required to be in place by December 2007, not 2006.

(ii) a review clause has been inserted into the text for a “full economic and legal assessment of regulation” within five years of the regulation coming into force. This will look particularly at the issue of scope.

(iii) there is now greater clarity for those firms that detect that other payment service providers regularly fail to supply the required information on the payer (Article 8). In particular, there is also an explicit reference to national guidance on this point.

(iv) for transfers of sums below EUR 1,000, the payment service provider is required to take a risk-based approach to verification rather than prescriptively being required to verify the name of the customer in each and every case. This is entirely in line with the UK’s approach to regulation.

Now that Member States have agreed the details of a text to be submitted to the Parliament, I would like to update you on the particular points raised in your letter to my predecessor of 23 March.

Obligations on the Payee’s Payment Service Provider

Your Committee urged the government to develop JMLSG guidelines as to what constitutes a “repeated failure” to provide information under Article 9 of the Regulation.

JMLSG guidance is authored by the industry, and approved by the Treasury, in order to provide practical assistance in meeting obligations under the UK’s money laundering regime. A draft has now been prepared by industry that will be the subject of extensive examination and development in coming months before final endorsement by the Treasury. The materiality of “repeated” failures to provide information will obviously differ depending on the context and we accept the Committee’s recommendation to work with industry to ensure that there is no inappropriate or unhelpful ambiguity on this point.
Penalties

The timetable for the introduction of penalties has been extended significantly. The development of an enforcement and sanctions regime has obviously been limited by the ongoing negotiation on the text itself. The scope of new penalties, including the regulatory and legal changes necessary to enforce them, therefore remains under consideration. In drawing up new Regulations on this point, it will be important to maximise the consistency of our approach with the existing money laundering regulations which set out civil and criminal penalties in some detail.

Co-operation Obligations (Article 14)

Your Committee was concerned that information obtained for anti-money laundering or terrorist finance measures might be used for other purposes. I am pleased to say that the current text re-introduces a restriction here from the Commission’s original proposal. Article 14 now states that:

Payment service providers shall respond fully and without delay, in accordance with the procedural requirements established in the national law of that Member State, to enquiries from the authorities responsible for combating money laundering or terrorist financing of the Member State in which the payment service provider is situated, concerning the information on the payer accompanying transfers of funds and corresponding records. Without prejudice to national criminal law and the protection of fundamental rights, those authorities may use that information only for the purposes of preventing, investigating or detecting money laundering or terrorist financing.

I hope that this goes someway to reassure the Committee on this point.

Article 5(2a)(a)

Your Committee advised that a reference in Article 5(2a)(a) to the Money Laundering Directive should relate more clearly to the whole of Article 8 rather than Article 8(2).

My predecessor has written on this point and I am afraid that the Presidency text, which reflects a delicate compromise between national positions, is unchanged from previous versions. We are therefore considering how to achieve maximum clarity on the issue of verification requirements in the enforcement provisions. We are also considering the extent to which this can be achieved by guidance incorporating the substance of Article 8.

Overall, we have successfully developed a Regulation that will bring the EU in line with important international terrorist finance standards in a way that is effective, proportionate and based on extensive engagement with industry.

Once again, I would like to express my thanks to your Committee for its most helpful consideration of this issue. Given the stage of the negotiations and the sensitivity of the compromise agreed thus far, I very much hope that the Committee will feel able to lift its reserve in advance of a decision by Ecofin.

10 July 2006

Letter from the Chairman to Ed Balls MP

Thank you for your letter dated 10 July 2006 which has been considered by Sub-Committee E (Law and Institutions).

Obligations on the Payee’s PSP—“Repeated Failure” and “Regularly Fails to Supply”

As we have stated on several occasions, we consider it important that a directly applicable instrument which may lead to criminal sanctions be very clear in its terms. We note that the new text replaces “repeated failure” by a PSP to provide information under Article 9 of the Regulation with a reference to where a PSP “regularly fails to supply the required information”. We trust that your assurance to work with industry to ensure that there is no unhelpful ambiguity as to what constitutes a “repeated failure” will also apply to clarifying “regular” failure in future guidelines.
Penalties
We note what you say regarding the matter of penalties. We are disappointed that you have not provided more details on this issue but your reference to the money laundering regime is helpful. We understand that criminal (as well as civil) penalties are envisaged and again stress the need for clarity in defining obligations which may give rise to these penalties.

Co-operation Obligations and Data Protection
We are very pleased to see the provision restricting the use to which data obtained under the Regulation can be put re-introduced into the text.

Article 5(2a)(2) and Clarity
As we have said in correspondence with your predecessor, it is regrettable that the difficulties of negotiating European legislation sometimes leads to the adoption of instruments which are not as clear as they might be. We welcome your efforts to achieve clarity at the implementation stage, although we recall that, as a Regulation, the scope for flexibility in implementation will be limited.

We have decided to clear this proposal from scrutiny. We understand that the Commission will in due course produce a revised text. This should be deposited for scrutiny in the normal way. If the new text accords with the description and explanation given in your letter we would expect to be able to complete our scrutiny speedily.

25 July 2006

INTELLECTUAL PROPERTY RIGHTS (8866/06)

Letter from the Chairman to Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Home Office
Select Committee E (Law and Institutions) considered this proposal at its meeting of 7 June 2006.

Case C-176/03
We note that there are likely to be difficulties with this proposal as a result of the Commission’s wide interpretation of the ECJ judgment in Case C-176/03 Commission v Council. We fully support a cautious approach to the present Directive. Is there a realistic prospect of the proposal being agreed in its current form? As you know, we are due to meet on Wednesday 21 June but any information you can provide in advance of that meeting would be most helpful. We shall likely raise this proposal with you in the course of your evidence.

Application to IP Rights under National Law
Although limiting the obligations created by the Directive to IP rights under Community law appears to be an attractive way to limit the proposal, we are concerned that this may create its own problems. How would this work in practice? Is there a danger that two concurrent regimes for sentencing in IP offence cases will apply in the UK, one where the offence is derived from Community law and the other where it is not?

Need for Future Approximation
You say that you are not convinced that further approximation in this area is necessary. Has an impact assessment been prepared by the Commission? We have not seen this and would be grateful to receive a copy.

We raised a number of points in the context of correspondence on the original proposal. Those which remain unanswered are set out again in our comments below.

Legal Base
In addition to the implications of Case C-176/03, the Committee is concerned by the Commission’s assertion (in the explanatory memorandum accompanying the original proposal) that the mere existence of disparities between the national systems of penalties distorts the internal market and justifies the adoption of this Directive. This 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). Your predecessor undertook in her letter of 17 November 2005 to return to the Committee on this subject and we look forward to hearing your views.
**Scope of Directive**

We note that you favour limiting the application of the Directive to counterfeiting and piracy, rather than extending it to cover all IP rights. Is this a position supported by other Member States? If the Directive is to cover all IP rights, will this term be defined in the body of the text, either fully or by reference to Commission Statement 2005/295/EC?

**Definitions**

We agree that it is necessary to clarify the meaning of “on a commercial scale”, particularly as the Directive would introduce criminal liability for offences. We note that the term also arises in Directive 2004/48/EC; however, in that instance efforts have been made to explain its meaning in the recitals. The recitals of the present proposal do not contain a similar explanation.

Article 5(1) 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 instruments 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”. It would be helpful to ensure consistency of expression wherever possible.

We have decided to retain the present proposal under scrutiny. As the original version (document 11245/05) has been superseded by the present amended proposal, we take this opportunity to clear that version from scrutiny. We would of course expect any document containing substantial changes to the present proposal to be submitted to Parliament for scrutiny.

8 June 2006

**Letter from Gerry Sutcliffe MP to the Chairman**

Thank you for your letter of 8 June 2006. I note that the proposal is retained under scrutiny by the Committee. I will take each of your points in turn.

**Case C-176/03**

I agree that the true meaning and effect of the judgment of the ECJ in the environment Framework Decision case will have a profound impact on this proposal. The difficulty at the moment, of course, is that Member States and the Commission cannot reach agreement on the competence issue. The situation is now further complicated by the Commission’s challenge to the maritime pollution FD. As you know, the European Parliament has intervened in support of the Commission. But 19 Member States, including the UK, have intervened in support of the Council. The UK intervention supports the Council’s defence that the effects of the judgment of the ECJ in the environment case should be restricted to the environment. We have not yet been given access to other Member State’s interventions but it is likely that a number of Member States will take the same position. Accordingly, a political agreement for anything other than the maintenance of the status quo looks very unlikely in advance of the judgment in the maritime pollution case which is not expected before 2008. If the ECJ rules in favour of the Commission in the maritime pollution case, the prospects for a proposal that resembles the current draft will be enhanced substantially. Much will of course depend on the detail of that judgment when it is handed down.

**Application to IP Rights under National Law**

The ECJ ruled in the environment case that the Community could legislate to require Member States to apply criminal law in order to ensure the effectiveness of community rules on the environment. If that principle is extended to other policy areas we would argue that it must be on the basis that the criminal provision applies only to national laws implementing existing community norms or standards. As regards intellectual property the fact that we may be required to apply common sanctions to Community and national rights, which are largely equivalent, should not present any difficulty. Much will depend on the final detail but we recently undertook a provisional assessment of Community standards or norms in the intellectual property area. In general terms they cover trademarks, designs, copyright and related rights, plant varieties and geographical indications. I stress that this is a very provisional preliminary assessment used here for illustrative purposes only, but on the basis of the existing extent of Community rules the Directive may oblige the UK to create new offences, with a maximum of no less than “x”, in respect of infringements of plant variety rights and geographical indications rights. On the evidence of the current proposal it is likely that the agreed minimum
maximum penalty will be well within the level of existing UK national penalties for the protection of IP rights and therefore it will be a relatively simple task to incorporate the new offences into a coherent and internally consistent UK regime.

NEED FOR FURTHER APPROXIMATION

I attach a copy of the Commission’s impact assessment. Unfortunately this has only been issued in French and no translation is available. Should an English translation become available I will forward it on to you.

LEGAL BASE

You ask whether the mere existence of disparities between the national systems of penalties distorts the internal market and justifies the adoption of this Directive. We do not consider that the mere existence of disparities between the laws of member States justifies Community internal market measures. Action by the Community should not go beyond what is necessary to achieve its internal market objective and should only require the approximation of the laws of member States where the existing disparities are inhibiting the proper functioning of the internal market.

SCOPE OF THE DIRECTIVE

The definition of intellectual property rights has proved in the past to be fraught with difficulty. During the negotiations of the adopted enforcement Directive of 2004 (2004/48/EC) it was not possible to reach agreement on this issue. Consequently, after the adoption of the Directive, the Commission published their Statement 2005/295/EC setting out their view of the scope of the term “intellectual property rights” for the purposes of legislation. Earlier this year the Austrian Presidency asked delegations for written views on which of the rights set out in the Commission’s Statement should be included within the scope of the current draft instrument. The views expressed ranged from those, including the UK, who favoured a very limited scope, to those who favoured inclusion of all of the items on the Commission’s list. Generally speaking the consensus would appear to favour the inclusion of the majority of the rights listed in the Commission’s Statement. Views are also divided on the best way to express in the body of the text any definition of the rights to be included, but due to the suspension of discussion of the substantive issues pending agreement on the way forward on the competency issue, this topic has not yet been subject to any detailed discussion in negotiations.

DEFINITIONS

I note your comments on the definition of “on a commercial scale”. The Government agrees with your suggestion and would favour the inclusion in this instrument of a definition modelled on that which appears in the recitals to the 2004 enforcement Directive.

In the Government’s view the provision of Article 5(1) stipulating that the phrase “under the aegis of a criminal organisation” is to have the meaning of the Framework Decision on the fight against organised crime is intended only to ensure that the phrase “criminal organisation” is consistently interpreted. We agree, however, that there should be consistency between the two instruments and that therefore the reference in the intellectual property instrument should be “within the framework of” rather than “under the aegis of”.

I hope you find my explanations helpful. I am, of course, available to answer any further questions you may have.

Undated received 12 July 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter received on 12 July 2006, which has been considered by Sub-Committee E (Law and Institutions).

We are grateful to you for the clarifications you provide. In particular we are pleased that you agree with some of our suggestions to enhance the clarity and consistency of the proposed Directive and we trust that you will press for these changes when the negotiations recommence.
Timetable for Negotiations

You confirm that a political agreement for anything other than the maintenance of the status quo looks very unlikely until the judgment in the Ship source pollution case is handed down in 2008. We recall that the Working Group has suspended discussion of substantive articles; are discussions likely to recommence prior to the judgment in that case? What timetable is currently envisaged for progress on this dossier?

Legal Base

Regardless of how the First Pillar v Third Pillar dispute is finally resolved, the issue of an Article 95 legal base will remain relevant. As we have previously said, we are concerned at the proposed use of Article 95 for this Directive. Although this legal base was used for Directive 2004/48/EC on civil enforcement of IP rights, we do not consider that this in itself justifies its use in the present case. Some support for this view can be found in the Court’s recent judgment in Cases C-317 and 318/04 Parliament v Council and Parliament v Commission.

For Article 95 to be appropriate, the Directive should have as its objective and subject-matter the establishment and functioning of the internal market by contributing to the removal of obstacles to the freedom to provide goods and services. The recitals to the proposed Directive make reference to the internal market, as does the Impact Assessment you provided. However, no evidence is provided to show that the absence of harmonised sanctions has any real impact on the internal market. The Impact Assessment does little more than assert an impact on the internal market. It is for consideration whether the proposed Directive has been too hastily adopted by the Commission, coming as it does so soon after the adoption of Directive 2004/48/EC and therefore before the full impact of that Directive has been measured.

Our concern is that the proposed Directive may be intended to achieve a substantially different goal. The Impact Assessment explains that “La contrefaçon représente souvent un volet de l’entreprise criminelle, ayant de multiples liens avec d’autres formes du crime organisé” which in turn helps “financer d’autres activités criminelles comme le trafic d’armes, la contrefaçon d’argent, la traite des êtres humains, le vol de voitures ou le trafic de drogue” (page 6). It later refers to the role of counterfeiting and piracy in funding terrorism. Reference is also made to consumer protection and the dangers to health associated with counterfeit products.

What assessment has been made, both by the Government and within the Council, of the true objective of the proposed legislation? You say that you do not consider that the mere existence of disparities between the laws of Member States justifies Community internal market measures. Are the Government satisfied that the proposed Directive is a genuine internal market measure? If so, is the impact of disparities among Member States’ laws on the internal market such as to satisfy the Article 95 test?

Scope of the Directive

Why do the Government favour a limited scope for the definition of intellectual property rights and what impact would a wider definition have on the current position in the UK?

We have decided to hold the proposal under scrutiny.

25 July 2006

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 25 July 2006 regarding the above proposed Directive. I have dealt with your points in turn below but I should first stress that in respect of the first two my responses are by necessity provisional. We will of course provide you with a fuller response on these points in due course.

You asked about the timetable for work on this dossier. At present this is unclear but the dossier has been referred to the Article 36 Committee meeting of 12–13 September. Papers are not yet available but our understanding is that one of the questions the Committee will be asked to consider is whether the negotiations on the substantive Articles can resume pending the judgment in the ship source pollution case.

Your comments on the Article 95 legal base are very interesting and helpful. I agree that there are many question marks about the Commission’s justification for the proposed measures. Our initial view is that we are yet to be convinced that this dossier is an internal market measure as we are still in the process of examining the case and will provide you with a more detailed view once we are in a position to do so.

You asked why the Government favours a limited scope for the definition of Intellectual Property Rights and what impact a wider definition would have on the current position in the UK. A precise definition of Intellectual Property Rights is difficult to achieve. No agreement, for example, was reached during the
negotiations of Directive 2004/48/EC despite lengthy consideration. However, the recitals\(^{68}\) in the proposed Directive suggest that the purpose is to deal with counterfeiting and piracy rather than the full range of intellectual property rights. Consequently the Government’s view is that the measure should be restricted, and any extension beyond wilful trade mark counterfeiting and copyright piracy\(^{69}\), needs clear justification. Our experience is that these are the infringements that may be linked to serious/organised crime and are suitable for criminal proceedings. Infringements of other forms of intellectual property rights, such as patent rights, would on the other hand present problems for the criminal courts due to their technical complexity involved; this in turn would lead to resource issues. Our view is that the protection of these less easily identified infringements is a matter more rightfully dealt with by the specialist civil courts, such as the Patents Court or Patents County Court. The Government is of the view that there is no strong and compelling evidence to justify any extension beyond the scope set out in Article 61 of the TRIPS.

I hope you find my explanations helpful.

22 August 2006

JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS (11131/05)

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Thank you for your reply of 20 January 2006\(^{70}\) which was considered by Sub-Committee E (Law and Institutions) at its meeting on 1 February.

Your comments on the Government’s position are very helpful. In particular we welcome your assurances that the changes to the double date provisions will not affect Member States which do not operate double dating.

We are also in favour of measures to ensure transparency of costs and are pleased to see that this is something which the Government fully support.

We note what you say regarding the need for clarification in some areas and would be grateful if you would advise us of the current discussions in the Working Group. Are Member States now agreed on a deadline for service within one month? Are there any other matters in the proposal which are likely to be contentious?

The Committee decided to retain this document under scrutiny.

9 February 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 9 February. You asked for details of the current discussions in the Working Group, in particular whether Member States were agreed on a deadline for service within one month and whether there were other matters in the proposal which were likely to be contentious.

I enclose the latest Presidency text which was issued recently. In it you will see that indent (c), the amendment to Article 7(2), retains the requirement for a deadline for service of one month. This follows almost unanimous support from Member States. However following concerns about what the receiving agency should do if service was not possible within one month a provision has been added to clarify that the receiving agency should continue to attempt service until a date that the transmitting agency may provide on the standard form.

In indent (d), the amendment to Article 8(1), the text has been amended to say that the receiving agency is only obliged to notify the addressee in writing about the possibility to refuse the document on grounds of language. This followed concerns from many Member States about the practicalities of giving this information orally. The text also clarifies now to where the documents should be returned if they are refused after they have been served. The rest of the provision has been reordered without affecting the substance.

The only change of substance to the amendment to Article 8(3) is to clarify that when a translation is provided the original document should accompany it. There have been no changes of substance to indent (e), the amendment to Article 9, but a recital will indicate that double dating applies in only a limited number of Member States.

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\(^{68}\) Extract from recital 5 “Certain criminal provisions need to be harmonised so that counterfeiting and piracy in the internal market can be combated effectively”.

\(^{69}\) As defined in Article 61 of the TRIPS Agreement (Trade-Related aspect of Intellectual Property Rights).

Indent (i), the amendment to Article 15, now clarifies that direct service only applies where it is permitted under the law of that Member State. Indent (j), the new Article 15(a), now includes an added paragraph 2 clarifying that where service is through diplomatic or consular agents under Article 13 or by post under Article 14 the relevant authority has a duty to inform the addressee of his/her right to refuse the document on grounds of language and to give information about where the document should be returned.

In indent (l), the replacement of Article 23, an additional paragraph 1(a) has been added following concerns from several Member States that much of the information provided by Member States to the Commission should be published in the EU’s Official Journal.

There is a proposal to codify the text by adding a new Article at indent (m) which repeals the current Regulation. This should make it easier for authorities and practitioners to use the new Regulation when it enters into force.

The Government is able to support all of these changes and the remaining amendments which are mainly technical or have been made to simplify the text.

The main contentious issue is whether Member States should be able to charge for service under Article 11(2) (indent (g)). A minority of Member States have called for there to be no costs for service. As I said in my previous letter the Government believes strongly that the question of whether there should be costs for service should be a matter for each Member State to decide and we will oppose any moves that prevent Member States from making that decision. However we can support the Presidency’s text which now stipulates that there should be a single fixed fee in each Member State and that Member States should notify the Commission of how this fee should be paid.

I understand that the Presidency would like to obtain agreement on this proposal at the Council on 27 and 28 April. It would be helpful, therefore, if your Committee is able to clear it from scrutiny before then.

22 March 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 22 March 2006 which was considered by Sub-Committee E (Law and Institutions).

Your explanation of the changes in the new Presidency text is very helpful. We are pleased to see that transparency of costs has been enhanced and that changes have been made to improve the clarity of the provisions.

We note that a proposal has been made to consolidate the regulations once the new provisions have been agreed. We have not seen the consolidated text and would be grateful if you would provide a copy.

We have decided to clear the proposal from scrutiny.

24 April 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 24 April. I am very grateful to your Committee for clearing this proposal from scrutiny. Although the Austrian Presidency originally planned to seek a general agreement on this text at the April Council I understand they now plan to take this proposal to the Council in June.

I note that you say that you have not seen the consolidated text and would like to be provided with a copy. The consolidated text will only be available once the amended Regulation has been agreed. I will ensure that you are provided with a copy then.

9 May 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 9 May 2006 which was considered by Sub-Committee E (Law and Institutions) at its meeting of 7 June 2006.

We note that the proposal was agreed at the June Council and look forward to receiving a copy of the consolidated text in due course.

8 June 2006
Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Your Committee cleared this proposal from scrutiny on 24 April but I thought you would find it useful to have an update on progress in the negotiations.

As I anticipated in my letter to you of 9 May the Council agreed a general approach in June. The final text included a few changes to the text I sent you in March, some of these were technical and the others I describe below. However none of these changes significantly change the substance of the March text.

First the following has been added to Article 1(1): “It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (‘acta iure imperii’).” This follows the wording used in other recent civil judicial co-operation proposals. As I have explained to the Committee in the context of those other proposals the Government is of the view that the effect of this exclusion is very limited as most, if not all, acts this wording would cover do not fall within the meaning of civil and commercial matters. Its inclusion, however, is a matter of political importance to several Member States.

In Article 23 a requirement has been added to ensure that Member States tell the Commission if they operate a “double date” procedure. The date of a review of the Regulation in Article 24 has been changed to 1 June 2011. The proposed Article 24A to repeal the original Regulation has been deleted. Instead the Presidency decided that after the delivery of the European Parliament’s opinion the Commission should submit an amended proposal which will address the question of codification or recasting of the existing Regulation.

In addition to the changes to the recitals indicated in the footnotes to the text of 10 March two new recitals were agreed. The first states that the Regulation should not apply to service of a document on the party’s authorised representative in the Member State where the proceedings take place, regardless of the place of residence of that party. This clarifies that such service is not cross-border and therefore the Regulation should not apply. The second says that the requirement of a single fixed fee for service should not prejudice the possibility for Member States to set different single fixed fees for different types of service as long as they respect the principles of proportionality and non-discrimination.

Earlier this month the European Parliament adopted its report on this proposal. I enclose a copy for your information. Apart from some minor differences in wording in the recitals the proposed amendments align the text with that agreed by the Council. In addition the European Parliament has asked the Commission to submit a codified version of the Regulation which incorporates these amendments.

We await the decision of the Commission as to whether a codified version will be submitted. If it is I shall of course ensure your Committee receives a copy.

25 July 2006

JURISDICTION OF THE COURT OF JUSTICE (11356/06)

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office

Thank you for your Explanatory Memorandum of 19 July. The Commission’s Communication will be considered by Sub-Committee E (Law and Institutions) immediately after the summer recess. In order to assist that work I should be grateful if you could provide some clarification of paragraph 16 of your Explanatory Memorandum.

You say that the Government’s preliminary views are “that there are both benefits and risks associated with any Council Decision”. Are the benefits to which you refer the same benefits as are identified by the Commission (and listed in paragraph 12 of your Explanatory Memorandum)? If not what, in the Government’s view, are the benefits? Finally, what, in the Government’s view, are the risks associated with the Decision as proposed by the Commission and how are they ranked?

20 July 2006

Letter from Rt Hon Baroness Scotland of Asthal QC, Minister of State, Home Office to the Chairman

Thank you for your letter to Joan Ryan of 20 July concerning the Commission Communication on the adaptation of the provisions of Title IV TEC relating to the jurisdiction of the Court of Justice. I am responding on her behalf. You asked whether the benefits identified by the Government were the same as those identified by the Commission in its Communication. The Government is in the process of considering the Communication along with the Commission’s justifications; in particular the Commission’s analysis of gaps identified and whether a proposal based on Article 67(2) would address the issues raised. A measure which would improve the speed of cases referred to the ECJ would be beneficial and is something the UK could
support in principle, however we must be satisfied that this would be a result of using Article 67(2). Whilst there may be potential benefits to such a proposal; including improved access to justice, there may also be risks. One such risk is that increased referrals to the ECJ could slow the Court’s work with resulting decreased access to justice. Preliminary rulings currently take an average of 20.4 months to be completed, which may not represent effective judicial representation or access to justice. We will continue to examine all options associated with any proposal.

Since detailed analysis of the communication is ongoing, I am afraid that I am unable to provide a full analysis of the risks and benefits at this stage. A more detailed response will be provided at a later date.

15 August 2006

MAINTENANCE OBLIGATIONS (5198/06, 5199/06)

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

The Commission’s Communication was considered by Sub-Committee E (Law and Institutions) at its meeting on 1 March. We are grateful for your Explanatory Memorandum and for setting out, so clearly, the Government’s concerns. We agree that the Commission must make a much stronger case to justify the use of the passerelle. It seems clear from our preliminary examination of the proposed Regulation on maintenance obligations (the subject of a separate letter) that harmonisation of applicable law would have substantial implications for the United Kingdom and that the Commission may have already strayed into areas of substantive law (see, for example, Articles 17(2) and 36 of the proposed Regulation). We also agree that were a Decision to use the passerelle to be formally proposed close attention would need to be paid to the precise wording. “Measures relating to maintenance obligations” (emphasis added) is far too wide.

The Committee decided to retain the proposal under scrutiny.

2 March 2006

Letter from the Chairman to the Rt Hon Baroness Ashton of Upholland

The proposed Regulation was considered by Sub-Committee E (Law and Institutions) at its meeting on 1 March. The Committee also considered the Commission’s proposal to use the passerelle in Articles 67(2) TEC to allow provisions on maintenance to be dealt with by qualified majority voting. I am writing to you separately on that matter.

Need for Regulation

Thank you for your Explanatory Memorandum pointing out the main features of the Commission’s proposal and drawing attention, in particular, to its relationship with a new Hague Convention on maintenance obligations. This is a matter to which I shall return later. First, there is a question of the legal basis and the scope of application of the proposed Regulation. The Commission cites Article 61(c) which, as you will recall, refers to Article 65 and the requirements that there be “cross-border implications” and that the measures be necessary for the proper functioning of the internal market. The Commission argues that the proposal would contribute to the free movement of persons and in the absence of any detailed statistical information seeks to deduce from certain EUROSTAT data, a DAPHNE research project and estimates of maintenance debts in Spain and the UK that there could be up to 62,000 maintenance claims subject to legal action as a result of inter-EU marriages. Have the Government subjected this analysis to critical examination?

Do the Government accept that the Commission has shown a need for the sorts of measures proposed? As you indicate, there already exist international conventions (including the 1973 Hague Convention currently under revision), the Brussels I Regulation and the EEO Regulation. While improvements might be made to enforcement, for example by removing the need for exequatur, is there a genuine need to have harmonisation of choice of law rules?

Opting-in

We would also be grateful for clarification on the particular position as regards the United Kingdom. As you say in your Explanatory Memorandum a significant proportion of maintenance traffic in and out of the UK is with the USA, Canada and Australia. You also say that the United Kingdom need not participate in the adoption of the Regulation unless it opts-in. It would be helpful if you could provide a statement of the advantages and disadvantages of the UK opting-in to this Regulation.
Importance of detailed examination

We are pleased to see that you will be consulting widely on the Commission’s proposal. At first glance it appears that the Commission’s text may raise a number of points of policy and detail. Take, for example, page 20 dealing with Articles 16–19. Clarification would seem to be necessary between Articles 16 and Articles 17(1)(e). Should different rules apply to the right to seek reimbursement and the right to obtain reimbursement? Article 17(1)(d) raises a question as to whether the applicable law should govern a limitation period and time limits on the institution of proceedings. Article 17(2) appears to contain a rule of substantive law under the guise of defining the scope of applicable law. Article 18 raises questions relating to the scope of application of the Regulation and taken with Article 1 raises a question as to whether or not the Regulation would have universal application. Would the Regulation oblige the United Kingdom to adopt the same jurisdictional and choice of law rules in a case which involved a third state, such as Australia, the United States, and no other Member State? Why does Article 19 provide a different rule where the choice of law rules lead to the application of a non-Member State? It may be that the Commission can provide good answers to all these questions. The simple point we are making here is that the Regulation will need careful examination, Article by Article and line by line.

United Kingdom

We note that the Government have reservations about the inclusion of rules governing applicable law in the Regulation. You say that the benefits of harmonising applicable law rules across the EU has yet to be clearly identified. You also say that Article 21 (which we believe cannot apply to any other Member State than the United Kingdom) needs amendment and that it is unlikely that it is the Commission’s intention to harmonise conflict rules between the different UK jurisdictions. But why if the Commission is prepared to harmonise conflict rules in a case involving the UK and Canada should it not be equally concerned about a case between England and Scotland? The latter is more likely to have implications for the internal market.

Cooperation

Chapter VIII deals with cooperation and would require the designation of central authorities and the provision of information, including personal data, between central authorities. This chapter raises a number of questions. First, what sort of central authority is envisaged? Would it be a judicial authority or a body such as the Child Support Agency? Second, what safeguards will the individual, the subject of the request, have? There are limitations on the use of information (Article 46) and it appears that the debtor, after the event, must be notified of his rights under the data protection Directive. Are the Government satisfied with the Commission’s analysis of the impact of the provisions in Chapter 8 and of the other Articles in the Directive as set out in Table 7 of the Commission’s Impact Assessment?

Hague Convention

The relationship of the proposed Regulation with the Hague Convention is, as you indicate in your Explanatory Memorandum, of critical importance both from the general position of the United Kingdom and the detail of the Regulation. As regards the former, you say that the new Hague instrument has significant attractions for the UK because of the volume of maintenance enforcement cases which lie outside the EU. You will recall that in our letter dealing with the proposed accession of the Community to the Hague Conference we raised a number of questions relating to the practical implications regarding the exercise of competence. We asked, among other things, what would be the position if a matter was being negotiated in the Hague Conference and then the Commission put forward its own proposal. The present position as regards maintenance obligations is exactly the sort of case we had in mind. We therefore look forward to receiving your reply on this point and would be particularly grateful if you could explain whether the United Kingdom’s position would be better if it did not exercise its right to opt-in to the proposal in question.

We look forward to receiving your response on the above matters. The Committee decided to retain the proposal under scrutiny.

2 March 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

I am writing to bring you up to date in regard to progress on the proposed maintenance Regulation. I apologise that you did not receive a response to your letter of 2 March to me about the EU proposal, however I hope this response will provide a response that answers all the points raised.
The Government has decided not to opt in to the above proposal, under Title IV of the protocol to the Amsterdam Treaty and I want to provide a brief explanation as to why we reached this conclusion.

I should stress at the outset that the UK is very keen to develop and deliver improvements in the way international maintenance cases are handled. Our aim is to ensure payments are delivered to those that need and deserve them as simply, quickly and cost-effectively as possible. This is particularly important for the vulnerable clients involved in such cases, which are often for very small but desperately needed sums of money.

The UK, like all Member States, is fully engaged in the well-advanced work on the proposed Hague Convention on these issues. The work in the Hague is nearing completion. That work is particularly important for the UK since the Hague potentially stretches globally, and most of our international maintenance cases involve non-EU parties.

Given the priority we attach to our Hague work, it is essential for the UK that we remain able to negotiate such international agreements. Recent developments appear to have called into question the extent of Community competence, particularly as regards the future development of Community law in this area. This uncertainty over the extent of the Community’s external competence has been a significant factor in our considerations on whether to opt-in. We concluded that it was most important to be absolutely certain that we are able to continue to negotiate international agreements as we can now.

You are aware from our earlier Explanatory Memorandum of our concerns about the inclusion of rules on applicable law in the proposal. The Commission thought it right to bring forward a proposal incorporating rules of applicable law, which in the end we judged we could not support, due to the limited potential benefit from the proposal and some significant associated risks. We would have been happy to support a proposal limited to improve mutual recognition and enforcement of judgments, which ensured synergy with the proposed Hague Convention and other international instruments, as was envisaged in the EU’s Hague Programme.

I am aware that some Member States apply foreign law in maintenance cases, yet this is wholly unknown within the UK’s Family Law jurisdictions. Introducing such an approach in our common law jurisdictions would imply a new and additional process for the clients affected which, in the context of our legal arrangements, would inevitably build in complexity and delay and increase costs for those cases, all of which are particularly unwelcome for the vulnerable clients involved.

As you are aware, in the context of the work on the Hague Convention the rules on applicable law are planned to be optional. That is a pragmatic approach which allows applicable law rules to be used where those are wanted but also allows other Member States, such as the UK, not to be required to apply foreign law in circumstances when they consider it inappropriate.

We have considered this question very seriously and consulted stakeholders here. We have concluded that there is no likelihood of our being able to agree to a measure in this form. Were we to have opted-in it would have to be on the basis that we would strongly resist features of the proposal which currently seem central within it.

Since the proposal is subject to unanimity, that may have required us to block it, on the understanding that under the terms of the Title IV Protocol, the other Member States may, after a reasonable time, proceed without us. That may have been viewed as unhelpful by partner Member States.

Notwithstanding the formal legal position in respect of the opt-in protocol we do plan to continue to engage fully and constructively in the development of this proposal in the hope that we contribute positively to the improvement of the measure. Our hope would be that when negotiations are concluded that we will be able to accept the proposed Regulation under Article 4 of the Title IV protocol.

Your letter also mentioned the importance of detailed examination. The Government is committed to consulting as widely as possible on the Commission’s proposal. A stakeholder group has been set up including members from the Law Society, Resolution, the Judiciary and other Government Departments. We have also consulted the Lord Chancellor’s Advisory Committee on Private International Law.

I agree that certain aspects of the proposal require very detailed examination, and we are undertaking such an analysis. This will include the specific points on the articles you raised.

16 May 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 16 May which was considered by Sub-Committee E (Law and Institutions) at its meeting on 7 June. The Committee notes that the Government have decided not to opt-in to the above proposal and that the Government accord priority to the work in the Hague Conference on the revision of the
1973 Convention. We agree that this is the better way forward, especially in light of the proposed scope of application and unsatisfactory nature of the Commission’s proposal as described in our letter of 2 March.

The Committee decided to retain the proposal under scrutiny and would be grateful to be kept informed of developments.

Finally, you will recall that we also wrote to you on the subject of the Commission’s Communication of 15 December 2005 (Doc 5198/06). We would be grateful if you could let us know what is happening as regards this Communication. Has there been any discussion of it in the Council and if so what conclusions have been reached?

8 June 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 8 June. You have asked for an update of what is happening in regard to the Commission’s Communication of 15 December, in particular, if there has been any discussion of it in the Council and if so what conclusions have been reached.

The Communication was made alongside the Commission’s proposal for a Regulation concerning jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations (COM (2005) 649). As you are aware the UK exercised its option not to opt-into the proposed Regulation, but continues to fully participate in negotiations with a view to adopting the measure at a later date if conditions are right and those areas of concern are removed.

The Communication suggested that the measure was about the collection of a civil debt and could be viewed as a financial matter, to be taken forward under qualified majority voting (QMV) and suggested that the Council might use the passerelle procedure in Article 67(2) to give this effect.

The “passerelle” allows the Council to decide to provide that a matter currently subject to unanimity and consultation with the European Parliament should instead be subject to QMV and co-decision. The suggestion would allow this and future measures concerning maintenance to be dealt with under QMV and co-decision.

The Communication was debated in the Civil Law Committee under the current Austrian Presidency on 13 February 2006. The majority of Member States did not support it. There is no intention to raise the matter again under the Austrian Presidency, neither is there any intention to raise the matter under the incoming Finnish Presidency. The Communication requires a formal proposal from the Commission under Article 67(2) of the Treaty, after consultation with the European Parliament. The Communication is not a formal proposal, although it did have a draft proposal attached to it.

It is clear at this time that the Commission cannot achieve unanimity if the matter were to proceed to a vote on a Decision and the indications are that the Commission will not press the matter further.

26 June 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 26 June which has been considered by Sub-Committee E (Law and Institutions). We note that the Commission’s proposal to use the passerelle to provide for measures relating to maintenance obligations to be subject to QMV and co-decision has not received the support of the majority of Member States and that neither the present Austrian nor upcoming Finnish Presidency wishes to put the matter back on the agenda. As, therefore, the present proposal appears to have no future and any formal decision put forward by the Commission would have to be submitted to Parliament for scrutiny, we are content to release the document from scrutiny.

6 July 2006

MUTUAL ADMINISTRATIVE ASSISTANCE FOR THE PROTECTION OF THE COMMUNITY’S FINANCIAL INTERESTS AGAINST FRAUD AND ANY OTHER ILLEGAL ACTIVITIES (12993/04)

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

You wrote to my predecessor, Ivan Lewis, on 28 June 2005, on this issue, asking to be kept informed of developments.

I am writing now to let you know that in the light of the opposition from virtually all Member States to the inclusion of VAT fraud in the draft regulation, OLAF is now considering a revised proposal, I will submit a fresh Explanatory Memorandum. I am sorry for the delay in letting you know this.

17 July 2006

Letter from the Chairman to Ed Balls MP
Thank you for your letter of 17 July which has been considered by Sub-Committee E (Law and Institutions). In light of the prolonged inactivity on this matter and your assurance that you will submit a fresh EM in due course on the basis of a revised proposal, we have decided to clear this document from scrutiny.

25 July 2006

NATIONAL CONTACT POINTS FOR RESTORATIVE JUSTICE (10575/02)

Letter from Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Home Office to the Chairman
The clerk to the committee wrote on 10 July requesting progress on a Belgian proposal to establish a network of national contact points for restorative justice to develop, support and promote various aspects of restorative justice within Member States as well as at Union level. Since 4 March 2003, when we last wrote to update you, the initiative was discussed, amended and approved during the April 2003 plenary session of the European Parliament (11621/2002-c5-0467/2002-2002/0821 (CNS)). The matter was then forwarded to the Council but there has been no further progress. We will, of course, keep you informed should there be any developments on this proposal.

25 July 2006

NEW CRIMINAL PROCEEDINGS: TAKING ACCOUNT OF CONVICTIONS (7645/05, 10676/06)

Letter from the Chairman to Andy Burnham MP, Parliamentary Under Secretary of State, Home Office
Thank you for your letter of 16 December 2005 enclosing summaries of your consultation exercises in England and Wales and in Scotland. The Committee was interested to learn the views of practitioners and others concerned. We note the need for clarification of a number of aspects of the proposal if it is to be workable in practice and we are pleased to see that these are points to which you are giving further consideration.

We are also interested to see that a number of consultees have suggested that the Framework Decision should proceed in parallel to the Framework Decision on minimum standards in criminal proceedings. As you mentioned when you met the Committee on 18 January this latter Framework Decision has met opposition from a number of Member States. We trust that the Government will remain a strong supporter of the Framework Decision on minimum standards in criminal proceedings and will resist any attempt to adopt a lowest common denominator approach to that proposal. The responses of practitioners in your recent consultation exercise will, we hope, encourage the Government to argue for a high level of protection in order to strengthen mutual trust which is essential to mutual recognition measures such as the present Framework Decision on taking account of convictions in other Member States.

The Committee decided to retain the proposal under scrutiny.

2 February 2006

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office
The revised text of this proposal (COPEN 66) has been considered by Sub-Committee E (Law and Institutions). As you describe in your Explanatory Memorandum of 10 July, the proposal has been substantially amended. The scope of application of the proposal has been reduced and a number of provisions of the Commission’s proposal removed. We are grateful for the explanation of these changes you have provided. The revised proposal nonetheless raises a number of concerns.

First, amendments have been made to Articles 1 and 2 so as to restrict the scope of the Framework Decision to criminal proceedings and previous convictions, one intended to effect of this being to remove administrative authorities, offences and proceedings from the Framework Decision. We note that the Commission retains

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the view that the Framework Decision should cover road traffic offences, many of which it considers to be “covered by administrative decisions”. You have given an “initial view” as to whether the Framework Decision would apply to fixed penalty notices for road traffic offences. We would find it helpful if you could provide a detailed note as to how you see the proposed Framework Decision applying to road traffic offences more generally.

The text of Article 3(1) has been amended and, as our sister Committee in the House of Commons has indicated, raises a question as to whether or not the obligation contained within the new Article 3(1) impinges upon judicial discretion in admitting evidence and/or sentencing. We would be grateful to have clarification of your understanding of the extent of the obligation contained in Article 3(1).

The deletion of Article 4, which the Government welcome, reminds us that we are still awaiting the Government’s views on how the proposal addresses the issue of spent convictions. This is a matter on which your predecessor, Andy Burnham MP, appeared not to have reached any conclusion (see his Explanatory Memorandum of 23 May 2005, and letters of 15 November and 16 December 2005). This is also a point which has been raised by the Commons Scrutiny Committee. We look forward to receiving your detailed response.

You also welcome the removal of Article 5 describing it as “an obscurely drafted Article which . . . seemed unlikely to have much practical effect”. However obscure, the Article did purport to deal with the issue of dual criminality on which the Framework Decision is now silent. Would Article 3 require an English judge to take account of a foreign conviction for an offence in respect of conduct which would not be criminal here? The Commons Committee has raised the question of compatibility with Article 7 ECHR. Again, we look forward to your detailed response.

Finally, there is the question of the application of the principle of subsidiarity, an issue which we raised when we first considered this proposal back in June 2005. You say that the principle is satisfied because the proposal “will allow Member States to take convictions recorded in other Member States into account during new criminal proceedings in their own jurisdictions in accordance with their national practices”. Are Member States not free to do this now? And insofar as any international stamp of approval is necessary is this not already given by the 1970 Convention on the International Validity of Criminal Judgments between Member States? We find your argument unconvincing.

The Committee decided to retain the proposal under scrutiny.

25 July 2006

Letter from Joan Ryan MP to the Chairman

I am responding to your letter of 25 July 2006 concerning the latest text of the draft Framework Decision on taking account of convictions in the Member States of the EU in the course of new criminal proceedings. I am writing 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. Overall the draft deposited with the Committee contains many improvements and addresses the concerns the Government had previously outlined. We are therefore content with the latest text. The Presidency is hoping to reach a General Approach at the October Council.

Road Traffic Offences

The Select Committee asks for an explanation about how the proposed Framework Decision will apply to road traffic offences. Where a road traffic offence results in a conviction from a criminal court, it will fall within the scope of this Framework Decision. Fixed Penalty Notices will not fall within the scope.

Road traffic offences will be treated in the same way as any other criminal conviction under the Framework Decision. That is, where a Member State in the course of new criminal proceedings is aware of a previous conviction from another Member State for a road traffic offence, it will be taken into account in the same way and to the same extent as would a national conviction, both for bad character and sentencing purposes. In the UK, this will result in the conviction being treated as an aggravating factor, to which the judge will have the discretion to attach the appropriate weight in sentencing the offender. It will not attract penalty points, because the individual will already have been convicted and punished for this offence in the Member State of the proceedings, according to the national law of that state.
Article 3(1)

The Government is grateful to the European Scrutiny Committee for raising the issue of compatibility with the CJA 2003, and agrees with the Committee that the obligation to give the same—or equivalent—legal effect to foreign convictions under Article 3 goes further than the provisions of the CJA which permit but do not require a court to treat a conviction by a court outside the UK as an aggravating factor in sentencing. Accordingly, our latest legal advice suggests that we will indeed have to amend legislation to comply with this obligation.

The Government does not however accept the Committee’s concern that this removes the court’s discretion not to take a foreign conviction into account. The purpose of the framework decision is to ensure that foreign convictions be taken into account to the same extent as domestic convictions. Therefore, the discretion that the Courts have in determining the relevance of and weight of a previous conviction in a new criminal proceeding will apply equally to foreign convictions.

Spent Convictions

The Select Committee also raises the issue of spent convictions. Section 4(1) of the Rehabilitation of Offenders Act 1974 provides that after a certain period of time (determined by the length of the sentence imposed), a conviction attracting a sentence of less than 2.5 years imprisonment shall become “spent.” This means the person will be treated in law as a person who has not been convicted for such an offence. The entry on the criminal record pertaining to this offence, however, is not automatically wiped and Section 7(2)(a) of the Act provides that Section 4(1) of the Act does not apply to evidence given in criminal proceedings. The Judge therefore has access to the full criminal record, including spent convictions, and such spent convictions can be taken into account in sentencing.

The Framework Decision stipulates that previous convictions be taken into account to the extent previous national convictions are taken into account, this means that if the conviction would have expired in the Member State of the new proceedings, had it been a national conviction, it will be treated as such by the Court and the appropriate legal consequences attached.

It therefore does not follow that a UK national whose “spent” convictions become known to the Court of another Member State in new criminal proceedings will be treated more unfavourably than if the previous conviction had been a national conviction.

Dual criminality

The Select Committee also raises the question of dual criminality. With regard to sentencing, Article 3 will not require an English judge to take account of a foreign conviction for an offence in respect of conduct which would not be criminal here. The Recitals make clear that the framework decision does not oblige Member States to take into account previous convictions imposed in other Member States where a national conviction would not have been possible regarding the act for which the conviction had been imposed.

However, the Courts are not prevented from taking such a foreign conviction into account for bad character purposes if they so wish. Under Section 112 of the Criminal Justice Act 2003, previous relevant “reprehensible behaviour” (which goes wider than convictions) can be taken into account in the investigation and prosecution of offences.

Subsidiarity

Finally, the Select Committee raises the question of subsidiarity and asks whether Member States are not currently free to take into account during new criminal proceedings convictions recorded in other Member States. You cite the 1970 Convention on the International Validity of Criminal Judgements between Member States as providing a vehicle for them to do so. However, only nine of the 25 Member States have ratified this convention and since many of its provisions have been superseded by EU instruments, it is unlikely that any more will do so. It is the case that certain Member States are currently unable to take into account foreign convictions.

19 September 2006
PRESUMPTION OF INNOCENCE (9128/06)

Letter from the Chairman to Rt Hon Lord Goldsmith QC, Attorney General, Office for Criminal Justice Reform, Home Office

Sub-Committee E (Law and Institutions) considered this Green Paper at its meeting of 21 June 2006.

We note that the Government show little enthusiasm for EU legislation on the presumption of innocence. In your EM you say that you do not consider that a Commission initiative in this area is necessary or desirable. You refer to major differences in the common law and civil law systems. What are your particular concerns here? It would be helpful if you could provide an example of one such major difference and the complications which might ensue in any harmonisation attempt in the EU.

The Committee also queries whether certain reactions to the Green Paper may be symptomatic of a more general problem. We are aware that issues have arisen over legal base. It seems probable some Member States would oppose any future Framework Decision on grounds of lack of competence. In our view, careful thought should be given to the wisdom of pursuing action in an area where opposition from at least one Member State is almost certain (we understand that Austria and Slovakia have voiced concerns in respect of current and future legislation aimed at harmonisation of national criminal law procedures). A number of other dossiers are, or are likely to be, similarly affected by challenges to competence, including the Procedural Rights Framework Decision, the Eurobail proposal and any future proposals on the Admissibility of Evidence and Conflicts of Jurisdiction and ne bis in idem.

The Committee recalls the commitments made by Member States in the Hague Programme, but on important matters such as Procedural Rights little or no progress is being made. Rather than pursuing negotiations on individual dossiers with little prospect of success, Member States and EU institutions may wish to reconsider more generally the extent of judicial cooperation in criminal matters they now wish to have. Unless use is made of Article 42 TEU passerelle to move to QMV, it is becoming apparent that little progress will be made in this area without some new agreement at the highest level. We understand that the Commission has proposed a review of progress made in implementing the Hague Programme and a thorough evaluation of results. Are Member States still committed to the Hague Programme? Do you agree that a comprehensive evaluation should now take place and that a revised programme should, if necessary, be agreed?

We note that the deadline for responses to the Green Paper was 9 June 2006. We would be grateful for your explanation of why your EM was not received by this House until 13 June 2006. We also look forward to receiving a copy of your response to the Commission.

We have decided to hold this Green Paper under scrutiny.

22 June 2006

Letter from Rt Hon Lord Goldsmith QC to the Chairman

Thank you for your letter of 22 June. I note you have held the Green Paper under scrutiny.

You asked about our particular concerns over this Green Paper in relation to the differences between the common law and civil law systems. I had in mind the fact that UK criminal justice systems are essentially adversarial, while most other European criminal justice systems are basically inquisitorial. Though the differences can be overstated, I think it fair to say that in common law systems, the functions of investigating, prosecuting, testing and challenging the evidence, reaching conclusions and adjudicating are performed by a number of different bodies. In inquisitorial systems, on the other hand, the state usually has the primary role both as fact-finding prosecutor, and as impartial and independent judge actively involved in determining the truth. Also, our proceedings at trial are primarily oral, whereas in inquisitorial systems the “dossier” of written evidence plays a central role, and oral evidence is supplementary.

In ECHR terms what is important is that the trial process as a whole should be fair, whatever our system. One problem with attempts to harmonise some elements of the trial process on a pan-EU basis is that such measures will play into different systems in different ways, with perverse and possibly unforeseen consequences.

I note your comments regarding the wisdom of pursuing action on a number of Commission dossiers which are likely to be opposed by some Member States on grounds of lack of competence. We are considering the general position on such measures in the light of proposals now being made by the Commission, and we will be writing to you about this separately.
As to the timing of my response, the Green Paper did not set a firm deadline for responses but requested them “preferably by 9 June”. This allowed very little time for the amount of consultation and consideration needed in formulating our response, and in the event we are only now finalising it. We will send you a copy once it has been lodged with the Commission.

I share your surprise that there was a delay between my signing of the Explanatory Memorandum on 7 June and its arrival with you on 13 June. I am afraid that this appears to have been the result of an oversight while staff who normally handle these documents were absent from the office.

8 July 2006

Letter from Rt Hon Lord Goldsmith QC to the Chairman

Further to my letter of 8 July on this subject, I am writing now to enclose the UK’s response to the Green Paper on Presumption of Innocence.

We look forward to receiving any further comments the Committee may have.

12 July 2006

Annex A

CONSULTATION RESPONSE TO THE COMMISSION’S GREEN PAPER ON PRESUMPTION OF INNOCENCE, COM (2006) 174, DROIPEN 33

Factual responses setting out the position in the jurisdictions of the United Kingdom concerning the Green Paper on the Presumption of Innocence are given below.

The United Kingdom questions if it is appropriate to bring forward this initiative at the present time. Paragraph 2 of section 1.1 of the Green Paper indicates that the original intention was to pursue evidence-based safeguards, of which this is a part, following the work on procedural safeguards. In fact the draft Framework Decision on procedural safeguards has run into very considerable difficulties. The text proposed initially by the Commission has effectively been abandoned and a much more general text is currently being considered by Member States. Even so, several Member States contend that there is no basis in the Treaty for any such legislation at Union level. Against that background, the prospects for negotiating to a successful conclusion a Framework Decision on the even more challenging issue of evidence-based safeguards appear extremely poor, the more so as it has not been demonstrated that there is an objective need for this exercise.

In the circumstances, we suggest that substantive work on this topic would not be a good use of scarce resources.

It should be noted that there are three jurisdictions in the United Kingdom: England and Wales, Northern Ireland, and Scotland. On most—but not all—issues the law in Northern Ireland is the same as in England and Wales. The response below to each question first sets out the position in England and Wales, and then the position in Scotland. Northern Ireland will only be mentioned where the position differs from England and Wales.

The law in England and Wales alone is very complicated in this area. We consider that our domestic arrangements in all three jurisdictions guarantee the rights of individuals in accordance with the ECHR. However, a legislative approach designed to harmonise systems across EU Member States would be likely to require significant changes to our primary legislation.

RESPONSES TO SPECIFIC QUESTIONS

1. Do you agree with the list of what constitutes the presumption of innocence given here? Are there any other aspects not covered?

This seems a broadly accurate account of the position in all UK jurisdictions. However the presumption of innocence is displaced by proof beyond reasonable doubt, so we would include the qualification “reasonable” when indicating that any doubt should benefit the accused.

In England and Wales the presumption of innocence has been adjusted in certain situations, for example to allow inferences to be drawn (in certain tightly defined circumstances) from a defendant’s silence, and removal of the right not to produce evidence in matters of suspected serious or complex fraud—see below.
It should also be noted that there is a variety of non-court disposals in UK jurisdictions, such as fines, mediation and social work diversion, which may be used when there is sufficient evidence to prosecute the person concerned; but it is always open to him or her to refuse to accept any of these alternatives and proceed to be tried for the offence.

2. Are there any special measures in your Member State during the pre-trial stage in order to safeguard the presumption of innocence?

Any special safeguards of this kind need to be considered and understood in the context of the criminal justice system in question as a whole. Publicity may impact on the fairness of a trial, especially where a person is to be tried by a lay jury. Care must therefore be taken to ensure that the reporting of allegations is not such as to colour the approach of potential jurors. The media in England and Wales are therefore constrained in their reporting of early stages of criminal proceedings and may in certain circumstances be specifically ordered by the court not to report proceedings.

In Scotland, similar restrictions on media reporting apply and there is also the important safeguard of corroboration, which is required in two respects. Firstly, there must be evidence from at least two sources that the alleged offence was committed, and if so, evidence from at least two sources that it was the accused who committed the offence in question.

3. (a) In what circumstances is it acceptable for the burden of proof to be reserved or altered in some way?

In England and Wales, the principles governing reverse burdens of proof in the context of Article 6 ECHR were summarised by Lord Bingham of Cornhill in Sheldrake v Director of Public Prosecutions [2005] 1 A.C. 264 at para. 21:

“21. From this body of authority certain principles may be derived. The overriding concern is that a trial should be fair, and the presumption of innocence is a fundamental right directed to that end. The Convention does not outlaw presumptions of fact or law but requires that these should be kept within reasonable limits and should not be arbitrary. It is open to states to define the constituent elements of a criminal offence, excluding the requirement of mens rea. But the substance and effect of any presumption adverse to a defendant must be examined and must be reasonable. Relevant to any judgment on reasonableness or proportionality will be the opportunity given to the defendant to rebut the presumption, maintenance of the rights of the defence, flexibility in the application of the presumption, retention by the court of a power to assess the evidence, the importance of what is at stake and the difficulty which a prosecutor may face in the absence of a presumption. Security concerns do not absolve member states from their duty to observe basic standards of fairness. The justifiability of any infringement of the presumption of innocence cannot be resolved by any rule of thumb but on examination of all the facts and circumstances of the particular provision as applied in the particular case”.

There are a few strictly defined exceptions to the general rule where the “reverse” onus is upon the accused to prove some matter the effect of which is that he is not guilty of the offence charged. There is one reverse onus at common law, and that is the general defence of insanity, and in all other cases reverse onuses are statutory, imposed by express words or necessary implication.

In some cases legislation may provide that an accused is obliged to prove an element of his defence (or disprove at least one element of the offence). This is commonly referred to as a “legal burden”. In other cases, an accused may be subject to a lesser burden to present some evidence of the defence and it is then the duty of the prosecution to disprove the existence of that defence. This is most commonly referred to as the defendant’s, “evidential burden”. If the imposition of a legal burden on the accused involves a breach of Article 6 ECHR, in accordance with the principles set out above in Sheldrake, a Court may use Section 3 of the Human Rights Act 1998 to “read down” the provision so that if an evidential burden is satisfied, then the legal burden is also satisfied.

Scotland: The three areas listed in paragraph 2.3 of the Green Paper represent areas where the burden of proof may be modified. As far as strict liability offences and the reversal of the burden of proof are concerned, these apply to offences at the lower end of the scale in Scotland. In relation to the recovery of assets, the standard of proof is often on the balance of probabilities.
3. (b) **Have you experienced cross border co-operation situations in which the burden of proof created a problem?**

We are not aware of any situation in any UK jurisdiction where issues in relation to the burden of proof have created problems in cross border situations.

4. (a) **How is the right to silence protected in your Member State?**

In England and Wales, broadly along the lines described in the Green Paper. Under the Police and Criminal Evidence Act 1984 the police, when questioning a suspect, are obliged to inform him of his right to remain silent.

However under the Criminal Justice and Public Order Act 1994, if an accused fails to mention, when being questioned by the police, a fact which is later relied on in his defence in criminal proceedings, the jury may draw an adverse inference. Under Section 35 of the same Act a jury may also draw an adverse inference in certain circumstances where an accused fails to testify or answer questions at trial.

As a further elaboration of the right to silence, Section 2 of the Criminal Justice Act 1987 effectively limits the right to silence and the right not to produce evidence in matters of suspected serious or complex fraud. These compulsory powers are an integral tool in the successful investigation and prosecution of serious and complex fraud. Naturally there are procedural safeguards in place to ensure these powers are compliant with the ECHR. Firstly, a person may refuse to answer questions if they have a reasonable excuse. Secondly these powers cannot normally be used in evidence against the maker at trial, and thirdly no person can be compelled to provide information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

In Scotland currently the only information a suspect has to provide is name and address. (Legislation currently in the Scottish Parliament, the Police, Public Order and Criminal Justice Bill, due to come into force in August 2006, proposes a minor addition to include date of birth and information relating to nationality.)

4. (b) **Is there any difference in cross border situations?**

In England and Wales, there is no difference in cross-border situations if cross-border cooperation is the issue. If we were seeking to gather evidence outside the UK the suspect would have the same rights as in the UK. In cases of serious or complex fraud, if another country uses compulsory powers similar to our own to obtain evidence, this does not of itself pose a problem for its admissibility provided equivalent safeguards are in place. Similarly the powers available under Section 2 of the CJA 1987 outlined above will be used to interview or obtain documents for other EU Member States that have requested mutual legal assistance.

There are no differences in Scotland with regard to cross border situations.

4. (c) **To what extent are legal persons protected by the right?**

In all three jurisdictions there is no differentiation between natural and legal persons, ie both are subject to the same procedural safeguards.

5. (a) **How is the right against self-incrimination protected in your Member State?**

In England and Wales, the privilege against self-incrimination is well established and applies in respect of all criminality, from those offences which are summary offences only before magistrates (eg parking fines) up to those which are triable only on indictment (eg murder). It is recognised and given effect to by legislation. Parliament has however identified a number of areas where it is considered that the public interest in the proper administration of justice, and in particular in ensuring that all relevant material is before the court, outweighs the rationale for the privilege, and has legislated to provide for this. The content of the privilege against self-incrimination was subject to detailed scrutiny in Brown v Stott [2003] 1 AC 681 and Attorney General's Reference no. 7 of 2000 [2001] 1 WLR 1879, and in accordance with the decision in Saunders v United Kingdom it has been held that the privilege against self-incrimination in criminal proceedings does not apply to pre-existing documents.

There are however some limitations on the privilege. For example, the criminal courts have powers to ensure that the investigating authorities can secure documents from third parties. The fact that compliance with an order to produce documents by the person ordered may involve him in incriminating himself is not per se a reason for not making the order. See also the answer to Question 4 (a) above on Section 2 of the Criminal Justice Act 1987.
In Scotland, in addition to the position explained in 4(a) above, individuals are generally not required to speak to police or produce any other evidence eg documents. But this is without prejudice to the options available to the police to apply through a prosecutor to a judge for a search warrant. However, the prosecutor will only present the application and the judge will only approve it if they think it is merited in the specific case.

It should also be noted that in both jurisdictions, there are legal consequences for a suspect if they refuse to supply intimate body samples. Suspects may also be required to take part in an identity parade.

Furthermore, both jurisdictions have made it a statutory offence for a driver to fail to respond to a question from the police as to who was driving his vehicle at a particular time. In the case of Brown v Stott 2003 IAC 681 the ECtHR found that this is not a breach of the accused’s right not to incriminate himself.

5. (b) Is there any difference in cross border situations?

In all three UK jurisdictions there is no difference with regard to cross-border situations.

5. (c) To what extent are legal persons protected by the right?

In all three jurisdictions legal persons can generally be said to enjoy the same protections as natural persons.

6. (a) Are in absentia proceedings possible in your jurisdiction?

In England and Wales, Magistrates’ Courts are empowered in certain circumstances to proceed to trial and sentence in the absence of the accused, but the powers are used sparingly. Where a trial in absence takes place, the defendant can seek to overturn the verdict within 21 days, seek a rehearing, or appeal to the Crown Court. It is also possible for the Crown Court to proceed with trial in the absence of the accused, provided the accused has been present to enter a plea. If the accused then voluntarily absents himself from the trial, it is in the court’s discretion whether to proceed in his absence. This discretion must be exercised with great care and only in exceptional cases, and in practice trials in the absence of the accused in the Crown Court are very rare.

The discretion to proceed with a trial in absence must be exercised so as to be compatible with Article 6 ECHR. It is also necessary to have regard to the judgment in R v Jones [2002] UKHL 5. The Government is considering legislating to allow the imposition of a custodial sentence in the accused’s absence in certain circumstances.

In Scotland in absentia proceedings are also available in limited circumstances. There is provision to allow for certain summary proceedings to go ahead in the accused’s absence where he/she is charged with a statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where there is specific statutory provision allowing proceedings in absence. In both cases the court must be satisfied that the accused has had adequate notice of the hearing at which he/she has failed to appear. Counsel or a solicitor may represent an absent accused if the court is satisfied that they have appropriate authority.

There are also provisions in Scottish law for trial in absence in certain circumstances in solemn (serious) cases so that a trial can continue in the accused’s absence where he/she fails to appear during the course of the trial, and evidence has been led which substantially implicates guilt. The court may allow the trial to continue if it believes that it is in the interest of justice. A solicitor will be appointed to represent the accused in this situation if no other solicitor has authority to act. There are also provisions, which are seldom used, but which allow for a person who misconducts him/herself in court to be removed and for the trial to continue in his/her absence.

The Scottish Parliament is currently considering legislation to extend substantially the provisions relating to trial in absence in summary cases.

6. (b) Do these proceedings raise specific problems with regard to the presumption of innocence, in particular in cross border situations?

In all three jurisdictions, such proceedings raise no issues with regard to the presumption of innocence in cross border cases. Standards and methods of proof are the same as in situations where the accused is present. Cross-border cases involving in absentia proceedings are very rare, and the only cross-border situation in which they might be raised would be extradition from another state to the UK after conviction in absence. Our limited experience is that this has not presented any difficulty.
7. Does legislation in your Member State lay down special rules for terrorist offences? If so, please describe the provisions inasmuch as they relate to the presumption of innocence. Does this regime apply to other offences?

In England, Wales and Scotland, as a general rule, terrorist offences are dealt with using the ordinary criminal law and within the confines of the ordinary criminal justice system. A person who is accused of a terrorist offence enjoys the protection of the presumption of innocence. However, there are some legislative provisions in relation to terrorist offences that are relevant to the presumption of innocence.

The Terrorism Act 2000 contains a number of specific offences and investigative powers for the purposes of terrorist investigations. These include provisions for the disclosure of information and drawing of adverse inferences in certain circumstances provided for within the legislation. There are appropriate safeguards within the legislation which ensure that the presumption of innocence is protected.

In Northern Ireland, special provision exists for the trial of certain offences by a judge sitting alone rather than with a jury. In such trials the presumption of innocence is unaffected.

8. At what point does the presumption of innocence cease in your Member State?

In all three jurisdictions, the presumption of innocence ceases either when the accused pleads guilty or is found guilty. If appeal proceedings are upheld and the conviction is quashed the person’s “not guilty” status is reinstated.

9. (a) Are you aware of problems in a cross border context linked to the presumption of innocence other than those referred to above?

(b) To what extent are these problems related to differences in approach in other jurisdictions?

(c) Could EU proposals add value in this area? If so, in what way?

We are not aware of any problems in any UK jurisdiction linked to the presumption of innocence. Nor are we aware of difficulties with cross-border cooperation arising from this issue. We do not accept that any of the areas discussed in response to the preceding questions present any problems.

In consequence, we do not think that there would be anything to be gained from EU intervention in this aspect of criminal procedure.

Letter from the Chairman to Rt Hon Lord Goldsmith QC

Thank you for your letter of 12 July which has been considered by Sub-Committee E (Law and Institutions) and for the copy of the Government’s Response to the Commission’s Green Paper.

We are grateful to you for the additional information and in particular for outlining your concerns in more detail. We agree that difficulties may arise as a result of the differences between the two main systems in Europe (civil law and common law) and we would expect there to be careful consideration of these issues. We recall that Member States are already under a legal obligation to guarantee the presumption of innocence under the European Convention on Human Rights, and that the case-law of the Strasbourg Court has developed the content of this right. In these circumstances, we are hesitant to agree immediately that it would be dangerous to seek some level of harmonisation in the EU.

This said however, we do consider that the proposal raises subsidiarity concerns. As with other dossiers (eg the Green Paper on conflicts of jurisdiction and ne bis in idem) the Commission has yet to produce evidence that problems exist and make a case for EU action. Should any proposal be adopted by the Commission following this consultation, this is a matter to which we will pay particular attention.

We note that you will write separately to us on the matter of Member States’ commitment to the Hague Programme. We look forward to receiving your response to the questions we raised in due course.

We have decided to clear the Green Paper from scrutiny.

25 July 2006
Letter from Rt Hon Lord Goldsmith QC, Attorney General, Office for Criminal Justice Reform, Home Office

Thank you for your letter of 16 December 2005 to Fiona Mactaggart which raised further questions on this draft Framework Decision. In this reply I refer to an Explanatory Memorandum which we are depositing in both Houses, together with the most recent text of the Framework Decision, Droipen 61. Copies of both are enclosed for convenience. I am replying for the reasons given in paragraph 7 of the Explanatory Memorandum, in brief that the Office for Criminal Justice Reform and not the Home Office are now leading on criminal procedural law. Of course, Fiona, supported by her Home Office officials, will continue to deal directly with your committee in relation to the substantive criminal law.

The comments below in response to some specific points you raise should be read in conjunction with comments on the relevant articles contained in the enclosed Explanatory Memorandum.

Legal Base and Subsidiarity

The specific issue of the legal base was not discussed at the JHA Council of 1–2 December 2005. The Council took note of the state of play on negotiations.

The future of this draft instrument is now uncertain. As a number of difficulties and fundamental differences of view between Member States have become evident, the Austrian Presidency held a discussion on the future of this proposal at the Informal meeting of Justice and Home Affairs Ministers in Vienna, 12—14 January. At this meeting, discussion was centred on the question of whether work on common standards in the area of procedural rights, in support of the facilitation of judicial cooperation, should be re-directed to focus on measures for the general safeguarding of procedural law principles that serve to protect the fundamental rights of the individual (proper hearing, fair trial, legal remedies). There was some support for this position but no decision was reached and the issue will be considered again at the Justice and Home Affairs Council in February.

The Austrian Presidency has proposed a new approach, and we have some sympathy with this. We took the draft instrument as far as we could under our Presidency, but it was clear that some Member States have real problems with the principle of any legislation in this area. Serious difficulties had emerged over what precisely should or should not be included within the scope of the Framework Decision, and in particular over the issue whether there should be limitations on certain rights in relation to terrorism and serious organised crime.

Definitions (Article 1)

You ask whether the UK would need to revise its position in relation to Article 35 TEU in the light of the Pupino Judgment. We see no need to revise our position. Our assessment is that the Pupino Judgment is unlikely to make much practical difference, since we already carefully scrutinise Framework Decisions to ensure that any legislative implications are fully explored. But it does underline that framework decisions need to be taken very seriously.

Legal Advice (Articles 2–5)

Please see comments in the Explanatory Memorandum (paragraphs 17—21).

The latest draft of the text, in particular the definition of “criminal proceedings” in Article 1, makes clear that the right to legal advice extends to investigations.

Translation (Articles 6–8)

You mentioned in your letter the need for an accreditation mechanism and sought assurance that appropriate measures would be put in place in the UK to that effect. There is already a national agreement in place in England and Wales, whereby agencies in the Criminal Justice System are advised to use interpreters registered with the National Register of Public Services Interpreters (NRPSI), and this is reflected in PACE Code C. NRPSI Registration can only be obtained by those who achieve a recognised standard of attainment in the languages they offer, and involves an obligation to abide by a code of conduct which is backed up by disciplinary procedures.

You queried the reference in Article 7(1) to the effect that a translated summary of documents may suffice “where appropriate”. Please see the comment in the Explanatory Memorandum (paragraph 23). The current wording stresses what is actually necessary for the purposes of the fairness of the proceedings. The Working Group was of the view—which we share—that this provision should derive from the relevant ECtHR case law. It was held in *Kamasinski vs Austria* (1989) that the assistance of an interpreter required by Article 6(3)(e) extends beyond provision of an interpreter at the hearing to include translation of “all statement which it is necessary for him to understand in order to have a fair trial”; this may not require a written translation of every official document. It was held in that case that “the interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself [. . .]”, which is the wording reflected in the current draft.

**Recording (Article 9)**

As you know, this article has been deleted at the wish of an overwhelming majority of member states. While we agree that the recording provisions were an important and useful aspect of this proposal, given that the majority of Member States were strongly opposed to the inclusion of Article 9, the UK alone was not able to persuade the other Member States of the usefulness of this provision.

**Specific attention/Right to [special measures] (Article 10)**

In your letter you ask whether the exceptions which now appear bracketed in Article 10(3) of Droipen 61 are acceptable in the case of minors. As you will be aware (see comments on Article 2 above) the whole question of such exceptions is a recurring and dividing one which EU Ministers will need to consider. Fiona Mactaggart said in her letter of 24 November that in our view some provision to allow Member States to apply exceptions or conditions is needed in order to maintain an effective response to serious organised cross-border crime and in particular the threat posed by international terrorism. The wording of Article 10(3) reflects that of Article 2(2) and 12(2) for reasons of consistency.

**Letter of Rights (Article 14) and Monitoring and Evaluation (Articles 15–16)**

I refer you to the Explanatory Memorandum (paragraphs 33–35).

I shall write to you again after the Justice and Home Affairs Council Meeting in February, to let you know what has been decided about the future of this measure.

*7 February 2006*

**Letter from the Chairman to Rt Hon Lord Goldsmith QC**

Thank you for your letter of 7 February 2006 which was considered by Sub-Committee E (Law and Institutions) at its meeting of 22 March 2006.

We note that the future of the proposed Framework Decision is now uncertain and we understand that a number of Member States do not favour the adoption of the proposal. What is the Government’s position?

We understand that the Austrian presidency has asked Member States to reflect on three questions regarding the proposal. We would be grateful if you would provide a copy of these questions.

You indicated that the matter would be discussed at the February JHA Council and undertook to write to us following that meeting to inform us of developments. We understand that the issue was not, in the event, discussed at that meeting. We would be grateful if you would advise us of the current position and whether the proposed Framework Decision will be on the agenda for the April JHA Council.

We have decided to hold the proposal under scrutiny pending future developments.

*23 March 2006*
Law and Institutions (Sub-Committee E)

Letter from Rt Hon Lord Goldsmith QC to the Chairman

I am writing to update you on developments over this measure since I last wrote on 7 February.

I understand that this measure was not referred to the Justice and Home Affairs Council in February as had been indicated by the Austrian Presidency. Instead, after discussion at a meeting of the Article 36 Committee of senior officials early that month, the Austrian Presidency decided to refer the matter once again to the relevant Working Group, so as to clarify what, if any, operation need lay behind it.

At the Working Group’s meeting on 6 March, Member States agreed that there was no evidence that the Framework Decision was in fact required to facilitate cooperation—having regard to actual cases. However some Member States continued to hold out for a legally binding instrument to be agreed in this area, despite the deep divisions described in my Explanatory Memorandum of 7 February. In the absence of consensus on the way forward, it was decided that the measure would require further political guidance.

In view of the apparent impasse, we think that there may now be a need to consider non-legislative alternatives to a Framework Decision. These could include a political declaration and some EU-funded schemes to improve provision of, for example, legal advice and interpreters. We are discussing such possibilities with other Member States.

I shall write to you again when there are substantive developments to report.

23 March 2006

Letter from the Chairman to Rt Hon Lord Goldsmith QC

Thank you for your letter of 23 March 2006 which was considered by Sub-Committee E (Law and Institutions).

We note what you say regarding the future of the proposal. As we emphasised in our Report, Procedural Rights in Criminal Proceedings, 1st Report of Session 2004–05, HL Paper 28 (paragraphs 25 and 72), there is a need for minimum standards in criminal proceedings, and it is important that the outcome of the current negotiations is truly “something worthwhile”. We would need to be convinced that a “political declaration” would satisfy this objective.

Your letter appears to have crossed with our letter of the same date and we would be grateful for a response to that letter.

The Committee has retained the proposal under scrutiny.

24 April 2006

Letter from Rt Hon Lord Goldsmith QC to the Chairman

Thank you for your letter of 23 March on this subject, which crossed with mine of the same date.

You asked what the Government’s position is concerning adoption of this proposal. I am not sure that it is realistic to speak of adoption at this stage. Unanimity is required before this instrument can be accepted and there is as yet no text which commands consensus. This reflects in part serious disagreement by several Member States regarding the legal base for the proposal, and deep divisions between Member States over the question of exceptions regarding safeguards in cases of the terrorism and serious crime. Recent discussion in the Council Article 36 Committee of senior officials has suggested that a fresh approach may be required to try to resolve the differences. One option would be to consider non-legislative measures which could take forward some of the work done by Member States in this area, and act as a guide for future work.

You asked for a copy of three questions which the Austrian Presidency had posed to Member States regarding this proposal. The Austrians have in fact posed a number of questions on this measure on several occasions. The three most recent questions have been:

— “Could restricting the content of the proposal to particular rights help to overcome doubts on the legal basis and to speed up discussions?”
— “Should the Framework Decision accordingly focus on the right to defence, the right to information on essential procedural rights and the right to free interpretation and to free translation of relevant documents?”
— “Should the abovementioned rights and eventual exceptions to them be precisely formulated or could it be helpful, for the sake of rapid agreement, to refer to the principles developed in the case law of the ECtHR and/or to national law in order to further clarify some aspects (in this case, discussion of individual exceptions to certain rights might be unnecessary and general standards would be developed instead)?”
These were considered by Senior Officials on 11 and 12 April when a dozen Member States (including the United Kingdom) indicated support for practical proposals such as a political declaration, as a way of making progress. At the time of writing, this Framework Decision is an item on the agenda for the Justice and Home Affairs Council meeting to be held on 27 and 28 April.

25 April 2006

**Letter from the Chairman to Rt Hon Lord Goldsmith QC**

Thank you for your letter of 25 April 2006 which was considered by Sub-Committee E (Law and Institutions).

We note that the United Kingdom has indicated its support for a political declaration as a way of making progress. Does this mean that the Government no longer support the legislative proposal as currently drafted? If so, would the Government in principle support a new legislative proposal on procedural rights in due course?

We would be grateful if you would update the Committee on any developments following the April JHA meeting.

As you will be aware the Commission has recently published a Communication (A Citizens’ Agenda Delivering Results for Europe) setting out its ideas for taking matters forward under existing Treaty powers during the period of reflection on the Constitutional Treaty. Under the heading “Freedom, Security and Justice” the Commission says: “The EU must act further. For example, it needs . . . to focus on respect and promotion of fundamental rights for all people and to develop the concept of EU citizenship”. In the Commission’s view the **passerelle** in Article 42 TEU could bring about changes which would “improve decision taking in the Council and allow democratic scrutiny by the European Parliament”. Do you think that the proposed framework decision on procedural rights would have fared better as a Community measure subject to co-decision and qualified majority voting in the Council? Would the Government support the use of the **passerelle** to take matters such as this one into the Community pillar?

Finally, for the sake of clarity, we take this opportunity to clear previous draft document 10880/05 from scrutiny. The Committee has decided to hold the most recent draft of the proposal submitted to Parliament (document 15432/05) under scrutiny.

18 May 2006

**Letter from Rt Hon Lord Goldsmith QC to the Chairman**

I am sorry for the delay in responding to your letter of 18 May, but I am writing now to update you on developments over this measure.

It is clear that the Commission’s original draft framework decision on procedural rights has been shelved, for reasons summarised in my last letter of 25 April 2005 on this subject. The Austrian Presidency circulated in April an alternative, more general, text which was discussed at informal working group meetings in April and May and at the JHA Council on 1 June at which I represented the UK. I enclose a copy. You may be interested to know more about the views expressed at the JHA Council.

Despite the weaker content of the Presidency text, a number of Member States continued to object on principle that there is no basis in the treaties for such intrusion into wholly domestic situations. Several Member States, including the UK, also expressed concern about the justification for and dangers from creating parallel and overlapping European jurisdictions on human rights (as between the ECHR and the proposed FD). The Austrian Presidency had only recently circulated a paper dated 5 December 2005 from the Council of Europe, which expressed serious concerns in this regard.

Other Member States, though not opposed in principle to any binding EU law in this area, expressed doubts that it would be possible to overcome the long-standing problems of agreeing basic definitions of scope and content so as to achieve the necessary unanimity.

My view is that we need to be realistic and to consider alternatives which can deliver practical concrete benefits for the citizen. I therefore advised the Council of Her Majesty’s Government’s clear preference for a political resolution with a package of practical measures and funding streams to enhance compliance with the ECHR. I was pleased to secure agreement that such a Resolution should be discussed and developed in the Working Group alongside the draft binding text we now have, and I enclose a copy of a proposed text which has also been circulated to all Member States.
A meeting of the relevant Working Group took place on 7 July. It is now clear that certain Member States attach great importance to securing a binding instrument in this area, however general the wording. But as other Member States remain strongly opposed in principle, it remains unclear that there can be such an outcome.

The UK has made clear all along that its support for this project is conditional on the tests of necessity, proportionality and subsidiarity being met. In my view the most important political test is the value added for the citizen over and above the ECHR.

You ask whether the proposed framework decision on procedural rights would have fared better as a Community measure subject to co-decision and qualified majority voting in the Council. This does beg the question of what would constitute “faring better”, on which our views may not entirely coincide. However QMV might not necessarily have speeded up what was always likely to be a controversial measure, since the European Parliament would have had much more influence.

So far as the passerelle in Article 42 TEU is concerned, the Government is giving careful consideration to the proposals contained in the Commission Communication on “Implementing The Hague Programme: the way forward”. We can see both benefits and risks in using the Article 42 TEU passerelle to transfer elements of the Justice and Home Affairs agenda from the Third to the First Pillar.

14 July 2006

Annex A

RESOLUTION BY MEMBER STATES MEETING WITHIN THE COUNCIL OF THE EUROPEAN UNION

OF [ ] 2006

On ensuring fairness in criminal proceedings with particular reference to access to free legal aid and to an interpreter

Whereas:

1. It is a key objective of the Union to provide citizens with a high level of safety within an area of freedom, security and justice.

2. The Union’s commitment to freedom, security and justice is based on the values of human rights, democratic institutions and the rule of law.

3. The Member States share a determination to counter the threat to freedom and fundamental rights posed by serious crime.

4. Co-operation between the Member States and mutual recognition of judicial decisions in criminal matters is needed to combat criminal organisations effectively throughout the Union.

5. Steps should be taken to ensure that such decisions are respected and enforced throughout the Union, while safeguarding the fundamental rights of people in promoting the fairness of the proceedings.

And Whereas:

6. A high standard of fundamental rights in criminal proceedings should be maintained throughout the Union.

7. The Union’s respect for fundamental rights in criminal proceedings is rooted in the ECHR.

8. In the context of cross-border co-operation, it is highly desirable to ensure full compliance with the requirements of Article 6 of the ECHR especially regarding access to free legal aid and to an interpreter for all those who need such services.

9. At this stage of the Union’s development it is expedient to take practical steps to enhance observance of certain minimum standards.

HEREBY ENCOURAGES THE MEMBER STATES TO TAKE ACTIVE STEPS TO

— Promote the fullest compliance with Articles 5 and 6 of the ECHR as developed in the case law of the ECtHR.

— Use where appropriate the [attached76 Annex] on standards for the provision of free legal aid and assistance of interpreters/translations to suspects in criminal proceedings throughout the EU.

76 Not attached, but to be based on principles in the draft Framework Decision.
— Develop, in cooperation with the European Commission, targeted EU funding for improving the supply and quality of interpreters and translators in criminal proceedings in EU countries with identified priority needs.

— Consider extending available [peer] evaluation mechanisms to safeguard key procedural rights in criminal proceedings.

**Presidency Proposal for the Text of an Instrument on Procedural Rights in Criminal Proceedings**

**Article 1**

**Subject Matter and Scope**

1. With a view to facilitating mutual recognition between the Member States of the European Union and to safeguarding the fairness of proceedings this instrument aims at establishing minimum standards to be respected by Member States throughout the European Union concerning certain rights of persons subject to criminal proceedings.

2. The rights referred to in this instrument shall be interpreted with respect for the different legal systems and traditions of the Member States.

3. The minimum standards referred to in this instrument shall be interpreted in full compliance with the European Convention for the protection of human rights and fundamental freedoms, in particular Articles 5 and 6 thereof, as developed in the case law of the European Court of Human Rights.

4. For the purpose of this instrument, “criminal proceedings” and “charged with a criminal offence” shall be interpreted in accordance with national law while respecting Article 6 of the European Convention on Human Rights as interpreted by the European Court of Human Rights.

**Article 2**

**Right to Information**

1. Member States shall ensure that any person subject to criminal proceedings is provided with effective information, in a language which he or she understands, on the nature of the suspicion and of the fundamental procedural rights that he or she has.

2. This information shall be delivered as soon as these rights become relevant.

3. The information referred to in paragraph 1 shall include in particular information on the right to legal assistance, the right to such assistance free of charge and the right to free interpretation and translation.

**Article 3**

**Right to Legal Assistance**

1. Member States shall take the necessary measures to ensure that every person charged with a criminal offence has the right to legal assistance of his own choosing.

2. The right to legal assistance means at least the possibility for the person concerned to have adequate opportunities, time and facilities to communicate and consult with a legal adviser.

3. Member States shall take the necessary measures to ensure that any person subject to deprivation of liberty prior to trial has the right to legal assistance in order to safeguard the fairness of proceedings, taking into account the peculiarities of each national system, the legal relevance attached to such proceedings within the overall procedure, and in particular for serious offences, the need to protect investigations.

4. Notwithstanding paragraph 1, the right to legal assistance shall be available where the person concerned is subject to a European Arrest Warrant or extradition request or other surrender procedure.

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77A recital addressing quality standards of the persons involved in criminal proceedings, in particular lawyers, and a mechanism for the provision of a replacement lawyer, is introduced.
ARTICLE 4

RIGHT TO LEGAL ASSISTANCE FREE OF CHARGE

1. If the person subject to criminal proceedings is partly or totally unable to meet the costs of legal assistance as a result of his economic situation, these costs shall be borne in whole or in part by the State according to national law when the interests of justice so require.

2. The interests of justice referred to in paragraph 1, shall in particular cover cases where the person concerned:

— is subject to deprivation of liberty prior to trial, or
— is subject to criminal proceedings which involve a complex factual or legal situation or which may result in severe punishment, or
— is unable to understand properly or to follow the content or the meaning of the proceedings because of his age or mental or physical condition, in particular in the case of minors.

3. The economic situation of that person shall be assessed by the competent authority of the Member State in which the court is located.

ARTICLE 5

RIGHT TO INTERPRETATION

1. Member States shall take the necessary measures to ensure that any person subject to criminal proceedings or subject to a European Arrest Warrant or extradition request or other surrender procedure is provided with the free assistance of an interpreter when a procedural act requiring the person’s participation is taking place if he or she does not understand or speak the language in which the act is being held.

2. The interpretation referred to in paragraph 1 shall be organised in a way that guarantees the effectiveness of the rights of the defence.

ARTICLE 6

RIGHT TO TRANSLATION OF DOCUMENTS OF THE PROCEDURE

Member States shall take the necessary measures to ensure that a person subject to criminal proceedings or subject to a European Arrest Warrant or extradition request or other surrender procedure is entitled to get free translation of the documents, which are relevant for the participation of the person concerned in any procedural act, but in a language that he or she does not understand, to the extent necessary to ensure the effectiveness of the rights of defence.

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

Thank you for your letter dated 15 December which was considered by Sub-Committee E (Law and Institutions) at its meeting of 18 January 2006.

You confirm that the Community is well able to provide information on the division of competences under this Convention. We would be grateful to receive information on the allocation of competence, as envisaged in paragraph 307 of the Explanatory Report accompanying the Convention.

In the meantime, we will retain this document under scrutiny.

19 January 2006

79 A recital along the following lines is introduced: “Member States shall guarantee the right to interpretation and to translation of relevant documents, as laid down in Articles 5 and 6, in a way that safeguards the fairness of proceedings, in particular by enabling the defendant [suspect] to have knowledge of the case against him or her and to defend himself or herself.

Law and Institutions (Sub-Committee E)

Letter from Paul Goggins MP to the Chairman

Thank you for your letter of 19 January concerning the allocation of competence between the Member States and the Community in respect of Convention 198.


The Convention is concerned with criminal law matters, which generally fall outside of Community competence. However, there is some Community competence in relation to the Convention insofar as it relates to areas covered by the internal Community rules on money laundering (see Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, as amended by Council Directive 2001/97/EC, and further as amended by the third money laundering Directive 2005/60/EC). This applies to Articles 1(f), 12, 13 and 14 of the new Convention (CETS 198).

My officials have approached the Commission for further information about the division of competence between the Community and its Member States, as envisaged in paragraph 307 of the Explanatory Report accompanying the Convention. We await their reply.

I hope this information is of assistance.

9 February 2006

Letter from the Chairman to Paul Goggins MP

Thank you for your letter of 9 February which was considered by Sub-Committee E (Law and Institutions) at its meeting on 1 March. We note that your officials have now sought clarification from the Commission concerning the division of competence between the Community and its members in relation to the revised Convention. We look forward to receiving a copy of the Commission’s opinion together with your comments on it.

The Committee decided to retain the proposal under scrutiny.

2 March 2006

PUBLIC LIMITED LIABILITY COMPANIES: MAINTENANCE AND ALTERATION OF THEIR CAPITAL (14197/04)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

You cleared this proposal from scrutiny by letter on 16 December 2004\(^{80}\) (progress of scrutiny, 27 December 2004, session 2004–05).

I am writing to inform you that, at its meeting on 29 November, the Competitiveness Council agreed a general approach text in relation to this draft directive. The agreed text is in line with the negotiating objectives outlined in the letter accompanying the EM submitted last November. In particular, the text no longer includes the proposals to introduce general squeeze-out and sell-out provisions which we considered to be additional regulatory burdens.

The proposal is currently being considered by the European Parliament and there remain reasonable prospects of political agreement being reached in the first few months of this year.

10 January 2006

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


Further to my letter of 10 January 2006 (setting out details of the Competitiveness Council General Approach agreement reached on 29 November), I am now writing to inform you that the European Parliament voted on a text on 14 March which will enable a “first reading deal” on the dossier to be achieved between the Council and the European Parliament.

\(^{80}\) Correspondence with Ministers, 4th Report of Session 2005–06, HL Paper 16, p 274.
The text agreed by the Parliament is in line with our negotiating objectives. It does not include the Commission’s proposals to introduce general squeeze-out and sell-out provisions which we considered to be additional regulatory burdens. It also removes a Commission proposal which would have resulted in unlisted companies having to produce a written report when seeking to disapply pre-emption rights in relation to an increase in capital up to the limit of authorised share capital (where a public company proposes to issue new shares, existing shareholders have the right to be offered on a pro-rata basis part new shares before they may be offered to a third party). This too would have constituted an additional regulatory burden. Overall, the amendments to the Directive are unlikely to be of significant benefit to UK companies but with the potential added regulatory burdens now removed, they are unlikely to be harmful. Moreover, as most of the amendments are Member State options, we will be able to retain our current arrangements if our consultation on implementation of the directive indicates that this is the preferred course of action.

The directive is likely to be adopted without discussion at a Council meeting late summer/early autumn 2006.

31 May 2006

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letter of 31 May which was considered by Sub-Committee E (Law and Institutions) at its meeting on 21 June. We were interested to learn of the removal of a number of measures which might have constituted additional regulatory burdens (for example the squeeze-out and sell-out provisions). We note that a “first reading deal” has now been achieved between the Council and the European Parliament.

22 June 2006

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


There has been a further exchange of correspondence on the proposal (letter from Ian McCartney dated 31 May and your reply of 22 June 2006) concerning developments to achieve a First Reading Deal on this dossier.

I am now writing to confirm that the proposal was agreed at the Agriculture Council on 24 July. There have been no further changes of substance since the previous exchange with the Committee—the dossier has simply undergone the necessary agreement of all language texts.

The UK will, therefore have until around early 2008 to implement the Directive (the exact date will depend on the publication of the Directive in the Official Journal). We have begun considering in detail the implementing measures and will, of course, be happy to supply to the Committee a copy of the public consultation document in that respect in due course.

16 August 2006

REVIEW OF THE HAGUE PROGRAMME

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I am writing to provide an initial Government view of the four recent Commission Communications that relate to the review of the Hague Programme. More detailed Explanatory Memoranda will follow within the usual timescale but I am conscious that recess is almost upon us and wanted you to have an opportunity to begin to consider the issues covered by the Communications before the summer.

The four European Commission Communications cover: the future direction of the Hague Programme, including the option of using Article 42 TEU (the passerelle clause); reviewing the implementation of the Hague Programme to date (the scorecard); options for better evaluation of the impact of EU policies in the area of Justice and Home Affairs (JHA); and a legislative proposal based on Article 67(2) TEC adapting the remit of the European Court of Justice in Title IV (immigration, asylum and civil law matters).

Interested Departments have been consulted in formulating the Government’s initial view of these communications and broadly welcome the package and its aim of assessing progress made under the Hague Programme and providing options for future evaluation of JHA policies. It will also be a useful tool for supporting discussion over the remainder of this year about the future direction of JHA priorities and whether the current institutional and decision making arrangements in this area can be improved upon.
As regards the Hague Programme, it is a matter of record that this has already led to some useful measures, for example on information exchange and an Action Plan to combat human trafficking. However, a number of difficult projects aimed at harmonising sensitive aspects of domestic criminal law have also been brought forward under the Hague Programme, for example on procedural safeguards for suspects, the presumption of innocence and pre-trial custody/bail. As the Programme itself indicates, assumptions were made about implementation of the Constitution treaty and about agreement between the Member States regarding binding legislation on criminal procedural law which have not been borne out by events. We need to reflect upon these issues. The Commission Communication on the way forward for the Hague Programme is intended to review priorities and examine the need for policies in JHA. The Government broadly welcomes the relatively modest proposals for new policies, in particular the emphasis on extending the external dimension of JHA and improving the exchange of information including on criminal convictions. However, there are other areas such as asylum, internal security and criminal procedural law which the Government will want to look at very carefully before endorsing the line the Commission appears to be taking. Above all we want to ensure that what is done under the Hague Programme delivers tangible benefits to citizens.

Also central to this Communication is the proposal to use Article 42 of the Treaty on European Union to move police and judicial co-operation from intergovernmental arrangements in Title VI TEU, where unanimity and limited ECJ oversight apply, to Community arrangements under Title IV TEC, where ECJ oversight and Community rules apply. It could also mean that QMV and co-decision with European Parliament (EP) would apply. These proposals represent the Commission’s response to the June 2006 European Council’s request for the incoming Presidency to explore means of improving decision-making and action in the EU’s JHA work, on the basis of the current treaties. We are giving careful consideration to the potential consequences of using Article 42 but the Government is clear that the final position will reflect our national interests.

The Commission Communication on the implementation of the Hague Programme in 2005 is a largely factual record of JHA measures adopted and implemented last year. But the Communication also raises concern at the level and quality of implementation by Member States. The Government is committed to effective and timely implementation of EU measures and will look closely at the conclusions the Commission draws from its findings, in particular the assertion that transposition of Title VI measures is particularly deficient.

The third communication looks at how JHA measures are assessed and implemented, including the variety of tools and methods available to ensure that measures adopted work as intended and have been implemented properly. The UK has long called for proper evaluation of EU measures but we will want to ensure that the best evaluation methods are applied to each type of measure and that any extension of the role of the Commission is both necessary and consistent with principles of proportionality and subsidiarity.

The fourth communication is on adapting the Jurisdiction of the ECJ in relation to immigration, asylum, and civil law measures (Title IV TEC) and seeks to align European Court of Justice (ECJ) rules with those used for other Community business. Currently, in the UK, a case may only be referred to the ECJ for a preliminary ruling from the House of Lords. The Commission’s proposal would allow preliminary references from national courts at any level. The Government will be making a full analysis of the implications of this proposal before deciding whether and how far we can support it.

13 July 2006

ROME I: LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (5203/06)

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

The proposed Regulation was subject to a preliminary examination by Sub-Committee E (Law and Institutions) at its meeting on 8 March. The Committee decided to retain the proposal under scrutiny and to raise with you the following preliminary issues.

THE OPT-IN

First, you say, the United Kingdom need not participate in the adoption of the proposed Regulation unless it opts-in. You say that no decision has yet been reached on this. You also say the matter has significant commercial implications for the UK. We agree and would therefore be grateful if you could identify the advantages and disadvantages of opting-in to the proposed Regulation and where, and for what reasons, you see the balance of advantage lies.
Vires—Articles 61(c) and 65

Second, there is the question of *vires*. As you will recall from our discussion of Rome II and a number of other measures relating to harmonisation of the civil law under Title IV TEC, we believe that there are restrictions on the Community’s law-making powers. You refer to Article 61(c). This in turn refers to Article 65. We would be grateful for your analysis as to how the requirements of these provisions are met in the present case, including why the provision is “necessary” when there already exists an operative body of rules in the Union, that is the Rome Convention, which is generally considered to be working well.

Universal Application

Finally, there is the question of scope of application. We understand that the Commission’s proposal would not be restricted to contracts which have cross-border implications and would include, for example, a contract made between a party in the United Kingdom and another in Australia. Do you agree that the Regulation should have such universal scope of application and, if so, how is this justified in terms of Article 65 TEC?

9 March 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 9 March. We have received a number of responses from City stakeholders, detailing concerns about the Rome I proposal, not least in relation to article 8(3). We are conscious that the potential legal uncertainty which may arise from that article, as currently drafted, could have very significant consequences in situations where the parties have expressly chosen English law to govern their contracts. A number of meetings with interests in the City are planned for the next few days in order to assess these issues.

With other Government Departments, we are working to investigate as fully as the timetable for the opt-in decision allows the reality of these concerns. We will then be able to set out more fully the information you request on the relative advantages and disadvantages of opting in to the proposal.

I will, of course, write to you again with any further updates.

30 March 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 30 March which was considered by Sub-Committee E (Law and Institutions) at its meeting on 26 April. In addition the Committee had the advantage of written submissions from a number of interested parties, including legal practitioners and academics. We have also received the legal assessment prepared by the Financial Markets Law Committee (FMLC Issue 121).

It is clear that Rome I raises a number of concerns and that at least one of these (Article 8(3)—application of mandatory rules of third State) causes the most serious doubts as to whether it would be in the interest of the UK to opt-in to this proposal at this stage. There are clearly important financial and commercial interests at stake and we are not persuaded that the balance of advantage lies in the UK opting-in at this stage.

The Committee decided to retain the proposal under scrutiny.

27 April 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 27 April regarding the above proposal. As you may know, the United Kingdom has now decided not to opt in to Rome I. Notwithstanding this decision, we intend to participate fully in the negotiations in the Council and the Council Working Group. If our concerns can be met, there is every possibility that we will seek to opt in to the adopted instrument with the agreement of the Commission.

We made our decision after consulting a wide range of UK stakeholders, including the Financial Markets Law Committee. They identified several serious issues with the proposed regulation. These could have significant economic consequences by making the EU as a whole—and the UK in particular—a much less attractive place to do business. The Commission failed to identify these consequences as it assumed that there were no significant differences between the 1980 Rome Convention and the Rome I proposal. On this basis, it decided not to carry out an impact assessment. I believe that had such an assessment been properly carried out, many of the problems with the proposal would have been avoided. I intend to urge the Commission, in particular the JHA Directorate, to ensure that in future such assessments are routinely made before proposals are issued.
As you have already identified, the principal concern is article 8(3). It introduces an unacceptable degree of legal uncertainty. In addition to increased legal costs and litigation, it could lead to the loss to other jurisdictions, probably New York, of significant volumes of international contract business, such as commercial and governmental securitisations. The UK and six other Member States have, of course, a reservation on the equivalent article in the 1980 Rome Convention.

Other significant stakeholder concerns relate to aspects of the proposed provisions that appear much less satisfactory than the equivalent provisions in the 1980 Convention. These include article 4 (rules applicable in the absence of a specific choice of law by the parties); article 7 (contracts concluded by agents); and article 13 (voluntary assignments). There are also concerns about the effect on business of the proposed article 5 (consumer contracts). The uncertainty as to the meaning and effect of these and other provisions suggests that considerable further work will be required to ensure that the adopted regulation will not have adverse economic consequences. The 1980 Rome Convention may not be perfect, but it has generally worked well in practice. The Commission’s proposal, in its present form, would not be an improvement on it.

These considerations underline the importance of effective consultation and the need for genuine impact assessments before draft Community legislation is proposed. Rome I illustrates all too clearly that even apparently technical changes in the law can have widespread economic and social consequences.

Finally, I should stress that the decision not to opt in to Rome I does not in any way weaken the commitment of the UK to the development of a single area of freedom, justice and security. We are committed to increasing the benefits of civil judicial co-operation for all our citizens and businesses. For this reason, as I mentioned, the UK intends to play a full part in the forthcoming negotiations. I will keep the Scrutiny Committees fully informed of our progress.

16 May 2007

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 16 May which was considered by Sub-Committee E (Law and Institutions) at its meeting of 7 June. We are pleased to note that the Government have now decided that the United Kingdom should not opt-in to Rome I.

We also note that you and your officials will participate fully in the forthcoming negotiations. Clearly the UK has an interest in any Regulation which succeeds the Rome Convention being a good Regulation. But as you indicate there are a number of articles which will require substantial amendment.

As regards the Commission’s failure to carry out an impact assessment in advance of adopting its Rome I proposal, we support the line you propose to take with the Commission. As the Rome I proposal clearly indicates, matters which appear at first sight to be “lawyers’ law” may have substantial implications for commerce, industry and consumers.

The Committee decided to retain the proposal under scrutiny and is grateful for your assurance to keep the Scrutiny Committees fully informed of the progress of the negotiations.

8 June 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 8 June regarding the UK’s decision not to opt in to Rome I. I am writing to you again in order to update you on the current situation on this dossier and to outline the United Kingdom’s main negotiating positions. These are currently being deployed in discussions with other Member States in the Council Working Group.

You will recall that the Government decided in May that the United Kingdom should not formally opt-in under our Protocol on Title IV measures to the negotiations on the Commission’s proposed Regulation. However it also decided that we should nevertheless participate constructively in them. We are now doing so and attempting to persuade the Member States that in several significant respects the Commission’s proposed Regulation should be amended. With the same intention we also intend to explain our concerns to the JURI Committee in the European Parliament. Our objective is to ensure that, provided we are successful in securing the necessary amendments to it, the United Kingdom will in due course be able to become a party to the Regulation.

Discussions in the Council Working Group have got off to a good start under the Finnish Presidency and will continue with regular meetings in the autumn. Work has also just started in the JURI Committee. The Rapporteur, Dr Maria Berger, is due to produce her report in September and, following consideration of it by the Committee in the autumn, a First Reading by the European Parliament as a whole is likely to be
completed early next year. It will then be for the Council to produce a Common Position in response to the Parliament’s proposed amendments. I will continue to keep the Scrutiny Committees informed about the progress of the negotiations.

Turning to the UK’s negotiating positions I should emphasise the importance that the Government attaches to the views of stakeholders, and in particular their valuable assessments of the practical implications of the issues at stake here. These assessments have already alerted us to the potentially significant adverse consequences of some of the Commission’s proposals. We will make sure that as negotiations progress stakeholders are kept properly informed of developments and are consulted in advance about any proposals which the UK intends to submit to the Working Group.

ARTICLE 1 (SCOPE)

The draft Regulation contains no limitation on its scope in terms of Article 65 of the EC Treaty and the reference there to the proper functioning of the internal market. As you will recall the UK consistently argued for an appropriate limitation in discussions on the Rome II Regulation. Despite our failure to persuade a sufficient number of Member States to agree such a limitation in that instrument the Government remains of the view that there should be some such limitation in this context and will continue to argue for one.

ARTICLE 3 (FREEDOM OF CHOICE)

The Commission has proposed that it should be open to parties to choose non-national laws to govern their contracts. Under the Rome Convention parties may only choose a national law. The Government is opposed to this proposal on the basis that it would create legal uncertainty and is not supported by any demand for change by commercial operators. If the parties wish to give effect to particular rules of contract which are not part of any national law it is open to them to include those rules in their contracts. The option of arbitration is also available to them.

The Commission’s proposal in this area also has implications for the Government’s position in relation to the European Commission’s work on European contract law where, as you will know, we have significant reservations about a so-called “optional instrument” which would in effect represent a 26th contract law support. The Commission has identified the optional instrument as an instrument that could be chosen.

ARTICLE 4 (APPLICABLE LAW IN THE ABSENCE OF CHOICE)

Many stakeholders have expressed concern about the lack of flexibility in the proposed choice of law rules that are designed to select an applicable law in the absence of a specific choice by the parties. The Government is seeking to secure the amendment of this article so that it would operate with sufficient flexibility to deal appropriately with three types of case where it would not do so in its current form.

The first type of case involves transactions which consist of several linked contracts. These should be subject to a single applicable law and not have imposed on them different applicable laws in relation to each component contract. The second type of case is a “mixed” contract where the subject-matter covers more than one of the topics referred to in the list of specific types of contract set out in paragraph (1), for example a franchise contract which involves the licence of an intellectual property right. The final type of case is one where exceptionally it is more appropriate to apply the law of the country where the contract is to be performed than to apply one of the laws selected under the Commission’s proposal.

ARTICLE 5 (CONSUMER CONTRACTS)

The Commission’s proposed rules in this area are significantly more favourable to consumers than the equivalent rules in the Rome Convention. Commercial stakeholders are concerned about this and fears have been expressed that a particular burden may be imposed on e-Commerce operators. There is even some concern that these rules might impede the operation of the internal market. The Government considers that the extent of the Commission’s move away from the carefully balanced solution in the Convention has not been properly justified. It is proposing that that solution should be reinstated.
**Article 7 (agency)**

This is a complex area of considerable commercial importance. The Commission has failed both to consult properly on the issues at stake and to carry out an impact assessment. The case for creating rules of Community law that would go beyond what is already covered by the Convention has not been made out. In the light of this and the detailed technical criticisms made by stakeholders the Government is arguing that the limited coverage of this topic under the Convention is adequate and that no further provision should be made.

**Article 8 (3) (Application of the mandatory rules of third countries)**

The legal uncertainty that would be created by the proposal in paragraph (3) has been much criticised by commercial operators. The potentially significant adverse economic consequences of this constituted the greatest single reason behind the Government’s decision not to opt-in under our Protocol. The deletion of this paragraph is clearly a major negotiating objective.

**Article 13 (voluntary assignment and contractual subrogation)**

As with agency this is another technical area of commercial importance where once again the Commission has both failed to consult adequately and to analyse the issues in sufficient depth. In view of this and the technical criticisms of paragraph (3) in particular which have been made by commercial operators the Government is arguing that the solution for this topic laid down in the Convention remains adequate and that the case for more extensive coverage by Community law has not been made out.

**Article 21 (States with more than one legal system)**

The Commission has failed to make any provision that would allow Member States which, like the UK, consist of several jurisdictions to decide for themselves whether in effect to extend under their national law the rules of the Regulation to purely internal cases. Such provision is available under the Convention and in the Rome II Regulation. The Government considers that it should be made available here as well both in order to achieve consistency and to respect properly the principle of subsidiarity.

20 July 2006

**ROME II: LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS (16231/04, 6622/06)**

**Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman**

I am writing to update you and the Select Committee on this dossier following the end of the UK Presidency and the attempt by the Austrian Presidency to gain political agreement on certain articles of the draft regulation.

You will recall that during our Presidency, the Council Working Group considered all the amendments proposed by the European Parliament last July. I attach the latest version of the text of the draft Regulation which in effect records the position adopted by the Working Group in relation to those amendments. I draw your attention to those aspects of this text where the Parliament’s amendments were accepted by the group (the group rejected the rest of the amendments). The European Parliament proposed a large number of amendments to the Commission’s original proposal and in an annex to this letter I intend to focus on the more significant of these.

The Austrians stated at the start of their Presidency that they would make Rome II a civil justice priority and it remains their objective to get political agreement and, if possible, a full common position on this dossier by the end of June. They intend to obtain political agreement on some parts of the dossier at the JHA Council on 20 February.

On this basis, they have produced a proposal (which is attached) covering several contentious articles including those dealing with defamation, product liability and unfair competition. I intend to set out the key issues behind each article contained in the proposal and the Government’s position in relation to it.
**General Questions and Article 3**

The Government fully endorses the Presidency’s proposals as set out under a) General Questions and b) Article 3.

**Article 4**

This article proposes a special provision for product liability cases. It contains a form of “cascade” rule which has not previously been considered in the Council Working Group and which attempts to balance the interests of the victim and the defendant.

The Government does not favour a special rule for such cases; it believes instead that the general rule in Article 3 would be sufficient. However, because the great majority of Member States are in favour of some such rule, we will continue to argue that any special rule should be simple and workable. We have particular concerns about the proposal in paragraph 6 that the rule should apply without prejudice to Articles 3(2) and 3(3). We believe that the application of these rules, particularly the latter, is unnecessary and will create legal uncertainty.

**Article 5**

The Presidency is proposing a separate rule for unfair competition cases. As with the previous article, we do not favour any special rule for these types of cases but are aware that the majority of Member States do favour such a rule. The Presidency has put forward a special rule as set out in the latest Presidency text with some minor modifications. This broadly sets out an applicable law that is the law of the country where competitive relations or the collective interests of consumers are or are likely to be affected. Because this is not intended to be substantially different in its results from the general rule in Article 3, it is proposed that this should be clarified in a recital. The Government supports this clarification.

We believe that there should be clarification, either in the text or in a recital, that would give a clear definition of what is meant by “unfair competition and acts restraining free competition”. We believe that such a definition would be more helpful than the current reference in the proposal to a recital giving examples of cases that would be covered by Article 5.

**Article 6**

The Presidency has proposed a special rule (at paragraph 22) for defamation and similar cases which attempts to balance the interests of victims and the media. This states that the applicable law should be the law of the country where the person sustaining damage has his habitual residence if the publication was distributed or the programme was broadcast in that Member State. In all other cases, the law of the country where the publisher or broadcaster is established would apply.

This proposed rule is not fully consistent with the Government’s position, which is to support solutions based closely on the country of origin principle. We believe that only solutions of that kind will create the necessary high degree of legal certainty essential for securing freedom of expression for the media and the proper functioning of the internal market. However, mindful of the lack of consensus among the Member States behind any particular solution in this field, we also support the idea of excluding defamation from the scope of Rome II altogether as this seems to us the most likely and pragmatic way of moving forward on this important issue and therefore the dossier as a whole. We will continue to press for either of these outcomes on defamation.

**Article 3A**

This proposal establishes freedom of choice between commercial parties to agree on an applicable law to govern a tortious dispute before the events giving rise to that dispute have occurred. The Government generally supports this proposal. We can accept the proposed restrictions in it, namely that it should not apply to cases involving unfair competition and breaches of intellectual property rights and that it should not apply to cases involving consumers and employees.
ARTICLE 22

The Presidency proposes to retain the wording of the current Presidency text as regards the provisions on public policy. They have proposed that the second sentence of this provision, referring to a possible incompatibility between public policy and the award of non-compensatory damages, should be set out in a recital. The Government is content with this approach.

However, we are concerned by the second proposal in this Article which is that the reference to excessive non-compensatory damages should be omitted. We do not support this omission for two reasons. Firstly, a simple reference to “non-compensatory damages” may cast some doubt on the limited circumstances in English law where exemplary or punitive damages can be awarded, for example in unjust enrichment cases where an account of profits can be awarded.

Although the Presidency’s wording would only provide courts with a guideline as to what may constitute a breach of public policy, we will continue to press for the reference to “excessive” to be re-inserted into the text or for the entire recital to be deleted.

ARTICLE 23

The Presidency proposes to gain agreement on Article 23, governing the relationship between Rome II and other Community provisions, as set out in the current Presidency text. We have previously argued for the inclusion here of a suitably worded recital that would explicitly state that Rome II does not undermine the workings of the E-Commerce Directive and related internal market measures.

Although such a recital would not be intended to change the legal meaning of Article 23, we will continue to press for its inclusion on the basis that it would be helpful in clarifying the relationship between Rome II and the E-Commerce Directive. We propose that the precise wording of a recital should be referred back to the Working Group.

20 February 2006

Annex A

ARTICLE 1

The Working Group rejected as unnecessary the European Parliament’s proposal (Amendment 24) for a new paragraph 2a (relationship with Community instruments). This provided (in subparagraph (d)) that Rome II would not “prejudice the-application or adoption of acts of the institutions of the European Communities which . . . lay down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of private international law”.

ARTICLE 2a

The Working Group broadly accepted the European Parliament’s proposals (Amendment 25) on party autonomy, in particular the proposal that in the commercial context parties should in principle be able to choose an applicable law before the dispute between them has arisen.

ARTICLE 3

The Working Group rejected the European Parliament’s proposals (Amendment 26) for the amendment of the general rules in the Regulation. The grounds for doing so broadly related to drafting considerations and, as regards traffic accidents, that no special rule would be appropriate.
ARTICLE 4
The Working Group generally rejected the European Parliament’s proposal (Amendment 27) to delete the special rule for product liability cases. It was considered desirable that there should be some such rule.

ARTICLE 5
The Working Group generally rejected the European Parliament’s proposal (Amendment 29) to delete the special rule for unfair competition cases. It was considered desirable that there should be some such rule.

ARTICLE 6
The Working Group rejected the European Parliament’s proposed rule (Amendment 57) for defamation and related claims. This rejection was in broad terms based on the view that the Parliament’s proposal would not achieve a satisfactory balance between the interests of the parties and that it was not satisfactorily drafted.

ARTICLE 6A
The Working Group generally rejected the European Parliament’s proposal (Amendment 31) that there should be a special rule for industrial actions on the ground that an insufficient case for such a rule had been made out.

ARTICLE 6B
The Working Group rejected the European Parliament’s proposal (Amendment 32) for a special rule as regards damages in traffic accident cases on the basis that such damages should in principle be dealt with under the general rules.

ARTICLE 7
The Working Group generally rejected the European Parliament’s proposal (Amendment 33) to delete the special rule for environmental torts on the ground that some such rule was justified in the interests of environmental protection.

ARTICLES 9, 9A AND 9B
The Working Group generally supported the European Parliament’s proposed approach (Amendments 35, 36 and 37) in the field of non-tortious non-contractual obligations. In particular it was agreed that there should be specific provisions on unjust enrichment and proceedings arising out of acts performed without due authority (negotiorum gestio).

ARTICLES 11A AND 11B
The Working Group rejected the European Parliament’s proposals (Amendments 42 and 43) for certain procedural provisions requiring the determination of choice of law issues by national courts on the basis that these matters were more appropriately left to the national law of the Member States.

ARTICLE 22
The Working Group rejected the European Parliament’s proposals (Amendment 50) relating to the provision on public policy on the basis that an insufficient case had been made to justify these. The proposals envisaged that specific reference be made in this context to the European Convention on Human Rights and related national and international legislation and to awards of non-compensatory damages.

ARTICLE 24
The Working Group accepted the European Parliament’s proposal (Amendment 52) to delete the provision on non-compensatory damages on the basis that such damages should in principle properly remain available under the laws of Member States.
ARTICLE 26

The Working Group rejected the European Parliament’s proposal (Amendment 54) relating to the provision in the Regulation for the review of that instrument. This decision was made on the basis that no sufficient case had been made out in relation to the matters specified in the proposal (these related to damages, procedure, and defamation and the media generally).

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 20 February informing the Committee of the outcome of the discussions in the Working Group under the UK Presidency and of the position of the Austrian Presidency to be presented at the Justice and Home Affairs Council on 20 February. If reports in the media are to be believed, discussions at the recent JHA disclose a lack of agreement between Member States on a number of key issues including whether Rome II should include a clause on defamation and violations of privacy. I understand that you will be writing to the Committee shortly letting us know the outcome of that meeting and indicating how the negotiations are likely to proceed under the Austrians.

We are aware of the priority which the Austrian Presidency has attached to Rome II and that it is likely that new texts of key provisions will be prepared for discussion in the coming weeks. Rather, therefore, than spend time on the detail of texts which may now be only of historical value we believe it might be more helpful to you to indicate the key concerns of the Committee. First, we remain of the view that the Regulation should not have universal application but should be limited to cases closely connected with the Union. Second, we share your view that the number of special rules should be restricted to the absolute minimum. We can see a case for a special rule for defamation but are still not persuaded that there is a need for a rule to deal with product liability cases or for unfair competition cases. If there are to be such rules it must be clear when they should apply and what their purport and effect is. Third, were the Regulation to include a rule for defamation and privacy, we continue to support the view that, in the interests of free expression, it should be a country of origin rule.

We look forward to hearing from you and learning about the present state of the negotiations. We will endeavour to respond quickly to any texts submitted for scrutiny and hope that our views will be of assistance to you in the forthcoming negotiations.

The Committee decided to retain the proposal under scrutiny.

9 March 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

The amended Commission proposal for Rome II was considered by Sub-Committee E (Law and Institutions) at its meeting on 22 March. We are grateful for your Explanatory Memorandum and for drawing attention to major changes.

We note in particular the Commission’s proposal to exclude “violations of privacy and of personal rights by the media” from the scope of the Regulation. We share the concerns you have regarding the Commission’s text and agree that it would be preferable for the whole of issue of defamation to be removed from the Regulation. We wish you success in your search for “a simpler and better solution”.

The Committee decided to retain the proposal under scrutiny. We would be grateful to be kept informed of developments and, as I mentioned in my last letter, the Committee will respond as quickly as possible to any further documents submitted for scrutiny.

23 March 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

I am writing to you in advance of the JHA Council on 27 and 28 April at which this dossier will be on the agenda for political agreement on the articles in the Regulation. I am therefore seeking scrutiny clearance from your Committee in the light of the outcome which I expect from the Council and the positions which the Government will take at that meeting. This outcome will be based on a text currently being prepared for the Council by the Austrian Presidency. It will effectively supersede the text issued by the Commission in February.

This political agreement in the Council is most unlikely to be the end of the negotiations. The Council is likely to adopt a full common position in June (including the recitals) and the dossier will then return to the European Parliament which is expected to make further proposals for the amendment of the text. The Council
will have to consider these later this year. These proposals will be incorporated into a new text which will be deposited with Parliament in the usual way together with an Explanatory Memorandum.

I propose to deal in some detail with the most significant elements, from the Government’s perspective, which are likely to be incorporated into the agreement which will go before the Council.

SCOPE

This has always been a significant issue for the United Kingdom and for your Committee. As proposed by the Commission Rome II would have an unlimited scope of application in the sense that it would apply notwithstanding the absence of any proper connection between either the parties to the dispute, or the facts of the dispute itself, and any of the Member States. The UK has consistently argued that such a broad scope would not be compatible with the instrument’s treaty base under Article 65 of the EC Treaty which requires that measures adopted thereunder must be “necessary to the proper functioning of the internal market”. This position has been supported in general terms by the Council Legal Service.

During the negotiations in the Working Group the UK has put forward various limitations on scope which would comply with Article 65. Unfortunately it has not proved possible to persuade a sufficient number of other Member States to accept any of these of these options, although a minority have supported us in principle.

In the light of this I am not optimistic that the Council will agree any limitation on scope, although I propose to raise the issue there and clearly register the UK’s concern that it has not been satisfactorily resolved.

DEFAMATION

It is likely that the Council will agree that the whole topic of claims relating to defamation and breach of privacy will be excluded from Rome II. This outcome will reflect the reality that within the Council there is no agreement on any positive choice of law rule for such claims.

The UK originally argued for a solution in this area which would closely follow the country of origin principle on the basis such a rule would both protect the important principle of freedom of expression by the media and ensure the proper functioning of the internal market in this area. However we were aware that a solution of this kind was not generally acceptable to other Member States. We therefore strongly urged the Commission to come forward with a revised proposal to exclude defamation and similar claims from the scope of Rome II. This was discussed at the Council where we expressed support for this proposal as the only realistic way of securing political agreement in the Council on this contentious topic. The majority of Member States agreed with this. The exclusion of defamation and privacy claims from scope will ensure that these claims continue to be regulated by national law. The media can accept such an outcome; I regard it as a good outcome and propose to support it in the Council.

PRODUCT LIABILITY

The UK has consistently opposed a special rule on product liability as being both unnecessary (such a rule has never been part of our national law) and likely to produce undue complexity. We have argued that the general rules in Rome II would be quite adequate for such cases. Our position was supported by the European Parliament. Unfortunately the great majority of other Member States favour such a rule, largely because their national laws already so provide, and it is almost certain that the Council will agree some such provision.

However there remains considerable disagreement among the Member States as to the detailed formulation of such a rule and therefore in this sense uncertainty as to the outcome in the Council. The UK’s position is to continue to press for a provision which will minimise legal uncertainty and therefore establish so far as possible workable legal arrangements for both consumers and businesses. I shall continue to urge further improvements in this area at the Council.

ENVIRONMENTAL TORTS

The UK has also consistently opposed the proposed special rule on environmental torts as unnecessary in principle and likely to create some legal uncertainty in practice. Again our position was supported by the European Parliament. However the great majority of Member States favour the provision put forward by the Commission as this uses Rome II to pursue a policy of environmental protection. The provision is therefore almost certain to be agreed by the Council. I cannot envisage any way of avoiding this outcome.
UNFAIR COMPETITION

Once again the proposed spacial rule in this area has been consistently opposed by the UK as both unnecessary and likely to produce some legal uncertainty. Unfortunately the great majority of Member States favour some such rule which is therefore likely to be adopted in the Council. This would not be an entirely satisfactory outcome, although the European Parliament may return to this matter on Second Reading given that they recommended the deletion of the rule on First Reading. In the light of this I propose that we should engage with the JURI Committee at that stage and seek to persuade them to come forward with a proposal which would be more acceptable from the UK’s perspective.

Mandatory Rules of a Third Country

The Commission proposed a provision which would displace the other choice of law rules in Rome II and involve the application of the mandatory rules of another country with which the situation is closely connected. In general terms these rules are national provisions of special socio-economic importance in that particular country. The UK has always opposed this rule as being likely to create an unacceptable degree of legal uncertainty. I am pleased to report that our position is now generally accepted by the other Member States and that this is likely to be endorsed by the Council. As well as being a good result for Rome II, it will also be a valuable precedent for the future negotiations on the proposed Regulation to replace the 1980 Rome Convention on the Law Applicable to Contractual Obligations. This proposal currently contains an equivalent rule which would be particularly objectionable in that context where legal certainty is of the first importance.

FREEDOM OF CHOICE

I am also pleased to report that the Council will almost certainly approve a provision which will generally enable commercial parties to agree on the application of a particular law in the event of future disputes between them involving an alleged tort. The UK has consistently championed such a rule which in our view will enhance legal certainty, an important consideration in the context of the internal market. Our current national law is not clear on this issue and therefore in this significant respect Rome II will represent an improvement on our present arrangements.

25 April 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 25 April setting out the present state of the negotiations and advising us, in advance of the JHA Council this week, of the issues to be discussed in the Council of Ministers. Your letter was considered by Sub-Committee E (Law and Institutions) at its meeting on 26 April. It is regrettable that the Committee did not have more notice of the issues raised but, on the other hand, they are not new and it is helpful to have the position so clearly stated as at the eve of the meeting of the Council of Ministers this week.

Thank you for setting out so clearly the position of the Government on each of the key issues to be discussed. On the question of scope there is, as you know, no disagreement between the Government and the Committee. We are pleased to note that this position has been supported by the Council Legal Service and that you will continue to press this point in the negotiations.

Thank you also for setting out the position as regards defamation and breach of privacy. As you will recall from my letter of 23 March the Committee believes that it would be preferable for the issue of defamation to be removed from the Regulation. We look forward to receiving the revised text in due course.

As regards the special rules for product liability, environmental torts and unfair competition, you will recall that the Committee has consistently questioned the need for these rules. However, as you have explained, they have importance for a number of other Member States. We wish you success in seeking clarification of the rule relating to product liability. The question of the scope and detail of the proposed rule for unfair competition does, we agree, need further consideration. We wonder what the Commission’s position is given the recent initiative of the Competition Commissioner encouraging the greater use of civil proceedings as a means of enforcing competition law in the Community.

Finally, we note the developments relating to mandatory rules of a third country and also to freedom of choice. As you will recall, the change may be a useful precedent for the proposed Regulation to replace the 1980 Rome Convention. I am writing to you separately about that proposal.
Finally, you request that the proposal be cleared from scrutiny. Having regard to the number of issues outstanding and their seriousness the Committee regrets that it is not able to accede to this request. However, we would not wish to prevent you from pushing for agreement at the Council along the lines set out in your letter and would not regard that as amounting to overriding scrutiny in these circumstances.

27 April 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 27 April in reply to my earlier correspondence. I am grateful to the Committee for considering my letter at such short notice and for indicating agreement to my proposed course of action in advance of the meeting of the Justice and Home Affairs Council on 28 April.

At that meeting, political agreement was reached on all articles in Rome II and I attach a copy of the final Presidency proposal as agreed by the Council (not printed). This will now be adopted as a common position by the Council later this year. The discussion centred on two main issues: Article 8A—the special rule for cases involving industrial action, where a small minority of Member States were opposed to such a rule, and Article 25 governing the relationship between Rome II and international agreements. Neither of these issues were contentious as far as the UK was concerned. On the latter, following mediation efforts by the UK, the Presidency produced a compromise solution that commanded broad support.

Regarding the articles that were of concern to the UK, on Article 1, the scope of the Regulation, I was aware that there was not likely to be sufficient support amongst Member States for our concerns on this issue to result in any amendment to the Presidency proposal. However, due to the importance of this issue I reiterated our continuing concerns that there was no limitation on scope which was inconsistent with Article 65 and that this should not be a precedent for future dossiers. As expected, there was little support for introducing such a limitation and, as you will see from the attached Presidency text, Rome II continues to have universal application in that it requires no particular connection between the parties to a dispute or the facts of the dispute itself and any one or more Member States. I have to accept that this outcome is not satisfactory. It is however an issue which we will continue to raise in other dossiers where it arises.

There was no discussion on the issue of defamation and similar cases as there was already clear agreement in the Council that claims relating to defamation and breach of privacy would be excluded completely from the scope of Rome II. This outcome, which I supported, reflected the reality that there was no agreement, within the Council, on any positive choice of law rule for such claims. There was also agreement on a reference to defamation and similar cases in the review clause. This provides that, no later than four years after the Regulation comes into force, the Commission shall submit a report to the Council and European Parliament on its application and in particular, the report shall consider non-contractual obligations arising out of violations of privacy and rights relating to the personality, including defamation. This agreement meets UK concerns that there should be a realistic timescale for the production of the Commission’s report and that this should only be accompanied by proposals to adapt the Regulation if the Commission considers that to be necessary.

I am sure that you will share my view that this is a good outcome for the UK, and its media interests in particular. The eventual exclusion of defamation was, as you know, a hard fought issue and we made a concerted effort to achieve this end. You may be aware that I had many meetings with other EU Justice Ministers and with the Commission who I am pleased to say eventually agreed that exclusion was the only way forward.

The UK’s remaining concerns centred on the proposed special rules for cases involving product liability (Article 4), unfair competition (Article 5) and environmental damage (Article 7). Again, there was limited support amongst Member States for our concerns on these articles and although I reiterated our concerns, agreement was reached on the Presidency proposal without further amendment. This is an unsatisfactory outcome for the UK although I intend to pursue our concerns, particularly regarding the rules on product liability and unfair competition, with the Parliament during their second reading where I hope there may be scope for further amendment.

Following the meeting of the Council, the recitals in Rome II have been discussed in the Working Group. Political agreement will be sought on these when the Council next meets in June and I will write to you further in advance of that meeting. A full common position on Rome II will then be adopted by the Council later this year.

19 May 2006
Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter describing the outcome of the discussion of the Rome II Regulation at the Justice and Home Affairs Council on 28 April. This was considered by Sub-Committee E (Law and Institutions) at its meeting on 24 May.

We are pleased to see that privacy and rights relating to personality, including defamation, are to be excluded from the Regulation, though we note that the matter will be reconsidered four years after the entry into force of the Regulation. We are also pleased to see that notwithstanding the political agreement reached at the JHA, you will continue to press the points relating to the scope of application of the Regulation (Article 1) and the proposed special rules (Article 4, 5 and 7).

We would be pleased if you would furnish for scrutiny the common position when its final text is settled.

The Committee decided to retain the proposal under scrutiny.

25 May 2006

ROME III

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

You asked to be kept informed of developments concerning the consultation exercise on the Rome III proposals.

You are aware of the consultation on the Commission’s Green Paper. The Department received nine responses from the following bodies:

— Bar Council of England and Wales.
— Brethren Christian Fellowship.
— European Economic and Social Committee.
— Individual (Mr Leslie Seymour).
— International Family Law Committee.
— Northern Ireland Commissioner for Children and Young people (NICCY).
— “Resolution” (formerly Solicitors Family Law Association).
— The Association of District Judges.
— The Law Society.

These are attached for your reference (not printed).

The Commission’s Green Paper set out a list of questions. The UK Government’s response to the Commission, which is attached builds on the responses we received. They support maintaining the current position of the law of the forum (lex fori).

Our response is quite short and is a robust defence of the law of the forum, or lex fori, principle which we believe currently provides an effective approach.

31 May 2006

Annex A

RESPONSE TO COMMISSION GREEN PAPER ON APPLICABLE LAW AND JURISDICTION IN DIVORCE MATTERS

The United Kingdom is a good example of several jurisdictions each exercising lex fori in close proximity. The UK comprises the jurisdictions of England and Wales, Scotland and Northern Ireland and has free movement of citizens between those jurisdictions despite the variations in their respective legal systems. This response is informed by the views of each of these jurisdictions.
**Question 1:** Are you aware of other problems than those identified that may arise in the context of “international” divorces?

No. We are not aware of other problems, neither are we aware of the perceived risk of forum shopping in divorce matters being a reality. It is not clear how often some of the scenarios referred to in the Green Paper arise in practice, and to what extent they cause real difficulties when they do. Forum shopping would be more likely to affect proceedings for ancillary relief but these are not the subject of this consultation.

**Question 2:** Are you in favour of harmonising conflict-of-law rules? What are the arguments for and against such solution?

We are not in favour of harmonising conflict of law rules as there is little evidence to support the perception that forum shopping is a significant problem. UK jurisdictions currently apply the law of the forum which delivers legal certainty and predictability. Application of laws from other jurisdictions would reduce legal certainty, increase costs for courts and parties, and incur delays. We would not wish to reopen the jurisdictional rules established by Brussels IIa either, since currently there is insufficient evidential basis for amending such a relatively new Instrument.

**Question 3:** What would be the most appropriate connecting factors?

We do not favour harmonisation of choice of law rules but the obvious connecting factors would be nationality, domicile and habitual residence. The rule in the UK jurisdictions is that the courts will have jurisdiction if a party is domiciled there.

**Question 4:** Should the harmonised rules confined to divorce or apply also to legal separation and marriage annulment?

Legal separations are seldom obtained in the UK jurisdictions but if rules on divorce were harmonised it would be logical that this would also be applied to legal separation as divorce and legal separation are based on the same grounds. It would not be suitable to apply choice of law rules to nullity which has entirely different grounds.

**Question 5:** Should the harmonised rules include a public policy clause enabling courts to refuse to apply foreign law in certain circumstances?

It would be essential to include a public policy clause to protect Member States’ domestic interests in the politically and culturally sensitive area of family law.

**Question 6:** Should the parties be allowed to choose applicable law? What are the arguments for and against such a solution?

No. Lex fori should be preferred. Choice of parties on which law should be applied would effectively promote forum shopping—albeit applied locally—potentially leading to uncertainty, argument, delay and increased costs. Lex fori provides certainty, speed and efficiency.

**Question 7:** Should the choice be subject to certain laws? If yes, what would be the appropriate connecting factors? Should it be limited to the laws of the Member States? Should the choice be limited to “lex fori”?

We have indicated that we are not in favour of complete freedom of choice and prefer the choice is limited to lex fori for the reasons above. The need to establish “connecting factors” to support any other approach indeed illustrates the uncertainty such a change could introduce.

**Question 8:** Should the possibility to choose applicable law be confined to divorce or should it also apply to legal separation and marriage annulment?

See answer to 4 above.
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Question 9: What should be the appropriate formal requirements for the parties' agreement on the choice of law?

This is a matter of detail which can be considered if the suggestion under consideration is taken further. Such considerations would be likely to include the need for the choice to be made in writing and any agreement on choice of law prior to the commencement of proceedings would not be binding.

Question 10: In your experience does the existence of several grounds of jurisdiction result in “rush to court”?

There is no evidence that the existence of several grounds of jurisdiction results in “rush to court”. Article 19 of the Brussels IIa Regulation does encourage spouses to issue proceedings at an early stage but we do not consider there is sufficient evidence of the phenomenon to require amendment of Brussels IIa at this juncture.

Question 11: Do you believe that the grounds of Jurisdiction should be revised? If so, what would be the best solution?

We do not consider that there is sufficient evidence that the existing grounds of jurisdiction require revision. This Regulation has not been in force for long and in our view, sufficient time needs to elapse for adequate evidence for the need for change to emerge, before any revision is considered.

Question 12: Do you consider that the harmonisation of the jurisdiction rules should be reinforced and that Article 7 of Regulation number 2201/2003 should be deleted, or at least limited to cases where no EU citizens are involved? If yes, what should these rules look like?

We consider any revision of Regulation 2201/2003 to be premature as, in our view, there is currently no sound evidential basis for considering its revision.

Question 13: What are the arguments for and against introducing the possibility of prorogation in divorce cases?

The UK would only be in favour of introducing a prorogation clause subject to evidence that there is a real problem with forum shopping.

Prorogation will only apply with the consent of both parties and therefore this issue is unlikely to apply to the most difficult cases requiring judicial intervention. On the face of it, the inclusion of a prorogation clause would seem to eliminate the particular problem of EU citizens resident in a third state and denied access to the applicability of the Brussels IIa Regulation where they could only sue in the Member State of common domicile/nationality, which may not exist, but, would not prevent them from being sued. A prorogation clause would also appear to reduce the likelihood of parties acting unilaterally and under Article 19—the “lis pendens clause”, and seising a court’s jurisdiction before the other party does, but clearly this would only be operable where both parties were in agreement.

Question 14: Should prorogation be limited to certain jurisdictions?

Prorogation should be limited to the fora available under Article 3 of Brussels IIa or a jurisdiction where at least one spouse has a clear, close connection (nationality, domicile, habitual residence).

Question 15: What should be the formal requirements for the parties' prorogation agreement?

The formal requirement would have to be an express agreement by both parties in writing; on the choice of court. However, no agreement as to the choice of court should be binding other than that made at the time of instituting divorce proceedings and not prior to the marriage, in a pre-nuptial agreement for example.

Question 16: Should it be possible to request the transfer of a case to the court of another Member State? What are the arguments for and against such solution?

Again, as indicated in our response to Question 13, the UK would only be in favour of introducing a provision to transfer a case subject to evidence that there are real problems in cross-border cases which could be resolved with such a provision. Cases should be capable of transfer on the request of one party, where the court believes this to be in the interests of justice, to another Member State. Given that the Brussels IIa Regulation contains a large number of jurisdictional grounds, transfer would enable the case to go to the country which has the genuine closest connection in the circumstances of the case.
Question 17: What should be the connecting factors to establish whether or not a case should be transferred to another Member State?

It would seem logical to continue to use the existing grounds of jurisdiction in Article 3 of the Brussels IIa Regulation as the relevant connecting factors, and difficult to justify excluding any of them, but there would also need to be a broad discretionary test in place to justify the transfer to another Member State’s jurisdiction.

Question 18: What safeguards would be necessary to ensure legal certainty and avoid undue delays?

It seems reasonable to expect that this remedy would be left to the discretion of the courts. Delays could be dealt with by imposing time limits on the requesting Member State making the application to the requested Member State, and also on the requested Member State in issuing its response.

Question 19: Which combination of solutions do you believe would provide the most appropriate remedy to the situations described?

The UK feels that the problems outlined do not exist to any great extent and therefore any of the solutions considered would be a disproportionate response to them. It may be that in the future the *lis pendens* rule in the Brussels IIa Regulation may need to be reconsidered, but it would seem premature to do so now, in the absence of any negative evidence about its operation.

Question 20: Would you suggest any other solution to solve the problems described in Chapter 2?

No. Not at this time.

SHIPOWNERS: CIVIL LIABILITY AND FINANCIAL SECURITIES (5907/06)

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

The proposed Directive was considered by Sub-Committee E (Law and Institutions) at its meeting on 22 March. We are grateful for your Explanatory Memorandum of 18 February identifying a number of concerns to which the Directive gives rise. We agree that the most careful consideration is needed of the implications of the proposal both for the United Kingdom in the context of its external relations including its involvement in the IMO and also for the implications the proposal may have for levels of compensation and for the marine insurance and reinsurance markets.

We note that in your Explanatory Memorandum of 10 March covering the whole Third Maritime Safety Package you say that the United Kingdom and a number of other Member States see no need for this piece of Community legislation and that it has the potential for undermining existing international liability arrangements as well as not probably working in practice. We agree that it is for the Commission to show there would be clear benefits flowing from the proposed Directive and we look forward to reconsidering the matter when we have sight of their impact assessment as well as the Government’s own regulatory impact assessment.

The Committee decided to retain the proposal under scrutiny.

23 March 2006

SUCCESSION AND WILLS (7027/05)

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

I refer to your letter of 13 October 2005.81 I am grateful to you and your Committee for your comments on the Green Paper.

I am pleased to enclose a copy of the Government’s reply to the European Commission’s Green Paper on succession and wills. The response was agreed with the Scottish Executive. It was delivered to the Commission on 30 August. This was later than I had hoped but my officials kept the Commission informed of the progress of the preparation of the reply.

I also enclose a translation purchased by my Department of the Commission’s Working Paper Annex to the Green Paper (not printed) referred to in the response in case it is of assistance to you or the other members of the Committee. The original Commission text is in French.

I understand that the Commission is now considering the responses to the Green Paper, many of which are available on the Commission’s website, and that there is to be a public hearing on the Green Paper on 30 November.

In your letter you said that the Committee would be pleased to see the outcome of the consultation that my Department carried out with stakeholders and looked forward to seeing a summary of the result. We received 11 responses. I have been able to obtain agreement from most of the consultees to make their replies available to you. These include the principal professional organisations involved in this area. My officials are still seeking permissions from the remainder and, if this is forthcoming, I will arrange for the relevant replies to be forwarded to you or your Clerk. Where a permission cannot be obtained in the next two weeks a summary will be prepared and sent instead.

Finally, you may be interested to know that on 12 September the European Parliament’s JURI Committee is to consider a motion to seek a resolution of the Parliament calling on the Commission to submit a legislative proposal to deal with succession and wills in accordance with certain detailed recommendations (Provisional 2005/2148(INI)). Several of these recommendations seem prematurely prescriptive of the solution to be adopted and are inconsistent with the line taken in the UK response. Several amendments have been tabled and we will be watching developments with interest.

4 September 2006

Annex A

RESPONSE OF THE GOVERNMENT OF THE UNITED KINGDOM


2. The United Kingdom consists of three jurisdictions. The law of England and Wales and the law of Northern Ireland on matters relating to succession and wills are broadly similar. Scots succession law has many similar features but is somewhat different. The principal differences between Scots law and the laws of England, Wales and Northern Ireland, in this area are described in Appendix A. The Government is accordingly familiar with the practical issues arising in relation to cross-jurisdiction succession and wills.

3. The Green Paper is extremely wide ranging and asks a large number of questions. Many of these raise difficult and controversial issues, particularly for a common law jurisdiction. The Government has been greatly assisted in formulating its views by the comments and advice of several academics and legal practitioners. The Government’s replies are summarised in this document and set out in full in Appendix B. A short summary of the private international law of England and Wales in relation to succession is set out at Appendix C.

4. For brevity, references in this response to “the law of succession” include the law relating to wills.

HARMONISATION OF LAWS

5. The UK Government agrees with the Commission that the diversity of the laws of succession in operation across Member States makes full harmonisation of these laws inconceivable. The Government considers that such harmonisation would be a fundamental interference in the domestic affairs of Member States, which could have unpredictable social and cultural outcomes. It would be undesirable and unnecessary.

6. It is the UK Government’s view that the diversity of legal traditions in Member States must be fully respected. This is essential because the differences in the approaches taken by Member States to the transfer of property on death are fundamental. Some Member States, such as the UK, favour freedom of testamentary disposition, whilst others provide for reserved heirship. Some allow property to pass direct to the heirs, but the UK and others operate a court based system, which, on the death of the deceased, gives ownership of the deceased’s property to a third party. This third party is entrusted with the administration of the estate of the deceased and its distribution to his or her beneficiaries. Some, including the UK, define the estate as the

property of the deceased at the date of death, others include gifts made by the deceased during his or her life. This diversity is entirely legitimate. It reflects the differing approaches adopted by different societies within the European Union to questions about the nature of ownership and about family obligations. It limits the extent to which any harmonisation proposed in a European instrument could be acceptable. However, although the UK Government would, in principle, be able to support measures of limited harmonisation that would bring real benefits to citizens, it considers that there is very little scope for creating them in the field of succession.

7. The UK Government strongly believes that any European legislation on cross-border succession cases must not adversely affect the working of important aspects of the domestic succession laws of the UK. Therefore, any European instrument must not:

- limit the operation of the principle of freedom of testamentary disposition or affect the operation of the rules of intestacy;
- change the court based system of probate and the associated office of executor;
- interfere with the use of trusts, joint tenancies or life policies; or
- adversely affect the working of the national land registration or tax law systems.

8. The UK Government notes that differences between Member States are not limited to matters of substantive succession law. There are also fundamental differences between their private international laws in relation to succession. Of particular significance in this respect to the UK are three matters:

- the principle of scission (that is the rule that the law of the country where the immovable property is situated is the law applicable to the succession for the immovable property);
- the distinction between matters of succession (determining who gets what) and matters of the administration and distribution of the estate (determining what is the net estate and the procedures and formalities for collecting in and then distributing the net estate to those entitled under the law of the succession); and,
- the basic principle that the law of succession applies only to property comprised in the deceased’s estate at death, with property effectively given away by the deceased in his or her lifetime not being part of the estate. Any proposal to change these rules would require strong justification. The UK Government is not aware that such justification exists.

9. The potential effect of European legislation on the different national systems of property ownership and transfer must therefore be carefully considered as part of the assessment of any proposals. The effect of any proposed European instrument in the field of succession must be proportionate to the degree of change required to implement it. The principle of subsidiarity must be fully applied.

10. Subject to these significant concerns, the UK Government supports, in principle, the concept of attempting to develop proposals to improve the administration of the estates of deceased persons with a cross-border element, in so far as the diversity of laws and practice creates real problems in the field of succession.

11. In general terms, the UK Government would approach such proposals from the standpoint that European measures in the civil law field should be based on mutual recognition and enforcement of judgments, judicial co-operation and the harmonisation of conflict of laws rules. However, any proposals must be restricted to cases with a cross-border element. They must also be demonstrably necessary for the proper functioning of the internal market to ensure that they fall within the competence of the European Union.

**Impact Assessment**

12. The UK Government is strongly of the view that the first stage in the development of any proposals should be a thorough analysis of problems with current law and practice. Any proposals for action at European level must flow from this analysis and be justified by clear evidence that the measures proposed offer proportionate solutions to real problems, which could not adequately be addressed at national level. The Green Paper and the Annex do not contain such evidence. The assertion that European action is essential because there appear to be around 50,000 transnational succession cases each year among Member States is not an adequate evidence base to justify legislation. The Commission must identify the real problems that exist and demonstrate their scale. It must develop persuasive impact assessments to justify proposed change. The UK Government does not accept the Commission’s view that there is an established need for reform.


**Language**

13. Finally, the UK Government stresses the importance of an accurate understanding of technical legal language and concepts used in different Member States. For example, words such as “domicile”, “deed” and “heirs” appear to have a different meaning in the English language version of the Green Paper than normally applies in the United Kingdom. Similarly, as already mentioned at paragraph 8, “estate” may mean different things in different countries and is not synonymous with “patrimony”. It will be very important to ensure that linguistic and conceptual accuracy is maintained during the development of any proposals.

**Replies to the Questions in the Green Paper**

14. Turning now to the topics addressed in each Part of the Green Paper, the UK Government has the following general observations.

**Conflict of Laws**

15. The UK Government considers that the assertion in Part 2 of the Green Paper that the universal nature of future rules should not be in dispute is premature. In view of the practical importance of the United Kingdom’s strong relationships with the Commonwealth and the USA, the UK Government will give careful consideration to the impact of any proposals arising from the Green Paper on dealings with non-EU countries.

16. On the question of the proper scope of the law applicable to the succession the UK Government considers that the applicable law should not extend to matters of the administration and distribution of the estate, or to the definition of the property comprised in the estate. This will prevent disruption of well functioning national administrative systems, such as the probate and land registries. It will also avoid interference with the operation of national property law by incompatible rules of another Member State as to reserved heirship or freedom of testamentary disposition. It would be totally unacceptable to the Government of the UK if the law applicable to the succession undermined perfectly valid lifetime gifts, including trusts, or interfered with the operation of testamentary trusts. In the UK Government’s view no further choice of law rules are necessary in relation to trusts.

17. In relation to the determination of the applicable law, the UK Government agrees that there are advantages and disadvantages to each of the likely connecting factors, but is not convinced that one solution is yet demonstrably superior to the others. Nor has the UK Government a finally concluded view on permitting a testator to be able to choose an applicable law. An unlimited choice would present some obvious difficulties but a limited choice might provide greater certainty for testators.

**Jurisdiction**

18. Turning to issues relating to jurisdiction, the UK Government considers that a single exclusive jurisdiction would have considerable disadvantages and would be undesirable. For example, it might require a foreign court to exercise a discretion under English law. The foreign court could find this impossible due to its lack of familiarity with the common law concepts involved (for example, proprietary estoppel or the operation of the court’s discretion under the Inheritance (Provision for Family and Dependants) Act 1975).

19. The UK Government also considers that the courts of the territory in which immovable property is situated should have jurisdiction over that property. This supports the proper and efficient administration of the transfer of property, which is correctly a matter of domestic law. The Government is unaware that the present systems in operation in the UK create any significant problems for nationals of other Member States or that UK nationals, properly advised, have to make disproportionately burdensome arrangements in relation to property in other Member States in relation to succession.

20. Subject to these considerations, the UK Government is open to discussion about the precise rules that would govern the primary choice of jurisdiction and the transfer of jurisdiction in whole or in part in an individual case.

21. The UK Government notes the proposals in Part 3 of the Green Paper that non judicial authorities of one Member State might have jurisdiction instead of the court designated under the choice of court rule. The Government considers that this possibility is fraught with difficulties and very unlikely to be acceptable.

22. The UK Government considers new rules of jurisdiction are unnecessary in relation to testamentary trusts, because they, like lifetime trusts, are within Regulation 44/2001.
RECOGNITION AND ENFORCEMENT

23. Part 4 of the Green Paper addresses issues of mutual recognition and enforcement on the assumption that harmonised choice of law and choice of court rules have been established. This assumption is unnecessary and premature.

24. As a general rule, the UK Government supports mutual recognition and enforcement measures as effective and efficient ways to make procedures in cross-border cases simpler, cheaper and more certain. However, it acknowledges that the differences in legal systems across Member States in matters of succession appear to create significant obstacles even to the creation of such measures. These obstacles would be particularly acute in relation to the suggestion that judgments from one Member State should automatically form the basis for an amendment of land registers in another. These obstacles would require very careful consideration.

25. For similar reasons, the UK Government has strong reservations about the proposals in Part 4 that the same status should be given to succession related deeds as to judgments. This proposal appears to be based on mutual recognition of notarised documents. This would present problems in jurisdictions that do not have a notarial tradition. Essentially the same problems arise in relation to the proposals for the automatic recognition of executors.

EVIDENCE OF STATUS AS HEIR

26. The UK Government has no overriding conceptual objection to the creation of a European Certificate of Inheritance. However, the certificate proposed would have to be compatible with systems of administration and distribution of estates that are fundamentally different. A certificate designating an heir (in the civil law sense) would not be effective to entitle that person to possession of property in UK jurisdictions where a grant of representation, or equivalent, in favour of an executor is required so that the executor can administer and distribute the estate. Unless a means can be found to overcome the differences, the certificate would have to perform different functions in different systems. This might make it confusing and cumbersome.

REGISTRATION OF WILLS

27. The UK Government does not have any overriding objection in principle to the possible creation of a scheme for registering wills in all Member States, including the possibility of a central European register. However, the Government considers that any registry of wills should be voluntary and that it should not preclude informal and deathbed wills, both of which are regularly made in UK jurisdictions. Any proposals for the creation of such registries would have to be carefully evaluated.

LEGISLATIVE APPROACH

28. In response to the Commission’s request for suggestions as to how the project might be carried forward, the UK Government strongly believes that the Commission would be unwise to attempt to carry forward an immense single project covering the whole of the subject matter of the Green Paper in a single stage. The Government strongly recommends that the Commission should divide the work both by subject and chronologically into separate and manageable areas. Priority should be given to those parts that are likely to be achievable and to bring demonstrable benefits to citizens.

29. In carrying out this exercise the Commission should take into account the successes and failures of the previous attempts to create international conventions in this field. Whilst not ruling out the possibility of commencing work in another area, the UK Government strongly recommends that serious consideration be given to the exploration of the need for, and the possibility of achieving, an instrument harmonising choice of law rules in matters of succession (excluding administration and distribution of estates). If progress can be made in this area, it may well be possible to build on that achievement in other areas covered by the Green Paper. The suggested European Certificate of Inheritance might also provide a starting point provided that it applied to both heirs (in the civil law sense) and executors (in the common law sense). There are, however, significant practical problems in identifying and creating an effective and cost-efficient procedure of this kind. All proposals must however be developed in accordance with Better Regulation principles.

August 2006
SURRENDER PROCEDURES BETWEEN THE EU AND ICELAND AND NORWAY
(8762/06, 9226/06)

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office
Sub-Committee E (Law and Institutions) considered this proposal at its meeting of 21 June 2006.

The Committee recently reported on the European Arrest Warrant (European Arrest Warrant—Recent Developments (30th Report of Session 2005–06, HL Paper 156) and found it to have a key role to play in the fight against terrorism and in bringing those accused of serious crime to justice (paragraph 17). We therefore welcome in principle the extension of these simplified surrender procedures to Norway and Iceland.

We note that the proposal’s provisions address some of the concerns which have been raised in respect of the EAW Framework Decision. In particular, the abolition of dual criminality for a specified list of offences is not mandatory: Article 3 allows States to choose whether to abolish dual criminality. Do you agree that it might be helpful to allow States to make a declaration in respect of particular offences in the Article 3 list? The current approach appears to require States to accept the abolition of dual criminality for all offences listed or for none.

The Committee is concerned to ensure that there is a consistent interpretation of the instruments relating to the EAW. It therefore welcomes Article 37a of the proposed agreement. However, the provision does not outline what is to be done where the review mechanism reveals a difference of approach between the courts. The EEA Agreement may provide a useful precedent. As you know, Article 105 of that Agreement specifically provides for a dispute resolution procedure in circumstances where attempts to achieve a homogenous interpretation have failed. The dispute resolution procedure set out in Article 111 EEA is far more detailed than that proposed in Article 37 of the proposed agreement. Might the provisions of the proposed agreement be strengthened to reflect more closely those agreed in the EEA Agreement? Would it be desirable to agree a provision equivalent to Protocol 34 to the EEA Agreement allowing Norway and Iceland to make a preliminary reference to the ECJ (Article 35 TEU allows Member States to accept the jurisdiction of the ECJ in Title VI matters)?

We note that in your EM you say that as the proposal is not depositable you have submitted it for information only. We are surprised that the Government did not voluntarily submit the proposed agreement for scrutiny at an earlier stage, given the importance of the subject matter and the well-known interest of both Scrutiny Committees in the EAW. We note that a general approach was agreed on 28 April 2006. We nevertheless have decided to hold the proposed agreement under scrutiny.

22 June 2006

Letter from Joan Ryan MP to the Chairman
Thank you for your letter of 22 June 2006 in relation to the above draft agreement. I am pleased that the Committee has welcomed, in principle, the extension of the simplified surrender procedures to Norway and Iceland.

I will deal with your queries in the order they are posed. Firstly, with regard to dual criminality, some Member States are not able, for constitutional reasons, to abolish the dual criminality rule with non-EU Member States. Furthermore, Iceland will not abolish dual criminality and some Member States are not willing to do business on an unreciprocal basis. This Article therefore has to be based on reciprocity.

The UK is not in this position and we are of the opinion that the Surrender Agreement should be applied consistently with the Framework Decision on the European Arrest Warrant. However, in order to secure agreement of the Surrender Agreement, it was necessary to allow those Member States to be able to disapply the dual criminality provision.

Secondly, you raise the issue of the dispute resolution procedure and whether it would be desirable to follow the precedent of the EEA Agreement, in particular Protocol 34 to the EEA Agreement, which allows Norway and Iceland to make a preliminary reference to the ECJ. As you say, Article 35 TEU allows Member States to accept the preliminary reference jurisdiction of the ECJ in Title VI matters. The UK has chosen not to do so. In these circumstances, whilst we would not object to the inclusion of a provision equivalent to Protocol 34 in this agreement, it is not something that we have pushed for during the negotiations.

Thirdly, you ask why the Government did not voluntarily submit the Agreement for scrutiny at an earlier stage. The Government cannot submit to the Committees any document which is classified. Since this is an external agreement with third countries, the negotiations were confidential. The first de-classified version of the agreement was given to the Committees as soon as it was issued. The first depositable text the Home Office
received was in May, after the General Approach had been agreed at the April Council meeting. Until that time the Agreement had a restricted marking and could not therefore be deposited for scrutiny.

7 July 2006

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 7 July which was considered by Sub-Committee E (Law and Institutions).

DUAL CRIMINALITY

We note that some Member States are not able, for constitutional reasons, to abolish the dual criminality rule. Of those States which are so able, would it be helpful to allow them to abolish the rule for only some of the offences listed in Article 3(4)? For example, States may be happy to abolish the rule of dual criminality in respect of terrorism, but not in respect of the less clearly understood offence of “racism and xenophobia”. We recall that the list has been the subject of some debate in the Council in relation to other instruments.

DISPUTE RESOLUTION

Do you consider the EEA agreement, and in particular Articles 105 and 111, to provide a useful precedent in considering what general dispute resolution measures should be included in the present proposal?

You say that the Government would not object to a provision allowing the courts of Norway and Iceland to make preliminary references to the ECJ, but explain that this is not something you have pushed for. Do you intend to raise this matter in the Council? Was this discussed in previous negotiations? If such a provision is not to be included, do you agree that this could have a negative impact on the homogenous interpretation of the Agreement’s provisions?

DEPOSIT OF INSTRUMENT

We recognise that there are difficulties in submitting classified documents to Parliament. We note, however, that a General Approach was agreed on 28 April but you did not submit your EM to this House until June. We trust that in the future every effort will be made to submit de-classified proposals immediately after de-classification to allow this Committee reasonable time to conduct its scrutiny.

The Committee decided to retain the proposal under scrutiny.

25 July 2006

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 25 July 2006 in response to my letter dated 7 July 2006, in relation to the above draft agreement.

DUAL CRIMINALITY

I understand that some Member States are not prepared to abolish the dual criminality rule with Norway and Iceland because they are not EU Member States and that it has nothing to do with the contents or interpretation of the framework list of offences for which the dual criminality test is abolished. Had some Member States had an interest in a partial application of the framework list, then they would have raised this during the course of the negotiations which was not the case.

DISPUTE RESOLUTION

You ask whether we consider that Article 105 and 111 of the EEA Agreement provide a useful precedent in considering what general dispute resolution measures should be included in the present proposal. Article 37a of the proposed agreement follows the precedent of Article 105 of the EEA Agreement. As you pointed out in your previous letter, however, the dispute resolution procedure in Article 111 of the EEA Agreement is more detailed than that proposed in Article 37 of the proposed agreement. Whilst we agree that Article 111 of the EEA Agreement could be used as a precedent we consider that in practise Article 37 as presently drafted should be sufficient to enable the resolution of any dispute that should occur.
You also raise a point of possibility of allowing the courts of Norway and Iceland to make preliminary references to the European Court of Justice (ECJ) under the proposed agreement. Even if there is no provision for preliminary references to be made from the courts of Norway and Iceland (so that the position in those countries is the same as that prevailing in the UK in relation to third pillar matters) Articles 37 and 37a of the agreement will still be available for the purpose of pursuing as uniform application and interpretation as possible of the provisions of the agreement.

**DEPOSIT OF INSTRUMENT**

Whilst an EM was submitted on 18 May, some errors were identified. The initial EM was withdrawn and a new EM drafted. Unfortunately this led to the delay in submitting the revised EM until 9 June, for which I apologise. Declassified versions of the draft agreement and the accompanying annex containing the format for the arrest warrant were published on 3 May and 12 May respectively. These documents were deposited on 16 May and, as such, were provided at the earliest possible opportunity to inform the Committees of developments towards conclusion, in view of your interest in these matters.

*12 September 2006*

**TRAFFICKING IN HUMAN ORGANS AND TISSUES (9228/03)**

**Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office to the Chairman**

On 29 March 2004, my predecessor, Caroline Flint, wrote to you explaining the then current position in relation to the above draft framework decision and stated that any future developments would be notified to the Committee.

As you are aware the negotiations on this framework decision were suspended during the period of the Greek Presidency of the Council of Europe. Following a review of subsidiarity, the Commission has recommended withdrawal of this dossier as actions at bilateral and United Nations level are deemed more appropriate due to the international nature of this issue. Consequently, withdrawal of the dossier is expected to be inevitable. It is therefore unlikely to be a live issue for the consideration of the European Committee.

*20 July 2006*

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Home Affairs (Sub-Committee F)

ASYLUM SYSTEM: IMPROVING DECISION MAKING (6520/06)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered the Communication on strengthening practical co-operation at its meeting on 22 March.

The Committee shares your views in welcoming proposals that are designed to enable Member States to exchange best practice, to develop closer working relations among asylum services at operational level, and to develop confidence in each others’ procedures and decision-making. This will in time pave the way for the convergence of asylum decisions and address the great variation in recognition rates among Member States. To this end, we particularly support the establishment of a central Country of Origin Information (COI) system that delivers official, rapid and reliable information. As you explain in your Explanatory Memorandum, working practices on COI collation currently vary considerably between Member States. We believe that this is not satisfactory and that Member States should collect, organise and assess COI on the basis of agreed EU guidelines which reflect the highest standards. We would therefore encourage the Government to take these proposals forward in the next Council discussions of the Communication.

The Committee decided to clear this document from scrutiny.

23 March 2006

COMMUNITY CIVIL PROTECTION MECHANISM (8430/05, 8436/05, 5865/06)

Letter from Ed Miliband MP, Parliamentary Secretary, Cabinet Office to the Chairman

I am writing to give your Committee an update on progress on the Explanatory Memoranda on Civil Protection Proposals submitted on 29 June 2005 and 14 June 2006:

(a) Document 8430/05 COM(05) 137 Commission Communication: Improving the Community Civil Protection Mechanism issued on 26 April 2005;
(b) Document 8436/05 COM(05) 113: Council Regulation establishing a rapid response and preparedness instrument for major emergencies issued on 26 April 2005; and

Each of the three documents has a different status and purpose. Document (a) is a Communication that set out the Commission’s reasoning for improving civil protection. Document (b) is a Proposal for a Council Regulation that would provide the legal authority for financing civil protection actions (including preparedness and response) at European Union level. Document (c) is a proposal for a Council Decision that provides for the operational response arrangements for civil protection for which Document (b) is the legal act for financing. Documents (b) and (c) are closely interlinked.

Document (a) has not been discussed at length in a Council Working Group because it is not a proposal for a draft Legal Instrument. However most of the basic ideas were reflected in Document (b) which was discussed at five meetings of a Council Working Group during the UK Presidency, and both Documents (b) and (c) have been discussed at nine meetings during the Austrian Presidency.

AREAS OF CONSENSUS

Common themes and areas of agreement have emerged. There is general agreement that civil protection activity is an effective way of engaging mutual support in emergencies. There is also agreement on the principle of Subsidiarity, that civil protection is a national competence and that action at Community level must have added value. Member States are clear that the role of the Commission is to supplement national action and not replace it, which the Commission accepts.

On specific proposals there is Member States agreement that:

— the proposed Council Regulation should take the form of a Council Decision whilst providing the proper safeguards for finance;
— the scope of civil protection should include the response to terrorist attacks and other man-made disasters;
— civil protection should be able to operate inside and outside the EU;
— marine pollution should be included for response actions but not for preparedness which is covered by other programmes;
— early warning systems for disasters affecting EU territory could be enhanced.

There is also reasonably wide agreement on the need for tight criteria on the actions that would be eligible for funding and for sharper definitions in both legal instruments to make the actions and obligations of the Commission and Member States clear. Member States have pressed for improved co-operation between civil protection and humanitarian aid and co-ordination with the UN where they are present in a disaster area. The Commission appears to be willing to accept all these proposals.

On the proposal for Modules, a working group of Member States set up by the Commission has reviewed options. The view that emerged from the group is that assistance could be delivered through modules such as search and rescue teams, water purification systems, field hospitals, medical supplies and material for shelter (eg tents, blankets). The Commission is expected to issue advice at a later stage on the composition of modules and is considering how these could best match the categories of disaster assistance used by the United Nations.

Areas of Disagreement

The UK with a number of other Member States is concerned about the Commission proposals to acquire or fund logistics support, to hire equipment or assets and to fund transportation. During the discussions the Commission has offered further clarification. On logistics, it believes that experts loaned from national resources who are dispatched to assess needs or co-ordinate assistance in disaster areas require telecommunications systems and laptop computers for them to communicate with each other and with the Commission to send and receive reports. On equipment and assets, the Commission wishes to be able to hire such items where necessary in response to emergencies within the EU or to support national intervention teams sent out from the EU to areas affected by disasters.

On transport, the Commission wishes to offer three options. First, they see a role for the Commission in seeking and co-ordinating offers of transportation from Member States including pooling of offers. Second, they would like to set up a framework contract with an air broker that would allow the Commission to establish what airlift might be available and at what cost so that a Member State needing transport facilities could make use of it with the Member State paying the costs. Third, the Commission would like to be able to fund transportation as a safety net should other options not be possible for countries unable to organise airlift.

The UK and three other Member States have maintained reservations on these proposals. Whilst there may be an argument for the Commission providing basic support (eg laptops and satellite phones) for national experts contracted to the Commission for civil protection activity outside the EU, we believe that the provision of logistics, equipment and other support for national teams should remain a Member State responsibility either individually or, as in the case of the UK with the International Humanitarian Partnership, through close co-operation with other Member States.

Likewise, on transportation and the provision of equipment in response to emergencies within the EU, the UK along with a number of other Member States believes that this should remain a national responsibility and that where mutual support has been requested through the mechanism, the country requesting assistance should, in principle, meet the costs incurred although, of course, a country offering help might be willing to waive them. The availability of Commission funded assets could deter Member States from building up their own capabilities thereby reducing the EU’s resilience overall. The UK and other Member States argue that for disasters outside the EU the responsibility should also be primarily a national although the Commission could have a co-ordinating role in helping Member States to work together by pooling resources.

Legal Base

An area that continues to cause problems for the UK is the use of Article 308 as the legal base. As the Committee has noted there are three tests for the use of Article 308 namely if it is necessary in the operation of the common market; to attain an objective of the Treaty; and because 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 31(u) of the Treaty and there is no other appropriate Article.
On the operation of the common market test, the Government considers that it is satisfied where civil protection operates inside the EU, in the two Accession Countries (Bulgaria and Romania) and in the three European Economic Area countries (Iceland, Liechtenstein and Norway). The rationale is that civil protection intervention can serve to assist the operation of the common market because it aims to prepare for and to respond to major emergencies affecting people, the environment or property. In an emergency it 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 quickly so mitigating potential economic damage by early intervention.

The Government accepts, however, that in the case of civil protection activity outside the EU, the two Accession states and the three EEA countries it is more difficult to satisfy the operation of the common market test in Article 308. The UK has raised these doubts in the Council Working Group considering the Commission proposals and individually with a number of Member States that usually share UK concerns. We have found no support at all for the UK doubts, with all other Member States and the legal services of Council and Commission being content with Article 308 as a sole legal base and noting that it has been the legal base for previous civil protection legislation.

We have raised the suggestion of the Commons Scrutiny Committee that in addition to Article 308 the proposals should use Article 181a. Again that has received no support and doubts have been raised about the legal uncertainty that a dual legal base might create, since Article 181a uses qualified majority voting whilst Article 308 calls for unanimity. It has been pointed out that for civil protection response outside the EU the Commission has just confirmed that it will have access to €8 million each year from the Stability Instrument budget allocation which itself uses Articles 179(2) and 181a that allow assistance to third countries in response to disasters or emergencies. Other Member States, therefore, see the use of civil protection outside the EU as consistent with related legislation. In the absence of any support we shall reluctantly have to accept the use of Article 308 but ask for a note to be placed in the minutes of the Council working group of the UK concerns.

Discussions on the areas of disagreement will continue through the forthcoming Finnish Presidency. Finland has indicated that it will give priority to early agreement and Council approval on the Council Regulation because the existing financial legislation expires on 31 December. Finland will then move on to the Civil Protection Mechanism Decision with the intention of obtaining agreement and approval in the Council in December. We are currently holding discussions with the Finns and I shall write to update you on future developments.

12 July 2006

Letter from the Chairman to Ed Miliband MP

Sub-Committee F (Home Affairs) of the European Union Select Committee considered this proposal (5865/06) at a meeting on 19 July 2006.

As I am sure you know, Cabinet Office guidance requires Explanatory Memoranda to be sent within 10 working days of the deposit of the document. In this case it took over four months. While we note your letter of apology, we would be glad to know the reason for the delay. It would also be very helpful if the paragraphs in an Explanatory Memorandum, especially one of this length, could be numbered.

The Explanatory Memorandum states that the “Explanatory Memorandum [on the earlier proposed Council Regulation, document 8436/05] is being held by the Committees awaiting clearance”. In fact that proposed Council Regulation was cleared from scrutiny by this Committee in January: see my letter to your predecessor of 19 January 2006¹, of which I attach a copy (not printed).

The Committee considered both this Explanatory Memorandum and your letter of 12 July. We are grateful for this further information.

You will know from my letter of 19 January that we still had our doubts about the legal base, but were prepared to accept the view in Jim Murphy’s letter of 14 December 2005 that there was a sufficient connection between civil protection and the operation of the common market. The Explanatory Memorandum of 14 June 2006 stated only that “On the use of Article 308 as the legal base, the Government is currently reviewing the options”. It seems however from your letter that this review had already taken place. We are glad to see that Government lawyers shared our doubts, and those of the Commons European Scrutiny Committee, and are concerned that neither the Council nor the Commission legal service, nor any other Member State, seems to share these doubts. We agree that you should place on record the UK’s reservations.

All the matters listed in your letter under the heading “Areas of disagreement” are matters which also caused us concern; in particular, we too doubt whether the Commission has much, if anything, to add when it comes to the supply of equipment and transport, over and above what the Member States can provide individually and collectively. We note that the UK and a number of other Member States believe that this should remain a national responsibility. We hope that you will continue to put this view forward.

We are clearing this document from scrutiny, but would be grateful to be kept informed of progress in the negotiations on this instrument.

19 July 2006

COUNTER-TERRORISM SECURITY IN EXPLOSIVES (11929/05)

Letter from the Chairman to Lord Bach, Parliamentary Under-Secretary of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

Thank you for your letter of 15 December 20052 in reply to my letter of 18 November addressed to Hazel Blears.

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union considered your letter at a meeting on 11 January. We were very grateful for the information you provided on the measures taken to ensure that ammonium nitrate based fertilisers are stored in secure conditions. It is useful to know that there is awareness of this problem.

Fertilisers are of course a valuable commodity which farmers will naturally safeguard. Nevertheless the Committee believe that, even if a fertiliser is “wherever possible . . . [stored] . . . inside a locked building or compound”, this will not be much of a deterrent to anyone who wishes to steal it for use in manufacturing explosives. We hope therefore that you will discourage the Commission from burdening the industry with further regulations regarding the storage of fertiliser, since these will have no practical utility.

19 January 2006

COUNTER-TERRORISM STRATEGY (14469/1/05)

Letter from the Chairman to Rt Hon Charles Clarke MP, Secretary of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered this document at a meeting on 1 February.

We agree that, in a matter of this importance, it is regrettable that the document was not deposited for scrutiny, with an Explanatory Memorandum, in time for it to be considered before its adoption. We also doubt whether an Explanatory Memorandum sent to us “in early December as intended” would have been of any value given that, as you say, the Strategy was agreed at the JHA Council on 1–2 December, and thereafter was in practice not susceptible of amendment.

Since the Strategy has now been adopted, the question of clearance from scrutiny does not arise. We hope however you will have put in place arrangements to make sure, not just that documents are deposited for scrutiny, but that they are deposited in time to give the Committee a realistic opportunity of expressing its views to Ministers in advance of any agreement on their content.

2 February 2006

Letter from Tony McNulty MP, Minister of State, Home Office to the Chairman

I attach the revised EU Action Plan on Terrorism (not printed) for your consideration. As you will remember, during the UK Presidency we reorganised it into four headings—Prevent, Protect, Prosecute (which now replaces what was previously Pursue) and Respond. The plan measures progress made against objectives to date, and is a useful framework for EU CT work.

There are two annexes to this version. The first indicates progress on legislative measures, including international Treaties and Conventions, as at February. The second is a list of CT achievements since 2001. Neither of these are contentious and they are helpful reference documents.

Also attached for Committees’ information are: the EU Counter Terrorism Co-ordinator’s (Mr. Gijs De Vries) 6-monthly report on implementation of the Action Plan from May 19; an updated list of progress on legislative measures, also done in May; and an update from Mr. De Vries on Terrorist Financing work from June (not printed).

This detailed assessment of the various stands of EU CT work is welcome, and puts pressure on Member States to take action. We fully support the effective implementation of the Action Plan and will work closely with the Finnish and German Presidencies to help resolve any areas of difficulty. We are concerned not to lose the momentum that we gave EU CT work during our Presidency, and the revision of the Action Plan and Co-ordinator’s report are important levers in ensuring progress. Some important developments in the revised Action Plan are identified below, together with areas of concern for the UK.

As the material is Restricted, the Action Plan has been sent under cover of this letter rather than accompanied by an Explanatory Memorandum.

PREVENT

The Prevent strand focuses principally on two aims: preventing the radicalisation and recruitment of EU citizens, and preventing terrorists from financing their activities.

— Recent reports have included an assessment of the impact of the July 7 bomb attacks on Muslim communities within the EU.

— A joint strategy paper has been issued on terrorist financing and all Member States have now ratified the 1999 UN Convention for the Suppression of the Financing of Terrorism. A number of other legislative measures have also been introduced, strengthening the EU’s approach to tackling the financing of terrorist organisations.

NB the dossiers on terrorist financing and on limiting terrorist access to weapons and explosives have been moved from the Prosecute to the Prevent strand.

UK POSITION

Our view is that the Prevent strand is progressing along the right lines, albeit somewhat slowly. There is some Commission funding allocated to this work. For example they are conducting polls of Member States’ minority communities; we await the results with interest. The Austrian Presidency made some progress on the media communications strategy, which will go to GAERC on 17 July for endorsement and to JHA Council on 24 July for final sign off. The Finnish Presidency has proposed a friends of the presidency sub-group of media experts to take forward implementation, which we will support. Separately, we will question the unhelpful inclusion of financing and access to material in this section, as they would normally fall under ‘Prosecute’.

PROTECT

Under the Protect strand, the EU addresses the need to protect its citizens, infrastructure and borders, and makes regular assessment of the threat to each.

— Two Framework Decisions have been adopted on the European Programme for Critical Infrastructure Protection (EPCIP), and discussions continue.

— The EU has also adopted a number of other legislative measures to counter the terrorist threat to our borders as well as to our transport networks and other civilian and military targets. The Action Plan also details developments in EC/US collaboration on the protection of citizens and infrastructure.

The funding of technological and medical research is also addressed in this strand.

UK POSITION

Progress on the EPCIP, which represents the main programme under the Protect strand, has been slow. A Green Paper was published in January and the subsequent consultation phase is now complete. The UK supports the programme but feels that it should be limited to cross-border infrastructure, focusing on research and best practice which raises the CIP capability of Member States without interfering in national security matters. The Commission is now expected to put forward their proposal in September-October.
PROSECUTE

Within this strand, the EU addresses a number of areas including the legal framework for fighting terrorism, sustaining international consensus on fighting terrorism and enhancing judicial and law enforcement cooperation.

— The peer evaluations are now complete. Member States have been reporting back to the Terrorism Working Group (TWG) as to how they have responded to the recommendations made. Furthermore, the implementation of the Framework Decision on combating terrorism has now been completed by 22 Member States. The Commission will report back on its implementation by the end of 2006.

— The EU has adopted a number of legislative measures to assist in both judicial and police cooperation, including the Council Decision to establish Eurojust.

— Thematic SitCen threat assessments have continued to be used as the basis for informing EU policy making.

UK POSITION

The Austrians have made good progress in taking forward implementation of the peer evaluations, and have completed the assessment of the 15 “old” Member States. Once Finland has heard from the 10 accession states (and Bulgaria and Romania), the final report will need to capture best practice and remaining vulnerabilities, as well as possible options for next steps under the German Presidency. We also hope that the recommendations will form a basis for bilateral lobbying on capabilities (from eg Mr. De Vries) and Commission funding to address vulnerabilities in Member States.

It is the UK’s view that the Austrian Presidency has been unfocused on the issue of the EU’s provision of technical assistance to third countries, which also falls under “Prosecute”. The UK will work with the Finnish and German Presidencies to encourage a more flexible approach to third country assistance, in particular seeking to focus the EU on countries that HMG considers to be priorities.

RESPOND

Under the Respond strand, the EU aims to strengthen its ability to react effectively to a terrorist attack, and to enhance its crisis and consequence management.

— A Council Decision and a Commission decision on the Early Notification of a Nuclear Accident have been adopted.

— In terms of civilian assistance, the EU has made further progress on implementing the Solidarity programme and the guidance on the threat of biological and chemical agents. Work continues to be done on military databases.

The EU recognises that there is a need to work further to assist the victims of terrorism; both those directly affected by a terrorist attack and those who may be discriminated against as a result of an attack. These have been addressed by legislative measures adopted during the Austrian Presidency.

UK POSITION

The Barnier report on EU crisis management, in particular on closer consular co-operation, was not favourable to the UK. However, the draft language in the June Council Conclusions was better and the Finns are planning to hold bi-laterals with Member States who had difficulties with the work, which is encouraging.

We will of course keep the Committees abreast of any further developments in regard to the EU Action Plan on combating terrorism. We shall endeavour to work with the Presidency and partners to ensure continued progress on CT measures, and that Commission resources are devoted to supporting Member States’ activities in the most effective manner.

17 July 2006
DATA PROTECTION: FRAMEWORK DECISION (13019/05)

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, Department for Constitutional Affairs to the Chairman

Thank you for your letter of 15 December 2005 about the proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters. I reply below to the questions you ask, and will keep you updated and supplied with revised texts as they become available.

LEGITIMACY OF PROCESSING AND ACCURACY OF DATA

A data controller should control the accuracy of data they make available and the security of their computer systems. In relation to direct automated access to databases, this would require data controller to ensure that access links are only established with other “competent authorities.” I agree that it is not possible for the data controller to ensure that each automated request complies with the requirements of Article 4 of the DPFD. It appears that the requirements of Article 9 DPFD replace rather than augment the requirements in Article 4. We will be seeking to clarify this in the Working Groups on this instrument.

I also agree that it is not possible to verify the accuracy of information on databases to which direct automated access is provided at the moment of exchange, which implies that the contents of such databases must be maintained to a standard suitable for exchange with other Member States. The databases to which such direct access is contemplated (for example, the six listed databases in the Framework Decision on the Exchange of Information under the principle of availability, such as that for vehicle registration) are generally compiled to a high standard of accuracy. However, difficulties for data processors in ensuring accuracy arise particularly where the data processor must rely on members of the public to update their personal details. My officials are discussing with stakeholders how we might ensure that accuracy requirements in the DPFD are appropriate in this context.

I consider that safeguards can be put in place to prevent unauthorised access to direct automated access systems; a data controller determines who has access to data, and configure that in the system. The requirements for security and confidentiality of data set out in articles 23–26 fall to holding and obtaining data controllers in the first place and secondly to the supervisory authority established in Chapter VII.

PERSONAL DATA OF NON-SUSPECTS

The only specific rule that applies to data subjects who are not suspects appears to be Article 7(1). This provides a stricter rule against storing data for longer than is “absolutely necessary” for people in the last category in “a person who does not fall within any of the categories referred to above” (article 4(3)). This rule would not apply to all non-suspects, for example witnesses who are not suspects. The Commission has explained that article 4(3) is derived from articles 8 and 10 of the Europol Convention. They note that it is not evident why police and judicial authorities should process the data of people who are not covered by these categories for Third Pillar purposes. Although some “competent authorities” do process a great deal of data which is not connected to policing, for example, Her Majesty’s Revenue and Customs process information about all tax payers, this processing would not be within the scope of this instrument. I therefore intend to ask the Commission why this category was included.

RIGHT OF INFORMATION

I am still considering the implications of the absence of an equivalent for article 19(4) in article 20. The Committee should note that Article 30 requires the supervisory authority to monitor the application of the DPFD, including whether the restrictions in article 20 have been complied with.

The rule in Article 11 of the Data Protection Directive, that notification be given in relation to data not obtained from the data subject “no later than the time when the data are first disclosed” is qualified by the words “in so far as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing”. I would draw the Committee’s attention to Schedule 1, Part II, paragraph 2(1)(b) of the UK’s Data Protection Act 1998, which states that when data have not been obtained from the data subject, the data subject should be provided with the information either “before the relevant time or as soon as practicable after that time”. In the context of policing and crime prevention, I can

The determination of adequacy of data protection in third countries is a significant issue, which arguably needs to be decided collectively. This argument might amount to a case for the Committee. This function is very similar to that performed by the committee created under Article 31 of the Data Protection Directive, as per Article 25(4) and 25(6) of the Data Protection Directive. As I said, your concern on this point has been noted, and will be taken account of as we continue to develop the UK negotiating position.

While the Government agrees that there is a case for the consolidation of the Third Pillar supervisory authorities, I do not believe that this Framework Decision is the place to pursue that objective.

The Commission addressed the issue of the non-coverage of Europol and Eurojust in Article 4.6 of the Impact assessment 13019/05 ADD 1. I largely agree with their analysis that the Framework Decision is less a harmonisation measure than one to impose minimum standards, and that including Europol and Eurojust would probably hamper its introduction by adding complexities. I believe that the data protection provisions that apply to Europol and Eurojust are adequate as they stand.

I regret that I cannot give you a detailed timetable for the adoption of the proposal at the present time, as negotiations have barely begun and Member States have not revealed their positions. I will, of course, give you an estimate of the timetable as soon as I have it.

I hope this letter clarifies the points you have raised with me. I will, naturally, keep you fully informed of developments as negotiations continue.

20 January 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 20 January 2006 in which you provide a very detailed response to our questions. Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union has re-examined this proposal in the light of your information and the Opinion of the European Data Protection Supervisor (EDPS) at a meeting on 8 February.

We note that you share our concern that the accuracy and quality of personal data is adequately verified. We hope you will agree that this would be better achieved by bringing the provisions concerning the verification of data quality laid down by Article 9 within the general rules on the lawfulness of personal data processing in Chapter II, so as to complement the requirements of Article 4(1). As a general rule, the Framework Decision should also ensure that the provisions on proper verification of data quality apply to all processing of personal data by law enforcement authorities, including their further transmission as envisaged by Article 11(1). As you will be aware, this is the approach suggested by the EDPS. We would further emphasise the additional safeguards recommended by the EDPS, in particular in relation to the processing of biometric data and DNA profiles. We would like to see these safeguards built into the Framework Decision since they are relevant to current legislative proposals, such as the draft Framework Decision on the exchange of information under the principle of availability, entailing the processing of biometric and DNA data.

You will also have seen that, according to the EDPS, the criteria for data processing laid down in Article 4(4) go beyond the requirements of necessity and proportionality, as reflected in the case law of the European Court of Human Rights. As currently drafted, the Framework Decision would allow the collection of personal data simply on the ground that the competent authorities believe that such data would facilitate or accelerate the prevention, investigation, detection or prosecution of a criminal offence, rather than on the basis of a
demonstrable need for it. As highlighted in the EDPS’s Opinion, “almost any processing of personal data could be considered as facilitating the activities of police or of judicial authorities”. We would like to see the criteria under Article 4(4) tightened so as to comply with the requirements of Article 8 ECHR.

With regard to personal data of non-suspects, as you confirm in your letter, Article 7(1) lays down specific safeguards only with regard to time limits, and only for a limited number of persons who do not fall within any of the other categories listed in Article 4(3). While we are glad to know that you will be seeking clarification from the Commission as to why this residual category was included in the first place, we do not believe that Article 7(1) provides for satisfactory guarantees. Specific safeguards should apply to all non-suspects and should impose restrictions not only on time limits, but also on access to data and the conditions for their collection, and on the refusal of access or information to the data subject. We draw your attention to the EDPS’s Opinion at paragraphs 88–92 with regard to this point.

With regard to the rights of the data subject, we believe that these should be aligned with those provided for under other EU data protection instruments. We do not believe that the case has been made out for a less stringent requirement in the notification to be given in relation to data not obtained from the data subject, ie that he or she be notified about the data obtained or processed “within a reasonable time” from disclosure rather than at the moment of disclosure. However, we look forward to receiving clarification as to what might justify such a provision from your enquiries with the Commission. We would also welcome any insight into the implications of the absence of an equivalent to Article 19(4) in Article 20 once you have had a chance to consider this adequately.

We will be following closely negotiations on the provisions regarding the determination of the adequacy of data protection in third countries. This is undoubtedly an issue of great and increasing significance and has been the source of litigation in relation to First Pillar measures. It is all the more important, in the context of the exchange of law enforcement information, that a robust mechanism is in place which ensures that data transfers occur only to third countries that have data protection provisions which fully match European Union and Council of Europe standards.

We would also like to reiterate our view that the current fragmentation of data protection provisions in Third Pillar measures is unsatisfactory against the background of closer co-operation between law enforcement authorities, within the EU and with Third States. We take your point that the data protection provisions that apply to Europol and Eurojust are adequate as they stand, but concur with the EDPS that in the longer term the rules on data protection applicable to these agencies should be made fully consistent with the present Framework Decision.

We are not persuaded, on the other hand, that this Framework Decision is not the place to pursue the objective of consolidating the Third Pillar supervisory authorities. Given that you seem to agree that there is a case for it, perhaps you could explain to us where the obstacles to this currently lie.

The Committee looks forward to receiving updates on the progress of negotiations and revised drafts as soon as they become available, along with the timetable for adoption of the proposal. We would assume that the Information Commissioner has been consulted on this proposal, and would also be grateful if his views, once obtained, could be copied to us. In the meantime, we will continue to keep the document under scrutiny.

8 February 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 8 February, and for the further very detailed comments the Sub-Committee has made on the Proposal in the light of my letter of 20 January, and the Opinion of the European Data Protection Supervisor. These comments are most helpful, and my officials will pay close attention to them as they become relevant during the negotiations on this Proposal. At this point I cannot add much more than that, but perhaps it is worth saying that the negotiations on the Proposal are moving forward, though slowly, and may achieve a first read through by the end of the Austrian Presidency.

You raise several points of information. Firstly, you asked about the justification for the requirement that when data has been obtained from a third party, that the data subject be notified about the data obtained or processed “within a reasonable time” after the first disclosure, rather than at the point of disclosure. The Commission explained that in the context of criminal investigations there are circumstances in which it would not be possible to comply with this requirement, and that greater flexibility is required. Such circumstances might be the difficulty in finding where an individual currently lives, balanced against the legitimate need to transfer the data in a timely manner. There is also a disproportionate effort clause, to allow for the possibility that it would prove too burdensome, or perhaps impossible, to find that out.
You also ask about the absence of an equivalent to Article 19(4) in Article 20. The Commission indicated that as the data was not obtained from the data subject, there could be no right of information or appeal at that stage, as the data subject would not be aware that data had been obtained and processed. However, should the data subject believe that his data has been obtained and processed, then an access request could be made under the terms of Article 21, with the right of appeal to the supervisory authority if access is refused or restricted.

As I said in my previous letter, while the government does recognise in general terms the case for unifying the Third Pillar supervisory authorities, this proposal is not intended as an inclusive measure across the Third Pillar. Indeed, the option of including Europol and Eurojust was specifically rejected by the Commission in the impact assessment attached to the Framework Decision (13019/05 ADD 1, para 4.6). EU JHA Ministers commitment is to deliver this proposal as quickly as possible, in line with the Council Declaration of 13 July 2005 on the EU response to the London bombings, and I would be concerned that raising the issue of the Third Pillar supervisory bodies, which is likely to be difficult to resolve, would hinder that process.

You also asked about the inclusion of the residual category of personal data included in Article 4.3. Previously the Commission commented that special attention should be paid to the necessity of processing the data of persons with regard to whom there are no reasons to believe that they could contribute anything to the prevention or prosecution of a criminal offence. This applies especially to time limits for the storage of personal data as it is set out in Article 7(1), second sentence. I believe that this is a genuinely residual category, though, and is not intended to be one of wide application.

My officials are in discussion with the Information Commissioner on these proposals, and I myself hope to discuss them with the Commissioner in the near future. As yet we do not have a detailed consideration of the proposals from the Commissioner. When I have that I will of course send it to you.

In conclusion, I apologise for the slight delay in responding to you.

3 March 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 3 March 2006 in which you further address our concerns with the proposal. You also wrote that you were awaiting a detailed consideration of the proposal from the Information Commissioner which you would then kindly send to us. We have not yet received this information.

We have, however, been in correspondence with the Information Commissioner on a number of EU instruments that raise data protection issues, and a few important remarks were made on this proposal in his letter of 21 February which we attach. We would be grateful if you could address his question on scope, i.e. that the data protection rules should apply to all processing of personal data in the law enforcement field, particularly in the light of the principle of availability. We assume this point to be still relevant to the discussion. We are aware that negotiations on the Third Pillar data protection proposal are progressing slowly and that a revised draft of the proposal may yet have to emerge. In the absence of a new text, we would be grateful if you could provide us with an update on the state of play of discussions in the Council and a tentative timetable for adoption. In the meantime, we will continue to keep the document under scrutiny.

10 May 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 10 May 2006 regarding comments made by Richard Thomas, the Information Commissioner, in his letter to you of 21 February about the Data Protection Framework Decision (DPFD). You raise a number of important points and I have addressed each in order below.

With regard to your request for the Information Commissioner’s consideration of the proposed framework decision, I think there has been some misunderstanding. In my letter to you of 3 March, I noted that I would share with you any consideration of the proposal that I received from the Information Commissioner. However, I had not specifically sought a detailed consideration from the Commissioner when I wrote to you on 3 March, and have not as yet received one. My officials meet regularly with their counterparts in the Information Commissioner’s Office (ICO) and I am satisfied that this is an effective way of keeping the ICO informed and provides an opportunity to discuss various issues as negotiations on the DPFD proceed. Of course, the Commissioner is welcome to contribute a written consideration at any time and may choose to do so as we progress towards a more final draft of the DPFD.

You invited my comments on the point raised by the Information Commissioner in his letter of 21 February regarding the extent to which the DPFD might apply to all processing of personal data in the field of law enforcement, rather than simply to the exchange of personal data across borders. We are still considering the many important issues concerning the scope of the DPFD, including the extent to which it might apply to
domestic data processing and the potential impact that the principle of availability might have. I think it is important to note that while it would appear that there are no objections in principle to the inclusion of domestic processing in the scope of the DPFD at this present time, we naturally need to consider very carefully the practical implications that this proposal would have for competent authorities in the UK.

We have a number of concerns over the implications of current text for the work of our stakeholders because the Framework Decision defines the purposes for which personal data may be processed, or further processed, so narrowly it would in fact prevent a number of our organisations from fulfilling their proper duties efficiently and effectively. Many of these duties are statutory and include the protection of children, providing support to victims of violent and/or sexual offences and preventing regulatory breaches in the financial services industry. Of course, we could not commit UK competent authorities to provisions that would prevent them from carrying out their proper duties in a responsible and cost-effective manner, particularly when a number of our difficulties appear to stem simply from the different structure of our competent authorities in comparison to those in other Member States, where the police often have a wider remit than in the UK. Negotiations are therefore currently at too early a stage to be able to provide any sort of commitment on domestic processing, although we hope that progress on the proposal will be made as quickly as possible, which will enable us to clarify our position on this matter.

In his letter of 21 February, the Information Commissioner also noted that the scope of the DPFD extends to automated and structured manual data and expressed concerns that this could lead to a reduction in protection in relation to unstructured manual data. This is because the data protection rules that apply to the current Schengen Information System (SIS), which also cover unstructured manual data, would be superseded by those in the DPFD when the SIS II is implemented. While I can understand the Commissioner’s concerns, it would be very difficult to include unstructured manual files in the DPFD. The SIS applies to a limited set of exchanged data, whereas the scope of DPFD is considerably wider and, as discussed above, could also include purely domestic data processing. In these circumstances it would not be possible to apply the DPFD to unstructured manual data without imposing a huge extra burden on data controllers in the UK and throughout the EU. Of course, protection for unstructured manual data will continue to be provided through other measures such as Article 8 of the European Convention on Human Rights and national law. My officials discussed this matter on 21 June with representatives from the ICO, and noted the enormous regulatory burden this would impose on competent authorities. The ICO officials accepted that this could be a significant issue and they would need to reconsider their position.

You also asked about progress with the DPFD. Some of the information above addresses this point; additionally, as you will know, I recently discussed the matter of progress with the House of Lords Select Committee on the European Union Sub-committee F (Justice and Home Affairs) on 7 June as part of its inquiry into the G6 meeting of Interior Ministers at Heiligendamm in March where the principle of availability and data protection were considered. I was very pleased to accept the invitation to speak to the Committee and appreciate its ongoing interest and support during negotiations on the DPFD. A number of significant amendments have already been agreed on the proposal and productive discussion on the first part of Chapter 3 took place at the most recent Working Group meeting on 20 June. Revision 5 of the DPFD was circulated yesterday and I have enclosed a copy for your information.

Negotiations are necessarily taking some time in view of the vastly different police and judicial organisational structures within Member States. However, at a UK level, we are working hard to ensure that progress is made as rapidly as possible. I have spoken personally to stakeholders about their views and concerns regarding the DPFD. Officials are continuing to engage proactively with our stakeholders to ensure we fully understand the potential operational impact on the ability of our institutions and organisations to carry out their work, and to determine how we can help to move the negotiations forward. You may be interested to know that my officials provided a room document at the Working Group meeting on 20 June in order to help facilitate discussions on further data processing, the focus of a number of the Articles soon to be discussed. This contribution has been well received and the UK has been invited to present the paper for more detailed consideration at the next meeting on 7 July; I have enclosed a copy for your information. Finland will chair the meeting on 7 July and will hold monthly meetings from September. It is Finland’s hope that negotiations on the DPFD will be concluded under its Presidency and the UK has made clear its full support for this desire to quicken the pace of progress on the proposal.

27 June 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

I am writing with regard to comments received on 11 January 2006 from Jimmy Hood MP, Chairman of the Commons European Scrutiny Committee, about the Data Protection Framework Decision (DPFD). Those comments were in response to my letter to the Commons Committee of 30 November 2005 and I thought you
would be interested to know the substance of our exchanges. Mr Hood MP highlighted three areas on which he welcomed further information and in my response I also provided an update on the progress of negotiations on the DPFD which may be of particular interest to you. The three areas noted by Mr Hood MP were:

1. The effect of the exemption in Article 15(6) of the proposal on arrangements with third countries;

2. The proposed arrangement for a committee chaired by the Commission to make determinations on the adequacy of data protection in third countries (the proposed “comitology” arrangements in Article 16); and

3. The need or otherwise for criminal sanctions as provided for in Article 29.

The issues above reflect those raised by the Commons Committee in Mr Hood MP’s letter of 18 November. In my response to him of 30 November, I provided answers to the questions raised as fully as I was able to, bearing in mind that we were in the early stages of negotiation. I also gave an undertaking to send a further account once those issues had been considered in detail by the Working Group. The Working Group has not yet begun the first reading of the Articles noted above and so unfortunately I was unable to expand on my comments of 30 November.

However, I also undertook to keep Mr Hood MP in touch with developments on the DPFD more generally. My letter to you of 27 June, copied to Mr Hood MP on 29 June, provided a general update and I was also able to provide information about the first DPFD Working Group to be chaired by Finland, which, as you may know, took place on Friday 7 July. Discussions continued on Chapter 3, focussing on articles 10 to 14. I noted in my earlier letter to you that the UK had circulated a room document about further processing at the meeting on 20 June, and the UK delegation introduced this document to the Working Group on 7 July. The UK received support from many Member States with regard to the content of the room document and for the proposal that articles dealing with further processing should be considered as a whole, rather than delegations registering the same concerns on a series of similar articles; in addition to forming a more coherent approach to negotiations on further processing, it was also hoped that this would help to speed up negotiations. Unfortunately the agenda on 7 July was such that the time available to discuss the DPFD was cut to around half of that normally available. However, the Finnish Chair of the DPFD Working Group once again noted his keenness to make more rapid progress on the dossier and the UK naturally made its support for this sentiment known.

This keeness to make progress has translated into an unexpected but very welcome second meeting this month on 25 July. The Presidency circulated a revised text on 13 July and has proposed that discussion at the next meeting is focussed on specific aspects of Articles 10-18. I have enclosed a copy of the Presidency’s revised text for your information and hope to make sufficient progress in the next meeting to be able to soon provide you with the more detailed comments requested by Mr Hood MP on Articles 15 and 16.

I hope this letter provides a helpful update and, as always, I would be very happy to discuss any aspect further with you.

17 July 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letters of 27 June 2006 and 17 July which Sub-Committee F (Home Affairs) of the European Union Select Committee considered at a meeting on 19 July 2006. We are grateful to you for addressing the points raised by the Information Commissioner in his letter of 21 February and for providing us with an update on the state of play of negotiations.

We would also like to reiterate that we are most grateful to you for giving evidence to Sub-Committee F as part of our inquiry on the Heiligendamm meeting. The report Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm has just been published (40th Report of Session 2005–06, HL 221) and you will see that in one of the recommendations we call on ministers to treat the proposed Data Protection Framework Decision (DPFD) as a matter of priority. We are pleased to hear, therefore, that UK officials are actively engaged in moving negotiations forward and that there is hope to reach agreement on this proposal within the Finnish Presidency. It is reassuring to learn from the Finnish Minister of Justice hearing at the JURI Committee in Brussels that the DPFD is a key goal of their Presidency.

You told us in evidence to the inquiry that the UK has a robust protection regime for law enforcement data. Other witnesses have highlighted, however, that it is the differing levels of protection across EU Member States that are an obstacle to the exchange of confidential information. What are needed are harmonised rules which ensure the integrity and protection of such information. The DPFD would ensure that robust standards are replicated across Member States. It is also important to ensure that these standards apply both to domestic data processing and their transmission cross-border. As European supervisory authorities have highlighted,
in the light of the availability principle it is not practicable to exclude domestic data from the scope of the DPFD, as data which have been gathered in a purely domestic context can hardly be distinguished from data that have been subject to cross-border transmission. We reiterate our position that the adoption of common rules on protection of data, where the latter is intended for security purposes, is also a sine qua non for establishing the availability principle.

We will continue to keep the document under scrutiny pending further progress reports on negotiations.

19 July 2006

EUROPEAN DATABASES IN JUSTICE AND HOME AFFAIRS (15122/05)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined the communication on improved effectiveness, enhanced interoperability and synergies among European databases at a meeting on 25 January.

The Committee considered that, in the Commission’s rather cursory assessment of the functioning of existing EU databases, the case for their interoperability and synergy rests almost entirely on the fact that the law enforcement community and authorities responsible for internal security consider access to databases, which are designed for other purposes, necessary for the pursuit of their objectives. While we understand that such databases may contain personal information about individuals that might be useful for law enforcement purposes, we wish to ensure, as a matter of principle, that questions of proportionality and fundamental rights are fully taken into account and properly dealt with and that interoperability will not lead to a situation where an authority, not entitled to access or use certain data, can obtain this data via another information system.

The Committee understands that this Communication is to be followed by the Commission’s thorough impact assessment on interoperability, which will precede concrete legislative proposals in this area. We look forward to seeing the Commission’s impact assessment and have decided to clear this document from scrutiny.

26 January 2006

EUROPEAN MIGRATION NETWORK (15240/05)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered this Green Paper at a meeting on 25 January. We decided to clear the document from scrutiny.

Paragraph 5.2 of the Green Paper mentions the importance of overcoming obstacles to the comparability of data. It is plainly desirable to have in the different Member States data which are collected, stored and retrievable in ways which are identical, or at least sufficiently similar for them to be scientifically analysed and compared. We wondered why this was not possible without an EU initiative. Could this not be done simply by agreement between the Member States? If an EU initiative does make this easier, does it really have to wait for the next stage of this project? We would have expected this to be one of the first tasks of the pilot project. We would be glad to have your comments on this.

26 January 2006

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 26 January.

Paragraph 5.2 of the Green Paper on the future of the EMN mentions the importance of overcoming obstacles to the comparability of data within the EU. As you rightly say, it is desirable for Member States to provide comparable data on migration, and a number of initiatives are underway to take this forward.

One of the current activities of the EMN is to carry out EU comparison research studies in a number of different migration and asylum related topics. The output of these research studies is a synthesis report which is based on information drawn from individual country reports produced by EU Member States. Statistical data is often part of the information used in these synthesis reports and so far the research studies have helped in highlighting difficulties in data comparison. However the Explanatory Memorandum on EMN mentions that we need to ensure that there is no overlap between EMN and other EU data comparison work.

Statistical data on international migration and asylum are not at present available in some EU countries. Available data are often unreliable mainly due to under-coverage. Data that may be considered reliable are not necessarily comparable at EU level because of variety of used data sources, definitions and concepts.
Since the Tampere meeting in 1999, the need for better statistics has been clearly emphasised in official EU documents, with the aim of supporting European policy on migration and international protection. A proposal to introduce an EU regulation for data collection in the field of migration and international protection was adopted in September 2005 by the EU Commission and is now under discussion in the EU Council and EU Parliament (Explanatory Memorandum attached) (not printed). The regulation is likely to go through at least one more draft, and although harmonisation is sought for outputs, the extent to which the figures will be fully comparable, will depend on the extent to which administrative systems become harmonised in the Member States over time.

The THESIM (Towards Harmonised European Statistics on International Migration) project under the 6th Framework Programme aimed to support the implementation of this forthcoming EU regulation. Between April 2004 and August THESIM meetings were held in all EU countries with ministries involved in the registration or collection of data on international migration and asylum.

After adoption by both EU institutions the statistics regulation will require all EU Member States to produce annually a full set of statistics on international migration and asylum, beginning in 2007. It will explicitly request reliable figures and metadata in order to make clear how far the provided data may be considered as comparable at EU level.

15 February 2006

EUROPOL

Letter from Vernon Coaker MP, Parliamentary Under-Secretary of State, Home Office to the Chairman

I am writing to inform you of the discussions conducted during the Austrian Presidency of the EU on the future of Europol.

These discussions were launched at the Informal Meeting of the Ministers of Justice and Home Affairs in January, and continued by means of a senior officials conference, held in Vienna in February, and a Friends of the Presidency group consisting of experts from Member States, the Commission and Europol, which met in March and April.

In light of these discussions the Presidency has prepared an Options paper which I enclose for your information. The Options paper was presented to the meeting of the Justice and Home Affairs Council on 1 and 2 June. The paper reflects the full range of views expressed by the experts, notwithstanding that they are to an extent conflicting. It is structured around six clusters, each including a number of problem themes, concrete options and implementation measures. The clusters are: the future role of Europol; Europol’s support to operational work; partnership issues; corporate governance and oversight; Europol awareness; and institutional issues.

The Options paper will be useful in informing future discussions on Europol’s development, but I would emphasise that it does not bind Member States nor does it amount to a blueprint for Europol’s future development. There is not yet a consensus on which reforms are necessary or desirable. Further consideration will be required before decisions are taken as to which options to progress.

In light of this work Council Conclusions have been agreed. A copy of the Council Conclusions is also enclosed. Due to the timing of recess and the Council, I thought a letter after the Council would allow for a more informed statement. The Council Conclusions call for:

— Member States to complete the ratification of the three Protocols amending the Europol Convention: The Conclusions urge Member States to complete this task by 31 December 2006. The protocols will strengthen and improve the effectiveness of Europol. The UK has already completed the ratification process for all three protocols but this is a useful reminder to those Member States who have not.

— Preparation of the implementation measures for the entry into force of the three Protocols amending the Europol Convention. Once ratified by all Member States, measures will need to be taken to implement the Protocols. I welcome steps taken now to prepare for these measures; this will ensure that the benefits from the Protocols can be derived at the earliest opportunity.

— Consideration to the implementation of the options identified in the Presidency’s Options paper: I welcome the commitment to further consider reforms to improve the functioning of Europol. The Options paper has indicated a wealth of ideas for possible reforms. However, there is not yet a
consensus on which reforms to progress and when. The Council Conclusions sensibly reflect the need for further consideration before final decisions are taken. The identification of potential “quick wins”, reforms that do not require legislative change, is a useful development.

— Consideration to the creation of a more flexible legal instrument (replacing the Europol Convention with a Council Decision): Experience of amending the Convention by protocol has proved a time-consuming business. A more flexible legal framework is therefore desirable. One option would be to replace the Convention with a similar text but in the form of a Council Decision. The Council Conclusions reflect a wish to consider whether and how to progress this possibility.

— Exploration of a method to abrogate (repeal) the Europol Convention: There is no agreement yet as to how, technically, the Convention can be abrogated (repealed) were it to be replaced. The Council Conclusions reflect the possible need to consider this issue.

It is important that Europol is not constrained by over-rigid arrangements and practices from playing its full part in supporting Member States in preventing and combating organised crime. I believe the Austrian Presidency has made a valuable contribution in initiating discussions on this important issue. The Conclusions rightly recognise the need for further work and will ensure that the productive discussions conducted during the Austrian Presidency are taken forward by future Presidencies.

Overall I strongly believe that Europol should continue to perform a support function to Member States' own law enforcement operations. We certainly would not wish to see Europol being given intrusive or coercive powers such as the powers of arrest or seizure. Europol’s added value continues to lie in its ability to support Member States’ own operations by facilitating the exchange of criminal intelligence and by providing high quality analysis of this criminal intelligence. We need to ensure that Europol can effectively undertake these roles. The focus of reforms should be on options that can add value quickly and which will enable Europol to achieve its full potential within its existing remit.

I hope that you will find this letter helpful. I shall keep you closely informed as these discussions develop.

15 June 2006

FINANCING TERRORISTS (15203/05)

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 Select Committee on the European Union considered this document at a meeting on 1 February. The Committee cleared this document from scrutiny.

The Communication is based on the assumption that prevention of terrorist financing is an important weapon in the fight against terrorism. The Committee is not convinced that such initiatives would prevent the worst terrorist incidents. The Final Report of the 9/11 Commission states that “the 9/11 plotters spent somewhere between $400,000 and $500,000 to plan and conduct their attack” (section 5.4 of the report). The Madrid and London bombings have been shown to have had only a very modest financial input.

In particular, paragraph 3.1 of the Communication emphasises the importance of anti-money laundering initiatives. We draw to your attention a statement by Dr Anthony H Cordesman, a former director of intelligence assessment in the Office of the US Secretary of Defense who, in an address last month to the Royal United Services Institute Conference on Transnational Terrorism, said bluntly: “Money laundering initiatives are largely a waste of time”.

2 February 2006

ILLEGAL IMMIGRATION: MONITORING AND EVALUATION MECHANISM OF THIRD COUNTRIES (11614/05)

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

When I met your Committee on 17 January, I undertook to provide a written answer to the following question that we did not reach during the session.
The UK enters into memoranda of understanding with countries such as Jordan, Libya and Lebanon aimed at guaranteeing the safety of persons removed to those countries. The effectiveness of these guarantees depends entirely on the monitoring body. What steps does the Government take to ensure that these bodies are reputable, effective and trustworthy? What steps does it take to monitor the monitors?

The Government believe that the memoranda of understanding (MOUs) with Jordan, Libya and Lebanon provide a framework to enable return of terrorist suspects to these countries in a manner consistent with our international human rights obligations. The British and Jordanian Governments have agreed that the Adaleh Centre will monitor implementation of the MOU in Jordan. The Government has reached agreement in principle with the Libyan Government and the proposed monitoring body.

In selecting and appointing monitoring bodies, the British Government and the Government of the receiving state take into consideration: e.g. capacity, independence, access to expertise. Our Embassies in country are closely involved in the selection process and liaison with monitoring bodies once appointed.

Letter from the Chairman to Rt Hon Douglas Alexander MP

Sub-Committee F (Home Affairs) considered your letter at a meeting on 1 February, given their particular interest in the question about the Memoranda of Understanding with Jordan, Libya and Lebanon.

In the case of Libya, you refer to the proposed monitoring body, but do not give its name. We would be glad to know this. In the case of both this body, and of the Adaleh Centre in Jordan, we would like to know why they were chosen, and what reasons the Government has for believing that they will adequately monitor the working of the agreements. We would also be grateful to know what steps the Government will be taking to monitor the working of these two MoUs, and in particular to evaluate the work of the two monitoring bodies.

We will for the time being keep this document under scrutiny.

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Thank you for your letter of 7 December 2005 explaining the position regarding the Memorandum of Understanding with Libya. This was considered by Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union at its meeting on 15 February.

When Douglas Alexander MP, the Minister for Europe, came to give oral evidence to the Select Committee last month, we put to him questions on the monitoring of the operation of MoUs with Libya and other countries. There are problems on this which we are still pursuing with FCO ministers, but meanwhile we are happy to clear this document from scrutiny.

Letter from Rt Hon Douglas Alexander MP to the Chairman

Thank you for your letter of 2 February relating to the Memoranda of Understanding (MOU) with Jordan, Libya and Lebanon. I am sorry it has taken longer than usual to reply.

MOUs are bilateral international instruments that the UK has negotiated with other Governments to permit the deportation of individuals who threaten our security to their countries of origin. Under these MOUs, Governments undertake—at the highest possible level—to safeguard the wellbeing of those deported. These undertakings are ones that we should and can trust. We believe, on the basis of the evidence we have, that Governments who give us assurances in respect of a particular individual will abide by them.

In selecting and appointing monitoring bodies, the British Government and the Government of the receiving state work closely together to establish their suitability, taking into consideration various factors, including capacity, independence and access to expertise. The monitoring body must have capacity for the task, with access to experts trained in detecting physical and psychological signs of torture and ill-treatment and must have, or must have access to, sufficient independent lawyers, doctors, forensic specialists, psychologists, and specialists on human rights, humanitarian law, prison systems and the police. Where necessary, additional training or capacity building measures can be provided to ensure the monitoring body can function effectively, as the UK is already doing in Jordan. The monitoring body should also provide regular reports to the sending State and should contact the sending State immediately if its observations warrant. Our Embassies are closely involved in the selection process and liaison with monitoring bodies once appointed.

As you know, the Adaleh Centre has agreed to act as the monitoring body in Jordan. We have made good progress in establishing effective monitoring arrangements in Libya but are not yet in a position to release full details at this time as discussions are still ongoing.

The EU’s Monitoring and Evaluation Mechanism is designed to provide for a systematic assessment of cooperation with third countries on combating illegal immigration, and is seen as helping to achieve greater consistency in the EU’s relationships with third countries. The mechanism is not designed to monitor third countries with regards solely to returns, although that is one aspect. The mechanism will aid the EU’s monitoring of those countries with whom readmission agreements have either been concluded or are still in the process of negotiation. The memoranda of understanding on deportations with assurances (which I assume is the MoU being referred to here) that the UK is pursuing with Jordan, Libya and Lebanon are bilateral arrangements, and as such would not be monitored by the EU.

3 March 2006

INFORMATION AND INTELLIGENCE: SIMPLIFYING THE EXCHANGE BETWEEN LAW ENFORCEMENT AUTHORITIES (13563/05)

Letter from the Chairman to Paul Goggins MP, Parliamentary Under-Secretary of State, Home Office

Thank you for your letter of 11 January 2006 in reply to mine of 30 November. You will know that I had also written to you on 15 December, but I understand that this letter, reiterating some of my earlier points, did not reach you until 19 January.

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered your letter at a meeting on 1 March.

We are grateful for your full reply. Since the general approach of this Framework Decision was agreed at the JHA Council on 1–2 December, I can only put on record that we still believe that the scope of the Decision is too wide, both as to the breadth of the offences it covers and the persons to whom it applies.

In particular, we remain unhappy about the data protection provisions. We do not believe that the amendments to article 9, to which you refer, will in any way safeguard information sent by a country which, like the UK, has relatively stringent data protection laws, to another country which does not.

I copied to you my letter to the Information Commissioner of 15 December in which I sought his views on this and other matters. I look forward to receiving his views.

1 March 2006

JUSTICE AND HOME AFFAIRS COUNCIL, JULY 2006

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman

The first JHA Council of the Finnish Presidency is taking place on 24 July. Baroness Ashton was intending to table a written statement in line with standard practice on Friday, however, due to the Parliamentary non-sitting day on Friday she will be unable to do so before Monday. I therefore felt it would be useful for you to see an advance copy of the statement, which I enclose.

20 July 2006

Annex A

Baroness Ashton, Parliamentary Under Secretary of State, Department for Constitutional Affairs.

My honourable friend the Parliamentary Under Secretary of State for Nationality, Citizenship and Immigration (Joan Ryan) has made the following Written Ministerial Statement.

The Justice and Home Affairs Council will be held today, 24 July 2006, in Brussels. I am attending on behalf of the Home Office. I thought it would be useful if I were to outline the main issues I expect to be discussed.

The Council will take an initial presentation by the Commission on the Hague programme review. There will also be discussion of migration issues and, in the Mixed Committee format, the second generation Schengen Information System. On the first of these, the commission will present four Communications: the future direction of the Hague Programme which includes a proposed use of Article 42 TEU (the passerelle clause); reviewing the implementation of the Hague Programme to date the scorecard; options for better evaluation of the impact of EU policies in the area of Justice and Home Affairs (JHA); and a legislative proposal based

on Article 67(2) TEC adapting the provisions of the European Court of Justice under Title IV (immigration, asylum and civil law matters). The Presidency has indicated that they will focus on procedure and handling and is not looking for substantive discussion on these items at this Council. Detailed discussion, including in relating to the more controversial aspects, such as the possible use of Article 42 TEU (the passarelle clause) and Article 67(2) TEC (adapting the remit of the ECJ in Title IV) will take place later in the year, including at the September Informal JHA Council in Finland. Those aspects aside, the Governments initial view is to welcome the focus on implementation and more effective evaluation contained in the Communications.

There will be information items on the EU preparations for the UN High-Level Dialogue on International Migration and Development and the report on the outcome of the Euro African Ministerial Conference on migration and development held in Rabat on 10–11 July 2006. The Government welcomes the adoption of the EU common position at the General Affairs and External Relations Council last week, 13 July; we will continue to feed into preparations for the UN High Level Dialogues on International Migration and Development, which takes place in September. There will also be a presentation by the Commission and Frontex (EU Border Agency) on the situation in the Mediterranean and Africa. We expect there to be a focus on the continuing influx of illegal immigrants to the Canaries and Malta. The UK strongly supports EU joint operational activity in the Mediterranean and has offered technical assistance to the Spanish and Maltese authorities.

There will be discussion on the management of migration flows; specifically on the two Commission Communications on: a policy plan for legal migration; and a common policy on illegal migration. The Presidency will be seeking a first exchange of views on both items. The UK will be encouraging solutions of sharing best practice and establishing common principles, while advising against inflexible, detailed prescription, especially in the form of legislative measures on labour access. The Government is fully committed to tackling the problem of illegal immigration of third country nationals and notes with interest the Commission’s Communication; we will examine concrete proposals for measures when they are tabled in due course.

In the mixed committee format the Presidency will be hoping to agree a general approach on the key outstanding issues in the three legal instruments establishing SIS II—a Regulation covering immigration aspects, a Council Decision covering law enforcement aspects and a Regulation covering access by vehicle registration authorities—with a view to reaching a First Reading deal with the European Parliament in September. This is the last opportunity to resolve the major outstanding issues within the Council before the expected EP vote in September. The UK will not participate in the Regulation covering immigration but will participate in the other two legal instruments.

Two further presentations by the Commission are expected in the margins of the meeting. These are on (i) a proposal for a regulation setting up the powers and the financing of teams of national border control experts of Member States (Rapid Border Intervention Teams) to provide joint EU technical and operational assistance at the external EU Border, co-ordinated by Frontex and (ii) a proposal for a community code on visas—a Schengen measure in which the UK will not participate. Although the UK will not participate in the first proposal, we support the concept of nominated experts deployed at short notice to respond to emergencies to help enhance the security of the EU external border, but will wish to look carefully at the detail.

Finally there is likely to be a lunch time presentation by Commissioner Franco Frattini on the issue of CIA rendition flights.

**Letter from Joan Ryan MP to the Chairman**

I thought that it would be useful if I were to write to you about the JHA Council on 24 July, since it is not possible for me to make a written statement to the House due to the timing of recess.

The Finnish presidency opened the Council with the list of A points which were approved.

Commissioner Frattini introduced the package of Communications on the Hague Programme Review with the stated purpose of stimulating debate and to suggest ways of improving performance in the area of freedom, security and justice. He said that lessons drawn by the Commission from the first two years of the Hague Programme were that there was a need for more practical results, that decision making had been slow especially in the area of police and criminal justice co-operation and that increased involvement of the European Parliament and the European Court of Justice would bring more democratic legitimacy. The Presidency said that these Communications would provide the basis for debate at the JHA Informal in September. Discussions were also expected to continue at the October and December JHA Councils.

The Presidency welcomed the EU’s common position on the UN High Level Dialogue on International Migration and Development as agreed by the General Affairs and External Relations Council on 17 July. The Commission welcomed the EU contribution to the UN High-level dialogue and emphasised the link between
migration and development. The Presidency also welcomed the successful Rabat conference as an important contribution to the global approach to migration that would inform future initiatives. The Commission underlined the need for the EU to deliver the concrete actions in the Rabat plan. There was a general recognition amongst Member States that the conference was a success and underlined their commitment to the Global Approach to migration. A number of Member States called for an EU common integrated policy on migration in favour of competing, individual, national approaches. FRONTEX (the EU Border Agency) presented an update on its activities, which were welcomed by the Commission.

There were presentations from the Commission on the Policy Plan on Legal Migration and Policy priorities in the fight against illegal immigration. On legal migration the Commission would bring forward in future, proposals on highly-skilled and seasonal workers, intra-corporate transferees and remunerated trainees. There were nine strands to the Communication on future priorities on illegal immigration of which three key themes were: an integrated technological approach to border management, the fight against human trafficking and tackling illegal employment.

There was discussion about the second generation Schengen Information System (SIS II) legal instruments. There is expected to be a delay in technical implementation until December 2007/January 2008. There were some concerns about the political impact of delays in lifting the borders and some Member States urged for greater efforts to be made to meet the original deadline. The Presidency underlined the urgency of reaching agreement on the legal instruments as soon as possible. A number of outstanding issues will be sent back to experts to consider over August.

The Commission presented a draft regulation for the establishment of Rapid Border Intervention Teams. This aims to provide a mechanism to allow teams of Schengen States’ border guards to be deployed by Frontex to reinforce controls and surveillance of areas of the EU external border experiencing particular illegal migration pressures. It would also provide a limited set of executive powers which border guards might exercise when working on the territory of another Member State during other EU joint operations. The Commission expressed its hope that the measure might be adopted by the end of the year.

The Commission presented a draft regulation for a Community Code on Visas, which would consolidate the Common Consular Instructions and the existing sources of legislation governing Schengen visas. The Commission also referred to its earlier proposal on Common Application Centres which sought Member States’ participation in pilot projects for such centres.

The Presidency presented a consultation on initiating negotiations on visa facilitation and readmission agreements with Moldova. The Council agreed to the Presidency’s approach, asking the Commission to start consultations with Member States and to assess the current situation, with a view to preparing possible proposals for mandates to be brought forward.

Finally there was a lunch discussion on the situation in Lebanon: internally displaced persons. There was a call for solidarity in supporting the third country nationals arriving in Cyprus and a request to make aircraft available to repatriate EU citizens.

7 August 2006

LEGAL MIGRATION: POLICY PLAN (5052/06)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union briefly considered this document at a meeting on 8 February. As you say in the Explanatory Memorandum, the Policy Plan follows on from the Green Paper on which our report Economic Migration to the EU was based. We have now received from you the Government response to that report. The Committee therefore decided to postpone full consideration of the Policy Plan for the time being. Meanwhile it will be kept under scrutiny.

9 February 2006

MEETING OF THE INTERIOR MINISTERS, HEILIGENDAMM, MARCH 2006

Letter from the Chairman to Rt Hon John Reid MP, Secretary of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union have considered the Conclusions issued by the German Federal Ministry of the Interior of the meeting of the Interior Ministers of France, Germany, Italy, Poland, Spain and the United Kingdom at Heiligendamm on 22–23 March 2006. As you will know, your predecessor attended that meeting. The Committee believe that
the matters discussed at this meeting, and the conclusions reached, raise issues of importance, and they have decided to conduct an inquiry into these matters.

We fully support the purposes of the meeting: the promotion of integration, and the fight against terrorism and organised crime. There are however a number of points which we would like to examine further. We wonder to what extent the G6 proposals (such as exchange of best practice in the field of integration) go beyond current EU policy. To the extent that the G6 proposals do go further, they may appear to bypass some important measures currently being negotiated.

We note that the other 19 Member States “will be fully informed about the proposals of the G6 States and can take part in their implementation”, but we wonder whether other Member States will be sufficiently involved.

The Conclusions refer to a number of EU bodies such as FRONTEX and Europol. There are suggestions that they should have additional duties and priorities. We would be interested to know to what extent they, and other Member States, were consulted about this, and whether their existing constitutions allow for such an expansion of their mandate.

Lastly, we note the conclusion of the ministers that rapid implementation of the principle of availability should not depend on the adoption of a third pillar Data Protection Framework Decision (DPFD). Since the Commission proposal for the DPFD is already under consideration, we wonder whether it is sensible for the two proposals to be considered independently.

The Committee would like to invite you, or a Home Office Minister nominated by you, to write to the Committee giving the Government’s views on the significance of the Heiligendamm meeting, with particular reference to the points above, and subsequently to give oral evidence to them. This will be a brief inquiry, and no general Call for Evidence will be issued. The Clerk to the Sub-Committee will be in touch with your officials about the timetable.

10 May 2006

Letter from Rt Hon John Reid MP to the Chairman

I am writing in response to your letter of 10 May in which you asked me to set out the Government’s views on the significance of the Heiligendamm meeting. As you will know that meeting was attended by my predecessor so I did not think it right for me to give oral evidence at this time. But I would be happy to brief your committee after the next G6 meeting, which I will be chairing and is provisionally booked for 26–27 October.

It may be helpful if I provide some context to the Heiligendamm meeting before answering your specific questions. The G6 (the G5 until the addition of Poland at Heiligendamm) is an informal grouping of Interior Ministers from six EU Member States. It meets on an ad hoc basis two or three times a year in the country holding the rotating chair. The current chair is Germany and the next one will be the UK.

Informal groupings of Member States such as the G6 are not unique in the EU; there are a number of such that meet outside the structures of the EU to discuss issues of mutual interest. For example, the Schengen Convention had its origin in an informal grouping of Member States and other current groupings include the Benelux and Visegrad countries as well as the Salzburg Group. These are not just regional groupings, for example, the Prüm group has brought together countries interested in taking forward the information sharing agenda.

The main aim of the G6 is to discuss issues of mutual interest in the areas of migration, organised crime and terrorism with a view to sharing ideas and best practice while identifying concrete actions that can be taken forward by all six or any number of them. Recent topics of discussion have included the integration of migrants and improving the exchange of information. But as the G6 is made up of EU Member States this is also a useful forum for discussing whether any of the ideas raised at G6 meetings might also be explored at EU level, or even be used as the basis of formal EU proposals. For example, G6 expert discussions on ID cards helped inform the EU conclusions reached under the UK Presidency of the EU, and G6 expert views on the implementation of the Principle of Availability were helpful in taking forward discussions in the “Friends of the Presidency” expert group.

As an informal group, without any decision making powers or secretariat, the G6 cannot and does not seek to impose the outcome of its discussions on the rest of the EU. Conclusions are made public at the end of each meeting to signal the political commitment of the six to the agreements reached during discussion but are not binding on anyone, certainly not other Member States or EU institutions. It is a forum where ideas can be frankly discussed, relations with important EU peers strengthened and practical co-operation improved.

In preparations for G6 meetings as with any other informal meetings it is the practice of the Home Office to consult other government departments and ensure that policy positions are agreed.
To answer the first of the specific points raised in your letter, there are times when G6 proposals will go further than current EU policy. Innovation and informal political discussion are part of the benefit of small informal groups (such as the G6). But there is certainly no intention to bypass or undermine EU measures that are either in place or in the process of being negotiated.

To the extent that G6 action affects only G6 members there is no need or requirement for other Member States to be involved. This would be the same for other bi-lateral and multilateral arrangements between EU Member States. However, by de-briefing colleagues from other Member States the G6 is open with non-members and does not preclude their involvement in action stemming from the G6.

Any G6 suggestions that EU bodies, such as Frontex and Europol, should be given additional duties are simply suggestions and reflect ongoing EU level discussions on the future of Europol, its relationship with other bodies and the sort of methodology that might be best to help prioritise their work. Any formal changes to EU bodies would need to go through the normal EU channels.

On the implementation of the Principle of Availability, the G6 view that work should not be delayed by negotiations on the Data Protection Framework Decision (DPFD) does not differ from those of many other Member States. It is also the shared position of the Home Office and DCA, who have worked closely together on a range of EU measures to improve information sharing, including the DPFD. Securing a third pillar framework on data protection that adds value to existing arrangements remains the aim of both departments. If there are elements of the Principle of Availability that are ready to be implemented before negotiations on the DPFD are complete it is the view of both Home Office and DCA that these should come into effect as and when they are ready. It is of course the case that existing data protection rules will continue to apply until the DPFD negotiations have finished. All Member States have domestic data protection regimes for law enforcement and judicial processing that comply, at a minimum, with the Council of Europe Convention on processing of personal data (the UK, amongst others, goes further than this and broadly replicates the provisions of the existing first pillar EU Directive), so a high level of data protection is already in place.

The Government believes that for the fight against ever-more sophisticated crime, it is important to ensure any potentially drawn-out negotiations on the DPFD do not block progress on the Principle of Availability. However, we are hopeful that this need not be the case and our aim is to make as rapid progress as possible on achieving a successful outcome to discussions on the DPFD.

6 June 2006

MIGRATION: PRIORITY ACTIONS FOR RESPONDING TO THE CHALLENGE (15204/05)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined the Communication, setting out priority actions for responding to migration challenges, at a meeting on 1 February. This document was examined alongside Annex I to the Council Conclusions adopted at the European Council meeting of 15 and 16 December 2005, which builds on this Communication.

The Committee takes note of the funding commitment to North African countries, agreed by the Council, to help them better to manage migratory flows around their territory. It welcomes the emphasis on a balanced and comprehensive approach to migration issues, and agrees on the need to engage Sub-Saharan States, not just North Africa, so as to address the root causes of migration.

The Committee decided to clear the document from scrutiny, but would be glad to receive details of the budget allocated for the Union’s external policies on migration in the current and next financial perspectives, and what financial instruments are being considered, other than the European Neighbourhood and Partnership Instrument, for priority actions focusing on Africa and the Mediterranean.

1 February 2006

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 1 February requesting details of EU funding for external policies on migration in relation to the Commission Communication on follow-up to Hampton Court, and the European Council Conclusions of December 2005 on priority actions on migration.

Regarding the budget allocated for the Union’s external policies on migration in the current financial perspectives, this is primarily covered by the AENEAS funding programme. The scope of AENEAS is to provide assistance to third countries in the area of migration and asylum. The programme was allocated a budget of €250 million for the period 2004–08. The 2005 round has a total of €40.35 million available, with North and Sub-Saharan Africa specified as priority regions.
Specific migration external policy funding is complemented by geographic instruments. The MEDA programme provides financial support to European Neighbourhood Policy (ENP) southern partner countries, to promote economic development, peace and stability. In 2000–06 MEDA assistance will total €5.3 billion. In addition, the ARGO programme, also due to run until the end of 2006, funds cooperation in the fields of external borders, visas, asylum and immigration, and includes Member States’ co-operation activities in third countries.

In view of the conclusion of the current EU financial framework at the end of 2006, AENEAS has now been shortened to three years. It will be replaced by a new thematic programme within the framework of the financial perspectives 2007–13. This thematic programme will cover five strands: migration and development, economic migration, illegal immigration and readmission, migrant rights and integration, and asylum and international protection. The Commission issued a Communication, “Thematic programme for the cooperation with third countries in the areas of migration and asylum”, on 25 January. I will be sending you an Explanatory Memorandum setting out the detail of the Communication shortly.

From 2007, MEDA and TACIS (the main funding programme for Europe’s Eastern neighbourhood) will be replaced by a single, dedicated European Neighbourhood and Partnership Instrument (ENPI). This instrument will finance joint projects that bring together regions from EU Members States and partner countries sharing a common border. It will have a specific focus on cross-border cooperation and intra-regional cooperation. The Commission has proposed €10.4 billion for the ENPI for 2007–13. The European Council agreed to ring-fence up to 3 per cent of ENPI for migration in its Conclusions of December 2005, “Global Approach to Migration: Priority actions focusing on Africa and the Mediterranean”.

Another new instrument—the Development Cooperation and Economic Cooperation Instrument (DCECI)—will also be set up to provide support for all developing countries not covered under the ENPI or candidate and pre-accession countries. It provides the framework and legal base for the Community’s development programmes and has as its overarching aim to eradicate global poverty and promote sustainable development, including the pursuit of the Millennium Development Goals. Promoting good governance, democracy and respect for human rights are key elements of this instrument. In many regards, long term funding through the DCECI will address the root causes of migration from many parts of the world, by seeking to combat poverty and under-development, support fragile states and address issues of bad governance and instability.

2 March 2006

PASSENGER NAME RECORDS—TERMINATION OF EC-US AGREEMENT (10613/06)

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, Department for Constitutional Affairs

Sub-Committee F (Home Affairs) of the European Union Select Committee considered this Communication at a meeting on 19 July 2006.

We understand that, in the light of the Court’s judgment, the Council had no alternative but to accept the proposal from the Commission to denounce the agreement, and to do so without delay. Your Explanatory Memorandum states that “it is necessary for the European Council [sic] to terminate the Agreement”, though by the date of the Memorandum (6 July) this had presumably already been done. We understand the need for this, and accordingly we formally clear the document from scrutiny.

We are nevertheless very interested to know how this matter will be taken forward, and would be grateful if you would enlighten us on the following points.

We would like to know how, if at all, the undertakings given by the US Bureau of Customs and Border Protection (CBP) in the agreement to be signed before the end of September are likely to differ from those in the existing agreement.

At a seminar in Brussels on 22 June Mr Lambriadis (Vice-president of the LIBE Committee of the Parliament), Mr Peter Hustinx (EDPS) and Mr Jonathan Faull (Commission) all argued that the new agreement would only be a stop-gap, that an entirely new agreement had to be negotiated by October 2007, and that this would be their opportunity for inserting adequate data protection provisions. They also favoured activating the Article 42 passerelle to transfer this from the third pillar back to the first pillar, since only in this way could the Parliament have any influence on the agreement. We would be interested to know whether, and if so why, it is the case that an entirely new agreement will be needed before October 2007. What attempts will the Government be making to ensure that the data protection undertakings offered by the CBP are more realistic
than those in the existing agreement? Does the Government believe that there is a case for activating the passerelle for this purpose?

There is a parallel agreement between the EC and Canada. Although its provisions are less unsatisfactory than the agreement with the US, its legal base is the same. It was not the subject of the proceedings, and so has not been annulled, but plainly will need to be replaced by an agreement with the correct legal base. We would be glad to know what is being done about this.

19 July 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your comments of 19 July concerning the Explanatory Memorandum of 6 July about the termination of the Agreement with the United States (US) to transfer passenger name records (PNR) data. I am pleased to provide greater detail on the three areas you have drawn attention to.

You have asked for further explanation regarding the legal necessity for an EU instrument to make lawful the transfer of PNR data by UK-based carriers. An EU instrument is not required to make the transfer of PNR data lawful under UK law; indeed, it would not automatically have that effect, although it could be a relevant consideration when assessing compliance with the Data Protection Act. The Explanatory Memorandum which has given rise to your questions did not claim that the proposed EU-US Agreement was a legal necessity to make the transfer of data lawful, but I am sorry if this was not made sufficiently clear.

An Air Navigation Order (or amendments to the existing Air Navigation Order) still appears to be the most appropriate way to provide a clearly identified legal base for the transfer of the data under UK law. Making such an Order would not, in itself, secure specific data protection measures for transferred PNR data. However, in considering whether to make an Order requiring carriers to transfer PNR data to the US authorities, we regard US commitments on the protection of that data as a very relevant consideration. It would therefore be highly desirable to secure adequate data protection arrangements by placing binding obligations on the US via an Agreement. The question therefore is whether these binding obligations would best be served by an EU-level instrument or a series of bilateral Agreements.

The question above leads me to your second point of how an EU-US instrument would comply with the principle of subsidiarity if the necessary authorisations could be dealt with under UK law. As I have explained above, the purpose of EU-US Agreement would not be to provide authority for PNR transfers under UK law. However, given the advantages of having an instrument to place binding obligations on the US, an EU level Agreement would appear to be a more sensible option than a number of bilateral arrangements between the US and those Member States operating transatlantic flights. The EU has the advantage of collective bargaining and is likely to secure the best outcome for EU passengers when negotiating the terms of an Agreement with the US. The EU also has the benefit of experience and expertise in this area following the 2003–04 negotiations resulting in the current Agreement. Furthermore, an EU level Agreement has the advantage of providing standard levels of protection for passengers across the EU. It would appear to be unhelpful and confusing to passengers wishing to fly to the US if their personal data was treated in one way should they fly direct from, say, Heathrow, and in another should they fly via a non-UK airport such as Paris, Frankfurt or Amsterdam, as is commonly the case. Additionally, from an efficiency point of view, it would also seem to be a better use of resources to negotiate one single treaty than have a number of Member States working through a very similar but separate process.

You have asked for an account of the views of transatlantic carriers on this matter. My Department was present at a meeting with the carriers, along with the Department for Transport and the Home Office, shortly before the ruling by the European Court of Justice was handed down, and the Department for Transport has kept my Department and the Home Office advised of the carriers’ views, following further and ongoing consultation. The Department for Transport continues to keep transatlantic carriers (both UK and foreign carriers flying to the US from UK airports) informed about its legislative proposals. The carriers are supportive of the proposals and recognise the need to have a clearly identified legal base, conditions, procedures and protection for the transfer of their passengers’ data.

I hope this reply is helpful and provides the further details you require. As ever, I am very happy to discuss any aspect of this matter further.

Undated July 2006
POLICE CO-OPERATION BETWEEN MEMBER STATES (11407/05, 5284/06)

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 re-draft of the proposal for a Council Decision on the improvement of police cooperation between Member States at its meeting on 1 March. This proposal supersedes document 11407/05, which was being kept under scrutiny by the Committee and which it is now content to clear.

The Committee is grateful for your comprehensive Explanatory Memorandum and for the annexes which set out the original texts alongside the amendments proposed in Council negotiations. We noted that most of the amendments were minor and unobjectionable. The issue of major concern to us is that there is no longer a requirement for dual criminality in the re-drafted provisions of the Schengen Convention on cross-border surveillance and hot pursuit (Articles 40 and 41). We understand from the comments you have provided that the Government, along with other delegations, wants to ensure dual criminality, and we welcome this. We would be grateful for your assurance that you will press for this when negotiations on this proposal resume in Brussels.

As you will be aware, the Committee has previously expressed concerns over the extension to non-suspects of cross-border surveillance for which prior consent has not been requested. Such an extension of police powers might have implications for privacy rights for which the data protection framework envisaged by Article 7 of this proposal might not be adequate. We consider that the views of the Information Commissioner on this point would be particularly helpful. Perhaps you could let us know whether his views on this or earlier drafts of the proposal have been sought; if so, we would be grateful to receive them.

We also noted that you are not convinced that provisions on challenging and apprehending the person are appropriate in an Article dealing with surveillance. We share this view and would welcome information on whether you will press for rejection of the relevant amendment.

The Committee has decided to keep this document under scrutiny, pending receipt of the information requested and further progress reports on negotiations.

1 March 2006

Letter from Paul Goggins MP to the Chairman

Thank you for your letter of 1 March. I would like to address the points you have raised.

The Government shares your concern over the possibility that the current draft may allow cross-border surveillance or hot-pursuit to take place in the absence of dual criminality. We are flexible as to how such a condition is best achieved, but will continue to press for the principle that both types of operation should only take place in response to conduct which constitutes a criminal offence in all the Member States involved.

As I have explained in the past, I am less concerned about the extension of cross-border surveillance to non-suspects in urgent cases. Domestically, the police have the power to keep non-suspects under surveillance under similar circumstances and the Schengen Convention as it is at present allows cross-border surveillance to take place when pre-arranged. The draft Decision does not therefore represent a significant departure from current practice or principle, especially when it is considered that the rules governing urgent cross-border surveillance are appropriately tight.

I do however understand your concerns over the implications this change may have for privacy rights. The Government has not, to date, sought the opinion of the Information Commissioner on this point. I will however be sending a letter to the Commissioner shortly, copied to you, requesting his views.

The Government maintains its view that the provisions on challenging and apprehending a person under surveillance are not consistent with the purpose of Article 40 and potentially unhelpful. We will continue to keep this point under close review as negotiations move forward.

I will of course keep you informed as negotiations on this Decision progress.

27 March 2006
REGIONAL PROTECTION PROGRAMMES (11989/05)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Thank you for your letter of 11 January 2006, which Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered on 1 February. We are very grateful to you for providing us with the figures and information requested in relation to the Gateway Programme.

The Committee noted that resettlement in the UK is currently very low, and is well below the target the Government has set. It seems to us that, given the difficulties encountered with the Gateway Programme, the Government will hardly be in a position to commit to any resettlement quota under the two pilot Regional Protection Programmes (RPPs) shortly to be launched. Nonetheless, we are glad to hear that the Government supports resettlement. This is clearly an important component of RPPs—one that can genuinely lead to easing the burden in regions of origin, and address protracted refugee situations—and we would hope that the Commission’s proposals for the two pilots will include a resettlement element.

The Committee has learned that the December European Council adopted Conclusions regarding priority actions focusing on Africa and the Mediterranean which, amongst others, call for the pilot in Tanzania to be established and launched as early as possible in 2006, with a steering group to oversee the programme. Given the urgency of the matter, we would expect you to be shortly in a position to give us details of this and of the NIS pilot in Ukraine, Moldova and Belarus, and of the results of any discussions with UNHCR. We would also like information on the composition of the steering group and on the financial allocation for the two pilots. In the meantime we will continue to keep the document under scrutiny.

1 February 2006

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 1 February in which you ask for details of the European Commission’s thinking on the contents of the two pilot Regional Protection Programmes (RPPs), proposed in the Commission’s Communication on RPPs (Document 11989/05).

In my letter to you of 30 November 2005, I undertook that my officials would write to you directly with these details. A letter to this effect was sent to you on 31 January and I enclose a copy of that letter.

I am satisfied that the letter of 31 January covers the points that you raise, but if you need any further information or clarification please do not hesitate to contact me.

1 March 2006

Annex A

In his letter of 30 November, Tony McNulty said he would keep you informed when the European Commission came forward with further details for the implementation of the two pilot Regional Protection Programmes (RPPs). The pilots are to be deployed in the Western NIS region (Ukraine, Moldova and Belarus) and sub-Saharan Africa/Great Lakes region (with a focus on Tanzania).

At the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) held in Brussels on 13 December, the Commission presented broad areas for actions that could form part of the pilots, and advised Member States that discussions with the relevant third countries had now taken place, stating that discussions had fed into the process to identify the possible actions.

For the NIS region as a whole, the Commission suggests projects that support regional co-operation, as well as those to improve the registration and documentation of refugees and projects focusing on voluntary returns.

The Commission suggests that Ukraine could additionally benefit from actions being undertaken to improve the consideration process of applications for refugee status through better interpretation and translation methods and practices. Other areas for actions in the Ukraine include improving legal and practical access to registration measures and promoting self reliance among refugees, improving reception and accommodation infrastructures and establishing effective border monitoring mechanisms with the aim of improving access to

procedures for persons in need of protection. The Commission also suggest that actions which reinforce subsidiary protection through the provision of legislative training and support could also add value.

For Moldova, the Commission indicates that assistance to develop the capacity of the refugee directorate, including training, improving basic needs of refugees and developing an integration programme, would be appropriate.

In Belarus the Commission considers that projects focusing on building the capacity of civil society and NGOs in the asylum field, actions to improve legal and practical access to integration, and the promotion of self reliance for refugees, could also improve capacity.

For the sub-Saharan Africa/Great Lakes region, the Commission reports that the Tanzanian authorities have stressed that the top priorities for Tanzania fall into three main areas: repatriation, security and environmental redress. The Commission suggests that for the pilot, projects which focus on the following areas could add value: actions to strengthen the capacity of governmental and non-governmental national institutions, projects to improve the efficiency of registration and documentation of refugees, actions to address the impact of refugee populations on the hosting communities and work to encourage the inclusion of refugee issues in the national development agenda.

On funding for the pilot programmes, the Commission confirmed that the 2005 AENEAS Programme allocates €2 million for NIS countries and €4 million for sub-Saharan Africa/Great Lakes region, with a priority for actions in Tanzania. The Commission also suggested that the 2006 TACIS Programme may provide further funding for RPP activities in the NIS region.

The Commission also confirmed that it would set up a steering committee comprising the relevant Commission services, UNHCR, interested Member States and other relevant stakeholders to oversee the proper co-ordination and delivery of the pilots. There were no further details on the Commission’s thinking for the resettlement aspects of both pilots.

Letter from the Chairman to Tony McNulty MP

Thank you for your letter of 1 March 2006 and for undertaking to update us on the Commission’s thinking with respect to the two Regional Protection Programmes (RPPs) which were first proposed in this Communication. Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered this matter again at a meeting on 29 March.

We are very grateful for your officials’ very detailed letter of 31 January, which anticipates, and fully answers, the points we raised in our letter of 1 February. The Committee has no outstanding questions at this stage and has decided to clear this document from scrutiny.

29 March 2006

RETURN OF ILLEGALLY STAYING THIRD COUNTRY NATIONALS

Letter from Tony McNulty MP, Minister of State, Home Office to the Chairman

In my 8 December response to your call for evidence in relation to the above, I noted that the Government’s initial position was that we were minded not to opt into this draft directive. Our initial assessment of the provisions of the draft directive was that the changes required in our domestic practices would, in many cases, present us with an additional and unnecessary burden of bureaucracy and administration.

The 10 January 2006 was the deadline for the United Kingdom to opt in to the draft directive. I can confirm that the Government has decided not to opt into the proposal. I, and my officials, will of course continue to co-operate fully with any inquiries you chose to make into the Directive.

11 January 2006

SCHENGEN INFORMATION SYSTEM: SECOND GENERATION (SIS II) — ACCESS BY VEHICLE REGISTRATION AUTHORITIES (9944/05)

Letter from Rt Hon Hazel Blears MP, Minister of State, Home Office to the Chairman

Thank you for your letter dated 18 November 2005, regarding the above proposal, which explained that the document has not been cleared from scrutiny by Sub-Committee F (Home Affairs).

7 Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, p 552.
As you know, the proposal to allow access by vehicle registration authorities (VRA) to the first generation Schengen Information System (SIS I) was in the form of a Regulation under Article 71 of the EC Treaty. This proposal has cleared scrutiny. The present proposal to allow access by VRA to the equivalent SIS II data is also in the form of a Regulation under Article 71 of the EC Treaty. As you say, the legal base for the proposed SIS II Regulation has been questioned by the European Data Protection Supervisor (EDPS) and the Schengen Joint Supervisory Authority (JSA).

This appropriate legal base for the SIS I proposal was addressed when Caroline Flint, then Parliamentary Under-Secretary of State at the Home Office, wrote to you on 13 January 2004 detailing the reasons for providing for access under the first pillar. We consider that the legal base issues are the same for both the SIS I proposal and the SIS II proposal—we do not consider that there is any justification for using a different legal base for the SIS II proposal.

The aim of both proposals is to facilitate the checks that VRA have to carry out prior to registering vehicles presented to them for registration. The Community has already legislated in this area. Council Directive 1999/37 EC on the registration documents for vehicles, which is based on Article 71(1) of the EC Treaty, is primarily concerned with the harmonisation of the form and content of registration certificates as a means of facilitating the free movement of vehicles within the Community. The Directive also refers to the need to facilitate the exchange of information between VRA to enable them to carry out the necessary checks on the legal status of a vehicle prior to registering it (recital (9) and Article 9). The SIS I and the SIS II proposals take forward the process of facilitating such checks and we remain of the view that both proposals can properly be based on Article 71 EC Treaty.

28 February 2006

Letter from the Chairman to Rt Hon Hazel Blears MP

Thank you for your letter of 28 February which Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered at a meeting on 29 March.

The Committee takes note of your position on the legal base of this proposal but does not agree that it should be valid simply because it is the same legal base of the Regulation giving vehicle registration authorities access to SIS I. We do not believe that Article 71 of the EC Treaty provides a strong legal base for this latter instrument either. It is regrettable that, in the context of current negotiations on the SIS II, the opportunity has not been taken to put this proposal on a more solid legal footing, following the advice of the data protection supervisory authorities. We will, however, not pursue the matter further and have decided to clear this document from scrutiny.

29 March 2006

SCHENGEN INFORMATION SYSTEM: SECOND GENERATION (SIS II) — ESTABLISHMENT, OPERATION AND USE (9942/05, 9943/05, 5709/06, 5710/06)

Letter from Rt Hon Hazel Blears MP, Minister of State, Home Office to the Chairman

Thank you for your letter of 12 January 2006 about the draft Decision and Draft Regulation on the establishment, operation and use of the second generation Schengen Information System (SIS II). I am sorry for the delay in replying. You will have noted that revised drafts of both the Council Regulation and Council Decision were recently deposited for scrutiny. I hoped to reply to the issues raised in your letter at the same time as submitting the explanatory memoranda on these documents. However, they contain such substantial changes to the original Commission proposals that I regret that we will not be in a position to submit those until after the recess.

I can, however, give you an update of the progress made on these dossiers during the UK Presidency, during which a first reading of both proposals was completed and good progress was made in identifying the most important issues, in particular the scope of SIS II; its management; data protection and the extent to which the text of the Schengen Convention should be rewritten. Revisions of both the Regulation and the Decision were produced shortly after the end of our Presidency, but these were immediately superseded by the Austrian proposals and have not been discussed by the working group.

The new texts revert in large part to the text of the original Schengen Convention. For example, to pick up on the two points raised in your letter, the purpose for which SIS II data may be used (Article 21 of the Regulation) now more closely reflects Article 102 of the Schengen Convention and the revised draft has

removed the possibility of access for the purpose of facilitating the Procedures and Qualification Directives. Both points will be subject to further discussion.

Due to administrative oversight I regret that the letter to the Information Commissioner seeking his views on the original Commission proposals was not sent, contrary to the advice you were given in November. His views are now being sought on the revised proposals and I will forward these to you when they are available.

28 February 2006

Letter from the Chairman to Rt Hon Hazel Blears MP

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined the revised proposals for a second generation Schengen Information System (SIS II) at a meeting on 29 March.

We are grateful for your comprehensive Explanatory Memorandum and for the annexes which set out the Commission’s original proposal alongside the revised text. The Committee agrees that the Decision and Regulation should reflect the terms of the Schengen Convention more closely and broadly welcomes the revised texts. We are particularly glad to see that Article 21 of the revised Regulation clearly states the purpose for which SIS II data may be used in accordance with the purpose limitation provisions in Article 102 of the Convention. We also welcome the fact that the possibility of access to asylum authorities for the purpose of facilitating the Asylum Procedures and Qualification Directives has been removed in the current draft. We do not agree that such authorities should be granted access to SIS data as a source of information for their own purposes (such as determining the admissibility of an asylum application). We hope that the strict purpose limitation principle for the processing of SIS data will be maintained when the Regulation is finally approved.

We would be grateful for progress reports on the further negotiations.

We understand from your letter of 28 February 2006 that the Information Commissioner will now be consulted. We regret the failure to consult him on the previous drafts and hope to receive his views on the revised proposals. The Committee has decided to clear the earlier drafts (documents 9942/05 and 9943/05), but will keep these documents under scrutiny.

29 March 2006

SCRUTINY OVERRIDE—UK PRESIDENCY

Letter from Rt Hon Charles Clarke MP, Home Secretary, Home Office to the Chairman

Following my letter of 21 December 2005 I am writing to you as requested to provide further information on the two overrides of Parliamentary Scrutiny that occurred in the Justice and Home Affairs area during the UK Presidency.

These were:

— Council Decision for a Protocol Agreement Between EC, Iceland and Norway on Responsibility for Examining Asylum Claims (8006/05)—Both Houses. The dossier was released by the Council Secretariat on 24 May and adopted at Council on 2 June and regrettably, in that time, it was not possible to clear Parliamentary scrutiny. Dossier 8006/05 refers to protocols to an agreement for Denmark to operate the Dublin mechanism between the EU, Norway and Iceland. In so doing it extended to Denmark the agreement outlined in dossier 5784/01, which was previously scrutinised by both Committees and, in the Commons, classified as not politically or legally important. From the UK perspective this proposal is a purely technical instrument to provide practical and legal arrangements between Iceland and Norway and Denmark. I understand that my officials telephoned the Clerks to the Committees to alert them to the need to override scrutiny.

— Council Decision on the Exchange of Information Concerning Terrorist Offences (15999/05)—House of Lords only. The measure is aimed at facilitating the flow of information between EU institutions and is an important part of EU work to combat the threat of terrorism. The dossier was originally discussed at the extraordinary Council on 13 July, which followed the London bombings. At that time all Member States agreed that the measure should be adopted by the 19 September. Since this fell within the Parliamentary recess it was not possible to subject the document to scrutiny in the normal way and my colleague Baroness Scotland therefore telephoned you in advance of adoption on 19 September.

I take the commitment to Parliament scrutiny very seriously and regret that the Home Office has had to override our commitments on two occasions. However, I hope that you will appreciate and understand the circumstances set out above.

7 February 2006

STRENGTHENING CROSS-BORDER POLICE CO-OPERATION (6930/05)

Letter from Tony McNulty MP, Minister of State, Home Office to the Chairman

I am conscious that my predecessor agreed to provide a Government view on whether or not the above proposal would add value to the existing instruments and associated police co-operation arrangements. Your letter of 26 October 2005 last refers.

I apologise for the delay but this proposal and related matters have been appearing informally in a number of EU forums during the intervening period and it was felt prudent to map (and influence) developments before providing the reassurance you sought.

The UK line throughout has been to limit any potential impact to areas in which the EU has competence and to any specific measures that would add value to the wide range of instruments and associated arrangements that already exist in respect of European-wide police co-operation. That view is shared by many other Member States and at the last meeting of the JHA Police Co-operation Working Group, it was agreed that the way forward was to make better use of existing cross-border related instruments rather than support this proposal.

You will gather from this that whilst the Government wholly supports the core principle of enhancing cross border co-operation, we have never been convinced of the need for or value of this particular proposal and welcome the decision taken at the Police Co-operation Working Group Meeting.

19 July 2006

TERRORISM: CRITICAL INFRASTRUCTURE PROTECTION (14910/05)

Letter from the Chairman to Rt Hon Hazel Blears MP, Minister of State, Home Office

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 was to 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.

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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.

19 January 2006

Letter from Rt Hon Hazel Blears MP to the Chairman

I am writing in response to your letter of 19 January. I am very sorry for not responding to your concerns as effectively as we should have on the issues you raised.

For ease of reference, I thought it might be useful to split this letter into two sections.

Section 1 deals with all the points you have raised, both in your letter of 19 January and in earlier correspondence of 2 February 2005\(^\text{11}\) and 13 July 2005\(^\text{12}\) on Critical Infrastructure Protection, primarily relating to the Green Paper on the European Programme for Critical Infrastructure Protection (14910/05), but also linked to your earlier consideration of three Commission Communications:

- Communication from the Commission to the Council and the European Parliament on prevention, preparedness and response to terrorist attacks (93978/04).
- Communication from the Commission to the Council and the European Parliament on Critical Infrastructure Protection in the Fight against Terrorism (13979/04).

Section 2 will deal with the points you have raised in your letter of 19 January in relation to the Commission Communication Establishing a Framework Programme on Security and Safeguarding Liberties (8205/05 + ADD 1), which proposes two Council Decisions:

- Prevention, preparedness and consequence management of terrorism; and
- Prevention of and fight against crime.


General Comments on Subsidiarity

We agree with your advice to remain alert to the subsidiarity implications in these areas, and have particularly impressed upon the Commission the principle that subsidiarity must be at the heart of EPCIP with the protection of critical infrastructure being first and foremost a national responsibility. This is a view shared by most Member States.

Added Value of EPCIP

In relation to what added value EPCIP will provide, in our Government Response to the Green Paper we have made the point that the overall goal for EPCIP should be kept as simple as possible. We see the added value of the programme in raising critical infrastructure protection capability in Europe through the sharing of good practices, methodologies and expertise between all EU Member States, the private sector and other relevant parties. We also see added value in shared research into critical infrastructure protection related issues and solutions. We have also made the point in our response that we do not consider that EPCIP should include consideration of national critical infrastructure issues such as creating national inventories, monitoring of protective security measures and national infrastructures, including the Armed Forces.

Critical Infrastructure Warning Information Network (CIWIN)

You have also queried the added value that the proposed CIWIN will bring. On this our view is that a European information network can be an important instrument for sharing best practices, experiences and knowledge about how to analyse threats and vulnerabilities. However, we are not persuaded that a need for an additional warning network has been identified and we do not therefore support a CIWIN involving dissemination of specific threat, alert or vulnerability information. Early indications from the Commission suggest that this is a view shared by other Member States.

Security Inspections

In relation to security inspections, the Government shares your scepticism about the assertion that security inspections “are the only effective instrument to guarantee the correct implementation of security requirements”. In our response to the Green Paper we have made the point that it is probably too early to be prescriptive about monitoring and evaluation options and that the European Programme on Critical Infrastructure Protection will need to demonstrate that any activities it undertakes or commissions in this area do actually have the desired additional benefits over existing national and international inspection processes.

LEN (European Law Enforcement Network)

The Government remains to be convinced that establishing a LEN represents added value to existing arrangements such as the Bureau de Liaison network (BdL) and has shared these views with the Commission and other Member States. Official level discussions at a meeting chaired by the Commission on 27 February demonstrated clear support from other Member States for our position. The Commission has tendered for a research project to examine further the ways in which the exchange of law enforcement information of the nature covered by the LEN proposal might be improved. The Government will carefully scrutinise the results of this research.

Progress Update on ARGUS

ARGUS is a proposal for a Commission IT system to provide a central co-ordination point for the alerts generated by the existing independent Commission alert systems. Discussions are ongoing but, as long as it remains a matter of internal Commission organisation and does not impact on our national operations, the Government is not opposed to its creation.
The All-Hazards Approach to EPCIP, with Terrorism Priority

We have talked to the Commission about the approach that EPCIP should take and we concluded as part of our Presidency conclusions that, while recognising the threat from terrorism as a priority, the protection of European critical infrastructure should be based on an all hazards approach. This, we feel, will allow a pragmatic and flexible link that ensures a consistent approach with other types of hazards such as the threat from other types of intentional attack and natural disasters.

Armed Forces (Annex 2 of the Green Paper)

We agree that the activities of our armed forces will NOT be controlled under the EPCIP framework, and have clarified to the Commission that Armed Forces, while part of Critical National Infrastructure, are out of scope of EPCIP.

(ii) Points Raised on Commission Communication Establishing a Framework Programme on “Security & Safeguarding Liberties”

On the Communication establishing a framework programme on “Security & Safeguarding Liberties” for the period 2007–13 (8205/05 + ADD 1) you raised the following points in your letter of 19 January.

Article 308

In my reply of 14 November I expressed a commitment to report back to the Committee on our concerns over using Article 308 for purposes other than consequence management. In terms of the prevention of terrorist attacks on critical infrastructure, we have raised in the Council the concerns previously mentioned, but there has been only limited support for this position. We accept that there is an argument that civil protection could cover aspects of critical infrastructure protection as well as consequence management. However, as we and others have made clear in the negotiations, competence for law and order and internal security rests with the Member States, not the Community. We will therefore work to amend the draft so that this fundamental position is recognised and safeguarded.

Subsidiarity

The Government agrees with the Committee that combating terrorism should remain the primary responsibility of Member States and has consistently made this point in EU discussions. This is the view of the majority of Member States. Bi-lateral and multi-lateral co-operation outside the EU is valuable and ongoing but the Government believes that the EU also can play a role in adding value to Member States’ efforts. We are committed to ensuring that EU involvement does not extend beyond what is necessary or can in any way threaten our national security prerogative. But we believe the EU can add value in ways such as facilitating information sharing, supporting relevant research and encouraging Member States to reach a common level of preparedness. The area that we believe EPCIP will add most value is in multilateral Member State issues, involving three or more Member States.

25 April 2006

Annex A

UK RESPONSE TO THE EC GREEN PAPER ON “EUROPEAN PROGRAMME FOR CRITICAL INFRASTRUCTURE PROTECTION”

1. INTRODUCTION

The UK is grateful to the Commission for this opportunity to express our views on how the EP should proceed with improving the protection of European critical infrastructure. These views are provided in response to the EC Green Paper on the European Programme for Critical Infrastructure Protection (EPCIP), issued by the Commission on 17 November 2005.

Our response is formed of two parts:

— An overall summary of the UK’s views on the activities that will best help to improve the protection of European Critical Infrastructure. This provides the context for the detailed responses to the questions raised in the Green Paper.
— An Annex which contains the detailed responses to all the specific questions raised by the Commission.
The fundamental principles that underpin our response are:

— Management of National Critical Infrastructure (NCI) must be left to the Member State concerned, in line with the Principle of Subsidiarity, as articulated in the Green Paper. The introduction of options relating to NCI in some sections of the Green Paper is therefore very confusing. We seek greater clarity, and separation, of what the Commission is proposing for European Critical Infrastructure (ECI), and what the Commission is proposing for NCI.

— Clear establishment of the proposed activities and outcomes of the Programme is essential. This needs:
  — Agreement on the goal, scope and approach of EPCIP.
  — Positioning the Programme against the newly agreed medium/long-term EU strategy for counter terrorism.
  — Clear identification of all other EC activities that are related to EPCIP, (eg Research projects; Agreement of the Financial Programme for Prevention, Preparedness and Consequence Management of Terrorism).
  — Establishment of a risk-based methodology to assess ECI based on impact of disruption.

2. Direction of EPCIP (Aims)

2.1.1 Purpose/Goal

The goal for EPCIP is to raise critical infrastructure protection (CIP) capability in Europe, including:

— Sharing of good practices, methodologies, and CIP expertise between all EU Member States, the private sector and other agreed relevant parties.
— Shared research into CIP-related issues and solutions.

2.1.2 Out of Scope

For the sake of clarity, it is helpful to identify those activities that the UK believes should NOT form part of EPCIP:

— National critical infrastructure issues, including inter-alia:
  — Creating national inventories.
  — Member State justification of what it identifies as critical.
  — National Armed Forces and associated infrastructures.
  — Vulnerability analysis.
  — Monitoring of protective security measures.
— Assessing the threat from terrorism.

2.1.3 Specific Objectives

It is important that clarity on the fundamental purpose of EPCIP is achieved at the very outset, and that this clarity is retained for the duration of the Programme. We believe that it is therefore critical that the Goal of EPCIP is articulated in simple language, and at the most strategic level that is possible.

Any specific or detailed requirements to be addressed by EPCIP should therefore be identified as objectives, aligned to, but distinct from the Goal of EPCIP.

Specific and measurable objectives must be identified for all the activities of EPCIP. For the initial phases of the Programme, we would expect these objectives to be concerned with identification of the sectors and the infrastructures within scope, and with the sharing of good practices across the EU.

Later phases of EPCIP will include objectives on specific protection improvement measures, and the associated research projects.
3. Principles for EPCIP

3.1 Principles for Protection of EU Critical Infrastructure

— Subsidiarity is at the heart of EPCIP, with the protection of critical infrastructure being first and foremost a national responsibility.

— The prime responsibility for protecting critical infrastructure falls on the Member States and the owners/operators. The Commission’s efforts will be most effective when working with the Member States on the protection of critical infrastructures having an EU cross-border effect (defined as impacting at least three Member States)

— Information sharing on CIP must take place in an environment of trust and confidentiality. Access to sensitive information will be granted on a strict need-to-know basis only.

— Effective protection requires communication, coordination, and cooperation nationally and at EU level (where relevant) among all stakeholders—the owners and operators of infrastructure, regulators, professional bodies and industry associations in cooperation with all levels of government, and the public. Such efforts must be undertaken with due regard for the security of information and applicable law concerning mutual legal assistance and data protection.

— Member State authorities must provide leadership and coordination in developing and implementing a nationally consistent approach to the protection of critical infrastructure within their jurisdictions.

— The private sector must be actively involved at both the national and EU level.

— Not all infrastructures can be protected from all threats. Dealing effectively with threats requires risk assessments and risk management. By applying appropriate risk management techniques, attention should be focused on areas of greatest risk.

— The degree and complexity of interdependencies is increasing as the EU becomes more dependent on shared information technology systems and communication technologies, transportation systems, electricity networks etc. The Commission, the MS and the owners/operators of critical infrastructures need to work together to identify these interdependencies and apply appropriate strategies to reduce risk where possible.

4. Approach to Solutions (Framework)

The EPCIP delivery framework needs to be established such that the aims of EPCIP can be best met while conforming to the EPCIP Principles, outlined above. Accordingly, given the ongoing discussions on scope of EPCIP, and the lack of clarity as to what European CI designation will mean, the UK considers it premature to define a Common Framework at this time.

4.1 Organisation of EPCIP

We suggest that expert groups/networks form the core of EPCIP, by facilitating the exchange of good practices, experience and knowledge between all EU Member States, the private sector and other agreed relevant parties.

— Expert groups/networks within each of the critical infrastructure sectors/sub sectors identified as being potentially vulnerable to incidents with cross-border impact, eg:
  — Energy.
  — Transport.
  — Communication and IT.
  — Finance and banking.
  — Health infrastructure.

— Cross-cutting, issue-specific expert groups/networks with focus on best practices and experiences in relation to eg:
  — Management of Public-Private Partnership.
  — Methodology (risk and vulnerability analysis methods, guidelines/handbooks, definitions, CIP-related horizon scanning, etc).
— Use of CIP regulation/legislation, CIP minimum standards, certification programmes and inspections, working within the EU Better Regulations principles.
— CIP programme design at Member State level.
— CIP research and training.

4.2 Collection/Sharing of information

The UK is concerned that EC research initiatives being are being started that attempt to collect sensitive data from all Member States on national critical infrastructure (eg Energy; Transport), in advance of Member State agreement as to what actually forms part of the European critical infrastructure. The direct approaches that have been made to UK companies are jeopardising our working relationships with these companies.

The UK would therefore insist that clear guidelines be agreed in advance of EPCIP-related research initiatives:
— There must be clarity on the rationale for the collection of data, the nature of that data, the process by which it will be collected and held, and how it will be used.
— The benefit from sharing such data also needs to be clearly demonstrated, and agreed by the provider of the data.
— Access to CIP data owners will be by prior agreement, and will be facilitated through the nominated Member State Contact Point for EPCIP.
— De-stabilisation of existing good relationships with Private Sector operators will be avoided.

4.3 Way ahead: Next Steps

The key next step is the agreement of key definitions and principles for EPCIP, which will hopefully result from the Green Paper consultation process.

The UK priorities for EPCIP would then be:
— Facilitating dissemination of advice and good practice in CIP.
— Defining what constitutes cross-border infrastructure that is critical to Europe.
— Defining the role and the competence of the EU in cross-border CIP (eg Which EU Pillar? Relevance of Article 308?).
— Clarifying the Council working group (comitology) to be used for EPCIP.
— Develop a working understanding of the components that form the European critical infrastructure, their interdependencies, and how EU-level priorities are to be identified.

5. Critical Infrastructure Warning Information Network (CIWIN)

We believe that an EPCIP CI information network can be an important instrument in term of strengthening the exchange of best practices, experiences and knowledge about how to analyse threats and vulnerabilities among the public and the private sector. However, we are not persuaded that the need for any additional warning network has been identified. We do not therefore support a format of CIWIN involving dissemination of specific threat, alert or vulnerability information. Member State agreement of the requirements from CIWIN must precede any further advancement of plans for design or implementation of technical solutions.

6. Finance and Funding

We would seek greater transparency of how the options being considered for EPCIP effect the funding requirements of EPCIP.

It is the UK’s understanding that EPCIP will be completely funded from the FP (2007–13) for Prevention, Preparedness and Consequence Management of Terrorism. It is our understanding that €137.4 million is proposed for this FP. The proposals for EPCIP need to outline all the expected costs of the Programme, including the funds earmarked for related research projects, the costs for seminars and other information-sharing activities, and the costs for any specific solution proposals, such as for CIWIN.

As an overall principle, the costs for implementation of protective security measures will normally be the responsibility of the owner/operator of the infrastructure concerned.
7. Conclusion

Working together, we are making progress on preparing the way forward for the European Programme for CIP, although we do feel that the Green Paper does not fully reflect the progress that has been made by the Commission during 2005.

The June and September seminars have demonstrated that there is considerable common ground across Member States as to what the Programme should aim to achieve, how it is progressed, and the areas of activity that would deliver most value across the EU. It is important that this emerging consensus from the Member States is now translated into value-adding EP CIP activities.

TERRORISM: TRANSMISSION OF SECURITY INFORMATION (5335/06)

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 this document at a meeting on 29 March.

We agree that many of the objections you raise in your Explanatory Memorandum appear to be well founded. The added value is doubtful, and the resources involved potentially considerable. While we are not qualified to assess the security implications, we appreciate the concerns listed in paragraph 12 of the memorandum. We note that adoption of this Decision requires unanimity, and believe that the Government should not accept this proposal unless and until satisfied with it on security and other grounds.

We would be glad to be kept informed of developments, and propose for the present to keep the document under scrutiny.

29 March 2006

Letter from Rt Hon Charles Clarke MP to the Chairman

I am writing in reply to your letter of 29 March, following my Explanatory Memorandum on the proposed Council Decision. Your Committee said that the document would be kept under scrutiny, and indicated that they would like to be kept informed on developments. As the proposal for a Council Decision was formally discussed at the Article 36 Committee for the first time on 11–12 April, I am now able to provide you with an update.

Having been adopted by the Commission on 22 December 2005, the draft Council Decision was officially submitted to the Council on 16 January 2006. Since then, we have been considering this proposal in consultation with colleagues from other Member States.

Whilst we are in principle open to ideas for developing information exchange at EU level, we remain of the view that this particular proposal is unnecessary and potentially damaging to security within the European Union, and that the case for a new mechanism for the exchange of information, and the added value of such arrangements, has not been made. This was a view shared by other Member States. Indeed, at the Article 36 meeting on 11–12 April, no single Member State was prepared to speak in its favour.

Since then, we have submitted written comments to this effect, reaffirming our belief that, as a matter of principle, the EU should not legislate on the activities of Member States’ security and intelligence agencies or on the use of their sensitive information. This would still be the case whatever adjustments were made to the detail of the Commission’s proposal.

Given the level of opposition from other Member States with which the proposed Council Decision has been met to date we do not expect it to proceed, but will keep you informed of any further developments.

5 May 2006

UK PRESIDENCY: HOME OFFICE PLANS

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 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 Maclaggart; 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.

Undated

UNIFORM FORMAT FOR RESIDENCE PERMITS FOR THIRD-COUNTRY NATIONALS (7298/06)

Letter from the Chairman to Liam Byrne MP, Minister of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered this document at a meeting on 7 June.

The Explanatory Memorandum signed by your predecessor stated that “the Government is considering its position on participation in this proposal”. We were unable to understand why the Government, having decided to opt into the first proposal for an amending Regulation, was having doubts about opting into the second proposal; nor could we understand how it would be possible for the principal Regulation to apply unamended in the UK, but amended in the rest of the EU. However we now understand that the Government is planning to opt in.

We are also concerned about the huge increase in the cost. We understand that the estimated start-up costs have increased from £24 million to something in the region of £60 million; and the running costs, initially estimated at £15 million per annum, are now estimated to be £56 million. We would be grateful if you would detail under the relevant headings the items covered by both sets of costs, and precisely why there has been such a steep escalation.

In the meantime we are keeping the document under scrutiny.

7 June 2006
Letter from Liam Byrne MP to the Chairman

Thank you for your correspondence of 7 June 2006, in which the Committee asked for further information on the cost of implementing this proposal.

INCREASE IN COSTS

In 2004, the Government’s figures were a broad estimate based on implementation of the Regulation. My predecessor’s letter of 16 May 2006, to Jimmy Hood MP, explained that our new estimate of running costs, A) is a 10 year average figure, taking inflation into account, B) incorporates a larger contingency element, in line with Treasury best practice, and C) was necessary in the light of a better understanding of the technical specifications. We have therefore had to revise upwards our estimate of the unit costs. The objective will be to recover these running costs through charges levied on those who apply for the service.

The same letter also explained that the increase of £36 million in estimated start-up costs between 2004 and today reflects an increase in programme management costs, contingency and the costs of additional features to help ensure that the process for issuing biometric residence permits (BRPs) is secure.

A BRP solution that implements only the minimum required to meet the EU Regulation (“BRP Minimum” option) would now have start-up costs of approximately £36 million. However, our preferred solution for BRP that includes additional features over and above those required to meet the EU Regulation (“BRP Incremental” option), has estimated set-up costs of approximately £60 million (ie a £24 million increase over the BRP Minimum option).

We have identified the benefits for both the BRP Minimum and BRP Incremental options. Items covered by the two sets of costs are set out in the table annexed to this letter. The table illustrates clearly that the BRP Incremental solution will deliver more benefit than can be realised through the BRP Minimum option.

The identified benefits of the BRP incremental programme fall under three main headings, in-line with the objectives of the project:

Benefit 1—Contribution to the wider National Identity Scheme: The BRP project forms an integral part of the UK’s wider National Identity Scheme, comprised also of IND’s UKvisas Biometrics, e-Borders and Immigration Asylum Fingerprint System + (IAFS+) projects, and Identity and Passport Service (IPS). Together, these initiatives will ensure that all UK residents (and anyone requiring a visa) will have some form of recorded biometrics linked to their identity, providing significant benefits in terms of reduced identity fraud, immigration offences and threats to public safety. The additional benefits stem mainly from the increased assurance that biometrics are uniquely associated with an identity, through capabilities that are unique to the BRP Incremental option.

Benefit 2—Improvement to immigration control: Whilst the EU proposal for a uniform format biometric residence permit will help simplify immigration control within the wider UK society, including for employers and public offices; the EU Regulation does not stipulate any controls related to ensuring that recorded biometrics are unique. There is also no obligation to ensure that checks are carried out to ensure that biometrics are attached to the correct identity. As such, issues regarding counterfeiting and falsification are only addressed through the introduction of a product that is physically more difficult to counterfeit. The BRP Incremental option has been designed to include additional features that will help to control fraud and abuse, thereby improving immigration control.

Benefit 3—Compliance with EU legislation: The UK’s opt-in to the 2003 version of this proposal remains valid, and we are therefore bound to participate in, and implement this new proposal. Whilst compliance with this Regulation would be achieved through the BRP Minimum option, we consider, as noted above, that there are significant benefits in going beyond the requirements of the draft Regulation.

Finally, it is important to emphasise that these cost estimates remain subject to departmental approval. You should also be aware that I am in the process of conducting a review of IND. The information provided in this letter is subject to the outcome of this review. I have also written in similar terms to Jimmy Hood MP, in response to similar questions raised by the Commons European Scrutiny Committee on costs.

11 July 2006
## Annex A

### Benefits by BRP Minimum and BRP Incremental Options

<table>
<thead>
<tr>
<th>Area</th>
<th>Benefit</th>
<th>BRP Minimum</th>
<th>BRP Incremental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribute to the wider</td>
<td>Align with the wider National Identity Scheme to ensure no gaps in the system</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>National Identity</td>
<td>Support other organisations/projects in the wider National Identity Scheme by increasing the volume of assured biometrics data held by UK which can be checked against.</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Scheme</td>
<td>De-risk ID Cards for Third Country Nationals (TCNs) by trialling similar technology and processes.</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Increase attractiveness of UK for legal migrants by establishing a secure identity with clear entitlements—BRP a contributor.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Improved immigration control</td>
<td>Reduce the market for counterfeit documents by increasing document security.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Improve immigration control by identifying multiple applications made under a single identity—BRP a contributor.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Reduce support and processing costs by increasing the detection of asylum and immigration offences—BRP a contributor.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Increase number of illegal applicants identified against which enforcement action can be taken.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Increase cost effectiveness for residence permit appeals by decreasing processing time, enabled by enhanced, evidence-based initial decisions—BRP a contributor.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Increase cost effectiveness for removals by detaining people at interview and/or biometric recording stages.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Increase operational efficiency through joined-up processes and technology improvements.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Comply with EU legislation</td>
<td>To comply with EU legislation with EU legislation.</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

VISA INFORMATION SYSTEM (VIS) — ACCESS FOR CONSULTATION (15142/05)

**Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office**

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined this draft Decision giving access to VIS to Member States’ authorities responsible for internal security, and to Europol, at a meeting on 25 January.

The Committee has considered this proposal alongside the Commission’s Communication on the interoperability of EU databases (Document 15122/05) on which I have written to you separately. We will be examining further developments regarding the interoperability of EU databases once the Commission has completed its impact assessment and will subject to careful scrutiny any legislative proposals that might
follow. In the meantime, could you explain whether the Decision giving law enforcement authorities access to VIS takes into account the plans on interoperability?

We are very concerned about the implications of this measure on the privacy rights of a potentially high number of visa applicants—indeed we understand that the VIS system is estimated to be able to contain, as of 2007, the data concerning about 20 million visa applications annually. While we acknowledge that general and specific safeguards are built into this proposal—ie prohibition of routine access, decentralised access, subjection to third pillar data protection framework decision, etc—we believe that these need to be carefully assessed. We understand that an assessment is currently being made by the European Data Protection Supervisor, who is due to issue an opinion shortly. We hope that you will be seeking the views of the Information Commissioner on this proposal, and would be grateful if they could be copied to us.

Progress on this proposal is closely linked to progress on the VIS Regulation itself. The UK Government does not participate in the VIS Regulation but we understand that some form of participation would be achieved under a separate agreement. We would welcome information on the state of play regarding this agreement. In addition, it would be helpful to know what kind of VIS database records the UK would be seeking to access under this agreement, and whether there is any likelihood that a similar agreement may be negotiated on access to immigration data in the Schengen Information System.

The Committee has decided to keep this document under scrutiny pending receipt of the information requested and progress reports on negotiations.

26 January 2006

Letter from Tony McNulty MP to the Chairman

Thank you for your letter of 26 January in which you raised a number of questions from the Committee about this proposal.

The Committee asked whether this decision takes into account plans on interoperability, as set out in the Commission’s recent Communication on the subject. The Commission’s Communication is an initial, brief discussion document of potential areas for future action in the development of EU databases. It is not at this stage clear which, if any, of the suggestions in the Communication will become future legislative proposals. But there is a clear read across between the Communication and the VIS Council Decision. The Communication addresses the issue of access to EU databases, including VIS, by authorities responsible for internal security and notes that “in relation to the objective of combating terrorism and crime, the Council now identifies the absence of access by internal security authorities to VIS data as a shortcoming”. The VIS Decision will address this shortcoming.

The Committee also asked for an update on the state of play regarding an agreement enabling the UK to access VIS; for information on the records that the UK would be seeking to access under this agreement; and whether a similar agreement might be negotiated on access to immigration data in the Schengen Information System.

In addition to supporting the EU’s common visa policy, VIS will also facilitate application of the “Dublin II” Regulation (EC No 343/2003), as under the terms of the latter, issuance of a visa can be a key factor in deciding which Member State is responsible for any subsequent asylum claim lodged in the territory of the Member States. The UK does not participate in the VIS Regulation. But the Commission has acknowledged that as the UK is an equal participant in Dublin II, we should have the right to consult the VIS for this purpose and has proposed that a separate legal instrument be brought forward in order to allow us to do so. We have been discussing this issue with the Commission, but still await clarity on when they intend to table this proposal and what form it will take.

In terms of access to VIS records, we would expect to have access to the same information as the other Member States for Dublin II purposes. The VIS Regulation will specify the VIS information that can be accessed by asylum authorities. As we do not participate in the VIS Regulation, we will have little influence over what information this will be.

As with the VIS, the draft Regulation for the establishment of the second generation of the Schengen Information System (SIS II) enables Member States to access SIS II for asylum purposes. Unlike with VIS however, it has not been agreed that the UK should have access to SIS II data for this purpose. Our initial view is that this position is inconsistent with the position on UK access to the VIS and we are pursuing the matter further.

Finally, I can confirm that we have asked for the views of the Information Commissioner on this proposal.

20 February 2006
Letter from Tony McNulty MP to the Chairman

Further to your letter of 26 January, I am writing to provide you with a copy of the Information Commissioner’s views on the above proposal.

The Information Commissioner has welcomed a number of aspects of the proposal, such as the inclusion of a data protection supervisory regime, but has also set out a number of concerns, the majority of which relate to the participation of those Member States to which the VIS Regulation does not apply.

We are grateful for the views of the Information Commissioner, and will take his concerns into account during negotiations on this proposal.

2 March 2006

Annex A

INFORMATION COMMISSIONER’S VIEWS ON THE COMMISSION PROPOSAL FOR A COUNCIL DECISION CONCERNING ACCESS TO THE VISA INFORMATION SYSTEM BY EUROPOL AND THE AUTHORITIES OF EU MEMBER STATES THAT ARE RESPONSIBLE FOR INTERNAL SECURITY (COM(2005)600)

INTRODUCTION

The Information Commissioner, as the UK’s independent data protection supervisory body established under the Data Protection Act 1998 (and as designated under s 81 of the Crime (International Cooperation) Act 2003) is pleased to provide his reaction to the above proposal. Any proposal which involves a substantial amount of personal information obtained in one context being disclosed to and used by unassociated third parties for different purposes does engage data protection concerns. The current proposals, whilst incorporating some welcome safeguards do raise a number of questions.

GENERAL OBSERVATIONS

At a general level the proposal involves extending access to a collection of personal information collected with a specific context in mind, namely immigration control, to other parties for use in a different context. The Commissioner has already highlighted his concerns about the potential for “function creep” in relation to databases of personal information envisaged in the UK, such as with the National Identity Register under the Identity Cards Bill. Whilst the arguments for wider access may be superficially attractive any wider access should only be provided on the basis that there is a clear and pressing need for this new use/wider access. Any extension of access to information does run data protection compliance risks, in particular whether information which is quite adequate for its original purpose is of the appropriate quality/accuracy for the new purpose for which it is being deployed. Care needs to be taken to ensure that the arguments in favour of wider access are pressing, cannot be achieved by other means and the personal data in question are adequate for the new purpose.

There are a number of aspects of the proposal that are welcome including:

— Inclusion of a data protection supervisory regime including keeping records of transactions for inspection.
— Prohibiting general access and restricting the types of crime that may permit a search to be made.
— Openness about the national points of access and limiting these to single points per Member State.
— Restricting further onward transfers.

However, there are a number of specific areas of concern or ambiguity in the proposal, particularly in respect of the UK’s participation as a Member State to which the VIS Regulation does not apply. These specific concerns are set out below.

SPECIFIC COMMENTS

Article 4: The designation of a single point for non VIS regulation Member States should also be considered to ensure that there is still proper control over requests emanating from authorities in those Member States.

Article 5: The requirement that access should only be granted “in a specific case” is welcome. The clarification of what is likely to be a specific case is essential in case the term could be interpreted too generously and more systematic access provided. It is not clear whether there would be any circumstances other than those defined.
If there are no additional ones to those that are envisaged then the consultation should be limited to the specific circumstances particularised within the article. The article requires there to be “reasonable grounds” to consider that consultation of VIS data will “contribute” to crime prevention etc purposes. This does not seem a particularly restrictive test and alternative more restrictive approaches, perhaps based upon the test of likelihood of prejudice to crime detection etc if consultation does not take place or of “significant contribution” would be preferable.

It is not clear whether all the information listed at Article 5.2 should be available for searching. It is not clear how well defined “purpose for travel” would be to enable it to be searched. Similarly it is not clear whether photographic images will be useful as a primary search criterion in practice, given the possible limitations of matching photographic images. These items should be moved to Article 5.3.

Article 6: This article should make clear the Framework Decision on Data Protection in the Third Pillar also applies to the processing of personal data by those authorities of the Member States to which the VIS Regulation does not apply to avoid any doubt about this matter. Given that the UK is one such Member State, there should be no room left for possible ambiguity and different levels of data protection safeguards occurring.

Article 8: This article establishes the framework of data protection supervision. However it is not clear how the national supervisory authorities and the European Data Protection Supervisor will cooperate together and coordinate their activities. Given that it will be important to examine data flows to make sure that information is used for the purposes it is sought, there will need to be close cooperation between national supervisory authorities/EDPS that may require coordinated action. The lack of a coordination procedure is a deficiency that needs rectifying. This could be achieved by following either the model of the 3rd Pillar joint supervisory authorities or that established under the “1st Pillar VIS” regime.

The position of the UK national supervisory authority regime needs clarification. It is not clear whether the UK authorities as non VIS participant Member State authorities, will be covered by the inspection and monitoring regime. There should be no lessening of the regime ensuring that access is only for permitted purposes even though that access may not be provided on a direct access basis. The Commissioner would expect to be the UK’s national supervisory authority. Given the limitations in the DPA 98 in respect of his inspection powers he would expect that these are extended in respect of VIS monitoring activities in the same way that they have for Europol, SIS, and CIS under s.81 of the Crime (International Cooperation) Act 2003.

Article 10: The requirement to keep certain records for data protection monitoring purposes should extend to a requirement for those non VIS participant Member State authorities to keep a record of accesses etc. Whilst access may not be direct, it is important that a mechanism is in place for the UK authorities to account for why they requested details from others in order to ensure that there is a fully auditable process in these indirect access arrangements.

Letter from the Chairman to Tony McNulty MP

Thank you for your letter of 2 March in which you provide us with a copy of the Information Commissioner's views on the above proposal. Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined this proposal again at a meeting on 29 March.

We are grateful for the views of the Information Commissioner. In the meantime we have also obtained the Opinion of the European Data Protection Supervisor (EDPS) on this proposal. Both data protection authorities underline the crucial importance of granting access to authorities in charge of internal security and Europol only on a case by case basis and under strict safeguards. They suggest a few amendments to the text which would make the safeguards more stringent and close potential data protection loopholes. The Committee supports these amendments and is glad to hear that you will take these concerns into account during negotiations on the proposal. We would be grateful if in due course you could provide us with a progress report on negotiations.

We would also like to receive information in reply to the queries in our letter of 26 January. We asked (i) whether the impact of law enforcement access to VIS had been assessed in the light of plans on interoperability of European databases; and (ii) whether negotiations were under way for a separate agreement to allow the UK some participation in the VIS Regulation, and the terms of such an agreement. These questions were not addressed in your letter of 2 March.

The Committee will continue to keep this document under scrutiny pending receipt of further information and progress reports on negotiations.

29 March 2006
Letter from the Chairman to Tony McNulty MP

You wrote to us on 20 February 2006 in answer to the questions the Committee had about his proposal. Due to an oversight, this letter was not considered on 29 March when Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined this proposal again in the light of the views of the Information Commissioner, which you had kindly forwarded on 2 March. We apologise for this, and are grateful that your letter of 20 February fully deals with all the points we had raised.

The Committee will continue to keep this document under scrutiny pending a report on the progress of negotiations.

4 May 2006
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 for Public Health, Department of Health to the Chairman

I am writing to report progress of the negotiations on this proposal. The Committee was informed on 17 February of the adoption of the Council’s Common Position text at the Health Council in December 2005. This allowed the European Parliament to commence its second reading scrutiny in January of this year. The amendments proposed by the Parliament’s rapporteur were relatively minor and bore no policy implications for the UK. The issues have now been resolved to the satisfaction of the Parliament and Council and a second reading deal should follow the vote in the plenary session of the European Parliament in the week commencing 15 May. The UK is content with the likely second reading deal. This proposal has several cross-references to the proposal on nutrition and health claims made on foods (on which I am writing separately), and for this reason the European institutions have been taking the two proposals together.

A second reading deal would allow formal adoption of the Regulation, with entry into force some six months later. The timing of adoption of the Regulation is largely dependent on progress with the claims proposal and I will write again when the position is clearer. While the Regulation will be directly applicable in the UK, statutory instruments in England and each of the devolved administrations would be required to set penalties for offences.

4 May 2006

Letter from the Chairman to Caroline Flint MP

Thank you for your letter dated 4 May which was considered by Sub-Committee G on 18 May. We note that outstanding issues, which were relatively minor and had no policy implications for the UK, have now been resolved to the satisfaction of the European Parliament (EP) and the Council and that the UK is content with the Second Reading deal which is likely to follow a vote in a plenary session in the EP this week. We also note that the timing of formal adoption will depend on progress in resolving the related dossier on Nutrition and Health Claims in Food Labelling (reference 11646/03), about which you also wrote to me on the same date.

As you know, this document has already been cleared from scrutiny but we are grateful to you for promising to report further developments.

19 May 2006

ADVANCED THERAPY MEDICINAL PRODUCTS (15023/05)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Minister of State, Department of Health

Your Explanatory Memorandum and Initial Regulatory Impact Assessment dated 14 December 2005 were considered by Sub-Committee G on 9 February.

We note that these important proposals are at an early stage of consideration, that the Government is still studying and carrying out consultations on them and that Working Group discussions about them have only just started.

We agree with your view that any legislation in this area should be proportionate and risk-based. We would also expect the most thorough attention to be paid to all ethical aspects of the Proposal and will want to be satisfied that all the relevant interested parties in the UK have been fully consulted.

Although we note your initial view that it may be difficult to establish detailed costs and assess the overall impact of the proposal, we expect the Government to make every effort to carry out as thorough a regulatory impact assessment as possible. We will want to examine that assessment very carefully.
We also note that the Government is reviewing the appropriateness of the proposed Treaty base (Article 95) in the light of the ECJ judgement of 6 December 2005 in the “Smoke Flavourings” case (ECJ C-66/04).

In the circumstances, we are holding this document under scrutiny. We look forward to receiving the results of your further study and consultations about the proposal, as well as your emerging conclusions on the appropriateness of the proposed legal base. We would also be glad to know when you expect to be in a position to submit a revised Regulatory Impact Assessment and what timescale is envisaged for the Working Group discussions.

10 February 2006

Letter from Rt Hon Jane Kennedy MP to the Chairman

I am writing further to your letter of 10 February 2006 following your committee’s consideration of the explanatory memorandum and initial regulatory impact assessment submitted by the Department of Health on 14 December 2005.

Negotiations on the European Commission’s proposals for a Regulation on advanced therapies/tissue engineering are at an early stage, having commenced in the Council of Ministers working party in January 2006 under the Austrian Presidency. The Presidency has indicated that the dossier will be given priority in the first half of 2006 and there will be regular negotiating sessions throughout this period. Since the Commission published its proposals for advanced therapies/tissue engineering in November 2005, proposals have also been published for an amending Directive following the review of the Medical Devices Directives. There is a linkage between both sets of legislative proposals and my officials are considering them in the round.

To inform the development of the UK position, the Department of Health/Medicines and Healthcare products Regulatory Agency has had extensive dialogue with a range of stakeholders including hospitals, academic researchers, medical charities, industry and consumer groups. The position I outline below very much reflects the concerns that have been raised with us by interested parties. Overall, discussions with a range of stakeholders confirm that there is broad support for legislation on tissue engineering but that further clarification of, and/or adjustment to, the proposals is desirable in a number of areas, especially relating to issues of definition and scope of the proposals. There is also a strong concern to ensure that regulation is proportionate; products should not be subject to a more onerous regime than is justified. Further meetings with stakeholders are planned to take place on a regular basis during the negotiations to work through the complex issues arising from the proposals.

Our overall objective in the negotiations is to achieve a coherent regulatory framework in the interests of public health and in order to provide the regulatory clarity industry requires to attract investment in this innovative area of bioscience.

I can assure the committee that the Government will be mindful of the ethical aspects of the proposals. We wish to protect the UK position in relation to the use of embryonic stem cells in accordance with existing safeguards. The Commission’s proposals envisage that there would be national flexibility over whether to prohibit the use of particular kinds of cells. Given the divergence of views within Europe this seems a realistic way forward and mirrors the outcome reached on the recent Tissues and Cells Directive.

Our assessment of the two sets of current legislative proposals is that, while they have a number of benefits, in aggregate they do not fully address an existing problem, that some products containing human or animal tissue/cells and used for medical purposes fall into gaps between the medicines and medical devices regulatory regimes. We believe that some of these products would continue to be inadequately regulated under the current proposals. In negotiations we have raised the issue of “gap” products and are seeking a resolution that ensures products can be regulated in a way that is coherent, proportionate and reflects the characteristics of the product. More generally, we will seek to ensure that the specific provisions of the Regulation and, if it is agreed, the follow up technical requirements and guidelines are proportionate and risk-based.

The other key issue relates to the proposed exemption for hospitals under the Regulation. The proposal would exempt products from the requirements set out in the Regulation where the product is both prepared in full and used in a hospital in accordance with a medical prescription for an individual patient. Our discussions with stakeholders and in the early negotiations in the Council have indicated that the proposed exemption raises complex issues. On the one hand, it is desirable to ensure a consistent level of public health protection irrespective of where a product is made and used. On the other hand, there is a need for sufficient flexibility to ensure that hospitals can carry out their normal activities, with clinicians taking professional responsibility for treatments and therapies they deem to be in the interests of patients. Our position is that it may be better to link the proposed exemption to the characteristics of the activity rather than to specific institutional arrangements. My officials are exploring possible solutions in discussions at national level and are promoting our position in negotiations in Europe.
My officials are working with stakeholders to assess the possible costs that might be associated with the proposed Regulation. We would hope to be in a position to update the initial regulatory impact assessment once this information has been provided and hopefully by the summer. However, given that in large measure tissue engineering is very much at an early developmental stage, we envisage that it is likely to remain problematic for industry to produce reliable cost estimates.

The committee will be aware of the Government’s previous position on Article 95. However, in light of the judgement of the European Court of Justice (ECJ) given on 6 December 2005 in ECJ C-66/04 UK-V-European Parliament and Council of the Union “Smoke Flavourings”, the Government’s preliminary view is that we are now unlikely to have any convincing arguments on legal base and may therefore have to accept that article 95 is appropriate in this case. We will confirm our position on legal base in due course.

I would be pleased to keep the committee informed of significant developments in negotiations.

25 March 2006

Letter from the Chairman to Rt Hon Jane Kennedy MP

Thank you for your letter dated 25 March which was considered by Sub-Committee G on 4 May together with your letter dated 21 April about the related Medical Devices Directive review (reference: 5072/06). We note that negotiations on both Proposals are being kept in step.

We are glad to know that your negotiations are being informed by close and continuing consultation with the relevant stakeholders which have highlighted several important potential problems, including those of “gap” products and exemption for hospitals which remain to be resolved.

Thank you for your assurance that the Government will be mindful of the ethical implications of these Proposals, to which you already know that we attach the highest importance. We support your overall objective to secure a coherent regulatory framework that will protect public health and give industry the regulatory clarity needed to attract investment. We also share your wish to ensure that regulation is proportionate and risk-based and hope that it will be cast in terms that are likely to work well in practice.

While we also note what you say about the difficulty of producing reliable cost estimates, we continue to hope the Government will make every effort to carry out as thorough a revision of the Regulatory Impact Assessment as possible.

You should be well aware from previous correspondence of our views on the legal base question. We note what you say about the potential impact of the ECJ “Smoke Flavourings” ruling and look forward to learning your definitive view when you have completed your consideration of the position.

We are also grateful for your promise to keep us informed of significant developments in negotiations and would be glad to know when a Council decision might be expected. We will continue to hold the Proposal under scrutiny in the meantime.

5 May 2006

Letter from Andy Burnham MP, Minister of State, Department of Health to the Chairman

I am writing in response to your letter of 5 May 2006 following your committee’s consideration of Jane Kennedy’s letter of 25 March 2006.

Negotiations on the European Commission’s proposals for a Regulation on advanced therapies/tissue engineering have progressed under the Austrian Presidency. First reading was completed under the current Presidency. We do not anticipate early agreement on the proposed Regulation in the Council working group. The two key issues that have dominated negotiations so far relate to the proposed exemption for hospitals and the scope of the proposals.

The committee will be aware that the proposed exemption for hospitals has raised a range of complex issues. On the one hand, it is desirable to ensure a consistent level of public health protection irrespective of where a product is made and used. On the other hand, there is a strong case for ensuring there is the necessary flexibility to ensure that current tissue engineering activities that are carried out in hospitals can continue. There is also recognition that an exemption expressed in ill defined terms could offer a loophole for those wishing to avoid regulation. Given the complexities of the proposed exemption, our position is that it might be preferable to link the exemption to the characteristics of the activity rather than to specific institutional arrangements. No real consensus has emerged among Member States on this issue to date.
The committee will be aware of our concerns that under the proposals some products containing human or animal tissues/cells and used for medical purposes would fall into gaps between the medicines and medical devices regulatory regimes. We have raised this issue in negotiations and there is acknowledgement that some products would indeed fall into a regulatory gap. We will continue to seek a resolution that ensures products can be regulated in a way that is coherent and reflects the characteristics of the products. As you know, we are pursuing a single approach on this issue across the two separate negotiations on this Regulation and on the revision of the Medical Device Directives, on which I am writing separately to you.

In negotiations there was a proposal—which has attracted significant support—that all products containing viable human or animal cells and tissues should be regulated as medicines, and all products containing non-viable cells and tissues should fall under the devices regulatory framework. We are concerned that this approach would cut across existing arrangements for deciding the regulatory category of products (included combination medicine/medical device products) and we have argued that a product should be regulated on the basis of its mode of action and intended purpose. We expect to receive confirmation of the priorities for the Finnish Presidency in the very near future and I would be pleased to keep the committee informed of significant developments in negotiations.

I can assure you that my officials will continue to work with stakeholders to assess the possible costs that might be associated with the proposed Regulation. I believe it is important to emphasise that much of this type of activity is at an early developmental stage and we know from our ongoing discussions with stakeholders that it is likely to remain problematic to produce reliable cost estimates. We would hope that once the final shape of the proposed regulatory framework begins to emerge it may prove more realistic to develop cost estimates. We are, however, committed to updating the regulatory impact assessment to reflect developments in negotiations in Europe and to include any estimates provided by stakeholders, including from industry.

In relation to legal base, the European Court of Justice (ECJ) has recently given its judgment in the ENISA case. The UK lost its arguments on legal base in this case. Therefore, as previously stated the Government’s preliminary view is that we are now unlikely to have any convincing arguments on legal base. We will confirm our view on the proposed legal base for the Regulation in due course.

Letter from the Chairman to Andy Burnham MP

Thank you for your letter dated 13 June which was considered by Sub-Committee G on 29 June.

We note that negotiations have been continuing under the Austrian Presidency and that no real consensus has emerged so far over the proposed exemptions of hospitals, although there has apparently been some acknowledgement of the problem of the regulatory gap between the regulatory regimes for some products containing human or animal tissues or cells.

We are glad the Government is continuing to adopt a single approach to the related issues of this Regulation and the Medical Devices Directive (reference 5072/06), about which I am also replying to your separate letter of the same date.

We also note your concerns over the proposal that all products containing viable human or animal cells and tissues should be regulated as medicines while those containing non-viable cells and tissues should fall under the devices regulatory framework. We have some sympathy with your argument that products should be regulated on the basis of mode of action and intended purpose.

We are glad to see that your officials are continuing to work with stakeholders to try to assess the possible costs, though we accept the difficulty of making realistic cost estimates when many of the activities involved are at an early development stage and when the final shape of the proposed Regulatory Framework remains unclear.

We also note that the recent ECJ judgment in the ENISA case seems to support the Government’s preliminary view, as reported in Jane Kennedy’s letter to me dated 25 March, that the Government is now unlikely to have any convincing arguments on the legal base. But we look forward to receiving your definitive view on that as soon as it is reached.

Finally, we note that the Government expect confirmation of the Finnish Presidency’s priorities in the very near future and welcome your assurance that we will be kept informed of significant developments in your negotiations.

We will continue to hold this item under scrutiny pending your further reports.

3 July 2006
Letter from Shaun Woodward MP, Minister for Creative Industries and Tourism, Department for Culture, Media and Sport to the Chairman

I am writing to bring your Committee up to date with the proposal for the Citizens for Europe programme: I apologise for not having responded sooner to your letter of 28 June 2005.¹

Political agreement for this programme was reached at the Education, Youth and Culture Council meeting on 18 May 2006.

While the programme is a continuation of current initiatives and not problematic in substance, your Committee had raised a concern about the programme, that the Commission has yet to provide an evaluation of the current programme, The UK therefore maintained a scrutiny reserve and abstained at the Council meeting (I set out the reason for our abstention to the Commission).

The Commission has still not produced an evaluation, and the UK has thus maintained its scrutiny reserve. However, the Finnish Presidency decided unexpectedly that they wished to take a final decision on the Citizens for Europe programme on 25 September at the Competitiveness Council. We were unaware that this decision was to be raised at the Competitiveness Council until the week prior to the meeting. One of my officials tried to contact the Clerk of your Committee on Thursday and Friday of last week, as soon as we knew this was going to arise, to discuss the UK’s approach going into the 25 September Council. However, as Parliament was in recess they were unable to do so.

As you know the programme requires unanimity and was supported by all other Member States. If the UK had blocked the programme by voting against it because the scrutiny process had not been completed we would have been in a minority of one holding up a programme which Member States, including the UK, believe will bring benefits.

As a result of the sudden decision by the Finnish Presidency to proceed with a final decision I took the decision that the UK should abstain.

Of course I recognise that in abstaining on the programme—and not blocking the programme—this inevitably could appear to you that the scrutiny of the Committee has been overridden. This was not my intention and I regret the sequence of events which brought about this difficult decision for the UK Government, I can only apologise that no other practical way forward seemed to be available and therefore we took this course of action. However, we felt that as the UK favours the substance of the programme in general and had we blocked it the UK would have caused considerable irritation to other Member States, including those with whom we are seeking alliances on a number of wider issues. This course of action seemed the best way forward out of a difficult situation.

An interim evaluation is due to be published very shortly. When the Commission produces its evaluation I will formally seek your clearance of the programme.

Of course both myself and officials will continue to address the concerns you have expressed.

The European Parliament (EP) has now approved the Common Position adopted at the Competitiveness Council. The confirmed version of the Citizens for Europe proposal will now come back to the Council for final adoption and I anticipate this to be early next month. I will write to you again in order to update you on the outcome of this.

I again apologise for not updating your Committee sooner on this proposal. I have asked officials at the Department for Culture, Media and Sport to review the scrutiny procedures to ensure outstanding questions raised by the Committee are dealt with more promptly.

29 September 2006

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

Thank you for your letter dated 29 November 2005² enclosing copies of the Government’s Response to the Commission Consultation and the UK Position Paper on the Ageing Society.

These documents were initially considered by Sub-Committee G on 9 January. We propose to give them more careful detailed consideration at a subsequent meeting and will write again as soon as we have done so.

In the meantime, we would be interested to know the result of the policy debate which you expected to take place at the Employment and Social Policy Council on 8 December 2005. We would also be glad to know how consideration of the Green Paper is likely to be carried forward during the Austrian Presidency.

We will continue to hold the document under scrutiny in the meantime.

12 January 2006

Letter from James Plaskitt MP to the Chairman

Thank you for your letter dated 12 January 2006, following initial consideration of this document by your Committee.

I can confirm now that the Commission are expected to publish a Communication after the Spring European Council and that this will be submitted for scrutiny under cover of an Explanatory Memorandum.

The document should follow-up both the Green Paper and the Hampton Court Summit, held last October, on the challenges that globalisation presents to meeting the Lisbon goals.

You had also asked about outcomes from the Employment and Social Policy Council on 8 December 2005. I attach a copy of the Written Statement which I made to the House on 14 December (not printed).

You may also wish to note that I am submitting a Ministerial Statement about the forthcoming Council on 10 March at which the Presidency will provide information on the conference that they hosted on “Demographic Challenges—Family needs partnership”.

I hope that you will now be able to consider that the Green Paper passes scrutiny.

7 March 2006

Letter from the Chairman to James Plaskitt MP

Thank you for your letter of 7 March which was considered by Sub-Committee G on 23 March.

We are grateful to you for reporting on the Commission’s plan to publish a Communication based on the Green Paper consultation and for the additional information about this contained in Mr Woolley’s letter dated 28 February to the Clerk to Sub-Committee G.

We have subsequently learned that the Commission is now expected to adopt a Communication on Demographics on 10 May which will include a synthesis of responses to the 2005 Green Paper, the first results of analytical pilot studies by the Commission and Commission proposals for further action.

Your letter also mentions that you were submitting a Ministerial Statement about the March Council at which the Presidency was expected to provide information on the conference on “Demographic Challenges—Family needs partnership”. We have seen a reference to a written item about this in your Statement dated 8 March, but it is not mentioned in your subsequent Statement to the House on 17 March reporting on the Council meeting. We presume this was because the item was not debated, but we would be interested to see a copy of the document which was circulated at that meeting.

We confirm, as requested, that we are willing to release the Green Paper itself from scrutiny. But we will want to consider carefully the expected Commission Communication, and your Explanatory Memorandum about it, when they are submitted for subsequent scrutiny and may wish to consider holding an Inquiry on the Commission proposals.

24 March 2006

Letter from James Plaskitt MP to the Chairman

Thank you for your letter of 24 March.

I can confirm that the above agenda item was not debated at the 8 March Employment and Social Policy Council. The Council did, however formally note the information provided by the Presidency.

I am attaching the paper that was circulated at the meeting for your information (not printed).

25 April 2006
CONSUMER POLICY 2007–2013 (9909/06)

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

Your Explanatory Memorandum (EM) dated 14 June was considered by Sub-Committee G on 6 July together with the separate EM submitted by the DoH on the parallel amended Proposal for the public health aspects (9905/06), about which I have written separately to your colleague Rosie Winterton.

We note that the amended Proposal (reference 9909/06) replaces the earlier Proposal (reference 8064/05), about which I last wrote to Rosie Winterton on 19 May and which can now be released from scrutiny.

So far as the amended Proposal (reference 9909/06) is concerned, we note that the Government prefers the division into separate public health and consumer protection programmes, as now proposed. We also note that the new programme is less ambitious than its predecessor, reflecting the reduced budget allocation.

At first sight, the amended Proposal does seem to be an improvement on its predecessor but we welcome the Government’s assurance that specific programme proposals, as they emerge, will be tested to ensure that they meet the requirements of subsidiarity.

We also note the Government’s concern over the focus on a “high level of consumer protection”. We agree that this should be clarified and that what matters is that the programme should be effective, in-line with the better regulation agenda and concentrated on those areas where action at EU-level can have the most impact.

We also agree on the need for rigorous evaluation and monitoring of the programmes, so long as that does not involve excessive bureaucracy.

Your EM does not say how long the Department expect the new round of stakeholder consultations to take, but we look forward to a revised RIA based on the results of that consultation in due course.

We would also welcome an indication of the likely timescale for Council consideration as soon as the Finnish Presidency have made that clear.

The new document (reference 9909/06) will be retained under scrutiny pending your reply.

6 July 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 6 July 2006 on EM 9909/06. I am now writing to further update you and the Committee on progress with this draft decision, on the clarifications we have received from the European Commission and on the proposed timetable that will reach political agreement at the 25 September Competitiveness Council.

Since my Explanatory Memorandum of 14 June 2006, there have been two Council Working Groups during which Member States have expressed support for the amended draft decision and welcomed the split of the consumer and health programmes. The Finnish Presidency has announced they will seek to reach political agreement on 25 September.

During the working groups, we have sought clarification on the continued “better” consumer protection focus of the programme. The Commission has reassured us that the focus on “better” consumer protection, rather than a “high level” of consumer protection, is retained throughout the programme.

The reference to a high level consumer protection is intended to be consistent with the relevant language in Treaty Article 153 and to cover the wider range of actions that now sit under two rather than four objectives. Stronger evaluation measures have been included in the amended programme and we will press for better regulation principles to be taken into account as individual initiatives come forward. Other Member States have supported us in highlighting the importance of better regulation.

As stated in my Explanatory Memorandum of 14 June, we will also ensure that initiatives are tested against subsidiarity principles in order that action is taken at the most appropriate level.

In December 2005 my Department conducted an informal consultation of the original joint proposal with stakeholders. In June, we repeated this one-month informal consultation in light of the revised proposal. We received a small number of responses from consumer, business and academic stakeholders who supported the split of the programme and were generally supportive of the measures. Consumer bodies expressed some concern about the reduction in the proposed budget, and business pressed to be regarded as a stakeholder in all consumer issues (which the Commission have confirmed at our request). Those consulted supported the use of the Public Health Executive Agency; on the basis that it will not be a policy-making body. There was
also support for, and against, the development of a European Masters degree. A final regulatory impact assessment will be produced once a final text has been agreed in Council.

With reference to the Public Health Executive Agency, the Commission have confirmed that this body will be used solely for the administrative and technical implementation of the programme. The Commission considers the use of the Public Health Executive Agency to be a prudent use of resources, as investment has already been carried out in setting up the agency. Using it for the implementation of consumer policy would lead to greater economies of scale. Given that the agency will not set policy but rather implement it, we are satisfied that this is a sensible use of current resources.

The development of three or four integrated European Masters degrees, funded by the Commission, has been of concern to the UK. This initiative falls within the actions related to consumer education. Last year the Commission carried out a study that concluded that there was a need for a European-focused Masters degree. This degree would be offered by a consortium of universities located in three different countries (one of which must be in a new Member State).

The UK suggested that the Commission could use their report’s findings as a catalyst to encourage consumer organisations, business and the academic sector to fund their own courses, rather than relying on EU funding. The Commission responded that while such an initiative might be commonplace in the UK, a different culture persisted in other Member States where such alliances in the field of education were difficult to achieve. The Commission also stated that the modular nature of the Masters would mean that business could pay to take advantage of particular courses, widening the pool of those who would benefit. The imminent introduction of the EU consumer protection cooperation regulation (creating a network of authorities enforcing EU-wide consumer legislation) would also mean that there would be a significant number of officials increasingly enforcing Community legislation who could benefit from the Masters degree courses (or its constituent modules).

While we remain to be fully convinced that this is the most effective use of resources, we recognise that this represents a small sum in the overall budget (£800,000 per year) and that many other Member States are in support of the proposal. We are also sensitive to the fact that the UK has the most university courses within the EU, where a consumer-related focus is featured, covering issues such as management, law and economics; and that other Member States offer fewer opportunities. We are reassured that this funding is only planned for the first three years of the Masters programme and that they are expected to be funded independently, once they are established.

The UK is broadly supportive of the programme as our main concerns, relating to the merged programme and the need for improved evaluation techniques have been supported by the Council, the European Parliament and accepted by the Commission.

On this basis, we would seek to support political agreement at the September Competitiveness Council and I would welcome your urgent agreement to clear this programme from scrutiny before the summer recess. I would be happy to report to the Committee any developments on this programme as it is implemented.

17 July 2006

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letter dated 17 July which was considered by Sub-Committee G on 20 July.

We are glad to see that the Government has secured satisfactory clarification at Working Group meetings on most of the items raised in our earlier correspondence.

We share the Government’s doubts about the value of the proposed European Masters Degrees in consumer protection matters. Ideally, we would have wanted a fuller explanation of the rationale and justification than we have been given so far. But as you point out, only a relatively small part of the overall budget has been earmarked for this element of the programme.

We also note that the Commission’s view that the degrees may be of more value to other Member States than to the UK and that the modular nature of the course would make it particularly useful for business personnel and Government officials. You also point out that the degrees will only be funded for the first three years in any case. That being so, we agree that it is hardly a sticking point. But we remain sceptical and will want to see a thorough evaluation of the results when the three funded years are up.

We are therefore willing to release scrutiny to enable the Government to support the political agreement expected at the September Competitiveness Council. But we will expect you to report on the outcome of the Council meeting in due course.

20 July 2006
CONSUMER PRICES (6546/06)

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

Your Explanatory Memorandum dated 7 March, submitted on behalf of the Office for National Statistics, was considered by Sub-Committee G on 23 March.

Your EM says that only the UK and Ireland are opposed to this Proposal, although the Commission’s EM reports that Germany also voted against it while Hungary and Poland abstained. Has the German position changed and why has this particular division of opinion arisen among Member States?

It would help us to understand the significance of the Government’s position if you could explain the importance of this particular index to the UK and the Government’s technical objections to it in non-specialist terms.

Although we accept that a precise estimate of the extra costs of implementing the Proposal may depend on the methodology employed, we would welcome the best indication you can give of the probable costs and benefits involved to give us a better understanding of how serious a problem this is likely to be.

We note that the Commission do not appear to have carried out a full Regulatory Impact Assessment and would be glad to know whether the Government intend to demand one.

Neither the Commission document nor your EM make any reference to subsidiarity. We would be grateful if you would confirm whether any subsidiarity issues may arise from this Proposal and, if so, what opinion the Government has about them.

Your EM says that this Regulation is expected to enter into force by December 2007 at the latest, but it does not say anything about any plans for Council consideration, which we also need to know.

We will keep this document under scrutiny pending your reply on all the above points.

24 March 2006

Letter from John Healey MP to the Chairman

I am writing in response to your letter of 24 March on the above proposal, asking for further information.

I will firstly give some of the history of this proposed regulation. At the Statistical Policy Committee (SPC) in May 2005, all Member States voted in favour of it except the UK, Ireland, and Germany who voted against and Hungary and Poland who abstained. The voting broadly reflected current national statistical practices, ie those voting in favour were those countries which currently spread their price collection over a period of time. However, the positions of Member States at SPC are only indicative.

At the meeting of the Council Working Party on Statistics on 2 March 2006, the text of the draft Regulation was supported by Member States under the condition that the provisions of this Regulation shall be implemented in December 2007 at the latest and take effect with the index for January 2008, one year later than the previous proposals. The UK and Irish delegations still expressed reservations. It is understood that Germany does not believe that the regulation represents value for money (they take the view that the benefits to harmonisation do not justify the implementation cost) but voted in favour of it at the Council Working Party because a one year deferment to the original implementation of early 2007 was proposed and it became clear that with the change in voting by Hungary and Poland the regulation could not be stopped. A starting date of early 2008 makes implementation easier for Germany because it coincides with the introduction of a new computer programme for CPI-compilation. Hungary and Poland have not indicated the reasons behind their changes of position. The UK voted against the proposal.

In the UK the HICP is known as the Consumer Prices Index (CPI) and is the UK inflation target. The UK is opposed to the regulation as being too prescriptive to the point of being over-concerned with the details of price collection (rather than the comparability of the final index) and because its effect would be to smooth out volatile prices, such as those experienced with petrol prices and also seasonal price differences of fruit and vegetable prices, thereby hiding genuine price movements. A smoothed index can be a useful supplement to identify overall trends but as an alternative index with no additional information, can make an understanding of the main drivers of inflation more difficult.

A financial impact assessment of the implementation cost has been made by the Commission. The impact on businesses is minimal as the number of prices to be collected will be similar to the number of prices collected at present, only the timing of collection may change. The main impact of the Regulation falls on the operations
of National Statistical Institutes (NSIs). The commission will fund two-thirds of any additional costs for the first two years after implementation. The costs for the UK are estimated to be about £700,000. Please note that this is only an approximate estimation. A copy of the Commission’s financial impact assessment is given in the draft regulation (attached (not printed)).

In principle, the EM issued by the Commission on this proposal states that subsidiarity does apply. In practice, and unlike the primary purpose of previous HICP regulations, this regulation relates to the comparability of the “inputs” (basic data) of the index rather than the comparability of the “outputs” (results). The proposed regulation sets out rules for the price collection period for the HICP. It states that price collection should take place at least over a period of one working week around the centre of the month. For products which show sharp and irregular price changes, the price collection period should be extended to more than one week—in particular for fresh food and energy products. As a minimum member states must collect prices over at least six working days. Any collection period up to the whole month is allowed and this is entirely at the discretion of individual Member States.

This regulation has now been approved and adopted under Qualified Majority Voting. It was taken as an “I” point at Coreper on 29 March and adopted as an “A” point at the Council on 25 April.

I hope this provides the clarification requested.

31 May 2006

Letter from the Chairman to John Healey MP

Thank you for your letter dated 31 May which was considered by Sub-Committee G on 22 June.

We are grateful to you for clarifying the position over the changes in voting by Member States on the Proposal and for explaining how it is likely to work in practice.

We also note that, despite the UK’s continuing objections, the Proposal was adopted by qualified majority vote at the Council on 25 April. We are therefore releasing the document from scrutiny.

23 June 2006

CREDIT AGREEMENTS FOR CONSUMERS (13193/05)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

Further to the Explanatory Memorandum 13193/05 submitted on 1 November 2005, I enclose a copy of the supplementary consultation document that the Department will be publishing later this week (not printed).

The consultation document, which takes account of the revised Commission text of the Directive as well as developments that have taken place in subsequent Council Working Groups seeks views on the latest proposal and asks respondents to set out areas of particular concern.

27 March 2006

CULTURE PROGRAMME 2007–2013 (11572/04)

Letter from the Chairman to Rt Hon Tessa Jowell MP, Secretary of State, Department for Culture, Media and Sport

Thank you for your letter dated 20 December 20053 which was considered by Sub-Committee G on 12 January.

We are glad that partial political agreement was reached at the Education, Youth and Culture Council meeting on 14/15 November 2005 on what appear to be satisfactory terms. We note that final agreement on the programme is expected during the current year, following consideration of the outstanding budgetary aspects and Second Reading by the European Parliament. We look forward to your further report on these developments in due course.

We are also grateful to you for confirming your view that priorities and objectives of the Programme are sensible and should have lasting impact. We hope that the robust evaluation expected to result from the incorporation of SMART principles will ensure good value for money from this complex and ambitious

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programme. We are also glad to see the administrative processes are being simplified and look forward to scrutinising the interim evaluation of the new Education, Audiovisual and Cultural Executive Agency in due course.

12 January 2006

EDUCATION AND LIFELONG LEARNING: STATISTICS (15615/05)

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 27 February was considered by Sub-Committee G on 23 March and again on 30 March.

We are sorry to see that the voluntary collection of these statistics does not appear to be working but are very reluctant for it to become compulsory. We would be grateful if you would explain why the Government seemingly accept that voluntary collection cannot work and that compulsion is unavoidable.

We share your concerns over the ill-defined and potentially open-ended nature of the requirements under Domain 3 and support your efforts to ensure that those requirements are better-defined. We are anxious that the need for this additional information should be fully justified and that collection will not impose unreasonable burdens on educational institutions or other bodies. As the proposed requirements become clearer we trust that you will consult fully with those organisations who will be expected to contribute the information to assess the likely costs and benefits before agreeing to take part.

Although you appear to be less concerned about the requirements proposed under Domains 1 and 2, we note that your EM says that the “content could expand a little”. We would urge you to keep a watchful eye on the potential impact, as negotiations develop.

The proposal that new data collection requirements could be added through Comitology procedures also gives us some concern. We would be glad to know whether you consider that arrangement would be an adequate safeguard against unreasonable additional impositions.

We hope you will succeed in ensuring that the Regulation makes clear that it does not prejudice the sole responsibility of Member States for the content of teaching and the organisation of national education systems.

We also agree strongly that the current UK policy of voluntary participation by educational institutions in international and EU surveys should not be changed.

Your EM reports that Council Working Group discussions have only just started, but we would be glad to know whether a timetable for Council consideration has been fixed.

We are retaining this document under scrutiny pending your reply and will expect you to report any significant developments well before a Council decision is needed.

30 March 2006

Letter from Bill Rammell MP to the Chairman

I am writing to answer the questions in your letter of 30 March 2006, and to update you on the negotiations.

You asked why government seemingly accepts that voluntary collection cannot work and that compulsion is unavoidable. No other country is opposed to the Regulation on principle and in its entirety. Countries with concerns similar to the UK’s have focused on the issue of open-ended powers for the Commission. Had we opposed the Regulation altogether it is likely that the UK would have been outvoted heavily and lost influence in Council. Many countries, especially the new accession states, cannot produce statistics for the EU if there is no specific EU legal basis. Therefore the proposal should improve the availability of statistics from other Member States and consequently provide a more thoroughgoing set of comparators for UK education and training. A legal basis has proved workable and not unreasonably burdensome regarding the Continuing Vocational Training Survey, and for the European Labour Force Survey which includes questions on education.

You shared my concerns about the ill-defined and potentially open-ended nature of Domain 3 in the earlier draft of the Regulation. I am pleased to say that the negotiations have averted that danger. The Presidency has now circulated a compromise proposal; which has been agreed by all 25 Member States, in which it is made explicit that Domain 3 refers to existing data only. There is now no loophole open for the Commission to introduce new collections or expansions to existing collections. The Commission, however, has expressed a
general reservation against the text, on the grounds that it restricts flexibility with regard to new or extended data collections.

As to Domains 1 and 2, which cover statistical work in which the UK already takes part, I am confident that the UK’s representation on the relevant committees gives enough scope to resist any proposals implying unwarranted data collection burdens.

You were keen that the Regulation should safeguard Member States’ responsibility for the content of teaching and the organisation of national education systems. The new text contains an explicit reference to this at paragraph 5 in the opening recitals:

The Council has adopted in May 2005 Conclusions on “New indicators in Education and Training”. In these Conclusions the Council invites the Commission to present to the Council strategies and proposals for the development of new indicators in nine particular areas of education and training and stressed that the development of new indicators shall fully respect the responsibility of Member States for the organisation of their education systems and should not impose undue administrative or financial burdens on the organisation and institutions concerned, nor inevitably lead to an increased number of indicators used to monitor progress.

14 July 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 14 July which was considered by Sub-Committee G on 20 July.

We are pleased to note the progress made in Working Group negotiations, as reported in your letter, on virtually all the concerns raised in my letter dated 30 March.

We accept what you say about the need for compulsion in this exercise and note that you are confident that the UK will be able to use its representation on the relevant Committees to resist the imposition of any unwarranted data collection burdens so far as Domains 1 and 2 are concerned.

As for Domain 3, we are glad to know that the Presidency compromise text will leave no loophole for the Commission to introduce new collections or expand existing ones. We trust that the support of other Member States and the new provision about not imposing undue burdens in paragraph 5 of the opening recitals will be sufficient to ensure that the Commission’s reservation about lack of flexibility will not undermine the essence of the compromise text.

We are also reassured by what you say about the new language of paragraph 5 of the opening recitals so far as the responsibility of Member States for the content of teaching and the organisation of national education systems is concerned.

Although you have not said when the proposal might be submitted for Council decision we are content to release the document from scrutiny to enable you to support a Council decision in favour of the Proposal, so long as it embodies the safeguards outlined above. We would be grateful if you would let us know in due course, for the record, when the Regulation is adopted.

20 July 2006

EDUCATION AND TRAINING 2010 WORK PROGRAMME (13415/05)

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 30 November 2005 was considered by Sub-Committee G on 26 January.

We fully support the long-term objectives of the Education and Training programme and are glad to know the Government is broadly content with the draft report.

You will be aware from our Inquiry Report on the EU Integrated Action Programme for Life-Long Learning, (HL Paper 104-I published in April 2005) how much importance we attach to ensuring that life-long learning programmes demonstrate a genuine commitment to older learners and are well-tailored to their needs. We believe this is vital to the Lisbon agenda, especially in view of demographic trends in Europe. Regrettably, the draft report does not seem to us to give sufficient emphasis to this aspect. We would welcome your views on what more might be done to reinforce this requirement and ensure that the Commission and Member States take it seriously.
More generally, we must say that we found the draft report to be pretty indigestible and badly in need of a good concise executive summary. We would be glad to know whether the Government can do anything at this stage to persuade the Commission to make it more user-friendly.

We also question whether the mass of information contained in the draft report, and the very broad-brush nature of much of the content, is likely to make a significant contribution to the achievement of the programme’s objectives and thus whether the effort involved in preparing it is really worthwhile. We would be grateful for your views on this and to know how much use the Department and UK education authorities and professionals make of the report in planning and carrying out national education and training strategies.

We will retain this document under scrutiny pending your reply.

27 January 2006

Letter from Bill Rammel MP to the Chairman

Thank you for your letter of 27 January, from which I am pleased to note that the Committee supports the long-term objectives of the Education and Training 2010 programme, as outlined in the 2006 joint progress report.

We share your view on the importance of adult learning to the Lisbon agenda, particularly in view of the demographic trends facing Europe. To this end, we have managed to secure a reference to taking forward the follow-up action related to the Hampton Court summit as one of the priorities for the work programme. The need to take action to maintain economic growth in the face of the demographic challenges facing Europe was one of the key outcomes from the summit, and we believe that this link should help ensure that adult education and training is a priority within the programme. To deliver this priority, the peer learning clusters, which will be the main vehicle for taking forward the work programme, now contain adult learning as a transversal theme across half of the proposed clusters.

In response to your point on the need for an executive summary, we have worked with the Austrian Presidency and other Member States to agree a two-page summary of the key messages of the report, to be presented to the Spring European Council. This aims to raise the profile of the work programme to the Heads of State, and make it easier to understand the key messages.

You raised the concern of whether the draft report was likely to make a significant contribution to the achievement of the programme’s objectives. Although we share your concerns about the broad-brush nature of the content, we do nevertheless believe that this report breaks new ground compared to previous reports. For the first time, the analysis in section 2 of the report is based upon contributions that Member States have made, with the result that the report contains a very helpful summary of the current state of play of education and training systems across Europe. We also believe that the establishment of peer learning clusters as the main method of delivery of the work programme is a significant step forward. It represents a more decentralised approach, which could potentially lead to more useful outcomes, with less bureaucracy. We also strongly support the emphasis on increasing monitoring and evaluation of policies. This should help move towards an outcome-based approach across the EU, which is very much in line with the UK approach, and will help articulate the benefits of education and training to the wider Lisbon agenda.

In response to your point on the links with UK domestic policy, the Department intends to be an active participant in the programme of peer learning clusters as outlined in this report, which will not only enable us to showcase our education and training strategies in Europe, but also to learn from best practice in other countries in a way that could be potentially more useful to us than the previous method of expert groups. Furthermore, the priorities outlined in this report will form the basis by which the UK will submit its National report on the implementation of the programme to the Commission in 2007, in which the Department will report on how it is responding to the agenda set by the work programme. We do therefore believe that the priorities outlined in this report have the potential to benefit the UK in carrying out our National education and training strategies.

7 February 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 7 February was considered by Sub-Committee G on 9 February.

Although your letter does not say so, your officials tell us that you are anxious for an urgent decision on the scrutiny reserve because the Presidency want the report to be adopted at the Education Council on 23 February. Your officials also assure us that other Member States are ready to adopt the draft report, which would leave the UK isolated at Council if the reserve was not lifted. It is a pity that your letter failed to explain this and gave us so little time to consider the request.
In the circumstances, and because this is a non-binding exercise which Member States have voluntarily agreed to carry out, we are prepared to agree to release this draft report from scrutiny as requested to enable you to join the expected consensus for adoption at the Education Council. Please report on the Council decision.

We are glad to learn that the Government are working with the Austrian Presidency and other Member States to agree a much-needed two-page summary of the key messages of the report for presentation to the Spring European Council. But we consider it unacceptable that Member States should have to remedy the deficiencies of Commission documentation. In our view, the Commission have a duty to present the report in a format and language which are readily comprehensible to busy non-specialist readers. We strongly recommend that they should be taken to task for failing to do so in this case and urged to produce more satisfactory reports in future.

Your reassurance on the importance of adult learning is welcome as far as it goes. We are glad that it has been included as one of the priorities in the follow-up action from the Hampton Court Summit. But we could not judge from your letter what this is likely to mean in practice because, from what you say, so much seems to depend on the “peer learning clusters”. Unfortunately, we are not familiar with that term and your letter does not explain it.

At our request, your officials have given us an explanation of the meaning of “peer learning clusters” and a copy of a Commission note for the Education and Training 2010 Coordination Group on the use of these “clusters” in the context of the Education and Training 2010 work programme. This sets out the themes on which the “clusters” will be working and what appear to be the cross-cutting measures related to that activity. But it omits to say who the members of the clusters are. As we see it, the value of this activity will greatly depend on the level at which it is carried out and especially whether those who take part in it have relevant and recent practical experience of the topics which they will be dealing.

Nor does the material we have been given explain how or by whom the work of these clusters will be organised or how it will be funded. But it does give the impression of a great deal of complex structured activity which seems likely to be costly and difficult to manage and which could be inherently bureaucratic and wasteful. We would be obliged if you could explain more clearly how this process is expected to work in practice, the extent to which it will be related to relevant current experience in education and training and how undue expense, excessive bureaucracy and unnecessary effort will be avoided.

Your letter also seeks to reassure us that the priorities outlined in the report may benefit the UK in carrying out national education and training strategies and that it could be potentially more useful than the methods previously used in this exercise. That is very welcome, but my letter to you dated 27 January also asked how much use UK education authorities and professionals would make of the report. Your reply did not address this point, but we were rather surprised to be told by your officials that education authorities and professionals are very unlikely to make much use of the report because it is “aimed at Member States and European level”.

We do not find that statement reassuring. It does not help us to understand the purpose of the report. Nor does it seem to be consistent with our view that this programme should be soundly-based on real needs as identified by relevant and up-to-date practical experience and devised in a way that will gain the confidence and support of those who will have to carry it out. We would welcome your comments on that.

13 February 2006

Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 13 February 2006. Please accept my apologies for the short notice to lift the scrutiny reserve on the draft Joint Interim Report. I would like to thank you for your flexibility in responding so quickly, and am pleased to be able to confirm that the Education Council has adopted the draft report.

In your letter, you recommend that we should take the Commission to task for failing to present the report in a format and language which are readily comprehensible to non-specialist readers. I share your concerns about the readability of the text, and my officials do work hard to improve the drafts during the negotiations. However, we face the practical difficulty that when texts are being negotiated by so many representatives who are not working in their mother tongue, the resulting prose can be less than clear. I would also like to explain that the purpose of the two-page key messages paper is not to rectify the drafting of the main report. Rather, it is to ensure that the key political priorities can be clearly highlighted for the European Council.

You requested more information on how the “peer learning clusters” would operate in practice. The clusters are groups of policy officials from Member States who have expertise in a particular policy area, and have chosen to work together to share their knowledge and experiences. Each cluster will agree particular themes on which to organise study visits or seminars. These visits will be hosted by a specific country. The UK has proposed hosting a study visit on “Modernising Higher Education”, in line with the Prime Minister’s desire
to take forward the Hampton Court summit outcomes, and policy leads from the UK will participate in cluster groups covering “Making Best use of Resources”, “Maths, Science and Technology” and “Key Competences”.

With regards to the funding of these activities, the Commission will meet the travel costs of delegates and the countries hosting the study visits will meet the costs of holding the seminars. As I mentioned in my previous letter of 7 February, we do believe that these clusters could present a more effective way for policy experts in Member States to share good practice in areas that are of interest to them, than has been the case in the past. However, we share your concerns about excessive bureaucracy, and will press the Commission to ensure that the focus remains on the practical sharing of best practice amongst Member States.

I would also like to explain why I believe that education authorities and professionals are unlikely to make use of the 2006 Joint Interim Report. The Education and Training 2010 work programme is intended to provide a framework for Member States to co-operate with each other under the Open Method of Coordination, to allow them to implement their national education and training strategies more effectively. It is therefore a tool to enable national policymakers to improve the formulation and delivery of policies through learning about what has worked in a range of different contexts.

This report outlines the priorities of the work programme, and will be taken forwards by the Commission and national policymakers in Member States. It is therefore not intended to be aimed at education authorities and professionals, and is unlikely to be of direct interest to them. These groups are much more likely to be interested in the Education and Training Programmes, in which they can participate, and which are managed separately from the Education and Training 2010 process.

20 April 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 20 April which was considered by Sub-Committee G on 11 May. We note that the Education Council adopted the draft report on 23 February.

On the quality of the report, what you say about the practical difficulties posed by negotiating texts when representatives are not using their mother tongue may be so where last-minute amendments are concerned. Even so, the Commission ought to be staffed by officials who are sufficiently competent in the main working languages to help representatives of Member States to cast amendments in a comprehensible form.

But in this case we assume that the indigestible jargon-riddled text about which we were complaining was originally produced by the Commission. We see no excuse for that, any more than we do for the lack of a proper Executive Summary, which the Presidency and Member States ought not to have had to remedy.

We reiterate our view that it is the duty of the Commission to produce documents in a format and language which are readily comprehensible to busy non-specialist readers and we are disappointed that the Government does not seem to be willing to complain about the Commission’s failure to do so in this case.

Thank you for your explanation of the way in which the “peer clusters” are supposed to work. We hope that when the next Education and Training programme report comes to be considered the effectiveness of that method of working will be demonstrated.

We are still not entirely happy with your explanation that this exercise is unlikely to be of direct interest to education authorities and professionals. We fear that it may indicate a mismatch between the way that education policy is formulated in Brussels and the real world in which it has to be put into practice. But that is perhaps something we can discuss with Judith Grant at our next informal meeting about the implementation of the Life-long Learning Programme on 25 May.

12 May 2006

EDUCATION AND YOUTH COUNCIL

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to inform you of the forthcoming Education and Youth Council in Brussels on 23 February and to provide an overview of the items on the agenda. I attach a copy of the agenda for the Council meeting for information (not printed) as my officials have already provided your clerk with an annotated agenda confirming the scrutiny status of each agenda item. Unfortunately, I will be out of the country on long-planned official business for the week of the Council and so Anne Lambert, the UK’s Deputy Permanent Representative, will represent the UK at both sessions of the Council.
At both the Education and Youth Councils, the Commission will present information on the Preparation of the Spring European Council and its 2006 Annual Progress Report—a Communication to the Spring Council: “Time to Move Up a Gear: The New Partnership for Jobs and Growth”. This Communication reports on Member States’ progress during the first year of the relaunched Lisbon strategy after the 2005 Mid-Term Review and specifically on their Lisbon national reform programmes drawn up on the basis of the Integrated Guidelines for Growth and Jobs. The Commission Communication also sets out priorities for next steps and suggested action points, on which EU Heads of State and Government are expected to adopt Conclusions at the Spring European Council on 23–24 March. The document of course covers the whole range of Lisbon policy areas, but there are specific references to education and training policies and to youth. For example, there are actions suggested on investing more in knowledge and innovation, a clear priority for Higher Education in accordance with the informal special summit at Hampton Court last October, which we very much welcome; and suggested actions on responding to globalisation and ageing, including lifelong learning and increasing entry into the labour market for young people.

The Austrian Presidency do not plan a discussion of this report at the Education Council, as they propose that Education Ministers should input into the Spring Council via the established Education Open Method of Coordination. Accordingly, the Education Council will then be asked to adopt the 2006 Joint Interim Report on progress under the Education and Training 2010 work programme, “Modernising Education and Training: a vital contribution to prosperity and social cohesion in Europe”. It will also agree key messages on this report which will go to the Spring Council. These messages also take account of the priorities in the Commission’s Communication to the Spring Council. The UK supports the key messages which the Education Council is asked to adopt, particularly their emphasis on demographic challenges and globalisation; HE-business links and the Hampton Court agenda; involvement of stakeholders and partners, including at sectoral level; and raising of adult skills. No debate is planned on this item, however. I am grateful to your committee for recently clearing scrutiny on the report.

The Youth Council will also receive a presentation on the Commission’s Communication to the Spring Council but will have an exchange of views on youth issues raised by this Communication. The Council will be asked to comment on three questions about reinforcing the youth dimension of the Lisbon agenda through the European Pact for Youth and providing access to the labour market, particularly for young people with fewer opportunities, and engaging young people and youth organisations in the implementation of the Pact.

The remainder of the morning session will be given over to two exchanges of views in the Education Council. The first is the proposal for a Recommendation on key competences for lifelong learning, where the Council will discuss whether the competences proposed are the most appropriate ones and, if so, how they should be promoted.

The second is the Commission’s Communication on The European Indicator of Language competence, where Ministers will be asked four specific questions: what is their view of the approach outlined in the Commission Communication; would they agree to the proposal to establish an Advisory Board composed of a representative of each Member State whose initial mandate would be to clarify/define the parameters for implementation; is ISCED level 2 (this is age 14/end of year 9 in the UK) the right level for gathering data on competences in first and second languages; and a suggested approach for the choice of languages in the first round of data gathering. The UK supports the establishment of the Advisory Board, as we believe it is essential to have further information on how the indicator would operate in practice, as well as costs and burdens before we take a final decision on whether or not to participate in its implementation. We will also ensure that the indicator fully respects Member States’ responsibility for the organisation of their education systems and that there is a sufficiently flexible testing window for implementing the indicator in due course.

Both of these dossiers are still held under scrutiny and I shall be writing to the Committees shortly to update you on progress and to answer questions which have been raised.

The morning Education session will conclude with an informal lunchtime discussion—on the Commission’s Communication on “A new Framework Strategy for Multilingualism”.

The afternoon session will start with the exchange of views on the youth aspects of the Commission’s Report to the Spring Council as mentioned above. Following on from this exchange of views the Council will be asked to adopt Conclusions on implementing the Youth Pact. These Conclusions will form the contribution of the Council to the European Council. They are not subject to scrutiny.

I will report back on the outcome of the Council as usual.

17 February 2006
EMPLOYMENT AND SOCIAL SOLIDARITY—PROGRESS (8974/06, 9873/06)

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

Your Explanatory Memorandum (EM) dated 10 May was considered by Sub-Committee G on 25 May. We note your confirmation that the partial Political Agreement was achieved, as expected, at the ESPHCA Council on 8 December 2005 leaving only the budgetary proposals to be settled.

Your officials have confirmed that COREPER has endorsed the Working Group agreement on an overall budget of €658 million and the revised allocation of the budget, as set out in your EM, in preparation for the ESPHCA Council on 1 June at which political agreement to a Common Position will be sought. We also note from your EM that you have informal indications that the European Parliament may accept the budget of €658 million on Second Reading.

Since this will be the last opportunity that the Committee will have of considering the Proposal before the Council meeting on 1 June, we are exceptionally prepared to release the scrutiny reserve on the above document to enable the Government to support the proposed Common Position at the Council. But this must be on the clear understanding that the overall budget finally agreed for the PROGRESS programme should not exceed €658 million.

We look forward to your report on the outcome of the Council meeting.

25 May 2006

Letter from James Plaskitt MP to the Chairman

I am happy to report that the 1 June Employment Council reached Political Agreement on the budget and percentage allocations between strands of activity for PROGRESS, which your committee cleared on 25 May (EM 8974/06).

I am grateful for the co-operation from your committee in agreeing to clear the programme budget (€658 million at 2004 prices—the same basis as the overarching EU budget settlement—equivalent to €743 million when adjusted to take account of estimated future inflation year on year) in advance of the Commission’s production of the attached 29 May text, which formally confirms the agreed budget allocation. This is consistent with the Inter Institutional Agreement, and we are hopeful that the European Parliament will also shortly endorse it.

The text sets out a detailed technical statement of the budget breakdown, together with a recounting of the programme’s high-level objectives, actions and evaluation measures.

14 June 2006

Letter from the Chairman to James Plaskitt MP

Thank you for your letter dated 14 June, which was considered by Sub-Committee G on 22 June. We are grateful for your confirmation that the Employment Council on 1 June reached political agreement on the expected budget of €658 million at 2004 prices and on the percentage allocations for the PROGRESS programme as set out in your EM dated 10 May, on the basis of which we agreed to release the scrutiny reserve.

We note that the settlement will be the equivalent of €743 million when adjusted to take account of estimated future inflation over the life of the programme. We also note that the European Parliament is expected to endorse the settlement shortly and would be grateful if you would confirm as soon as it has done so.

23 June 2006

EMPLOYMENT EQUALITY (AGE) REGULATIONS

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 progress in implementing the age strand of the Employment Directive.

We wrote to you last summer, 12 July 2005, with details of our Equality and Diversity: Coming of Age consultation on the draft regulations. This consultation closed on 17 October 2005. We have analysed the 395 consultation responses and have continued to engage with stakeholders through our Age Advisory Group and

more informally. We have made a number of changes to the draft regulations in response to comments received through these processes.

I am pleased to be able to inform you that we laid the Employment Equality (Age) Regulations 2006 for consideration by Parliament on 9 March. I am attaching a copy of the regulations and the accompanying notes (not printed). Subject to Parliamentary approval, the regulations will come into force on 1 October.

Our analysis of the consultation responses was also published on 9 March. In line with normal practice we have also published detailed analysis of the benefits and costs of implementing the age strand of the Directive. Both the consultation report and the Regulatory Impact Assessment (RIA) are available from the DTI website at: http://www.dti.gov.uk/er/equality/age.htm.

8 March 2006

EMPLOYMENT POLICIES—GUIDELINES

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

Your Explanatory Memorandum dated 15 February was considered by Sub-Committee G on 16 March. We are content to release the document from scrutiny.

16 March 2006

EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS COUNCIL (ESPHCA)

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

I am writing to inform you of the key issues on the agenda for the Health part of the Employment, Social Policy, Health and Consumer Affairs Council, which will be on 2 June.


Health Ministers will adopt the amendments to the additives and sweeteners directives by Qualified Majority Voting. The UK fully supports this proposal.

Ministers will be asked to adopt draft Council Conclusions on Women’s health and on promotion of healthy lifestyles/prevention of type 2 diabetes. These were the health themes of the Austrian Presidency.

Ministers will also be asked to adopt draft Council Conclusions on the common values and principles in EU health systems. These Conclusions will endorse a Ministerial statement on the values and principles that underpin EU-Health Systems.

The UK supports the three set sets of draft Conclusions as drafted.

On sustainable development, Ministers will be asked to debate the strategy which is being drafted by the Presidency for agreement at the June European Council. The UK’s response is being led by my colleagues in DEFRA, and we can support the Health elements of the draft strategy.

There will be a lunchtime discussion on pandemic preparedness and the proposed EU stockpile of antivirals for pandemic influenza.

On HIV/AIDS, Ministers will be asked to give their views on questions related to the Commission’s Communication on combatting HIV/AIDS within the European Union and in the neighbouring countries, 2006–09. The UK supports this Communication.

On the proposals for legislation on advanced therapy medicinal products and on the review of the medical devices directive, the Presidency will present a report on discussions so far in the Pharmaceutical Working Group. The UK is content with the progress reports.
Under any other business, there will be information from the Presidency on; 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 and minerals and of certain other substances to foods; the Proposal for a Regulation of the European Parliament and of the Council on medicinal products for paediatric use; the Review of the implementation of the Beijing Platform for Action and the Presidency’s conference on harmful traditional practices.

Also under any other business, there will be information from the Commission on the Framework Convention on Tobacco Control; the Commission High Level Group on Health Services and Medical Care; mental health; the post G-10 strategy for pharmaceuticals; injury prevention and safety promotion (on which a Commission Communication will be adopted this summer); and the EU Alcohol Strategy (due to be adopted this autumn). The Presidency and Commission will also report back on the recent E-health conference in Malaga.

There will also be a progress report from the Presidency and information from the Commission on the proposal for a decision of the European Parliament and of the Council establishing a Programme of Community action in the field of Health and Consumer Protection (2007–2013).

25 May 2006

EQUAL OPPORTUNITIES AND EQUAL TREATMENT OF MEN AND WOMEN IN MATTERS OF EMPLOYMENT AND OCCUPATION (8839/04, 11865/05, 15623/05)

Letter from the Chairman to Meg Munn MP, Parliamentary Under-Secretary for Women and Equality, Department of Trade and Industry

Thank you for your letter dated 21 December 2005 which was considered by Sub-Committee G on 12 January.

We are grateful to you for reporting that political agreement was reached on a common position on the Directive, as expected, at the Employment, Social Policy, Health and Consumer Affairs Council on 8–9 December 2005 and note that Second Reading adoption by the European Parliament is expected in the first quarter of this year.

12 January 2006

Letter from Meg Munn MP to the Chairman

I write further to my letter of 21 December 2005, which reported on political agreement on this proposal, and your reply of 12 January. I am aware that you have not yet seen a “clean” copy of the proposal. I am therefore pleased to enclose for your information a copy of the final text following its approval by the Jurist/Linguist Working Group and translation into Community languages (not printed). There are no substantive changes—linguistic errors have been rectified and the paragraphs are now correctly numbered.

This text will be now be formally adopted at the Employment and Social Policy, Health and Consumer Affairs Council meeting on 10 March and then sent to the European Parliament (EP) for second reading, in May or June, where it is expected to be adopted without amendment.

28 February 2006

Letter from the Chairman to Meg Munn MP

Thank you for your letter dated 28 February, enclosing a copy of the Common Position adopted by the Council, which was considered by Sub-Committee G on 16 March.

We note that no substantive changes have been made to the text which was expected to be formally adopted at the Employment and Social Policy, Health and Consumer Affairs Council on 10 March and to be adopted without amendment on Second Reading by the European Parliament in May or June.

16 March 2006

EUROPEAN GLOBALISATION ADJUSTMENT FUND (EGF) (7301/06)

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

Your Explanatory Memorandum dated 28 March was considered by Sub-Committee G on 11 May. We note that the Government believe that the proposed EGF could play a useful role in helping to alleviate the consequences of globalisation. But, at first sight, we are not sure how much impact a Fund limited to €500 million a year diverted from other sources might have when spread across 25 Member States to offset a minimum of 1,000 job losses in a given sector or company.

We agree that the Fund should not undermine existing national policies or substitute for the responsibilities of companies. But we will want to look more closely at the proposed requirement that it should not overlap with other EU funding streams in view of the important role played by Structural and Cohesion Funds in this field.

We also agree that the intervention criteria will need to be tightly-drawn to ensure effectiveness. We foresee real difficulties in administering the Fund between rival claims from Member States fairly, consistently, effectively and without disproportionate bureaucracy.

We are retaining the document under scrutiny and will want to give it further consideration. We would be grateful if you would report on the progress of your negotiations before the House rises for the Summer Recess and again well before any Council decisions are required later in the year.

12 May 2006

Letter from James Plaskitt MP to the Chairman

I wrote to you in March of this year outlining the content of the proposed regulation creating the European Globalisation Fund and the UK position and would be happy to give you a further update on progress before recess.

In the interim the Commission has issued a revised version of the Financial Statement for EGF, this is a detailed technical document laying out the financial mechanisms for creating the fund. We will be seeking clarification from the Commission to ensure that commitments outlined are in line with the terms of the Inter-Institutional Agreement (IIA). I will update the Committee when further information is received.

6 July 2006

Letter from the Chairman to James Plaskitt MP

Thank you for your letter dated 6 July which was considered by Sub-Committee G on 20 July. We note that the Government is studying the Commission’s revised version of the Financial Statement for EGF and will be seeking clarification from the Commission that the commitments proposed are in-line with Inter-Institutional Agreement. We are grateful for your promise to report further developments.

We are content with this and will continue to retain the document under scrutiny pending your further report. But we are concerned that things will need to move rather rapidly in the Autumn if the Commission is to achieve its target of having the proposed Fund operative by 1 January 2007. We would therefore be grateful if you could let us know as soon as you have a clearer idea of the timetable envisaged for Council consideration.

20 July 2006

Letter from James Plaskitt MP to the Chairman

I wrote to you in March of this year outlining the content of the Commission’s proposed regulation creating the European Globalisation Fund (EGF) and setting out the UK position. In response you requested an update on negotiations prior to parliamentary summer recess. This letter is intended to answer that request. In addition at the start of July I wrote to inform you that the proposal’s financial statement had been revised and we were examining its content closely.

The UK position remains that laid out in my Explanatory Memorandum of March this year. We still believe EGF could play a useful role in responding to the consequences of globalisation, in particular the focus on funding active labour market measures designed to support redundant workers to return to work.
In particular, we are seeking to ensure that measures supported under the EGF do not undermine existing national policies or overlap with other European Union funding streams such as the Structural and Cohesion Funds.

The UK is also seeking to ensure that the intervention criteria, funding and monitoring arrangements are sufficiently tightly drawn to ensure the effectiveness of the EGF.

Negotiations in the Social Questions Working Groups (SQWG) progressed at a steady pace under the Austrian Presidency. The main focus of discussions has been around article two (the intervention criteria), article three (the eligible actions) and finally the financial provisions of the regulation particularly the level of co-financing.

There has been no clear endorsement of nor has any consensus emerged around proposals for alternative wording from Member States'. It is clear that Member States’ thinking on the eligible actions and level of co-financing is still evolving.

The Finnish Presidency looks set to make more rapid progress. The Finn’s are still hoping to bring the EGF to the Employment Council in December for political agreement. Achievement of this rather ambitious objective is reliant on progress throughout the autumn in the SQWG.

I also wrote to you at the start of July making you aware of the revised Legislative Financial Statement, the Commission now intends to provide a written note explaining the reasons for the changes to the Financial Statement. I will update the Committee further when this information is received.

21 July 2006

EUROPEAN INDICATOR OF LANGUAGE COMPETENCE (11704/05)

Letter from Bill Rammall MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to respond to your letter of 4 November 2005 and to update you on the progress of negotiations on the Communication on the proposed European Indicator of Language Competence.

The Communication was not discussed at the Education Council on 15 November. Negotiations began in the official-level working group in December and Ministers held an exchange of views at the Education Council on 23 February. The UK also tabled a position paper at that Council, which I attach for your information (not printed). I also attach the latest version of Conclusions on the Commission’s proposal which were drawn up by the Austrian Presidency in January (not printed). Coreper will discuss this compromise text on 3 May, before the Communication and Conclusions are tabled for political agreement at the Education Council on 19 May.

The Government agrees that it is important to improve language competence in the UK, so that more people are able to participate fully in the global economy as multilingual and culturally aware citizens and employees. However we have ensured during negotiations that the wording of the Communication and the accompanying Conclusions make clear that it is for Member States to decide the content and priorities of their education systems, including the language curriculum. We have also secured a change to the wording of the last paragraph of the Conclusions, so that it now invites Member States to take all necessary steps to establish, rather than implement, the Indicator.

Your letter stated that the Select Committee shares the Government’s view that more detailed professional examination of the proposals for the Indicator is required to define organisational and resource implications before Member States can make a decision on implementation. This is particularly important to ensure that the exercise should not impose undue burdens on schools and pupils. I am pleased to report that this position has been supported by other Member States. The draft Conclusions now suggest that an advisory board composed of a representative of each Member State and one representative of the Council of Europe should be established as soon as possible to take forward further development work.

The proposed role of the advisory board is set out on pages 6–7 of the draft Council Conclusions. It will report to the Commission by the end of 2006 on Member States’ preferred arrangements for constructing and administrating the tests. Ministers will then take a decision on implementation at Education Council next year, perhaps in May.

The advisory board will also produce a detailed proposal of the costs of participation for Member States, and discuss the timing of the survey. The UK has made clear that the testing period for the Indicator should not overlap with other international surveys, and have suggested a flexible testing “window” of 2009–11 which would allow Member States to choose the most convenient year for administering the tests.

The Communication originally specified 15 as the age for testing. However the Conclusions now suggest a grade/level-based sample rather than strictly age-based, as this would be easier to administer and less disruptive for schools. The UK supports this approach as specifying age 15 could mean having to test across two different school years. We support the end of the International Standard Classification of Education (ISCED) level 2 as the point of testing in both foreign languages. This would allow us to obtain a representative sample of pupils who are all Year 9 (ages 13–14) in England. This is also at the end of Key Stage 3 when learning a foreign language is still compulsory in England. However some other Member States prefer the end of ISCED level 3 (equivalent to ages 17–18 in England) in order to have a large enough sample of testees with two foreign languages. The compromise text in the draft Conclusions currently allows Member States to choose to gather data in the second foreign language from pupils during ISCED level 3 if a second foreign language is not taught before the end of ISCED 2, which the UK can support as it would still allow us to decide when to test the second foreign language.

I will of course be writing to Parliament immediately before and after the May Education Council to report on the progress of all the dossiers on the agenda, including the Communication and Conclusions on the European Indicator of Language Competence.

20 April 2006

Letter from Bill Rammell MP to the Chairman

My officials have sent you the latest version of this document which was discussed at Coreper on 3 May. I can report that no amendments were made and we are content with the Coreper texts.

9 May 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letters dated 20 April and 9 May which were considered by Sub-Committee G on 11 May. We acknowledge that these are very important proposals which require extremely careful consideration, and which we will want to examine more closely.

At first sight, we share some of the Government’s caution. We have also seen the critical debate in the media over the idea. Although the Commission have identified many of the relevant problems, we are not yet satisfied that their Communication has demonstrated that the EIT would be an effective solution.
It is regrettable that the conclusions of the March European Council were taken before the Commission’s Communication could be given adequate Parliamentary scrutiny. We trust that those conclusions will not be regarded as a foregone political conclusion in favour of the idea and would welcome your report and comments on the discussions at the Council about this.

We need more time to consider the highly detailed analysis of the Commission’s questionnaire and the Government’s response to it. But we note that the questionnaire appeared to assume that the EIT was necessary and did not seem to ask searching questions about how effective it was likely to be in practice or whether the desired results could be better achieved in other ways.

We would welcome your comments on the methodology used by the Commission in their consultation, about which we have some doubts.

Much more hard information will be needed on the way that the EIT is supposed to work in practice and how it will be funded. We share your concerns over the possible opportunity cost to other EU education and research programmes and will want to see evidence to support the apparent assumption that the EIT would attract sufficient funding from business, non-official grants and revenue-raising activities. Searching questions will also need to be asked about the legal base for the Institution, its operational structure and how the proposed “knowledge communities” are supposed to work, including how intellectual property rights will be handled.

Although we note that the Commission will be expected to produce more detailed proposals by June of this year, it is not clear from your EM how much work the Government plans to do on the Proposal in the meantime. We would be glad to know whether you intend to carry out further consultations at this stage with the academic, research and business communities in the UK, as well as with the Commission and other Member States.

We will hold this document under scrutiny pending your reply.

30 March 2006

Letter from Bill Rammell MP to the Chairman

Thank you for your letter dated 30 March in response to the Explanatory Memorandum on developing a European Institute of Technology (EIT). You asked for a report on the March European Council discussions on the Commission’s communication.

As you know, this communication was discussed by the European Council on 24 March. The conclusions of that discussion noted the significance of the Commission’s communication, recognised that an EIT would be an important step to fill the existing gap between higher education, research and innovation, and invited the Commission to submit a proposal on further steps by mid-June 2006. We will continue to encourage the Commission that those next steps should involve bringing together both universities and the business community to explore the options.

We think this is important, not least because we share some of your concerns about the Commission’s consultation last year and whether the model being proposed by the Commission is necessarily the most effective way forward. We also agree that there needs to be much more clarity about how the project would work in practice, the scale of resources needed for it and where that funding would come from.

It is however very clear that one of the real deficits in terms of the performance of European universities when compared to their US counterparts is the extent to which the outputs of research are exploited commercially. An initiative which successfully improved networking and collaboration between universities and business across Europe would be of real benefit.

Finally, you asked in particular about the further consultations that we are planning on this proposal. Although the proposal is still at a very early stage, we have been informally seeking views from a number of stakeholders, including the CBI and Universities UK, and we are encouraging the Commission and other Member States that the next steps should include some further consultation with leading higher education institutions and leading research and development intensive businesses.

25 April 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 25 April which was considered by Sub-Committee G on 4 May. We are grateful for your report on discussion of the Communication at the European Council on 24 March. You will see from my letter to you dated 30 March that we were concerned that the Council’s statement could be interpreted as a foregone political conclusion in favour of the EIT concept. We are therefore glad to know that
the Government support the need for the concept to be explored more thoroughly in full consultation with universities and the business community.

I am sure you would agree that the need for that thorough examination was amply borne out by some of the contributions to the Debate in the House on Lord Putten’s Question about the role of British and other European universities in the promotion of research and development on 27 April.

During that Debate the Chairman of Sub-Committee G, Baroness Thomas of Walliswood, drew attention to some of the deficiencies in the Commission’s web-based questionnaire which we understand was their sole, means of formal consultation. In my letter to you dated 30 March I said that we needed more time to consider the Commission’s analysis of the results of that consultation. Having done so, we thought it might be helpful if we were to share with you some of our preliminary impressions of that analysis, which are enclosed. Your comments would be most welcome.

You will see that our impressions tend to bear out some of the initial concerns about the consultation which I raised in my letter dated 30 March and which suggest serious shortcomings in the Commission’s methodology. We would be glad to know whether you regard this as a valid or sufficient way for the Commission to carry out their obligation to consult and to know how much weight you think should be given to their findings in the circumstances.

We are glad that the Government has now started to seek views from UK stakeholders, including the CBI and Universities UK and is encouraging the Commission and Member States to take parallel steps. We hope, however, that your informal consultations will range more widely and include not only universities but also independent research bodies, learned societies, professional institutions and organisations like the Skills Councils so as to give an assessment that is as wide and authoritative as possible not only on the need for the Institute but also on the best way of using it to achieve the desired result of improved co-ordination between higher education, research and innovation in making the most of European scientific and technological expertise.

We will continue to hold the Commission Communication under scrutiny and look forward to your further report in due course.

5 May 2006

Annex A

Results of the public consultation on a concept of a European Institute of Technology (EIT)

BACKGROUND

1. In March 2005 the European Commission published its Mid-Term Review of the Lisbon Strategy, which proposed a “European Institute of Technology” (EIT). After consideration, the European Council instructed the Commission to develop its proposals further. Subsequently a public consultation was organised between September and November 2005 and 741 responses were submitted via a web-based questionnaire. In March 2006, the Commission published its analysis of the consultation. This paper presents its key findings and provides a critique of the European Commission’s conclusions on the EIT.

OVERVIEW

2. The European Commission in conducting this consultation did not select a representative cross-section of the European Research and Development (R&D) sector. The sample was therefore entirely self-selecting, for example giving equal weight and credence to both the University of Cambridge and any interested private citizen. It is worth noting as an example of its unrepresentative nature that almost one third of all respondents were individuals from Poland and Italy (12 per cent and 18 per cent respectively). Only 4.7 per cent of total respondents were from the United Kingdom (see Annex 1).

3. Universities, research organisations and business constituted only a minority of respondents (28 per cent), while individuals comprised 72 per cent of the total. This indicates a genuine failure of the consultation to seek a thorough and empirical assessment of the views of the established R&D sector. For example, the research and education sectors are considered jointly for organisations but separately for individuals. Further examination of the results reveals that private businesses made up only 18 per cent of respondents and that within the research and education sector specifically only 6 per cent of respondents were from the private sector.
4. The report also grouped responses from EU Member States and non-EU countries into five separate categories for the purposes of analysis (Southern, Central, Northern, and Eastern Europe; as well as Candidate and other countries). However, the grouping of responses is based purely on a geographical location and does not accurately reflect existing R&D links between EU Member States. The UK and Ireland for example are arbitrarily included in the same category as the Scandinavian countries of Sweden, Denmark and Finland.

5. The European Commission’s analysis of the results also has some alarming weaknesses and inconsistencies. For example, it attempts to extrapolate qualitative conclusions from quantitative results, based on a subjective interpretation of sample responses. Also included in the qualitative analysis were 22 position papers submitted separately to the Commission in a different format, further weakening the integrity and validity of its conclusions.

Question One: What should be the main objective of the EIT?

<table>
<thead>
<tr>
<th>EIT Mission</th>
<th>% of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>4</td>
</tr>
<tr>
<td>Research and research training</td>
<td>17</td>
</tr>
<tr>
<td>Commercial exploitation of research results</td>
<td>12</td>
</tr>
<tr>
<td>Knowledge triangle</td>
<td>63</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
</tr>
</tbody>
</table>

6. The most significant weakness of this public consultation is that it did not ask respondents whether the EIT should be established by posing a straightforward and unambiguous question that would elicit a clear answer. The consultation simply proposed four options: education; research and training; commercial exploitation; or the “knowledge triangle”. The last option complicates accurate analysis as the European Commission defines the “knowledge triangle” as combining education, research and technology transfer (ie: commercial exploitation). It is effectively an option for “all of the above”, while assigning no relative value to the three sides of the triangle.

Question Two: How can the EIT best contribute above and beyond current provision in this area (teaching, research and technology transfer)?

<table>
<thead>
<tr>
<th>Added Value</th>
<th>% of response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Networking between Higher Education Institutes</td>
<td>11</td>
</tr>
<tr>
<td>Promoting intra-EU mobility</td>
<td>7</td>
</tr>
<tr>
<td>Attracting talent</td>
<td>14</td>
</tr>
<tr>
<td>Creating economies of scale in research</td>
<td>4</td>
</tr>
<tr>
<td>Building synergies with the EU Research Framework Programme</td>
<td>5</td>
</tr>
<tr>
<td>Promoting innovation and knowledge transfer</td>
<td>18</td>
</tr>
<tr>
<td>Best practice dissemination</td>
<td>7</td>
</tr>
<tr>
<td>Encouraging collaboration between research and industry</td>
<td>19</td>
</tr>
<tr>
<td>Developing commercial opportunities for research products</td>
<td>7</td>
</tr>
<tr>
<td>Supporting SMEs and local and regional development</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
</tr>
</tbody>
</table>

7. The question states the EIT must add value to each area of the “knowledge triangle” or a combination of all three, and provides eleven multiple choice answers to achieve this objective. However, the respondent is unable to allocate an answer to any one of the individual areas, providing only a generic answer for three very different activities. In addition, respondents were given the ability to choose two answers from the eleven options but no facility to rank or weight their answers, further weakening the robustness of the data.

<table>
<thead>
<tr>
<th>Added Value</th>
<th>% of response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academic Impact</td>
<td>36</td>
</tr>
<tr>
<td>Industrial Impact</td>
<td>49</td>
</tr>
</tbody>
</table>
8. The report also separated the data collected into “industrial impact”\(^7\) and “academic impact”\(^8\) by subjectively grouping four answers together in each category. In practice though, the answers overlap so considerably and are so generally applicable that they could conceivably be included in either industrial or academic impact. The report inaccurately concludes that industrial impact is valued more highly than academic impact, despite respondents not being made aware of this distinction in the questionnaire.

Question Three: Which type of institutional format would best allow the EIT to achieve these goals?

<table>
<thead>
<tr>
<th>Structure</th>
<th>% of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single institution</td>
<td>26</td>
</tr>
<tr>
<td>Small network</td>
<td>30</td>
</tr>
<tr>
<td>Large network</td>
<td>24</td>
</tr>
<tr>
<td>Label</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
</tr>
</tbody>
</table>

9. The consultation proposed four options for the structure of the EIT. These were a single institution; a small network (4–6 institutions); a large network (15–25 institutions); or a “label.” The consultation provided very limited information about the nature or scope of these options and this contributed to no clear majority in favour of any option. While the report admits “no clear preferences are discernable from the replies”, it goes on to conclude that “integration is relatively preferred”. It reaches this conclusion by combining the positive responses to both the small and large network options. Once again, the report seeks to artificially conflate answers to multiple proposals in order to support a weak assessment.

Question Four: How should the EIT organise its teaching/research/transfer activities?

<table>
<thead>
<tr>
<th>Priority</th>
<th>% of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue-driven</td>
<td>24</td>
</tr>
<tr>
<td>Discipline orientated</td>
<td>15</td>
</tr>
<tr>
<td>Thematically organised</td>
<td>37</td>
</tr>
<tr>
<td>Industry-orientated</td>
<td>15</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
</tr>
</tbody>
</table>

10. Respondents were asked whether the EIT should divide its activities based on issues, disciplines, themes or by industry sector. However, two problems arise from this approach. First is that the terms are broadly defined and have considerable overlap, for example wind power generation is given as an issue but “green energy” as a theme. Secondly, the issue of structure will affect what types of research the EIT conducts, ie a small network could be more suited to addressing a narrow problem, while a large network would perhaps be more inclined to tackle wider policy issues. In addition, the recurrent problem of combining three distinct activities (teaching, research and transfer) does not allow respondents to reflect accurately the specialist and varied requirements of each activity. It is worth noting that, in any case, no majority was in favour of a particular organisational approach.

General Conclusions

11. The report concludes that there is a positive attitude to the establishment of an EIT. This is unsurprising given the wording of the questions and the absence of an option to register opposition. Furthermore, the report states there is general agreement that the EIT’s main mission should be to integrate the “knowledge triangle”. In the questionnaire, this is defined as teaching, research and technology transfer, yet in the general conclusion it is defined as research, education and innovation. Altering the components for the professed main objective of the EIT during the course of the consultation underscores its characteristic of poorly defined terms and weak analysis.

12. The conclusion then goes onto to outline how the EIT could provide education and award degrees yet does so without clear agreement from the existing higher education sector about the preferred structure. It is also undermined by the fact that only a tiny percentage of respondents (4 per cent) thought the EIT should

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\(^7\) Building synergies with the EU Research Framework Programme; Promoting innovation and knowledge transfer; Encouraging collaboration between research and industry; Developing commercial opportunities for research products.

\(^8\) Networking between Higher Education Institutes; Promoting intra-EU mobility; Attracting talent; Creating economies of scale in research.
provide education services. Many of those who raised concerns during the consultation referred to the danger of the EIT crowding out private and public finance and setting up rival programmes that undermine existing national education institutes or established European networks.

UK Government View

13. The Government notes that there is a “high degree of scepticism” exhibited by UK Universities and states it “shares some of their doubts”. It comments that a new institution may not be the best way of addressing the European Union’s R&D weaknesses and expresses concern over its impact on existing European research programmes. The Government calls for further discussion and consultation with businesses and universities.

Annex 1

UK organisations that responded to the European Commission’s public consultation on the European Institute of Technology:

- AbilityNet.
- EuroMotor Project, University of Birmingham.
- European Consortium of Innovative Universities.
- Liverpool Hope University.
- Liverpool John Moores University.
- Marinetech South Ltd.
- Metatree Ltd.
- MyKnowledgeMap Limited.
- Royal Society of Edinburgh.
- Royal Society of London.
- The National Business-to-Business Centre, University of Warwick.
- UK Computing Research Centre.
- UK Government.
- Universities Scotland.
- Universities UK.
- University of Cambridge.
- University of Lincoln.
- University of Strathclyde.

Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 5 May and your Committee’s impressions of the Commission’s analysis of the results of its consultation on the concept of a European Institute of Technology (EIT). I am writing to provide a progress report on recent developments and, particularly, to follow up your concerns about consultation.

Following the European Council on 24 March, the Commission has continued to work on the EIT concept with a view to preparing a new Communication for the Spring Council on 15–16 June. We are pleased that this has involved an extensive consultation process with Member States and stakeholders over the last few weeks and that the Commission has shown that it is open to feedback and suggestions from all possible stakeholders. Our understanding is that general agreement is emerging from these consultations on the Commission’s background analysis of gaps and needs and the need for a concerted effort to harness Europe’s capacity in the knowledge triangle of education, research and innovation. During the consultations we have made it clear that we believe that a well-focused and well-designed EIT could be an important step to fill the existing gap between higher education, research and innovation, but that we have a number of concerns as to whether the model being proposed by the Commission is necessarily the most effective way forward. A number of other Member States have shared our concerns. We are looking to the new Communication due later this month to provide additional information on the concept and to address the main concerns that have been expressed by Member States and stakeholders. We expect the Commission to continue to consult widely with Member States and stakeholders over the coming months.

14 June 2006

9 Explanatory Memorandum on a European Community Document (6844/06 + ADD 1), see E/05-06/G323 (SCR).
Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 14 June reporting progress on the Proposal. This was considered by Sub-Committee G on 22 June.

We understand from your officials that the Commission produced the expected new Communication for the Spring Council on 15–16 June. We presume that this will be submitted for scrutiny shortly by the Department, together with an accompanying EM, which we look forward to examining. In the meantime, we will continue to hold the Commission’s present Communication under scrutiny.

We would also like to take the opportunity of drawing your attention to a reference to the EIT in the Report of the Committee’s Inquiry on the European Research Council which was published on 9 June (HL Paper 182). We note with interest what your colleague David Sainsbury had to say about the EIT proposal to that Inquiry. I attach a copy of the relevant extract from the Report, (not printed).

23 June 2006

Letter from the Chairman to Bill Rammell MP

Your Explanatory Memorandum (EM) dated June 2006 was considered by Sub-Committee G on 13 July. You should be aware from our previous correspondence about the original Commission Communication (6844/06) of our scepticism towards this Proposal and our dissatisfaction with the Commission’s failure to produce a convincing substantive evidence-based case for it. We were therefore very surprised that the Government should have gone along with the statement in the conclusions of the 15–16 June European Council which reaffirmed the importance of the EIT and appeared to treat it as a foregone conclusion. When Geoff Hoon gave oral evidence to the Select Committee today we asked him to look into this, but we would also welcome your views.

The mildly cautious approach of your EM does not seem to us to be consistent with clarity expressed by your Ministerial colleague David Sainsbury in giving evidence to the Committee’s Inquiry on the European Research Council, to which I drew your attention in my letter to you dated 23 June. The extract from the Inquiry Report (HL Paper 182) which I enclosed with that letter records David Sainsbury as describing the EIT project as “unhelpful . . . simplistic . . . and naive”. He thought it would be more sensible to build on the EU’s existing world class universities than attempt to start another one. Here again, your views would be welcome.

You should also be aware of the considerable opposition which this Proposal has provoked from leaders of academic opinion in the UK. That opposition was reflected in some of the contributions to the debate in the House on Lord Patten’s Question about the role of British and other European universities in the promotion of research and development on 27 April, to which I drew your attention in my letter to you dated 5 May.

In that same letter I passed on some of our preliminary impressions of our own analysis of the Commission’s initial consultation about the project which seemed to be defective in numerous respects and not least because it started with the questionable assumption that an EIT of some sort was necessary.

For all these reasons, we are disappointed that the Government should not have adopted a far more rigorous questioning approach to this Proposal. We see a real danger that the Council may be drifting through seeming acquiescence into an ill-conceived venture that risks diverting attention and resources from the very serious and pressing problems which the Commission has outlined.

We find the Commission’s latest Communication no more convincing that the previous one. It offers no objective analysis of the pros and cons of the Proposal. It reads more like a superficial sales brochure and is stuffed with jargon, hackneyed references to “flagships”, sloppy thinking and unarticulated concepts about the “knowledge triangle” and “knowledge communities” that inspire neither respect nor confidence.

To some extent the EIT project appears to be a rather grandiose and less well-considered version of the new UK Institution of Engineering and Technology and we wonder whether would be in the national interest for the Government to support what may well turn out to be a rival body.

In your letter to me dated 25 April you said that the Government was starting to seek views from UK stakeholders on the Proposal. In my reply to you dated 5 May I urged you to extend that consultation more widely. We look forward to hearing what progress you have made in those consultations.

We also urge that the Government should press the Commission directly, and in consultation with other Member States, for a much more rigorous and objective assessment of the merits in this Proposal than it has so far made.
We believe that searching questions must be asked about the reasons why this model might be more successful in remedying the problems identified by the Commission than alternative solutions. We need to be clear how the project would work in practice and how much initial funding would be needed from the Community and Member States. Any assumptions about the added value which the EIT might yield would need to be tested against the possible opportunity cost to other EU education and research programmes, including the European Research Council.

The Commission must be required to demonstrate the grounds for their belief that the EIT would succeed in attracting sufficient high-quality expertise and adequate counterpart funding from business, non-official grants and revenue-raising activities. We will also want to see a clear justification for the proposed awarding of degrees and diplomas and to know how they will be awarded and administered. As I have mentioned in earlier correspondence, we will also need to see more concrete proposals for the legal status of the EIT and its “knowledge communities”, and how such issues as intellectual property rights would be handled.

It is not clear from your EM whether any discussion is expected in Council Working Groups in the Autumn on the new Communication. But we note that the Commission have promised to continue to consult with Member States and stakeholders over the coming months and we trust that this will give the Government the opportunity of pressing the Commission to justify their case on all these aspects before more formal proposals for the EIT are produced.

Because of the importance of the underlying issues and the inadequacy of the Commission’s Communications to date, we are considering the possibility of carrying out a short Inquiry on the EIT project when Parliament resumes in the Autumn. It would therefore be most helpful to know as soon as you have clearer indications of the likely timing of the Commission’s formal proposals and the expected timetable for Council consideration of them.

In the meantime, we are clearing the previous Commission Communication (reference 6844/06) from scrutiny. We will hold the new Communication (reference 10361/06) under scrutiny pending your reply.

14 July 2006

Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 14 July and your Committee’s comments on the latest communication from the Council on the EIT. I am writing to clarify the Government’s position.

First, it may be helpful to set out what I understand to be the latest position on the Commission’s proposal. In line with the conclusions of the European Council in June the Commission is working on further developing their ideas with a view to producing a formal legislative proposal in October to the Council of Ministers and the European Parliament. Prior to this in September there is expected to be a further round of consultation meetings with both Member States and other stakeholders.

It is important to keep in mind that, as there has not yet been a formal Commission proposal, there has been no opportunity for any detailed discussion in the Council of Ministers or its working bodies. The Commission’s formal proposal, which will be accompanied by a full impact assessment, is not expected until mid-October.

As I explained in my letter of 14 June, we have made it clear from the outset, including in our response to the original Commission consultation last year, that we believe that a well-focused and well-designed EIT could be an important step to fill the existing gap between higher education, research and innovation. It would however need to demonstrate that it could help to generate reform of the university sector, increase Europe’s innovative capacity and add value rather than duplicate existing initiatives.

We therefore recognise the potential benefit of an initiative that would improve collaboration between universities and business in the area of knowledge transfer. And I fully agree with you that, if an EIT is to add value, it needs to focus on building on and developing existing partnerships which are already working well and helping them to move into the excellent class. It would be the focus on knowledge transfer and research-based innovation that would distinguish an EIT from other activities, such as the newly created UK Institution of Engineering and Technology.

We have, however, had, and continue to have, a number of concerns as to whether the model that has been proposed by the Commission to date is necessarily the most effective way forward. I would suggest that it is in this context that Lord Sainsbury’s comments to the Inquiry in February need to be viewed, particularly as they were made before the Commission had even presented its initial communication on developing the EIT. I am also well aware that we share these concerns with the UK higher education and business sectors as well as a number of other Member States. That is why we were pleased to see the Commission acknowledge in its
latest communication the complexity of the issues concerned and recognise that it will need to continue consulting widely with Member States and stakeholders.

I wish to assure you that the Government has adopted a rigorous questioning approach throughout the consultations and has been working closely with other Member States to try to influence informally the Commission’s further development of the proposal. We have involved representatives of both the higher education sector and the CBI in developing the position we should take to lobby the Commission and other Member States and we have ensured that UK stakeholders were involved in formal consultation meetings with the Commission on 25 April and 18 May. We will continue to consult informally with our key stakeholders as necessary.

I can also assure you that the particular issues that you have set out in your letter are precisely those that the Government raised at meetings with the Commission and other Member States on 24 April and 17 May. Together with several other Member States, we sought clarity on how the EIT would work in practice, what funding would be needed and where it would come from, and what the added value of the EIT would be in the light of other EU initiatives.

We will continue to press the Commission on the specific issues you have raised and on our other concerns, including at the next formal consultation meeting on 8 September.

25 July 2006

EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION (EMCDDA)
(12143/05)

Letter from Caroline Flint MP, Parliamentary Under Secretary of State for Public Health, Department of Health to the Chairman

Thank you for your letter of 4 November10 about the proposed regulation on the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and, in particular, about the proposed legal base.

I apologise that it has now been some time since you wrote to me about this matter. We have been waiting for outstanding judgments from the ECJ on relevant matters and I had hoped that my reply would be informed by these. Unfortunately, one of these is still pending, but as there is no indication of when this might be given, I have decided to respond without the benefit of that judgment.

As you say, the proposed legal base for the EMCDDA regulation raises similar issues to those for the proposed European Institute of Gender Equality. In each case a legal base chosen allows for the adoption of “incentive measures”. Also in each case, the Government does not accept that an incentive measures legal base should be used to establish a body, although it does recognise that a respectable argument could be made for the use of incentive measures Articles.

My colleague, the Parliamentary Under-Secretary for Women and Equality, [Meg Munn], has recently responded to you about this and set out arguments based on case law that could support the alternative approach that is taken in the draft regulation. Her reply gives details of challenges to the ECJ that the Government has made over similar proposals and of the opinions and judgments that have so far been given. Judgment in one case, that of the European Network and Information Security Agency (ENISA) is expected shortly and may provide further clarity on the legal position. I will not repeat the details of those cases here.

However, in conclusion, she states that while it is important to record our view that the legal base being used in respect of the European Institute of Gender Equality is not the most appropriate legal base for the establishment of an Institute, there is a sufficiently respectable opposing argument on balance as to warrant no further objection than the inclusion of an appropriate Minutes Statement. It is hoped that the legal position will be clarified further once the ENISA judgment is handed down.

A further consideration is that the measure involved is one that the UK strongly supports.

A similar position applies in the case of the EMCDDA regulation. Again, the Government does not accept either that an incentives measures legal base should be used to establish an agency, or that in this case all of the proposed activities of the EMCDDA are likely to constitute incentive measures. However, it does recognise that there is a reasonable argument for the opposing view namely that the end result of the activities undertaken by EMCDDA could be considered to be incentive measures and as such it would then be appropriate to use an incentive measures legal base (ie Article 152) to establish the Agency.

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This position is consistent with that we have taken on similar cases. By registering our dissent through a minutes statement, we preserve the possibility of taking stronger action in similar cases where we have a greater reason to object to the proposal.

You also asked me if the Government had taken a view about the composition of the proposed Executive Committee for the EMCDDA. An earlier draft of the Regulation had not included any further representation on this Committee from Member States other than the Chair and Vice Chair of the Management Board. The latest proposal is that the Executive Committee will also include two further representatives of Member States from the Management Board. Because of this, the Government now supports this proposal.

31 March 2006

Letter from the Chairman to Caroline Flint MP

Thank you for your letter dated 31 March which was considered by Sub-Committee G on 4 May.

We are content with the Government’s view that the Commission’s latest proposal for the Executive Committee of the Centre to include two further representatives of Member States from the Management Board is acceptable.

As for the legal base question, you should be aware of our views from my letter to Norman Warner dated 4 November 2005. Since you say that the ENISA judgment is expected shortly and may provide further clarity on the legal position, we would prefer to await your considered opinion on that judgement before commenting further.

We will continue to hold this document under scrutiny in the meantime. When you do reply, we would be glad if you could also let us know when a Council decision on this Proposal is expected.

5 May 2006

Letter from Caroline Flint MP to the Chairman

Thank you for your letter of 5 May on this Draft Regulation.

I must first make clear the position that we have now got to in negotiations on this draft Regulation. We have previously registered our disagreement with the Treaty base on which the EMCDDA is being constituted. Since then, negotiations have been continuing with the measure being based on Article 152.

These negotiations have been within the Council working group and between the Council working group and the Parliament. During the UK presidency, the Parliament offered the Council the possibility of a first reading deal. Given the complexity of the co-decision procedure, particularly when weighed against the routine nature of this piece of legislation, this was attractive to us as the presidency; and the current Austrian presidency shares that view.

However, there has been some disagreement between the European Parliament’s LIBE committee and some members of the Council over points of detail in the regulation. There have been protracted negotiations over these. But agreement on them now looks to be in sight, and the Austrian presidency is hopeful that it will be achieved in time for the European Parliament’s plenary debate on the matter at the end of this month.

Such agreement will mean that all Member States agree with the content of the Regulation. And, since no other Member State is maintaining an argument that the Treaty base is wrong, the measure will be adopted by qualified majority. We have a scrutiny reservation in place but, in this scenario, it will serve no practical purpose.
You asked me to provide you with the argument for the use of Article 152 as the legal base for this regulation. The argument derives from the broad approach being adopted by the European Court of Justice in considering the appropriate legal base for a measure. The UK has challenged in the ECJ two measures where it has contended that Article 95 was not an appropriate Treaty base and that Article 308 was. In the Smoke Flavourings case, ECJ C-66/04, the UK disputed the choice of Article 95 for the establishment of a centralised procedure for the authorisation of smoke flavourings in food. The UK argued that a centralised authorisation procedure was not a harmonisation measure. However, the Court held that to provide for a staged harmonisation by means of a centralised authorisation procedure was within the discretion granted by the Treaty provided (i) the basic act determines the essential elements of the harmonisation measure, and (ii) the mechanism for implementing those elements leads to harmonisation within the meaning of Article 95. The Court essentially looked at whether the end result of the measure would lead to harmonisation.

The recent ENISA judgment in case C-217/04 concerned the use of Article 95 for establishment of the European Network and Information Security Agency, which like the EMCDDA is a Community agency with an advisory role. The Court rejected the UK’s argument that setting up such a body is not a measure that could be achieved by using the domestic legislation within each Member State so as to harmonise provisions of national law, and that therefore it could not be a harmonising measure. The Court found that the expression “measures for the approximation” in Article 95 conferred discretion on the Community legislature depending on the general context and specific circumstances of the matter to be harmonised, particularly in fields with complex technical features. It found that the tasks conferred on ENISA were closely linked to the Framework Directive and the specific directives in the area of network and information security and concluded that the Regulation was adopted under the appropriate legal base.

The Court did not address whether an incentive measures legal base such as Article 152 could be used for the establishment of an agency. However, given the broad approach the Court has taken to what constitutes a harmonisation measure, if the matter were brought before it the Court seems likely to take an equally broad view of what constitutes an incentive measure. In the case of a measure based on Article 152, it might look at whether the tasks conferred on the body seek to achieve the objectives in Article 152.1 but do not affect the competence of Member States to organise or deliver health services and medical care.

The objective of the EMCDDA is to provide “the Community and its Member States with objective, reliable and comparable information at European level” which is “intended to help provide the Community and Member States with an overall view of the drug and drug addiction situation when, in their respective areas of competence, they take measures or decide on action” (Article 1). This assists Member States “to take measures or decide on action” but does not actually require them to take action or interfere with their responsibilities for the organisation and delivery of services related to drug misuse.

The ENISA judgment was delivered on 2 May. The Government is considering the implications of the judgment. In the meantime, I will continue to rely on our existing line. If the matter comes before the Council of Ministers, the Government intends to vote in favour but to enter a minute statement to the effect that Article 152 is not the appropriate legal base and that the measure should have been adopted under Article 308.

You also asked for my comments on your view that the Government’s support for the measure is immaterial if the legal base is not appropriate. In my view, a balance needs to be struck between the degree of risk to the principle of the appropriate Treaty base, getting what amounts to routine EU business done expeditiously, and ensuring that a position we take in one case does not undermine our negotiating position in others. In this case, the Government supports the existence of the EMCDDA, and the judgement was made during our presidency that the public interest would be better served by getting this particular piece of routine EU business completed quickly, so as to demonstrate a willingness to be flexible where appropriate and thus support our negotiating position in other dossiers. As this measure is subject to being introduced via Qualified Majority Voting and the UK would not be able to influence the outcome by voting against this measure, I remain of the view that our proposed course of action to register our disagreement, and preference for the use of Article 308, through a minutes statement is the appropriate one.

As the matter is likely to become urgent, we would ask the Committee to indicate that the Government’s agreement to the proposal need not be withheld pending your Committee’s further consideration of the proposal.

We would like to notify you that in the event of an urgent vote in this matter it is our intention to vote for the measure based on our previous position.

23 May 2006
Letter from the Chairman to Caroline Flint MP

Thank you for your letter dated 23 May which was considered by Sub-Committee G on 8 June.

We are grateful for your lengthy explanation of the present position over the legal base. We note that the Government is still considering the implications of the ENISA judgment, although you continue to believe that Article 152 is not an appropriate legal base for the EMCDDA and that Article 308 should be adopted.

The position is clearly unsatisfactory. You will know from our previous correspondence that we are content with the Proposal in all other respects. We would want to see it go ahead without further delay, as you clearly do. On the other hand, as we have indicated in previous correspondence, we attach importance to ensuring that all Commission Proposals should have an appropriate base.

We understand from your officials that a Council vote may be expected as soon as 27 June. In the circumstances, we are prepared to release the document from scrutiny to give you the leeway requested to vote in favour of the Proposal at Council, if you judge it to be necessary.

But, before doing so, we recommend that you should give serious further consideration to the alternative of abstaining from the vote on the grounds that the legal base proposed is inappropriate. That would seem to us to be a rather more robust defence of the principle that appropriate legal bases should be adopted. Given that the Proposal is likely to be carried by QMV, it would still enable what you describe as routine EU business to be done expeditiously in this case.

Although we are content to leave the judgment on that in your hands, if the need arises, we would be grateful if you would report as soon as a Council vote is taken and explain your reasons if you still decide to vote in favour rather than abstaining. We also look forward to learning the Government’s considered opinion on the significance of the ENISA judgment in due course.

8 June 2006

Letter from Caroline Flint MP to the Chairman

Thank you for your letter of 8 June on this Draft Regulation.

I would first of all like to thank you for your agreement to release this document from scrutiny, thereby giving the Government the ability to vote in favour of this proposal at Council, should we wish to.

Our position in this matter has not changed over a long period of time. We have registered our disagreement with the Treaty base on which the EMCDDA is being constituted. However, as this issue will be subject to Qualified Majority Voting (QMV) and we support the objectives of the EMCDDA we have maintained the position of voting in favour, while recording a minute of dissent.

As you are aware from my previous correspondence, the UK has challenged in the ECJ two measures where it has contended that incorrect legal bases were being used as a basis for establishing procedures in Europe.

In the Smoke Flavourings case, ECJ C-66/04, the UK disputed the choice of Article 95 for the establishment of a centralised procedure for the authorisation of smoke flavourings in food. The UK argued that a centralised authorisation procedure was not a harmonisation measure. However, the Court held that to provide for a staged harmonisation by means of a centralised authorisation procedure was within the discretion granted by the Treaty, provided (i) the basic act determines the essential elements of the harmonisation measure, and (ii) the mechanism for implementing those elements leads to harmonisation within the meaning of Article 95. The Court essentially looked at whether the end result of the measure would lead to harmonisation.

The case, which has most relevance to the EMCDDA, however relates to the recent ENISA judgment in case C-217/04 concerned the use of Article 95 for establishment of the European Network and Information Security Agency, which like the EMCDDA is a Community agency with an advisory role. The Court rejected the UK’s argument that setting up such a body is not a measure that could be achieved by using the domestic legislation within each Member State so as to harmonise provisions of national law, and that therefore it could not be a harmonising measure.

The ENISA judgment was delivered on 2 May. The Government is currently considering the implications of the judgment. In the meantime, I will continue to rely on our existing line. If the matter comes before the Council of Ministers The Government intend to vote in favour but to enter a minute statement to the effect that Article 152 is not the appropriate legal base and that the measure should have been adopted under Article 308.

Once we have had the opportunity to fully reflect on the implications of the ENISA judgment for future decisions on how the UK will vote when similar issues arise, detailed correspondence will be sent to both Scrutiny Committees.
You will be aware that this matter has separately been cleared by the Scrutiny Committee of the House of Commons, who have also agreed to the proposed way that the UK intends to vote on this matter.

I understand that they have separately written to the Minister for Europe, seeking written evidence in relation to a number of questions on the way the Government votes on European legal base issues. I hope that this evidence will help clarify the way that the Government considers which way to vote on these matters.

5 July 2006

Letter from the Chairman to Caroline Flint MP

Thank you for your letter dated 5 July which was considered by Sub-Committee G on 20 July.

We are grateful to you for setting out the Government’s present position on the legal base issue and for promising to report further once the Government has been able to reflect fully on the implications of the ENISA judgment, which is relevant to other matters under scrutiny.

Meanwhile, it appears that the Council vote expected last month did not take place. We are grateful for your assurance that, should a Council vote be required on the Proposal, the UK will make a formal Minute Statement recording the Government’s position on the legal base issue. Please report if that happens.

20 July 2006

EUROPEAN QUALIFICATIONS FRAMEWORK FOR LIFE-LONG LEARNING (11189/05)

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

In your letter of 4 November 2005, you asked that the Committee be sent a copy of the UK response to this Commission consultation document.

I am pleased to be able to enclose with this letter a copy of the UK Government’s response to the consultation. My officials sent it to the Commission on 11 January 2006.

My department launched a UK wide consultation on the Commission Staff Working Paper on the European Qualifications Framework (EQF) on 2 September 2005. 153 stakeholders were invited to respond to the consultation directly, and the devolved education administrations in Scotland, Wales and Northern Ireland also alerted their stakeholders to the consultation. This response represents the views of the UK Government, taking account of the responses received.

I will of course keep the Committee informed about any developments relating to this document, which the Commission propose to publish later this year.

23 January 2006

Annex A

UK RESPONSE ON A PROPOSED EUROPEAN QUALIFICATIONS FRAMEWORK

INTRODUCTION

The Department for Education and Skills, in the United Kingdom, launched a UK wide consultation on the Commission Staff Working Paper on the European Qualifications Framework (EQF) on 2 September 2005. 153 stakeholders were invited to respond to the consultation directly, and the devolved education administrations in Scotland, Wales and Northern Ireland also alerted their stakeholders to the consultation. The consultation invited interested parties to provide answers to the questions raised in the Commission’s document. It also invited respondents to raise any other issues about a European Qualifications Framework.

The responses received were from a wide range of interested organisations. They included competent authorities, whose occupations are covered by the provisions of the mutual recognition Directives; awarding/examination bodies; sector skills organisations; professional and business organisations; trade unions; higher education institutions and their representatives and the devolved education administrations.

This response represents the views of the UK Government, taking account of the responses received.

SUMMARY

The UK welcomes the proposal for an European Qualifications Framework. We believe that it can help improve mobility of individuals across borders by allowing qualifications across different Member States to be related to one another. This can make a significant contribution to the Lisbon process, by helping labour markets function more effectively, as well as allowing individuals to achieve personal fulfilment. We particularly support the outcome-based approach, and moves towards the recognition of non-formal and informal learning, which will allow the EQF to be used for a wide range of different forms of learning.

However, we believe that there are some key issues which need to be addressed to make the EQF a success. These are:

— The EQF needs to be consistent with the existing Framework for Qualifications in the European Higher Education Area (the “Bologna Framework”) and the linkages between the two need to be clearly and simply articulated.

— Links between lower levels of the EQF and qualifications for learners with low skill levels should be clarified further.

— The process for self-certification of EQF levels should be underpinned by a voluntary peer review process to improve consistency and build mutual trust.

— The level descriptors should be refined after consultation with stakeholders and an extensive trial phase. This should involve all stakeholders; and should aim to simplify and reduce the level of detail.

— The “Supporting and indicative information” in table 2 should not be part of the consultation document. This level of detail should be the responsibility of Member States, to reflect their national contexts.

UK RESPONSE TO SPECIFIC CONSULTATION QUESTIONS

THE RATIONALE OF AN EQF

1. Are the most important objectives and functions to be fulfilled by an EQF those set out in the consultation document?

The UK supports the objectives set out in the consultation document, which recognise the EQF as a translation device which will allow different national frameworks to be related to one another. We believe that this has the potential to help increase the mobility of individuals across Europe, as well as helping develop institutional and sectoral partnerships across national boundaries. This could help the internal market work more effectively, and hence make a significant contribution towards achievement of the Lisbon goals. It could also help individuals achieve personal fulfilment by allowing them to work and study more easily in different Member States. We are particularly pleased with the focus on learning outcomes, which is consistent with the development of qualification frameworks across the UK, and should help move towards a system where individuals are recognised for what they can do, rather than how long they have studied.

However, it is essential that the EQF remains a meta-framework, and does not aim to replace or supplant national frameworks. It is also important that it recognises the frameworks that are already in place and, in particular that it is totally consistent with the Framework for Qualifications in the European Higher Education Area (the “Bologna framework”), to avoid any confusion that might arise if stakeholders feel that they have two different frameworks to relate to. Some stakeholders have expressed concern over the mapping of the EHEA Dublin descriptors to the EQF descriptors specified in the consultation paper. The UK believes that the HE sector should be closely involved in a pilot and testing phase to ensure that the terminology and descriptors in the two frameworks are compatible with one another.

2. What is needed to make the EQF work in practical terms (for individual citizens, education and training systems, the labour market)?

In order to make the EQF work, it needs to be described in clear and simple terms in order to be accessible to all key stakeholders. It needs to complement and articulate clearly to other existing frameworks, such as the EHEA framework developed under the Bologna Process.

A number of respondents to our consultation felt that the overall purpose of the EQF, as well as its limitations could be stated more clearly, and a few misunderstood the nature of the EQF as an attempt to harmonise or regulate. Clear communication of the purpose and objectives of the EQF is essential to build support for it amongst stakeholders.
Furthermore, it is essential that the framework is not excessively detailed, otherwise it will become complex and inaccessible. Detail should be left to those implementing national frameworks—with the EQF merely providing common reference points. A number of respondents were concerned by the level of detail in the framework, and the UK would support moves to further refine and simplify the descriptors.

The EQF also needs the support of employers, awarding bodies, and professional bodies in order for it to encompass the full spectrum of lifelong learning. In order to achieve this, extensive consultation on the detail of the EQF needs to be undertaken. This should be done through a piloting and test phase that will involve stakeholders from each of the key sectors.

An integrated credit transfer system would be useful in the long term to improve the ability of individuals to acquire qualifications within different learning systems in different countries. This should be linked to learning outcomes, to be consistent with the principle of the EQF. However, this will need to be consistent with existing credit transfer systems, and in particular, the developments in Higher Education under the Bologna process.

3. What should be the content and role of the “supporting and indicative information” on education, training and learning structures and input (table 2)?

The UK believes that the “supporting and indicative information” on education, training and learning structures and input given in table 2 should not be part of the EQF proposal. This is because it contains input-based measures, which sometimes contradict the descriptors given in table 1, and can therefore be confusing. Instead, the content in table 2 should be the responsibility of each Member State to complete during the implementation phase of the EQF, to indicate how their national and sectoral qualifications fit into the EQF.

This view was echoed by our stakeholders, many of whom felt that table 2 as drafted was confusing to them, and undermined the outcome-based focus of table 1. However, a number felt that some sort of information on how the outcomes in table 1 related to the particular qualifications frameworks in the UK would be helpful.

4. Does the 8-level reference structure sufficiently capture the complexity of lifelong learning in Europe? Do the level descriptors, in table 1, adequately capture learning outcomes and their progression in levels?

The UK supports the 8 level reference structure as an effective means of capturing a wide range of lifelong learning approaches. We particularly support the outcome-based approach of the EQF, which is consistent with the developments within qualification frameworks across the UK, and are pleased that non-formal and informal learning will be captured by these descriptors.

However, we have some concerns about the lack of clarity in the present framework over how lower levels of qualifications, such as those for learners with low skill levels would be accommodated. This could weaken progression opportunities across Europe for vulnerable learners, which is an important issue given the concern with EU-wide progress against the agreed social inclusion benchmarks. We would suggest that the content of the lower levels of the EQF is reviewed to ensure that the lowest levels of qualifications and learning are recognised within them.

We are also concerned about the level of complexity within some of the descriptors. Although there is a need to ensure that the descriptors contain adequate detail to ensure that they are not too general for practical purposes, we are concerned that in some areas, the level of detail is approaching that of a national framework.

As mentioned in section 2 above, the UK believes that it is essential for the actual descriptors to be tested out in practice, with a wide range of stakeholders and a number of different qualification systems. There is no mention of a test and trial period for the actual descriptors within the consultation document, and we strongly believe that there should be one.

5. How can your national and sectoral qualifications be matched to the proposed EQF levels and descriptors of learning outcomes?

There are three different qualification frameworks in existence in the different parts of the UK. Both national and sectoral qualifications in the UK will be matched to the EQF through these national qualifications frameworks.
The involvement of Sector Skills Councils will be important for matching sectoral qualifications to the EQF in the UK. More details of this are given in section 10 below.

**National Qualifications Frameworks**

6. **How can a national qualification framework for lifelong learning—reflecting the principles of the EQF—be developed in your country?**

As mentioned above, the UK already has three different qualifications frameworks in each of the different parts of the UK. Northern Ireland, Wales and England have a 3-country framework, known as the National Qualifications Framework (NQF), which has nine levels, including an entry level. Within this, Wales has its own Credit and Qualification Framework for Wales (CQFW). Scotland has a separate own credit and qualifications framework, the Scottish Credit and Qualifications Framework (SCQF), based on 12 levels, which includes access levels.

Currently, England, Wales and Northern Ireland are discussing the development of the current NQF into a more inclusive unit-based qualifications framework, underpinned by a system of credit accumulation and transfer across the three countries. Furthermore, joint working with Ireland has led to a publication of a diagram showing the equivalence between qualifications in England, Wales, Scotland, Northern Ireland and Ireland.

The UK believes that its experience of working with its different qualifications frameworks would provide a useful model that the Commission may wish to consider when implementing the EQF.

7. **How, and within what timescale, can your national qualifications systems be developed towards a learning outcomes approach?**

National qualifications systems in the UK already adopt a learning outcomes approach.

**Sectoral Qualifications**

8. **To which extent can the EQF become a catalyst for developments at sector level?**

The EQF can become a catalyst for developments at sector level, by allowing qualifications developed by sectors in the UK to be related to their equivalents in other European countries. Employer and business organisations that responded to our consultation were optimistic that this could help support efforts to reduce skill and labour shortages by encouraging mobility within sectors across Europe.

9. **How can the EQF be used to pursue a more systematic development of knowledge, skills and competencies at sector level?**

Systematic development of knowledge, skills and competencies at sector level should first occur through national qualifications frameworks. The EQF can then be used to translate these developments to similar ones across Europe. Many sectors already collaborate on an EU-wide basis and the EQF can help stimulate collaboration on skill development in similar sectors across different Member States. However, as a meta-framework, it should not be used to bypass national frameworks.

10. **How can stakeholders at sector level be involved in supporting the implementation of the EQF? How can the link between sector skills development and national qualifications be improved?**

Stakeholders at sector level can only be involved in supporting the EQF implementation if the content of the EQF is relevant to them. This means that it should support recognition of workplace as well as academic learning, and sectoral stakeholders should be involved in the test phase of the EQF.

To improve the link between sector skills development and national qualifications, it is important for national qualifications bodies to work with sector organisations to ensure that the development of qualifications fits within the national frameworks. In particular, it is essential that the work on defining knowledge, skills and
competencies at a sectoral level is demand-led. Otherwise, the development of sectoral qualifications may not necessarily be relevant to the needs of the employers, which will reduce their usefulness.

Our mechanism for achieving this in the UK is through the involvement of Sector Skills Councils. These are employer-led bodies that are responsible for identifying and defining current and future skill needs within their sector. Our national qualifications bodies are working with the Sector Skills Councils to understand their learning and training needs. The aim is to deliver customised qualifications that help drive the acquisition of skills in a sector, and are linked to the national qualifications frameworks to provide clear pathways for progression.

**Mutual Trust**

11. *How can the EQF contribute to the development of mutual trust (eg based on common principles for quality assurance) between stakeholders involved in lifelong learning—at European, national, sectoral and local levels?*

The UK believes that mutual trust cannot solely be achieved through a consistent set of level descriptors, but also requires trust in quality assurance systems in different countries. In particular, we believe that the self-certification of levels to the national qualifications frameworks in Member States will need to be strengthened through a form of voluntary peer review, to build trust and ensure that consistent procedures are being used.

It is also essential that the EQF does not undermine existing arrangements for quality assurance under the Bologna process. This requires consistent terminology, and compatible procedures.

12. *How can the EQF become a reference to improve the quality of all levels of lifelong learning?*

The EQF can improve the quality of lifelong learning in the EU by facilitating co-operation and collaboration between providers in different countries, thereby raising standards. It can also stimulate the development of national qualifications frameworks that are outcome based, and recognise a wide range of learning. However, it is the national qualifications frameworks themselves, and not the EQF that should be the main drivers of improvement of quality in lifelong learning. The EQF therefore needs to ensure that it remains a translation device, complementing other frameworks that are already in place, and does not seek to supplant or replace national frameworks.

**Letter from the Chairman to Bill Rammell MP**

Thank you for your letter dated 23 January which was considered by Sub-Committee G on 9 February.

We are grateful to you for sending us a copy of the UK response to the Commission consultation document. Although you say that the Government welcomes the proposal, we note that the response draws attention to several key issues which it says need to be addressed to make the EQF a success. Of these, we are particularly concerned over the possibility of duplication with the Bologna framework. If the Government regards the Bologna framework as useful so far as higher education is concerned, is it necessary to have a separate EQF for the EU at that level? Would it not be better to concentrate on the levels which Bologna does not cover?

We agree that the other points made in your response should be pursued. You will recall from other correspondence that we attach great importance to ensuring that the commitment of the Commission and Member States to life-long learning is genuine, effective and based on real understanding of, and adequate support for, the needs of older learners. We trust this will be given high priority in any discussions about the EQF.

Your Explanatory Memorandum dated 4 October 2005 reported that the results of the Commission consultation were expected to be discussed at a conference this month, in preparation for the formal proposal which the Commission was expected to present before the end of the current Presidency. Please let us have a report on the results of the conference, together with your comments on the above, and any more news you may have about the Commission’s plans.

We will retain the document under scrutiny in the meantime.

13 February 2006
EUROPEAN QUALITY CHARTER FOR MOBILITY (12639/05)

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

Thank you for your letter of 4 November,12 from which I am pleased to note that the Committee broadly welcomes the Commission’s proposals for a European Quality Charter for Mobility.

We share your view that the proposed guidelines should be clear, realistic and flexible; but most importantly, that these should not be over-prescriptive and place unrealistic burdens upon individual Member States, nor lead to excessive bureaucracy. The text of the Recommendation is still in the process of being finalised through Education Committee. During the UK Presidency, we ensured that sufficient time was allocated for discussions, which have been going well, and will now continue under the Austrian Presidency, with a view to finalising the text. We have already been able to secure some changes that reinforce the voluntary nature of the Charter. In addition, comments from Member States have been reflected in revised versions of the text, particularly with regard to respecting the need to avoid over-prescriptiveness and excessive bureaucracy when recommending the proposed guidelines. The Charter will be discussed further at Education Committee during March and April. It will then be considered by Coreper on 3 May, prior to possible political agreement or possibly even a First Reading deal with the European Parliament at the May Education Council.

In response to your specific points, Articles 149 and 150 of the Treaty recognise the responsibility of Member States for the content of teaching and organisation of education systems and their cultural and linguistic diversity, and for the content and organisation of vocational training. However, since Article 149 focuses on development and co-operation in relating to teaching and dissemination of the languages of the Member States rather than harmonisation, we have managed to secure changes to the text so that it is more appropriate for Member States to decide what linguistic preparation and support are required. We think this better reflects Member States’ subsidiarity, as linguistic preparation would only apply if certain countries thought it appropriate. It also reinforces the voluntary nature of the Charter, since Member States would be free to implement elements of the guidelines as they choose. During discussions at Education Committees, this issue was raised by several Member States, who felt the initial text was too prescriptive, and in some cases language preparation prior to departure might not be appropriate. Moreover, it was noted that this provision might cause significant problems for some smaller countries. The re-drafted text therefore indicates that such support should be provided “wherever possible”.

In addition, as provision of logistical support does not fall within the scope of Articles 149 and 150, we have managed to secure some improvements in the text, to indicate that where necessary any logistical support provided to participants might include information on, inter alia, travel arrangements, accommodation, residence or work permits, social security, leaving it up to Member States themselves to decide what is appropriate.

Likewise, whilst we share your concerns about competence creep of the Commission’s powers if the Recommendation is adopted, we think this is unlikely to happen, as again, Member States would not be required to take any action but would be free to implement discrete parts of the guidelines, in line with their national needs and priorities. Other Member States had similar concerns in this area during Education Committee negotiations, and there have been several changes in the text of the Recommendation to reflect these. For example, the reference to respecting Member States’ competences now features more prominently in the Introduction to the Charter. There was also concern that the suggestion to provide mentors was too prescriptive, with the result that the text now reflects the concept of providing a mentoring scheme, rather than providing a mentor per se. Member States also called for more clarity as to who was responsible for setting out commitments and responsibilities to all participants. There was a general agreement that some of this responsibility should lie with the National Agencies responsible for the EU education, training and youth mobility programmes, whilst at the same time noting the need to avoid too much bureaucracy, which could make participation appear less attractive for sending and hosting organisations, and participants.

You asked about the procedure for taking the outcomes of expert Working Groups and translating them into Commission proposals. At the Stockholm European Council in March 2001, EU Education Ministers set out 13 key objectives in education and training across Europe. Following this report, a Detailed Work Programme was agreed, with eight expert groups being set up. Between them, they took forward work on the 13 objectives. The outcomes were fed into the Joint Interim Report on progress adopted by EU Education Ministers in February 2004, and then presented to the 2004 Spring European Council. The Report called for a common set of references and principles in the field of education and training, to promote good quality mobility within education and training systems throughout the EU by 2010. The UK was represented on most of these groups.

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by policy experts from this Department and the Scottish Executive, as well as experts from external organisations, including education associations both in England and in Scotland. Officials from the Joint International Unit oversaw the work of the groups, and kept in close contact with the UK experts, consulting policy colleagues both from DfES and other government departments on discrete issues arising from the working groups.

The Working Group looking at Quality in Mobility was one of the groups set up by the Commission. Part of its remit was to contribute to the development of European policy within the framework of the work programme on the follow-up of the Lisbon Objectives. The aim was to increase the quality of mobility by setting out a common European set of principles, to be implemented by Member States on a voluntary basis. The Commission’s draft Quality Charter for Mobility came from the work of this group.

The Commission’s discussion paper on Principles on Quality in Educational Mobility, presented to the Informal meeting of EU Education Ministers in Rotterdam in July 2004, included a draft statement of principles, which formed the basis for the subsequent Mobility Charter. Ministers concluded that quality of mobility played an important role in achieving the Lisbon goals, and that the Commission discussion paper should form the basis for measuring quality within the new education and training programmes, to include elements such as language learning, knowledge of cultural characteristics, guidance activities and recognition of credits gained during a period of mobility. In the light of the Rotterdam outcomes, where Ministers agreed a basic set of principles to support quality in mobility, and the work from the expert group on Quality in Mobility, we are content that there has been sufficient consultation before the Commission published its Recommendation for a European Quality Charter for Mobility.

The New Programmes Steering Group, set up by my Department, includes various stakeholders involved in the current education and training programmes, and will be taking account of the principles behind the mobility charter in the implementation of the new Programmes. The practical experience of those in the Steering Group will inform our negotiations and help us to ensure that the needs and expectations of programme participants are the main consideration in the Recommendation.

11 January 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 11 January which was considered by Sub-Committee G on 9 February.

We are grateful for your very thorough report on the progress made in developing this Proposal. We are glad that the Government has taken account of our concerns over competence, subsidiarity and the need for clear, more realistic and flexible guidelines which are not over-prescriptive or place undue burdens on individual Member States. It is good to see that other Member States have supported this line and that several improvements have already been made to the text to reinforce the voluntary nature of the Charter. We hope that further progress will be made with this approach as negotiations continue.

We take your point that subsidiary must be respected so far as the responsibility of Member States for language preparation is concerned in this non-binding exercise. But we would remind you of the findings of our Inquiry Report on the EU Integrated Action Programme for Life-long Learning that the poor state of language capability in this country is a serious barrier to mobility. We would not want the adoption of the phrase “wherever possible” to be seen as diluting the Government’s responsibility for ensuring that British students and trainees are given adequate language preparation to enable them to take full advantage of mobility opportunities.

Thank you for your clarification about the extent of the consultation over the recommendations of the expert Working Groups and in preparations for Council discussion. We are glad to note your view that this consultation has been sufficient and to know that the Government is continuing to consult interested parties.

We also note that the Charter is expected to be considered by COREPER on 3 May in preparation for the possibility of political agreement, or perhaps a First Reading deal at the European Parliament, at the May Education Council. We will continue to hold this document under scrutiny in the meantime and look forward to a progress report on your negotiations in good time before the COREPER meeting.

13 February 2006
Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 13 February about the proposed European Quality Charter for Mobility.

We are confident that the voluntary nature of the Charter will be maintained. We shall continue to press for this during forthcoming discussions at Education Committee, along with other Member States who are also keen to ensure that the Charter is seen as a voluntary tool for use when implementing the new Integrated Lifelong Learning Programme. At the meeting of the Education Committee on 28 March, the Presidency presented a revised version of the text for the Charter, highlighting the substantial progress that had been made under the UK Presidency. The UK was happy with this new draft, which reflected well the compromises that had been reached at the London Education Committee during our Presidency last December.

I note your concerns that the reference to “wherever possible” in the Charter in relation to linguistic preparation might be seen as diluting our responsibility for ensuring that students and trainees are sufficiently prepared in language skills to participate in mobility projects. You particularly highlighted this, since your Inquiry Report on the new Integrated Lifelong Learning Programme identified poor language skills as a key barrier to mobility for young people and trainees. However, we consider that this reference provides a sensible balance between offering guidance on good practice, whilst at the same time avoiding over-prescriptiveness. In addition, we would wish to avoid anything which might act as a deterrent for individuals and institutions. It has to be recognised that there are some practical restraints such as the possibility that institutions would not always be able to offer courses in all languages of potential host countries.

A First Reading deal with the European Parliament, as mentioned in my letter of 11 January, has not been possible. There was some delay in deciding that the Culture Committee of the Parliament should take the lead. A General Approach at the 19 May Council now seems most likely as we understand that the EP will not adopt its first reading of the Recommendation before then. The revised text will shortly be sent to Coreper, for consideration on 3 May.

19 April 2006

Letter from Bill Rammell MP to the Chairman

My officials have sent you the latest version of this document which was discussed at Coreper on 3 May. I can report that no amendments were made and we are content with the Coreper texts.

9 May 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letters dated 19 April and 9 May which were considered by Sub-Committee G on 11 May.

We are grateful for your assurances about the voluntary nature of the Charter and note that the Government is content with the Presidency’s revised text which was accepted by COREPER on 3 May.

We have carefully considered what that text says about linguistic preparations in the light of the remarks in your letter. On reflection, we take your point that a voluntary document of this nature should strike a sensible balance between offering guidance on good practice whilst avoiding over-prescriptiveness or unduly deterring potential participants. We also accept that institutions will not always be able to offer courses in the relevant languages of potential host countries for the time being, regrettable though that may be.

We are therefore prepared to accept the revised text as drafted, and to release the document from scrutiny to enable the Government to support the expected General Approach at the Education Council on 19 May.

In doing so, however, we must reiterate our strong view of the Government’s responsibility to take urgent and effective action to remedy the lamentable state of linguistic capability in this country and to make every effort to ensure that British students and trainees are given adequate language preparation to enable them to take full advantage of the mobility opportunities offered by the Life-long Learning programme and similar schemes.

We look forward to discussing further the practical implications of this at the informal meeting which has already been arranged with Ms Judith Grant and Dr Lid King of your Department on Thursday 25 May to review the progress made by the New Programmes Steering Group in preparing for the implementation of the Life-long Learning programme.

We also look forward to your further report following the Council meeting.

12 May 2006
EUROPEAN SOCIAL FUND (13531/05, 8219/06)

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

Your Explanatory Memorandum dated 2 February was considered by Sub-Committee G on 9 March.

We note that the Government welcomes those amendments that would strengthen the European Employment Strategy and reflect the Lisbon Agenda. We agree with the Government’s view that the ESF should be used where it can add value to Member States’ policies and increase employment and improve workforce skills. We are also glad to note that the amended proposal includes a simplified delivery mechanism and aims to encourage a more strategic approach to programming.

In our view, the most important outstanding issue remains the eventual size of the ESF budget and the way it will be allocated in accordance with the priorities outlined. We will want to examine that very carefully in due course.

To help us prepare for that examination, we would welcome clarification of the Government’s current overall policy approach to the Structural and Cohesion Fund and how that might affect the allocation of funding for the ESF and other components. For example, we see that the DTI EM on the original Proposal dated 1 September 2004 (reference 11606/04) argued that structural funding should only be given to the poorest Member States, presumably even if that meant that the UK would not benefit from the ESF. But your new EM appears to accept that the ESF should support activities to improve the labour market relevance of vocational education and training in all Member States and not just in the poorest ones. We should be grateful if you would clarify this, explain the likely consequences for the UK and let us know what consultations you have had about those consequences.

We will retain the document under scrutiny pending your reply and further progress reports.

9 March 2006

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

Thank you for your letter of 9 March 2006 to James Plaskitt, Parliamentary Under-Secretary of State, Department for Work and Pensions regarding the above Explanatory Memorandum. I am responding as the negotiations on the reform of the Structural and Cohesion Funds fall within my portfolio.

I welcome your support for the Government’s view that the European Social Fund should be used where it can add value to Member States’ policies and increase employment and improve workforce skills.

I referred in my letter of 4 February to the agreement reached on the overall EU budget at the December European Council. The agreement means that our regions will continue to receive significant Structural Funds receipts in the next Financial Perspective. It also means that our poorer regions in particular will continue to receive substantial EU funds for regional development. We have been making clear since 1999 that the UK was certain to receive less from 2007, given the need to provide funds for the new Member States, and given the fact that our economic performance has been stronger than many other Member States.

The Government’s original proposals for Structural Funds reform of 2003, as set out in the Department of Trade and Industry’s Explanatory Memorandum number 11606/04, would have focused a more limited Structural Funds budget on the poorer Member States, with richer countries financing regional development programmes from their domestic budgets. However, some countries were unprepared to accept such a sharp cut in receipts within the timescale of the next Financial Perspective. The agreement represents a compromise that reflects the range of views amongst the Member States, while ensuring that the new Members receive the very significant levels of funding that they need to catch up with the EU-15.

As part of the reform negotiations, the Member States have agreed to strengthen the strategic focus of future Structural Funds spending by establishing Community Strategic Guidelines on Cohesion and National Strategic Reference Frameworks, which will set out the broad objectives for future programmes.

The European Commission published its draft Community Strategic Guidelines on 5 July 2005. This was the subject of the Department of Trade and Industry’s Explanatory Memorandum number 10684/05 + ADD/1. This was followed by a Europe-wide consultation on the Guidelines, which ended on 30 September. In our view, the draft Guidelines successfully dentify 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.
On 28 February the Government launched a consultation on the UK’s draft National Strategic Reference Framework. The National Framework will establish the broad priorities for future Structural Funds (including European Social Fund) Programmes in the UK from 2007–13. The consultation document also invites comments on two related issues: the UK Government’s proposals for distributing its Structural Funds allocations under the Competitiveness Objective (replacing the current Objectives 2 and 3); and administrative arrangements for delivering the Funds in the UK during the next budgetary cycle.

I note your concern regarding the eventual size of the European Social Fund budget and the way in which it will be allocated. The Government’s current thinking is that the UK’s Competitiveness funds should be divided equally between the European Regional Development Fund (for regional development) and the European Social Fund (for promoting employment) at the UK level. We have not yet reached any firm conclusions on the allocation methodology for distributing the two funding streams across the UK’s nations and regions. As part of the consultation we are inviting comments on how best to allocate the UK’s ERDF and ESF funding, including views on the indicators, weightings, safety nets and ceilings that could be used.

The Department of Trade and Industry will publish all non-confidential responses on its website after the consultation ends. It will aim to publish a response to the consultation within three months following the close of the consultation on 22 May. This will include a summary of responses, a statement of the positions of the Government and the Devolved Administrations on the issues raised in the light of the responses, and the final UK National Strategic Reference Framework.

I hope that this clarifies the Government’s thinking on Structural and Cohesion Fund reform. I will keep your Committee informed as the negotiations on the reform of the Structural and Cohesion Funds progress.

10 April 2006

**Letter from the Chairman to James Plaskitt MP**

Your Explanatory Memorandum dated 18 April was considered by Sub-Committee G on 27 April.

We note that agreement has been reached at official level on the Presidency compromise text of the ESF Regulation and that the Government welcomes it, believing it to be an improvement on the earlier version.

We are grateful to your DTI colleague Alun Michael for the useful clarification of the Government’s overall approach in his letter to me dated 10 April, including confirmation that the UK will continue to benefit from the ESF, as well as from the European Regional Development Fund, during the next Financial Perspective. We are glad to note that the Government will be carrying out consultations on the best way of handling these funds in the UK.

I have already written to your colleague Malcolm Wicks confirming clearance from scrutiny of the separate proposals for Council Regulations (references 8216/06, 7177/06 and 8218/06) on the ESF, as well as the European Regional Development Fund and the Cohesion Fund, which include the all-important budgetary aspects.

In the circumstances, we are also prepared to clear the Presidency compromise text of the proposal for a Regulation (reference 8219/06) from scrutiny, as well as the earlier Commission amended proposal (reference 13531/05) which it replaces.

Although your EM states that the compromise text was due to be considered for “political agreement” by Council on 25 April, we understand from your officials that it will now be considered by COREPER on 3 May with a view to possible Council consideration on 5 May. We would be grateful if you would report when a decision has been taken by Council.

27 April 2006

**EUROPEAN YEAR OF EQUAL OPPORTUNITIES 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 letter dated 8 December 2005 which was considered by Sub-Committee G on 12 January.

We are grateful to you for bringing us up-to-date on moves at the European Parliament which you say are likely to pave the way for a Council decision before the end of this month. We understand from your officials that the EP plenary voted last month in favour of all the amendments proposed by the Civil Liberties Committee and that the First Reading deal envisaged would include increasing the budget for the Year from €13.6 million, as proposed by the Commission, to €15 million.

We also understand from your officials that you are anxious for a decision on whether to release this Proposal from scrutiny before a COREPER meeting on 25 January which is intended to prepare for the General Affairs Council meeting on 30 January.

Before reaching that decision we would be grateful if you could summarise the amendments accepted by the European Parliament and explain the justification the Government has for the proposed increase in the budget from €13.6 million to €15 million.

We will continue to retain this document under scrutiny pending your reply.

12 January 2006

Letter from Meg Munn MP to the Chairman

I am writing to update you on the progress made during negotiations on this proposal since I last wrote on 8 December 2005.

The UK Presidency has successfully led negotiations in Council Working Groups, making good progress on this dossier since it emerged in July 2005. The UK worked closely with the Commission and the rapporteur of the European Parliament Civil Liberties (LIBE) Committee to reach a compromise on the text. As President, the UK considered that our negotiating position was not compromised by this text. The Plenary voted in favour of the Year on 13 December 2005. They adopted 50 compromise amendments to the proposal (see attached annex). The decision is now scheduled to go to Coreper on 25 January as an I point and Council on 30 January for agreement as an A point.

Out of the 50 amendments, I should highlight that the Council agreed to accept the EP’s amendment (38) to increase the budget for the Year from €13.6 million to €15 million. This was seen as a fair compromise to accept by both the Council and the EP, as previous draft amendments made it clear that some MEPs wanted to double the budget. The EP feels that this is an important issue for Europe and therefore the budget needed to be increased in order for MS to raise awareness adequately. The Year of Disabled People in 2003 was allocated €12 million by the European Commission, which covered just the one strand of Article 13 and took place before the recent enlargement (27 MS will be participating in the Year of Equal Opportunities, including Bulgaria and Romania). We therefore consider €15 million to be a reasonable amount of money to carry out the activities under the Year of Equal Opportunities.

The EP accepted the Council’s amendments, including a simpler administrative procedure (amendments 29, 30, 32, 34, 44, 45) and textual changes such as language on gender mainstreaming, multiple discrimination and social inclusion, in return for a modest 10 per cent increase in the budget. The CION suggest that the money would go on additional EU level activities in 2007 so it would not have an impact on the amount of money to be allocated to MS or the corresponding amount of national co-financing required. Apart from the budget, and Council simplifying the administrative processes, the majority of amendments are textual and do not cause the UK great concern.

As I mentioned in previous letters, it is important that the decision is agreed in January 2006 in time for Member States to make preparations for the Year to start in 2007. The UK is now the only Member State to have a reserve on this dossier, and after all the progress made by the UK Presidency on negotiations, the UK would be in a difficult position not to lift its reserve at Coreper on 25 January.

12 January 2006

Letter from the Chairman to Meg Munn MP

Thank you for your letter dated 12 January which crossed with my letter to you of the same date. It was considered by Sub-Committee G on 17 January.

We are grateful to you for giving some more information about the proposed increase in the budget from €13.6 million to €15 million. We agree that this increase is not unreasonable in the circumstances.

We are also grateful for your description of the Council’s amendments. We welcome the simplified administrative procedures and note that the majority of the amendments are textual. Although your letter says that most of these amendments do not cause the UK “great concern”, we are assured by your officials that none of them cause the UK any concern at all. On that understanding, we are prepared to lift scrutiny as requested to enable you to support the proposed First Reading deal at Council on 30 January.
Nevertheless, we still have doubts about the clarity of this proposal and what it may achieve in practice. We therefore expect the Government to press the Commission for a thorough evaluation of the achievements of the Year and will want to consider that evaluation very carefully when it is submitted for Parliamentary scrutiny in due course.

18 January 2006

Letter from Meg Munn MP to the Chairman

I am writing to inform you that a first reading deal has been achieved between the European Council and the European Parliament on this proposal. I am attaching a copy of the text for your information (not printed). As you know, your Committee lifted its scrutiny reserve of this proposal by letter on 18 January.

The proposed European Year responds to the need, identified in the 2004 Green Paper on Non-Discrimination, for further awareness raising initiatives. The Year builds on the success of the 1997 Year Against Racism and the 2003 Year of People with Disabilities. The objective of the proposed Year of Equal Opportunities in 2007 is to raise awareness of the benefits of a “just cohesive society where there is equality of opportunity for all, irrespective of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation”, as well stimulate debate and exchange of good practice.

Negotiations (led by the UK Presidency) of the European Year of Equal Opportunities had been prioritised to ensure that Member States have time to make necessary preparations and to reach a first reading deal.

27 April 2006

Letter from the Chairman to Meg Munn MP

Thank you for your letter dated 27 April reporting that, as expected, a First Reading deal has been achieved between the European Council and the European Parliament on this Proposal on which we lifted the scrutiny reserve by my letter to you dated 18 January.

Your letter was notified by the meeting of Sub-Committee G on 11 May. We are glad that you are satisfied with the outcome and hope that the Government will make the most of the opportunities presented by the Year.

12 May 2006

EUROPEAN YEAR OF INTERCULTURAL DIALOGUE 2008 (13094/05, 8596/06)

Letter from David Lammy MP, Minister for Culture, Department for Culture, Media and Sport to the Chairman

Thank you for your letter of 22 November 2005 in response to my Explanatory Memorandum dated 25 October. Following further discussions at working group level 1 now have additional information with which to address your questions.

The main objectives of the Year are: to help all those living in an expanded European Union to adapt to a more open, multicultural environment, and to raise the awareness of all those living in the European Union of the importance of engaging in dialogue with people from other ethnic and faith groups and from other countries in the EU. I fully support these objectives.

The Year has a modest budget and the Commission’s intention is that the Year should complement, draw attention to and add value to Intercultural Dialogue activities within other programmes rather than focussing on projects. This will ensure that it does not duplicate the actions which other Programmes could fund. The Culture programme (formerly known as Culture 2007) and Citizens for Europe are two examples of programmes which should be strengthened by the related activities under the proposed Year of Intercultural Dialogue.

The budget proposed for the Year is €10 million (£6,820,000), but the final budget is still to be agreed as part of the Inter-institutional agreement with the European Parliament. This will fund an awareness-raising campaign and a limited number of emblematic actions on a European scale aimed at raising awareness, particularly among young people, of the objectives of the European Year. The Commission also proposes co-financing actions on a national scale with a strong European dimension. This funding would be allocated to Member States on the basis of their relative size, but the Advisory Committee would also need to ensure that any application met the selection criteria.

It is envisaged that promotion of the proposed Year of Intercultural Dialogue in the UK will be done through the funded actions which take place here. While it is too early to discuss specific examples of such activities, some possibilities are already being considered: English Heritage are interested in the potential links between involving citizens in the historic environment and developing active European citizenship and celebrating cultural diversity.

We in DCMS are eager to take advantage of the fact that 2008 is both the Year of Intercultural Dialogue and the year when Liverpool will be European Capital of Culture. Officials will be having an initial meeting with the European Commission and Liverpool to discuss the possibilities for an event in Liverpool to bring together both Years.

19 February 2006

Letter from the Chairman to David Lammy MP

Thank you for your letter dated 19 February which was considered by Sub-Committee G on 16 March. In principle, we continue to support the general objectives of the Year, as you do. They are potentially important and topical. But they are vaguely-defined and will require sensitive interpretation. We still find it hard to judge what effect these proposals might have in practice and to be confident that they will add worthwhile value to all the other Commission-funded cultural programmes. With the modest budget proposed, it will be essential to ensure that any projects funded from it are sound and likely to make a significant impact.

Much will therefore depend, in our view, on the integrity and effectiveness of the proposed Advisory Committee, about which we can find no details in the documentation produced so far. We would be grateful if you could explain how this Committee will be chosen, what its terms of reference will be and what oversight Member States will have of its activities.

We also want to be sure that the results of the Year will be rigorously evaluated by the Commission and Member States, as well as being submitted for Parliamentary scrutiny in due course.

We will continue to retain the document under scrutiny, pending your reply on these points. But we would also be glad to be kept in touch with the Department’s thinking, as it develops, on how to make the best of this opportunity in the UK.

Although we accept that it may be too soon to say exactly what activities might be held here under the aegis of the Year, we warmly welcome your efforts in trying to link the Year with the designation of Liverpool as the European Capital of Culture. At first sight, this strikes us as a potentially important initiative to which priority should be given. We hope it will be pursued with vigour and imagination in the Department’s discussions with the city authorities and the European Commission.

16 March 2006

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

I am writing to ask you and your Committee to consider the attached Supplementary Explanatory Memorandum on the Proposal concerning the European Year of Intercultural Dialogue (not printed).

The initial proposal for the Year was cleared by the House of Commons European Committee in November last year, but the House of Lords Committee placed a scrutiny reserve on the proposal, which it maintains.

I believe that the concerns which your Committee expressed in your letter of 16 March about the clarity of the objectives, the Advisory Committee and the evaluation process have been effectively answered in the revised text of the Proposal, and I would be grateful if you could urgently consider this issue before the Council meeting next week on 18 May.

12 May 2006

Letter from the Chairman to Shaun Woodward MP

Thank you for your letter and Supplementary Explanatory Memorandum dated 12 May, the electronic version of which only reached us shortly after 6 pm on Monday 15 May.

You asked for a decision to be taken on the scrutiny reserve before Thursday 18 May when the Council was due to decide on a General Approach. Members felt strongly that the notice given was unreasonably short and that your letter had not explained adequately why it could not have been submitted before. Your officials were
therefore told that your request could not be considered until the weekly meeting of Sub-Committee G on the morning of 18 May.

This is not the first request we have had recently for urgent consideration of what appears to be a last-minute move by the Austrian Presidency to bring outstanding items forward for decision at Council. We suggest that the Presidency might be reminded that Parliamentary scrutiny is taken very seriously in this country and that the scrutiny committees cannot be expected to short-circuit their normal procedures of methodical consideration when there is no apparent good reason for doing so.

Following careful consideration by the meeting of Sub-Committee G on 18 May, I confirm that we are prepared to release this document from scrutiny, as requested, to enable you to support the expected proposal for an agreed General Approach at the Council meeting on 18 May. The Clerk passed a telephone message to that effect to UKREP in time for the afternoon session of the Council when we understand this was due to be discussed.

In reaching this decision, we still felt that the overall objectives of the Proposal remained vague. We would like to remind you of what I said in my letter dated 16 March to David Lammy about the need for sensitive interpretation of the objectives and to ensure that any projects funded from the Year’s budget are sound and likely to have a significant impact.

We are glad to see that the UK will be represented on the Advisory Committee which will assist the Commission in carrying out the programme and trust you will ensure that the UK representative is fully aware of our views in this respect. We also welcome the new arrangements for continuous, as well as final, evaluation by the Commission which is a step in the direction indicated in my letter dated 16 March.

Nevertheless, we are still not entirely clear how the management arrangements will work in practice. Since the General Approach is only a decision in principle in favour of the Proposal, we assume that these details are still to be worked out. We would be glad to know how the Government proposes to make sure that the combination of the Advisory Committee and the continuous evaluation will give Member States proper oversight of the way that the Commission is running the programme and carrying out its responsibilities for the overall coherence of the programme and complementarity with other initiatives, as set out in Article 10.

We also agree that the proposed reallocation of the budget to give more scope for co-financing actions at both Community and national level, and rather less for general information and promotional activities, is potentially helpful. But we will want that the distribution to be carefully monitored by Member States to make sure that the balance is right.

We are particularly pleased that the Department has made more progress in trying to capitalise on the designation of Liverpool as the European Capital of Culture in the same year as the European Year of Intercultural Dialogue, and that the Commission also seem to be keen on this idea.

The notion of trying to link Liverpool with other leading maritime cities “on the edge” of Europe is interesting and we hope it will be pursued with vigour and imagination. But we suggest that some less ambiguous term than “on the edge” might be found which would make clear that it is intended to mean the maritime geographical extremities of Europe.

We look forward to your report on the outcome of the Council meeting and your comments on the above. We would also be grateful if you could keep us informed of further developments.

18 May 2006

Letter from David Lammy MP to the Chairman

Thank you for your letter of 18 May addressed to Shaun Woodward in which you confirmed that the House of Lords Select Committee had agreed to lift the scrutiny reserve on the European Commission Proposal for a European Year of Intercultural Dialogue 2008. I am sorry for the delay in replying.

I am sorry if the Committee felt that we were trying to rush them into a decision. I would certainly not wish your members to feel pressurized in any way, and I know that my officials were only concerned that the scrutiny reserve might be lifted as soon as possible so that the UK could take a full part in discussions in Council.

I am very glad that the Committee decided to lift the reserve and very grateful for the speed of their decision. This enabling the UK to support the proposal for an agreed General Approach at the Council meeting on 18 May. I should also like to thank your Clerk for taking the trouble to pass the news by telephone to UKREP before the afternoon session of the Council on 18 May.

I agree with your view that the objectives of the Proposal will need careful handling and that projects should be sound. With both these aims in view, I am very encouraged by the potential of the Liverpool “Cities on the Edge” programme (even if you do not care for the name).
I am not yet sure exactly how the Advisory Committee will carry out its work and how the budget will be distributed. I will of course keep you in touch with these details as they become clearer, and continue to inform you of all important developments in the programme.

18 July 2006

HEALTH AND CONSUMER PROTECTION STRATEGY (8064/05, 9405/06)

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

Thank you for your letter of 31 October15 to Lord Warner on the above communication from the European Commission. I apologise for the long delay in replying. There have been a number of recent and significant developments which have a direct impact on your concerns and I wanted to be able to update you on the latest position.

Firstly, the Committee wished to consider the budget. This will not be finalised until inter-institutional agreement has been signed off on the financial perspective (in the next few weeks). However, an increase of the order proposed is certainly out of the question. (Indicative figures released by the Commission in February suggest funding levels similar to the current programmes, although this may increase following the final budget deal).

Secondly, the Committee wished to consider the nature of actions at Community level in the proposal. The Commission have indicated that now the budget is close to being finalised they expect to revise the proposal, possibly reducing the number of actions. The European Parliament have also voted for amendments to the actions. The Commission are aiming to produce a revised proposal at the end of May.

The Government has given careful consideration to the issue of the Community’s competence to enact the measure as originally proposed. The view reached is that the health and consumer aspects of the decision appear broadly to be within the competence of articles 152 and 153. However, it is important to ensure that specific projects do not lead to initiatives that go beyond the scope of the Treaty. UK officials will seek a clarification in the revised text to this effect.

Given the developments outlined above, there will be no discussion of this proposal at the Health Council in June. I will be in a better position to supply further additional information when we have the promised revised proposal from the Commission and clarity about the budget and the actions proposed.

Finally, you mention the importance of evaluation of the current programme, particularly in relation to awareness-raising campaigns for public health. The Government has joined with other Member States to emphasise this point to the Commission at Council Working Groups.

8 May 2006

Letter from the Chairman to Rt Hon Rosie Winterton MP

Thank you for your letter dated 8 May which was considered by Sub-Committee G on 18 May.

We are grateful for this interim report and note that you expect the proposed budget to be clarified shortly, following the final settlement of the inter-institutional agreement on the Financial Perspective, and that the Commission will submit a revised proposal by the end of this month. We also note that, in the circumstances, the Proposal will not be discussed at the Health Council in June.

We are glad to see that you have taken on board the points made in my letter dated 31 October 2005 to Norman Warner and will expect these considerations to be borne in mind when the revised Proposal is examined.

In the circumstances, we will continue to retain the above document under scrutiny pending submission of an Explanatory Memorandum on the revised Proposal.

19 May 2006

Letter from the Chairman to Rt Hon Rosie Winterton MP

Your Explanatory Memorandum (EM) dated 21 June was considered by Sub-Committee G on 6 July together with the separate EM submitted by the DTI on the parallel amended Proposal for the consumer protection aspects (9909/06), on which I have written separately to your colleague Ian McCartney.

We note that the amended Proposal (reference 9909/06) replaces the earlier Proposal (reference 8064/05) about which I last wrote to you on 19 May and which can now be released from scrutiny.

As I have commented in my letter to Ian McCartney, we note that the Government prefers the division into separate public health and consumer protection programmes, as now proposed. We also note that the new programme is less ambitious than its predecessor, reflecting the reduced budget allocation.

So far as the amended Proposal on public health aspects (reference 9905/06) is concerned, we note that the Government is broadly satisfied with the revised programme. We agree that data on socio-economic factors and on the impact of other policies on health should be included in the proposed data collection activities to include, so long as this can be done within the national constraints and available data. We also support your wish to ensure that more emphasis is given to qualitative as well as quantitative evaluation, with stronger focus on monitoring outcomes and the impact of individual projects. We hope that other Member States will back your efforts to secure these improvements in Working Group negotiations.

We are grateful for your assurance that, even though the revised programme appears to be within the competence of Article 152, officials will seek a clarification in the text to emphasise the individual projects must not go beyond the scope of the Treaty.

Your EM does not mention consultation with stakeholders. We presume that this is under way and that the results will be reflected in the Regulatory Impact Assessment which you have promised.

We would also welcome an indication of the likely timescale for Council consideration as soon as the Finnish Presidency have made that clear.

The new document (reference 9905/06) will be retained under scrutiny pending your reply.

6 July 2006

Letter from Rt Hon Rosie Winterton MP to the Chairman

Thank you for your request of 6 July 2006 for further information on this proposal.

Negotiations on the proposal will get underway in the Council Public Health Working Group this month. I look forward to providing you with an update on the progress of these negotiations, and in particular on the points you raise in your letter, following your return from Summer recess. We will also ensure that our Regulatory Impact Assessment is forwarded to you at this time. This will reflect our stakeholder consultation earlier this year on the original proposal and on possible revisions.

12 July 2006

Letter from the Chairman to Rt Hon Rosie Winterton MP

Thank you for your letter dated 12 July which was considered by Sub-Committee G on 20 July.

We note that Working Group negotiations on the Proposal are expected to start this month. We are grateful to you for promising to report on the progress of those negotiations and to submit a Regulatory Impact Assessment, reflecting stakeholder consultation, for consideration after the Summer Recess. We are content with this and will continue to retain the document under scrutiny pending your promised report. When you do report we hope that you will be able to give us a clearer indication of the likely timescale for Council consideration.

20 July 2006

HEALTH AND LONG-TERM CARE: OPEN METHOD OF CO-ORDINATION (8131/04)

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

Further to my letter of 1 July 2005 on the open method of co-ordination, I promised to keep you up to date with developments in this area.

Since the UK submitted its national report on its healthcare system for the open method of co-ordination in healthcare process, the Commission has produced a very helpful synthesis note of the reports that it received from each member state. I have included a copy of this note as an Annex to this letter (not printed).

This helpful note outlines the similarities and differences between member states’ healthcare systems in the three areas of access, quality and financial sustainability which are the focus of the open method of co-ordination in healthcare. It highlights common challenges to all EU healthcare systems such as the ageing society, prevention of ill-health and health promotion and choice. It is helpful for us to know how other member states are tackling these issues and to be able to draw lessons from this.

In the conclusions of the note, the Commission stresses that “the aim of the OMC is not to develop common institutional solutions or to harmonise national systems. Each Member State has a unique system, and harmonisation would not make sense and is clearly not warranted. It will be up to the policy makers in each Member State to draw the appropriate lessons from the information that the Open Method of Co-ordination will make available to them and which should be usefully complemented by the work of international organisations such as the OECD and the WHO”. I welcome the recognition in this text that this process should be light touch and not administratively burdensome and that it should not impact on member states’ responsibilities in this area.

In terms of next steps, this note from the Commission has fed into the Streamlining Communication on all of the different forms of open method of co-ordination in the social protection field. This Communication has been adopted and you will receive an explanatory memorandum from James Plaskitt, Parliamentary Under Secretary (Commons) at the Department for Work and Pensions who is the lead minister for the Communication very shortly.

I will continue to keep you informed of any other relevant developments in this area.

11 January 2006

Letter from the Chairman to Rt Hon Rosie Winterton MP

Thank you for your letter dated 11 January. In effect it is a long-awaited reply to my letter to you dated 21 July 2005. Your letter was considered by Sub-Committee G on 2 March.

We are grateful to you for drawing our attention to the conclusion about the aim of OMC in the Commission’s Report on the review of preliminary policy statements on health and long-term care. This is very much in line with our own view on this and other OMC exercises which I have set out in earlier correspondence, including my letter dated 21 July 2005. So is the Commission’s other conclusion that resources are too scarce to allow duplication.

The risk of duplication is underscored by the Commission’s emphasis on the need to take account of the work of existing working groups. On the other hand, we note that the Commission calls for regional and local authorities to be more involved in the OMC. We trust the Government will ensure that the right balance is struck between these elements and that the best use is made of these and any other relevant resources.

Most of the Commission’s other conclusions seem to us to be self-evident. We hope that the further activity envisaged will produce cost-effectively more meaningful insights and concrete proposals to address the rather obvious needs which have been identified.

James Plaskitt’s Explanatory Memorandum on the new Framework for Open Co-ordination of Social Protection and Inclusion Policies in the EU (reference 5070/06), which you mention, has been sifted for examination to Sub-Committee A.

In the circumstances, we feel the time has come to release the present document from scrutiny, although we are grateful for your offer to report any further relevant developments.

2 March 2006

HEALTHY DIETS AND PHYSICAL ACTIVITY (15700/05)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under-Secretary of State for Public Health, Department of Health

Thank you for your Explanatory Memorandum dated 4 January 2006 which was considered by Sub-Committee G on 2 February 2006.

We are content to clear this document from scrutiny, although we would be glad if you would send us a copy of the Government’s submission to the Commission consultation.

You write that the Government supports the thrust of the Commission’s Platform for Action “which puts the onus on industry and the range of other non-governmental players across Europe”. We trust that you accept the Government has a clear role to play in promoting healthy diets, as well as working together with industry and health NGOs to further this aim.

We also hope you will make sure that the Commission strategy takes due account of all the relevant factors, including the relationship between malnutrition and obesity.

2 February 2006

**Letter from Caroline Flint MP to the Chairman**

When the Lords Scrutiny Committee cleared the Explanatory Memorandum, deposited in the House on 4 January, it requested a copy of the UK Government response to the European Commission’s Green Paper on Diet and Physical Activity. I am therefore pleased to enclose our response which was submitted to the European Commission at the end of March *(not printed)*.

The key messages for the Commission contained in the UK response are:

— the vast majority of areas covered in the Green Paper are best tackled by actions at national level;
— we support the voluntary self-regulatory approach;
— there are certain areas where the Commission can support and enable national governments;
— it is important to the UK that our non-regulatory initiatives are taken up elsewhere in the EU so that our efforts are not diluted; and
— there is much good work already underway across the UK.

*18 April 2006*

**Letter from the Chairman to Caroline Flint MP**

Thank you for your letter dated 18 April which was considered by Sub-Committee G on 11 May.

We are grateful to you for sending us a copy of the UK response to the Commission’s Green Paper. We are pleased to see that this stresses that the vast majority of areas covered by the Green Paper are best tackled at national level and through a voluntary self-regulatory approach. We note that you have indicated quite a number of areas where Commission action might be appropriate. At first sight, the list seems quite extensive. We trust that, in making those suggestions, the Government was satisfied that they were fully consistent with your overall approach to this matter, as well as with the requirements of competence and subsidiarity.

As you know, we have already released the Green Paper from scrutiny. We look forward to examining the Commission’s conclusions in due course.

*12 May 2006*

**HUMAN TISSUES AND CELLS (10122/03)**

**Letter from the Chairman to Rt Hon Rosie Winterton, Minister of State, Department of Health**

I am writing to let you know about the progress in implementing this Directive.

**BACKGROUND**

Directive 2004/23/EC was adopted on 31 March 2004 and published in the Official Journal on 7 April 2004. It sets standards for the safety and quality of all human tissues and cells (but not blood or organs) intended for or used in all human applications.

The Directive consists of a number of articles aimed at ensuring good practice, safety and efficacy in the way that tissues and cells intended for human application are procured, tested, stored, processed and distributed. It covers conventional tissue banking of bone, skin, corneas, heart valves etc as well as stem cells, gametes (sperm and eggs) and embryos.

The duty to ensure compliance with the requirements of the Directive will fall to the nominated “competent authority” in each Member State. We have agreed that for conventional tissue banking this will be the Human Tissue Authority (HTA) and for gametes and embryos, the Human Fertilisation & Embryology Authority (HFEA). Eventually, this role will be taken by the new body that will replace the HFEA and the HTA—the Regulatory Authority for Tissue and Embryos (RATE) once established. The Scottish Ministers have also agreed that the HTA should be the competent authority for Scotland for conventional tissue banking and both the Human Tissue Act 2004 and the Scottish Bill have been drafted to allow for this.

The Directive is being developed in three parts. The parent Directive 2004/23/EC came into force in April 2004 and Member States are required to take the necessary steps to comply with it by 7 April 2006. However, implementation of this Directive is dependant on the technical detail contained within two further Commission Directives. These were originally supposed to be ready by autumn 2005—well in time for the April 2006 start date. However, only one Directive (Directive 2006/17/EC) covering donation, procurement and testing is published. The second is unlikely to be published until summer 2006.
I have therefore agreed a pragmatic approach to implementation, and to implement the main Directive as far as we were able by April 2006, but to await the publication of both of the Commission Directives before implementing transposition regulations to come into force on a single date in April 2007.

**Progress to Date**

By 7 April 2006, some 140 conventional tissue establishments had registered with the Human Tissue Authority and had been deemed licensed under the requirements of the EU Directive. Fertility clinics licensed by the HFEA under the Human Fertilisation and Embryology Act 1990 do not need to comply with the Directive until April 2007 under derogation provisions allowed for within the Directive. Clinics that provide fertility treatment using “fresh” non-donated sperm (ie the clinics that will be required to register with the HFEA for the first time as a result of the directive) are encouraged to contact the HFEA who are issuing guidance and helping them prepare to be licensed by April 2007.

**Transposing the Directives into UK Law**

We propose to transpose the three Directives into UK law through two sets of Regulations—the Human Fertilisation and Embryology Act 1990 Amendment Regulations 2006 and the Human Tissue (Quality and Safety for Human Application) Regulations 2006 and will undertake a 12 week consultation on both sets of Regulations between July and October 2006. Both will incorporate the requirements of the three Directives to enable full implementation by April 2007. Similar Regulations are being drafted in Scotland to amend the Human Tissue (Scotland) Act 2006.

This timescale will allow sufficient time for the detail of the second Commission Directive to be finalised and for the definitive Regulations to be agreed and laid in Parliament by December 2006, made in January and to come into force by April 2007. Simultaneously we will work with the HTA and HFEA to ensure that the necessary guidance is made available to help establishments meet the requirements.

We have consulted with officials from the devolved administrations throughout the negotiation of the Directives and the development of these Regulations. They are content with the Regulations to date and will work with us during the formal part of the consultation.

**Scrutiny History**

The European Commission first published its proposal for the above Directive in June 2002 (COM (2002) 319 final). An accompanying Explanatory Memorandum and Initial Regulatory Impact Assessment were provided by the Department of Health on the 8 July 2002. They were cleared by the House of Commons and House of Lords European Scrutiny Committees on the 16 October and 30 October 2002 respectively.

The Department of Health wrote again on 19 May 2003 informing the Joint Parliamentary European Scrutiny Committees of the results of First Reading. An Explanatory Memorandum was sent on 13 June 2003 informing the Committees of the political agreement reached at the June Health Council. The House of Lords cleared scrutiny on 17 June 2003 but the House of Commons noted that in light of the significant additional costs that could arise as a result of the inclusion of mature gametes within the scope of the draft Directive, that they would hold the document under scrutiny pending receipt of a further Regulatory Impact Assessment.

In light of concerns expressed by the European Scrutiny Committee in July, Ministers wrote on 2 October 2003 outlining the current status of the Directive and enclosing a revised Regulatory Impact Assessment, the implications of which were debated in the House of Commons on 12 November when scrutiny was cleared. On 28 January 2004, we wrote to inform you that the Directive had completed its Second Reading in the European Parliament and in April 2004 that the Directive had been adopted by Health Council.

**Regulatory Impact Assessment**

We are to make the provisional Regulatory Impact Assessment available at the same time as we consult on the transposition regulations to enable establishments to assess the likely costs of implementation. You will see that the estimated costs have been adjusted now as the technical detail in the two Commission Directive becomes available. We now envisage that the set up costs of implementation will range from £18 million to £20 million with recurring costs of £4.1 to £12.6 million.

28 June 2006
INJURY PREVENTION (10938/06, 10950/06)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under-Secretary of State for Public Health, Department of Health

Your Explanatory Memorandum (EM) dated 12 July was considered by Sub-Committee G on 20 July.

At first sight, we are inclined to agree that this initiative might be worthwhile so long as it is properly thought-through, adopts sensible priorities, respects the competence of Member States and the principles of subsidiarity and takes due account of relevant national differences. We will also want to be satisfied that it will add significant value and will not lead to duplication of effort or impose undue burdens, especially on smaller organisations.

We are glad to see from your EM that the Government is aware of these risks. We also agree that it is important to be clear where the costs involved will fall. Please report when progress has been made in clarifying these aspects with the Commission.

As this appears to be essentially a voluntary exercise, we will also want to know how it will be co-ordinated and how potential difficulties over differences of interpretation and comparability of data will be overcome.

We are not quite clear what is meant by paragraph 22 of your EM. As a general principle, we attach importance to the sharing of best practice. But the choice for communications strategy is presumably between centrally-driven campaigns mounted by the Commission and co-ordinated national campaigns on a common theme. If that is correct, our preference would tend to be for the latter, but your clarification would be welcome.

Your EM does not mention consultation. We trust that the Government will consult the Devolved Administrations, local authorities and relevant professional groups in this country about the potential implications at an early stage.

It is not clear from your EM how consideration of these proposals will be carried forward and what timescale is envisaged for consideration by the Council.

We will hold both documents under scrutiny and would be grateful if you let us have a reply to the above points and a report on any progress soon after Parliament resumes following the Summer Recess.

20 July 2006

Letter from Caroline Flint MP to the Chairman


In your letter, you recognise that the Actions for a Safer Europe initiative aimed at injury prevention may be worthwhile, but raised a number of points concerning priorities, added value, the burden of costs and subsidiarity.

Injury prevention and safety promotion are partly covered by other Community programmes and initiatives. These, though, tend to focus on certain groups of risks (road accidents, workplace accidents, unsafe products, intimate partner violence). This leaves important groups of risks (accidents at home, during leisure time activities) or risk groups (children, adolescents, senior citizens, housewives, handymen, sportspersons) almost uncovered. Fragmentation of the programmes and initiatives has detracted from injury prevention as an important public health matter, and full recognition of the real burden of accidental injury to health.

Actions for a Safer Europe aims to add value and address these gaps by:

— fostering data collection and reporting systems about injuries and their causes at Community and Member State level;
— supporting the exchange of good practices throughout the Union;
— providing tools and guidelines for public health actions on different political levels;
— advocating better co-ordination of fragmented actions including suggesting national action plans for injury prevention;
— assisting in building up capacities to better tackle injuries eg—by inclusion of injury prevention with existing health promotion programmes and as part of professional health training.

We have also sought the views of the devolved administrations on the Communication and Recommendation, and are considering ways to assess the implications for other bodies and groups.
The Communication was included as an information item on the agenda of the Council meeting in June. It is provisionally on the Health Council (30 November) agenda for an “exchange of views”, with possible discussion in the health working group in September or October.

I hope that this information is helpful to you.

20 September 2006

INSTITUTE FOR GENDER EQUALITY (9195/06)

Letter from the Chairman to Meg Munn MP, Deputy Minister for Women and Equality, Department for Communities and Local Government

Your Explanatory Memorandum (EM) dated May 2006 was considered by Sub-Committee G on 25 May.

We note that the Commission’s new Proposal is due to be considered by the Employment, Social Policy, Health and Consumer Affairs Council on 1 June when political agreement is expected to be reached on a Common Position.

As I explained in my letter to you dated 27 April, the Commission’s original Proposal on the Gender Institute is held under scrutiny by the Committee until the debate in the House on the Inquiry Report on that Proposal, and on the related Report on the European Fundamental Rights Agency, takes place. As I believe you know, that debate has now been fixed for the afternoon of Thursday 8 June.

We note that the Commission’s new amended Proposal continues to favour a separate Gender Institute and that the Government continue to support that proposition, which is contrary to the view taken in our Inquiry Reports mentioned above. In these circumstances, we are unable to lift the scrutiny reserve on the amended Proposal pending the outcome of the debate on 8 June. We will want to take careful account of everything that is said in that debate, including any further information or statements provided by the Government during the debate or in preparation for it.

Moreover, you will recall that our Inquiry Report on the Gender Institute Proposal called for further consideration of the proposed management structure if the Gender Institute were to be set up. The Report also recommended that the practice of automatically awarding seats on the Boards of such Institutions to every Member State should be questioned.

It is not clear to us from your EM how this aspect of the amended Proposal now stands. Your EM records that the Commission has accepted the Parliament’s proposal for a restricted Management Board composed of 13 members. On the other hand, it also reports that the Council supports a larger Board, with one representative for each Member State, which is directly contrary to the view taken by the Committee.

To add to the confusion, although your EM does not say so, we understand that the Austrian Presidency may be circulating a compromise text which includes support for every Member State to have a seat on the Board. Your EM does not say what attitude the Government intends to take if size of the Management Board is discussed at Council. But we are very disappointed to learn from your officials that Government would probably go along with a consensus in favour of seats for each Member State.

Your EM also mentions that the Government has “some concerns about the relative voting weights attributed to the Commission and the Council” on the proposed Board, although it does not explain what those concerns are or how they might be resolved.

We also note from your EM that the question of the legal base remains unresolved and that the Government has placed a scrutiny reserve on that aspect to enable further investigations to be undertaken. Your letter to me dated 6 April recorded that the Government would review the legal base question in the light of the ECJ ruling expected in the ENISA case, but we have heard no more about that from you.

In the circumstances, we shall expect you to record at the Council that the scrutiny reserve must remain on the amended Proposal so far as we are concerned, for the reasons given above. We will expect you to report on the result of the Council meeting in time for the debate on 8 June.

It would also be helpful if you could explain in time for the debate on 8 June precisely what is happening about the Management Board proposal and the Government’s attitude to it, as well as reporting if there have been any further developments in the Government’s position on the legal base question.

25 May 2006
Letter from Meg Munn MP to the Chairman

I am writing with regard to an amended proposal for a Regulation establishing a European Gender Institute, which is scheduled to come before the 1 June 2006 Employment and Social Policy Council for political agreement.

The amended proposal is for a regulation to establish a European Gender Institute with the overall objective of the Institute being to assist in the fight against discrimination based on sex and the promotion of gender equality and to raise the profile of such issues across the EU, and in doing so to share best practice across Member States.

An Explanatory Memorandum was prepared and submitted on 19 May 2006 on the amended proposal. We have also exchanged various correspondences on this issue relating the original proposal EM 7244/05, prior to 19 May 2006. However, it has not been possible to obtain scrutiny clearance from neither the Lords nor Commons Scrutiny Committees ahead of the vote in Council on 1 June.

The Government’s position on the European Gender Institute has always been that it should be budget neutral, add value and not duplicate work of existing agencies. The decision on this proposal is subject to qualified majority voting, and the position set out by many other Member States is one of keen support for the establishment of a European Gender Institute. It has been judged that it would therefore not be in the UK’s best interest to block a proposal that, in effect, has little control and no veto over. The UK’s position has therefore been to try and ensure that the Institute will be as effective and efficient as possible, as well as budget-neutral. By voting in favour of this proposal, the UK will be in a stronger position to influence the more detailed budgetary and other discussions on the structure of the Institute—such as the composition and voting mechanism of the Management Board, which will be discussed at the second reading. The logic being that if the UK is deemed a constructive voice, rather than adopt a negative stance on principle, it will have more influence on the details as they are agreed.

It is unfortunate that scrutiny could not be completed in time for Council, and as the Government feels that it is desirable for the Commission’s amended proposal to be adopted, rather than for the UK to block it, I wish to inform your Committee of the Government’s decision to proceed.

25 May 2006

Letter from the Chairman to Meg Munn MP

Your letter dated 25 May crossed with my own letter of the same date. It was considered by Sub-Committee G at their first meeting after the Whitsun Recess today.

As you well know, our Reports on the European Gender Institute and the Fundamental Rights Agency are due to be debated in the House this afternoon. My letter to you dated 25 May pointed out that, as the scrutiny reserve on the original Proposal was already retained pending the outcome of that debate, the scrutiny reserve on the amended Proposal could not be lifted in the meantime. In those circumstances, I said that we would expect you to record at the Council that the scrutiny reserve must remain on the amended proposal.

We are therefore very surprised and disappointed to learn from your letter that, without even waiting for my response to your Explanatory Memorandum on the amended proposal, the Government had decided to override scrutiny and vote in favour of political agreement on the amended Proposal at the Council on 1 June. Although you have not so far reported on the outcome of the Council meeting, we understand from your officials that this is what happened.

Overriding Parliamentary scrutiny is a very serious matter indeed. It should only be contemplated where urgent decisions are needed on questions of considerable national importance. That clearly does not apply in this case and we see no good reason for the Government’s action.

Your letter claims that by voting in favour of the Proposal the UK would be in a stronger position to influence more detailed discussions about the Institute than if it had adopted a negative stance on the principle. But that argument is completely undermined since, as we understand it from your officials, the Government also decided at Council to vote in favour of a 25-member Management Board for the Institute. That possibility was not even mentioned in your letter.

You know perfectly well from our previous correspondence that, as well as having doubts about the merits of setting up a separate Institute, we had strong reservations about the proposed management structure. My letter to you dated 25 May drew attention to the Committee’s recommendation that the practice of automatically awarding seats on the boards of EU agencies to every Member State should be questioned. This would have been an ideal opportunity for the Government to have taken a stand on that practice, instead of
which you appear to have drifted with the tide on the only real issue of remaining significance apart from the budget and the location of the Institute.

We regard this as deeply unsatisfactory and the explanation given in your letter as wholly inadequate. No doubt this will be raised during this afternoon’s debate. But the Committee reserves the right to call upon you to appear before the Sub-Committee at a future date if the explanation given during the debate is not satisfactory.

8 June 2006

Letter from Meg Munn MP to the Chairman

Thank you for your letter of 25 May which incidentally crossed paths with my letter to you also dated 25 May, regarding the Explanatory Memorandum on the Amended Proposal for the Establishment of a European Institute for Gender Equality, and also for your subsequent letter of 8 June.

I think it would be useful if I first outline the current position on the Amended Proposal. As I mentioned in the EM, the Amended Proposal contains only minor amendments to the original proposal that do not result in any overall change to the aim and role of the Institute. Although the Commission favoured a smaller management board, this was not a view that was supported by the majority of the Council, who wanted one representative per Member State. However, the Presidency was not able to bridge the divide between Council and Commission at working level and have reverted back to the General Approach text, which favoured a larger board.

As you are aware, this dossier was on the agenda at the June Council and my officials have already provided a verbal update to the clerk of your Committee on the events of the June Council. I can inform you that political agreement was reached, by unanimity, on a draft regulation establishing a European Institute for Gender Equality. However, the Commission did not support the representative Management Board adopted by the Council, and so made a declaration to the minutes saying it would have preferred a smaller administrative board. Following on from the June Council, the text, as agreed will be adopted as a common position at a forthcoming Council session and sent to the European Parliament with a view to the second reading.

I would like to once again stress how unfortunate that was not possible to obtain scrutiny clearance from your Committee ahead of the June Council and the need for the UK to proceed this document and override your scrutiny reserve. Although this is not the way we had hoped to proceed, under the circumstances this was judged to be the best way forward for the UK, as my letter of 25 May explains, the Institute will go ahead and it is important for the UK to set itself in a good negotiating position as this will prove valuable in the next round of negotiations where the contentious issue of the voting structure within the management board will be discussed.

I understand your disappointment and concerns with our decision to favour the Council for a larger management board (one representative per Member State), and I acknowledge that a smaller board should operate more effectively. However, during negotiations it was clear from other Member States that they had a strong preference for one representative per Member State and were not prepared to deviate from this. We therefore felt it necessary to agree with the Council in having a larger board, as whilst this proposal is subject to Qualified Majority Voting, different voting mechanisms apply in different circumstances during the passage of co-decision dossiers. Therefore, to achieve political agreement in the face of Commission opposition, unanimity was required.

As Baroness Ashton highlighted on 8 June, Member States are extremely supportive of the Institute and very keen to play an active role, hence their desire to be represented on the management board. Once the institute is up and running, there is potentially scope for this position to be reviewed as some Member States may no longer feel the need for all 25 Member States to be on the board.

With regards to the UK’s position on the voting structure, we would not want a situation where the Commission has equal voting rights vis a vis the Council representatives, which, given that the Council is rarely able to speak with one voice, would effectively give the Commission overall voting control. To avoid such a situation arising, during discussions at working group level the UK have cited other agencies, which uphold the principle of “one person one vote” as a precedent for a similar approach to be adopted here. As you will appreciate, the issue of the voting rights goes wider than the European Gender Institute. This contentious issue will be discussed further at a later stage—second reading stage anticipated to take place in six to nine months.

On the matter concerning the legal base question, the UK Minutes Statement remains in place. The Government is still currently reviewing the legal base issue in light of the ENISA case and I hope to be able to report the conclusions to you soon.
Once again, I would like to express how unfortunate it was that we unavoidably had to override your scrutiny reserve in this instance, and I assure you that it is a decision I did not take lightly. I shall continue to provide you with updates on the dossier as necessary.

19 June 2006

Letter from the Chairman to Meg Munn MP

Your letter dated 19 June reached us on the afternoon of 21 June and was considered by a meeting of Sub-Committee G on the morning of 22 June.

Your letter raises important procedural and policy issues which the Committee wishes to discuss with you without delay. We envisage a short public meeting with Sub-Committee G, of which an official verbatim record would be taken and published in due course as a supplement to our Inquiry Report.

The Clerk to the Sub-Committee will be in touch with your officials to arrange a convenient date before the House rises for the Summer Recess.

23 June 2006

LABELLING OF SPIRIT DRINKS (15902/05)

Letter from the Chairman to Lord Bach, Parliamentary Under-Secretary for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) dated 20 January was considered by Sub-Committee G on 2 March.

We note from your EM that this Proposal is still at a very early stage and may well be changed during technical discussions at Council Working Groups which were expected to start some time this month, although no timescale for consideration had apparently been agreed. We also note that the Department is carrying out further consultations with interested parties in the UK about the Proposal.

In the circumstances, we appreciate that the Government is not yet able to take a definitive position on the Proposal. For the same reason, we are retaining the document under scrutiny until further notice.

Your EM states that the Government will be seeking clarification from the Commission on several issues, but does not say what they are. We trust that any serious problems for UK interests which might have been identified in your initial consultations would have been recorded in your EM. But you have said nothing about the results of those consultations.

It is impossible for us to tell from the documentation we have seen so far what effect the Proposal is likely to have on UK commercial interests, especially important British products such as Scotch whisky, Northern Irish whiskey and gin. Nor do we understand how the table of geographical indications in Annex III might affect UK vodka production. Since the Proposal is being handled by your Department, rather than the DTI, we also wonder whether it has any implications for UK agriculture.

Nor does your EM tell us what effect the Proposal might have on consumers or to what extent consumers representatives will be included in the Department’s latest round of consultations. We attach particular importance to this aspect.

More generally, it is not clear to us how the Proposal will change the existing Regulations or what the technical implications are. We therefore cannot judge whether it is likely to be a worthwhile improvement on existing legislation.

Your views on whether the Comitology procedures which the Committee propose to introduce are likely to be appropriate and effective would also be appreciated.

We will expect to have a progress report at a suitable stage in the negotiations and would be glad if you would ensure that it covers all the points mentioned above.

2 March 2006

Letter from Lord Bach to the Chairman

Thank you for your letter of 2 March concerning the above proposal which is still at a very early stage. As you note in your letter, there will be changes during the technical discussions at Council Working Groups, the first two of which took place on 3 and 17 March, with the next one scheduled for 11 April.
Since the Explanatory Memorandum was submitted to you on 20 January, Defra has received a number of detailed technical comments from the industry and some more general ones. These mainly cover points of clarification, on the relationship between the (horizontal) labelling Directive (2000/13/EC) and the specific labelling requirements in the proposal and on the status of the technical file that needs to be submitted to the Commission for existing and new geographical indications, such as Scotch Whisky and Plymouth Gin. However, there are no real problems for the UK as the proposal in most instances retains the status quo with the current rules, Where the rules are different our industry do not see any major problems for them.

The proposal, as it currently stands, is likely to have no adverse effects on UK commercial interests, since it meets the needs of UK Industry, in relation to Scotch Whisky, vodka, whisky in general and gin. However, the definition of London Gin will need to be altered to bring it in line with the definition recently agreed by the European Spirits Producers Organisation (CEPS), which is not expected to cause any problems for other Member States and is supported by our industry. The main impact on UK commercial interests is that part of the proposal requiring vodka producers to label their products with the raw materials used. Initial soundings from the industry suggests that the overall costs of this will be modest (around £0.6 million for a vodka industry worth £1.7 billion).

The impact of the proposal on UK agriculture is likely to be nil, since the definitions of the key spirits produced in the UK remain unchanged over those currently set down in EC law.

As far as the effect of the proposal on consumers is concerned, this is expected to be minimal. The proposal aims to improve clarity for consumers in terms of labelling, something the Government welcomes. The only significant proposed change, ie the requirement to label vodka with its raw materials, should help consumers make a more informed choice about the type of vodka they wish to buy, so should be welcomed.

As far as existing Regulations go, the proposal is primarily designed to organise existing rules in a clearer way, whilst at the same time update certain aspects to account for technological developments. It also, importantly, updates the existing Regulations regarding WTO compliance and Trade Related Intellectual Property Rights (TRIPS) in relation to the registration of geographical indications (GIs) and the requirement for all GIs to be supported by a technical file. This will make it easier for Member States to register new GIs and will provide a more legally robust protection for GIs.

The UK takes the view that the proposed Comitology changes are useful and worthwhile since they will enable Member States to get technical and other changes into EC law more quickly than at present. In a sector known for innovation, this will be a valuable tool in recognising new products. This should be of benefit to both consumers and producers.

I will ensure that you have a progress report on this dossier at a suitable stage in the negotiations.

9 April 2006

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

Lord Bach’s letter to me dated 9 April was considered by Sub-Committee G on 11 May.

We welcome the Government’s assurance that this essentially technical revision of the existing regulations presents no significant problems for UK industry or consumers and should bring some welcome improvements.

That being so, we are prepared to release this document from scrutiny so long as it is clearly understood that if further negotiations produce significant changes to the present text they would have to be submitted for fresh Parliamentary scrutiny. It would be appreciated if you could report to us for the record when the new Regulation is finally adopted.

12 May 2006

LIFE LONG LEARNING—ACTION PROGRAMME (9697/06)

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to update you on the revised timetable for the agreement of this proposal, as this has changed since I sent you the Explanatory Memorandum 9697/06 on 12 June.
As a result of the late agreement of the financial perspective, the timetable for the Lifelong Learning Programme became increasingly tight. Following discussions at COREPER on 21 June, the Austrian Presidency decided to place the Lifelong Learning Programme on the agenda of the Environment Council on 27 June, as an “A” point for political agreement.

Owing to the fact that the Committee will not have had the opportunity to discuss the proposal on 27 June, the UK will abstain from the political agreement at this stage. However, the common position is due to be agreed in mid July, by which stage I hope that the scrutiny process will be complete and the UK can vote in favour of the proposal.

27 June 2006

Letter from the Chairman to Bill Rammell MP

Your Explanatory Memorandum dated 12 June was considered by Sub-Committee G on 29 June.

We note that a final Council decision on the budget package proposed is expected early next month. We also recognise that the outcome is the product of lengthy and detailed negotiations under Austrian Presidency, although it is perhaps regrettable that we were not given an opportunity to consider the likely results at a much earlier stage.

As you know, our Inquiry Report on the Life-long Learning (HL Paper 104-I) noted that the budget of €13.62 billion originally proposed would require searching investigation and convincing justification. I drew your attention to this in my letter to you dated 31 October 2005 while confirming that we were broadly content for the proposed partial political agreement to be secured at the Education and Youth Council on 15 November 2005.

On the whole, we are satisfied that the total budget of €6.97 billion now apparently agreed is much more realistic and we note that the Government is content with it.

We are rather more concerned about the proposed allocation between the respective integral programmes. We welcome your assurance that, although the minimum allocated to the Grundtvig programme has only been increased from 3 per cent to 4 per cent, the actual allocation will be 5.14 per cent. This is undoubtedly a welcome improvement and in-line with our Report’s Recommendations, although we would have preferred to have seen even more allocated to Grundtvig. We are also anxious that the 5.14 per cent allocation should be maintained consistently throughout the life of the programme and not cut back to the 4 per cent minimum in future years. We would appreciate a clear commitment from the Government to ensuring that this will happen.

We would also have preferred an increased allocation for the Leonardo da Vinci programme and are disappointed that the Government was unable to secure that. We firmly believe that adequate allocations are essential for both programmes if the aim of a genuine life-long learning programme is to be achieved. We are also most anxious that everything should be done to make participation in those programmes in particular as inclusive as possible.

The increase in the Comenius allocation is also welcome in principle. We hope it can be used imaginatively, but we recall from the Inquiry how witnesses from schools in particular found the bureaucratic requirements and lack of supply teacher cover a significant disincentive. It would be a great pity if those difficulties led to an underspend so far as the UK is concerned.

We are also disappointed that some reductions appear to be necessary in the Transversal programme to improve policy development, dissemination and good practice and enable projects to bridge sectoral strands, especially to help improving standards of language and ICT development. You will see that our Inquiry Report described the Transversal programme as a potentially positive innovation, although many of the details of how it was intended to work in practice remained unclear at that stage. We look to the Government to ensure that this programme is imaginatively and effectively used and hope that the funding allocated will indeed prove to be adequate, especially as the programme gathers momentum in the later years.

We are also disappointed that Member State Governments apparently have so little scope to vire funds between individual programmes especially, it seems, where more than one national agency is involved. Since we understand that the UK is unlikely to appoint only one national agency it appears that we may be at a disadvantage in this respect and would welcome your clarification.

As things have worked out, it seems that we have really very little say in the allocations at this late stage. On balance, we are prepared to release this document from scrutiny to enable the expected Council agreement to be secured. But we would be grateful if the Government would bear the above reservations in mind as the programme progresses and especially when it comes to be reviewed.
In the meantime, we trust that the Government will make every effort to ensure that the money available is well spent and that the UK derives maximum possible benefit from these programmes. We look forward to our continuing informal dialogue with your officials about the latter aspect.

3 July 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 27 June. This arrived too late to be considered by the meeting of Sub-Committee G on 29 June, but was considered by Sub-Committee G on 6 July.

By now you should have received my letter to you dated 3 July conveying our decision, following the meeting of Sub-Committee G on 29 June, to release this document from scrutiny to enable the Government to endorse the Council agreement which was then expected in early July. That letter also made some observations about the individual programme budget allocations on which we look forward to receiving your comments.

We are very grateful to you for writing to inform us of the unexpected last minute action by the Austrian Presidency to place the programme on the agenda for the Environment Council on 27 June. We are glad to note that the Government, quite properly, abstained from political agreement at that meeting because scrutiny clearance had not been given by then.

Please let us know if the expected Common Position is agreed at Council later this month.

6 July 2006

LIFE-LONG LEARNING: KEY COMPETENCES (13425/05, 8084/06)

Letter from the Chairman to Bill Rammell MP, Minister for Life-Long Learning, Further and Higher Education, Department for Education and Skills

Your Explanatory Memorandum was considered by Sub-Committee G on 2 February.

We note that the Government appears to support this initiative in principle and says it is consistent with UK policy initiatives. The latter may well be so, but we need to be sure that this exercise is really worthwhile. We would be glad to know how much value it is likely to add and how the Government intends to put it into practice without generating nugatory effort and expense.

We were rather surprised that the Government is not planning to carry out any consultations about this Proposal. We believe that the views of educational administrators and the profession should be taken into account when judging the merits of this Proposal and would be glad to know why they are not being consulted.

If the exercise is judged to be worthwhile, we agree that the Government should keep a very watchful eye during negotiations for any possible encroachment on the principle of subsidiarity. It is also important to make sure that the competence of Member States is firmly respected.

We note that you have reservations over some of the definitions of the key competences. We agree that it is hard to see how the definition of entrepreneurship can be translated into vocational policy and practice. But we are less sure about your reservations over the definitions of communication in foreign languages and cultural expression and would be grateful for an explanation.

In my letter dated 27 January to you about the joint report on the Education and Training 2010 work programme, I reminded you of the importance attached by our Inquiry Report on the EU Integrated Action Programme for Life-Long Learning (HL Paper 104-I, published in April 2005) to ensuring a genuine commitment to older learners and their needs in life-long learning programmes. This would be equally important for the key competences exercise, where we would want to see evidence that it was being taken seriously and given due priority.

That Report also stressed the importance of language skills and the urgent need to remedy the UK’s poor performance. This will also require due priority in the key competence exercise. So, in our view, will the UK’s relatively poor performance in mathematics and science. We would be glad to know how the Government proposes to relate the development of key competences, as proposed by this exercise, to these and other areas where the UK is performing less well than our EU counterparts and how the relative priority between key competences would be determined nationally and across the EU.

We will retain this document pending your reply.

2 February 2006
Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 2 February. I am writing to respond to the points that you raised on the proposed Recommendation on key competences and to update you on how negotiations have progressed. The Recommendation is due to be adopted by the EU Council of Education Ministers on 19 May.

You asked the Government to keep a watchful eye during negotiations for any possible encroachment on the principle of subsidiarity. During negotiations at working group level, we secured amendments to the recitals in order to ensure that the Recommendation is fully in scope of the Treaty articles governing EU competence in education. The recitals on p 7 which set out the recommendations for Member States now read “Hereby recommend that Member States use the Key Competences for Lifelong Learning—A European Framework in the Annex hereto as a reference tool, with a view to ensuring . . .”. This makes clear that the Recommendation will not impact on the national curriculum unless Member States choose to refer to it when undertaking any curriculum reforms.

Our reservations on the definitions of the competences were that the Recommendation should not be prescriptive, as it is not compulsory to teach foreign languages at every Key Stage in England, nor could we guarantee that the full spectrum described under the cultural expression competence is uniformly on offer. The amendments we secured to the recitals make clear that the Recommendation does not prescribe to Member States what the content of their curriculum should be.

You agreed that it would be hard to see how the definition of entrepreneurship can be translated into vocational policy and practice. In fact the definition in the Recommendation is more consistent with the standard English usage of the more broadly defined term “enterprise”. Enterprise education in England is defined as “enterprise capability, supported by better financial capability and economic and business understanding”; enterprise capability encompasses “innovation, creativity, risk-management and risk-taking, a can-do attitude and the drive to make ideas happen”. The concept of enterprise therefore embraces future employees as well as employers, while the term “entrepreneurship” in England implies a narrower focus on setting up a business. However the Commission, Presidency and the majority of Member States argued strongly during working group negotiations to keep the word entrepreneurship. Firstly, enterprise would be understood unfortunately in several other languages as meaning “an enterprise”. Secondly, a broad definition of entrepreneurship has been used for several years at European level, and is thus part of the “acquis” in the field of education. Amendments to other competences suggested by policy experts in England and the devolved administrations have been incorporated into the current text.

We agree that the views of educational administrators and professionals should be taken into account when judging the merits of this Proposal. Two policy experts from the Skills for Life Strategy Unit represented the UK in the expert groups when the key competences framework was drawn up. A separate group of academics were charged with refining the content of the annex, on which the UK was represented by Ms Ursula Howard, Director of the National Research and Development Centre for Adult Literacy and Numeracy. Furthermore, a range of stakeholders has been informed and consulted on the Recommendation since negotiations began, including officials from across the Department for Education and Skills, the devolved administrations and the Qualifications and Curriculum Authority.

You asked how much value the proposed Recommendation is likely to add and how the Government intends to put it into practice without generating wasteful effort and expense. A policy expert will represent the UK in the forthcoming peer cluster on key competences. The cluster will consider follow-up to the key competences framework, including what the main policy messages should be and how to ensure appropriate dissemination. They will also undertake peer learning activities designed for Member States to exchange experience of relating the development of key competences to raising performance in specific areas of the curriculum. The UK representative will be communicating regularly with departmental policy leads to discuss how to determine the relative priority between key competences nationally, and how the key competences framework could be used to raise performance in areas where the UK is performing less well than our EU counterparts. The representative will also be making sure that the needs of older learners are properly taken into account.

We will also be hosting a seminar in autumn 2006 (joint funded with the European Commission) to engage UK stakeholders in debate on how best to disseminate the outcomes of the Education and Training 2010 work programme, including the peer clusters, at the national, regional and sectoral level.

19 April 2006
Letter from Bill Rammell MP to the Chairman

My officials have sent you the latest version of the draft Recommendation (document 8084/06) which went to Coreper on 3 May. It is due to be adopted (general approach) by the Education Council on 19 May.

Articles 149 and 150 of the EC Treaty state that Community action should encourage cooperation between Member States and support or supplement their action where necessary. The Government believes that the Recommendation is indeed necessary and that Articles 149 and 150 do provide an appropriate legal base for the revised version.

By attempting to define the new basic skills required in a knowledge economy, the Recommendation will usefully provide a common point of reference for Member States, either when choosing to undertake their own reforms of education and training systems, or when learning about what has worked in other countries through the open method of coordination. Indeed, the need for defining these basic skills has been emphasised by Heads of State and government in the conclusions of the European Councils in 2000, 2003 and 2005. Furthermore, the Employment Guidelines for Growth and Jobs 2005–08, approved by the June 2005 European Council, call for adapting education and training systems through better identification of occupational needs and key competences as part of Member States reform programmes. As well as wishing to fulfil these commitments made at European Council, the Government is also keen to ensure that the Key Competences Recommendation adds value by participating in the peer learning cluster on key competences, as I explained more fully in my letter of 19 April.

Although Recommendations have no binding legal force, they do carry moral and political obligation if Member States agree to them. We therefore aimed during negotiations to make sure that the wording of the Recommendation was fully in scope of Articles 149 and 150 and did not create any expectations that could lead us to consider changing the way we organise our education systems. We secured amendments to the Recommendation itself, so that it now reads “Hereby recommend that Member States use the Key Competences for Lifelong Learning—A European Framework in the Annex hereto as a reference tool, with a view to ensuring . . . ”. This makes clear that the Recommendation will not impact on the national curriculum unless Member States choose to refer to it when undertaking any curriculum reforms.

The introduction to the Annex which defines the key competences also states the four main aims of the Recommendation clearly, namely (i) to identify and define the key competences necessary as we move towards a knowledge society (ii) to support the work that Member States are undertaking to ensure that citizens have the skills they need (iii) to provide a European Framework for policy makers and other stakeholders to refer to when undertaking their own curriculum reforms and (iv) to provide a framework for future EU cooperation, for example through peer learning clusters and the EU programmes.

EXPLANATION OF OUTSTANDING ISSUE ON KEY COMPETENCE 6 (SOCIAL AND CIVIC COMPETENCES)

Apart from the Parliamentary scrutiny reservations held by the UK and Denmark, the one outstanding issue at Coreper concerned a proposal by France for a greater emphasis in key competence 6 (Social and civic competences) on knowledge of the development, functioning and achievements of the European Union. France proposed inserting the following paragraph as set out in footnote 12 on page 19:

“Knowledge of the origins of the European idea, the history of European integration, the EU institutions and how they work, and the rights, principles and values underlying the European project are also essential”.

The UK, supported by the majority of delegations, the Presidency and the Commission, opposed the insertion of this paragraph when it was first suggested at working group as it would mean that the text placed greater emphasis on EU as opposed to national or wider international history and democratic institutions.

I attach a copy of the compromise paragraph agreed at Coreper (not printed). The UK representative made interventions to ensure that it remained factual and neutral. These included questioning whether the word “essential” was really necessary and stalling an attempt by the Presidency to insert a reference to the “achievements” of European integration.

The UK will request a change to the last sentence in the paragraph when the document is examined by Jurists Linguists. Rather than “an awareness of European diversity and cultural identity . . . “, which we feel is unclear as it could imply there is such a thing as a single European identity, we will ask for the sentence to be re-drafted so that it reads “an awareness of diversity and cultural identities in Europe . . . “.

9 May 2006
Letter from the Chairman to Bill Rammell MP

Thank you for your letters dated 19 April and 9 May which were considered by Sub-Committee G on 11 May.

We are grateful for your reports on the Working Group negotiations and the COREPER meeting and note that a General Approach on the Recommendation is now due to be adopted by the Education Council on 19 May.

We are glad to see that the text will include clarification in the Recitals that Member States will be free to choose to what extent the Recommendation may be incorporated in national curricula and note that you are satisfied that the text fully accords with the Treaty Articles governing EU competence in education.

We also note that you are now apparently content over the definition of the key competences on communication in foreign languages. We support the line you propose to take in striving for further improvements in the definition of the key competences on what is now apparently to be called social and civic competences.

The revised definition of the key competences on entrepreneurship (now apparently to be re-titled as “Sense of Initiative and Entrepreneurship”) does not seem to us to be much of an improvement. It is still not clear what it would mean in practice and the very difficulty you report in arriving at an agreed definition with other Member States suggests that it is likely to have little or no practical effect. But, since you appear to be broadly content and consider it to be part of the Community acquis, we would not object to its inclusion in the overall package.

Thank you for explaining in such detail the reasons why the Government believe that this Recommendation is necessary and will add some value. I must say that we still have our doubts about whether this exercise is really worthwhile. But, for the time being, we are prepared to accept your assurances that it is.

We are particularly anxious that, in adopting this framework, the Government should ensure that it will not dilute attention from the need to focus on basic skills, to which we attach great importance. We also trust that the Government will ensure that the “peer cluster activity” envisaged is well-directed, proportional and does add significant value without generating nugatory effort or needless expense.

More broadly, we also have some concerns about the whole range and extent of consultative activity which is being generated around the Education and Training programme. We will want to discuss the implications of this at our next informal meeting with Judith Grant on 25 May.

We are glad to see that the Government has already carried out some consultations about this Proposal and will be hosting a stakeholder seminar in the Autumn on the work programme which will include consideration of the implementation of the key competences. We would have preferred to see the concept and practical implementation of the key competences exercise given much wider consideration by UK education professionals and others before final decisions were taken in Council.

Nevertheless, on balance, we are prepared to agree to lift scrutiny to enable the Government to support the expected General Approach at the Education Council on 19 May and would be grateful for your report on the result of that meeting.

12 May 2006

MEDICAL DEVICE DIRECTIVES (5072/06)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Minister of State, Department of Health

Thank you for your Explanatory Memorandum (EM) and Initial Regulatory Impact Assessment (RIA) dated 20 January which were considered by Sub-Committee G on 2 March.

We note that the negotiations are at a very early stage and are surprised to see from your Initial RIA that these negotiations could last more than two years. We wonder why such a protracted timescale is envisaged.

Although we see that the UK has strongly supported this initiative from the outset and is satisfied that the Proposal reflects the UK position, we agree that every effort should be made to ensure that the requirements are necessary and proportionate and that the wording of the text achieves what is intended.

As you know, we already hold the Commission’s Proposal for a Regulation on Advanced Therapy Medicinal Products (15023/05) under scrutiny. I wrote to you about this on 2 February. We will want to pay particular attention to the possibility of overlaps or regulatory gaps between this Proposal and that one, as indicated in your EM and the Commission documentation.
We are also particularly concerned about any ethical implications of this Proposal, which your EM does not mention. The Commission Impact Assessment briefly mentions the need for careful examination over the principle of “informed consent” as it applies to reprocessed devices, as well as some liability considerations over such devices. We would be glad if you would explain the ethical and legal considerations involved in this and how the Government propose to tackle them during the negotiations. More generally, we would welcome a statement on the Government’s overall view of the ethical considerations which apply to this Proposal and how they should be addressed.

The Commission’s EM refers to concerns highlighted during the 2003 review over the competence, consistency of performance and transparency of the Notified Bodies. We would be glad to know more about who these bodies are, how they work and to what extent you believe that the Proposal offers a workable solution to these problems.

We would also welcome your comments on the extent to which the Proposal adequately covers the respective responsibilities of the EMEA and national authorities and how good coordination between the two will be achieved.

Your EM also contains an unexplained reference to considering “how to police the requirement of having to provide the named patient with the statement of conformity” We would be grateful for an explanation of the meaning and significance of this sentence.

We would also be glad if you could explain how the text is intended to keep pace with scientific and technological changes.

We note that you intend your Initial RIA to become an “ever-evolving document” which will need to be adjusted in the light of negotiations. It would be helpful to know how you intend to present that “ever-evolving document” for Parliamentary scrutiny. We will want to examine the likely impact, especially on small organisations, very carefully and would expect to see some preliminary conclusions in a revised RIA based on the indicative costings which you expect to emerge from the next phase of your consultations.

In the meantime, we will retain this document under scrutiny and would be grateful if you would report significant developments.

2 March 2006

Letter from Rt Hon Jane Kennedy MP to the Chairman

Thank you for your letter of 2 March 2006 raising various points on the Explanatory Memorandum (EM) and Regulatory Impact Assessment (RIA) dated 20 January. I shall deal with each of your points in turn.

You question the prediction, in the EM, that negotiations on the European Commission’s proposal to revise the Medical Devices Directives could take two years. As you will appreciate, at this early stage in the process any prediction as to how long completion will take is inevitably imprecise. However, the prediction was based on a number of factors. Firstly, experience of two earlier attempts to extend the scope of the Medical Device Directive to include animal and human tissue. Both attempts failed but only after lengthy and protracted negotiations. The estimate reflects our experience of how long it can take to negotiate broadly comparable pieces of legislation bearing in mind the co decision process. Second, the issue of products containing tissues affects the negotiation of both the Medical Devices Directive and the Advanced Therapy Medicinal Products (ATMP) Directive. It seems realistic to predict that it may take time to achieve a consistent view across both sets of negotiations. Thirdly, the impact the new Accession Member States would have was unclear. In particular there were some early indications that some would take the opportunity to argue for more far reaching and fundamental revision of the Directive than those measure being proposed by the Commission. Finally, we are aware that the European Parliament may not have completed its scrutiny until towards the end of the year.

In fact, the Austrian Presidency has given the dossier high priority. There have already been five meetings of the Working Group and first reading has been completed. The Presidency plans to reach some sort of political agreement at the June Health Council.

If this is successful, the speed towards completion will then depend upon handling by the Finnish Presidency, progress of the discussions on the ATMP Regulation and any amendments proposed by the parliament.

In your letter you expressed particular concern about the ethical implications of this proposal which I take to relate to tissue engineering. I am sorry that the EM did not cover this. The Commission’s current proposal covers medical devices which contain human tissue engineered products, as defined in the ATMP Regulation, and which act ancillary to the device. The ethical considerations applying to the proposed ATMP Regulations equally apply here.
Article 28(2) of the proposed Regulation on ATMPs amends the Medicines Directive 2001/83/EC in order that under national legislation Member States may prohibit or restrict the use of any specific type of human or animal cells (eg germ cells or embryonic stem cells) or the sale supply or use of medicinal products consisting of or derived from these cells. This is consistent with the similar provision in Article 4(3) of the Tissues and Cells Directive 2004/23/EC setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells.

The proposed Regulation on ATMPs requires that the donation, procurement and testing of human cells or tissues used in these products are carried out in accordance with the Directive 2004/23/EC. Chapter III of Directive 2004/23/EC concerns donor selection and evaluation and includes: principles governing tissue and cell donation, consent, data protection and confidentiality and selection, evaluation and procurement. Article 13 on consent requires that procurement of human tissues or cells shall be authorised only after mandatory consent or authorisation requirements in the Member State concerned have been met. It continues that Member States shall, in keeping with their national legislation, take all measures to ensure that donors, their relatives or any persons granting authorisation on behalf of donors are supplied with all appropriate information. The information requirements for living and deceased donors are then detailed in the Annex to the Directive.

On the specific point of informed consent as it applies to reprocessed devices contained in the Commission’s Impact Assessment, you will wish to note that this related to an earlier suggestion that the scope of the Medical Devices Directive be extended to include the reprocessing of single use devices. For a number of reasons however, including ethical and liability considerations and after discussions with stakeholders, the Commission has now decided not to propose such a change. However, we are aware that the European Parliament is being lobbied on this matter and it may well be that they will want to suggest such a revision themselves, so we have included our comments about your point on informed consent anyway.

The Medicines and Healthcare products Regulatory Agency advises users always to follow the manufacturer’s instructions including those for reprocessing.

However, if the device in question has been CE marked for re-use, then the reprocessing would not be considered to be a safety issue or present any increased risk to the patient. Under these circumstances, although the details of the procedure and the use and principles of working of the main devices used in that procedure would fall within the information to be given as part of informed consent, the fact that the device has been reprocessed in line with the manufacturer’s instructions would not fail within the information to be supplied to the patient as part of informed consent. However, if a device CE marked for single use had been reprocessed, then there is the potential, under these circumstances, for an increased risk to the patient. In this case, the fact of reprocessing and the associated potential risks would fall within the principles of informed consent and should be discussed with the patient. In considering what information to provide, case law and DH guidance advises that a patient should be informed of any material or significant risks that might affect the judgement of a reasonable patient. More recently, the House of Lords has ruled that breach of the duty to inform patients of the significant risks will deny the patient the chance to make a fully informed decision. This means that the doctor may be found at fault even if the failure to explain the risks fully did not cause the damage suffered by the patient.

You also asked about Notified Bodies. These are independent certification bodies used by manufacturers, of all but the lowest risk medical devices, to check that the essential requirements contained in the Directive are met before the device can be affixed with a CE-marking and placed onto the European market. The Notified Bodies are designated by their national Competent Authority (in the UK this is the MHRA) who also regularly monitor their actual performance to ensure that they are performing their tasks to an acceptable standard.

The proposed Regulation on ATMPs also corrects the calculation of the number of reprocessing units in the proposed Regulation. The 2003 review, to which you refer, identified a number of problems affecting Notified Bodies. In particular it noted an uneven and inconsistent level of performance but concluded that the authorities responsible for their designation and monitoring were best placed to address these matters. Accordingly, Member States and the Commission set up the Notified Body Operations Group (NBOG) under the Chairmanship of the UK. The group had a remit to improve the overall performance of Notified Bodies by identifying and promulgating examples of best practice between Notified Bodies and those organisations responsible for their designation and control. Such has been NBOG’s success that the Commission has not proposed any change to the current text relating to Notified Body activities and no changes have been suggested during first reading by Member States.

You also asked about the respective responsibilities of the European Medicines Agency (EMEA) and national authorities and co-ordination between the two. The current text of the Medical Device Directive requires the EMEA and national medicine regulatory authorities to assess the safety and quality and usefulness of medicinal substances and stable blood derivatives incorporated within a device and which acts ancillary to the
device. The Commission’s proposals would extend the competence of the EMEA even further by requiring it to assess the safety and quality of a tissue engineered product added to a device with an ancillary action. These views are given by the EMEA and the national medicines agencies to the Notified Body who has to take such opinions into account when deciding whether or not to issue an EC Certificate of Conformity to the medical device manufacturer. Co-ordination therefore occurs primarily between the EMEA and national medicines regulatory agencies and the notified bodies and is already a feature of the existing regulatory systems. We are not aware of any particular problems in practice in the level and effectiveness of this co-ordination.

The reference to “how to police the requirement of having to provide the named patient with the statement of conformity” relates to the Commission’s proposal to require a statement containing information about the device to be given to each patient receiving a custom made device. In practice the proposal would place a legal obligation on, for example, a dentist to provide the statement. Failure to do so would be a criminal offence. We believe that in practice such an obligation would be difficult, if not impossible, to effectively enforce. You will wish to note, however that in negotiations our concerns were shared by several other Member States and has resulted in the proposal being provisionally amended to say that statement should only be given to the patient on request.

As far as keeping pace with scientific and technological changes, the Medical Devices Directive already requires manufacturers to make their device in accordance with state of the art and contain a provision to enable the Directives to be amended if scientific or technological changes warrant such amendments. Finally, and in accordance with Cabinet office guidance, our RIA is an “ever-evolving document” in that it will constantly be updated as negotiations progress. We are working with stakeholders to assess the possible costs that might be associated with the proposed revision proposal. The RIA has been posted on the MHRA website along with the Commission’s proposals and we have requested comments.

We will keep the Committee informed as negotiations develop and provide you with a revised RIA on the basis of the current consultation exercise.

21 April 2006

Letter from the Chairman to Rt Hon Jane Kennedy MP

Thank you for your letter dated 21 April which was considered by Sub-Committee G on 4 May at the same time as your letter dated 25 March about the related Advanced Therapy Medicinal Products (ATMP) Directive (reference 15023/05).

We are grateful to you for giving such a thorough explanation in response to the queries raised in my letter dated 2 March. Your promise to keep us informed as negotiations develop, and to submit a revised RIA based on your current consultation exercise, is most welcome.

We note that, on the one hand, you say that experience shows that negotiations on the Directives could last up to two years and are complicated by issues arising from the parallel negotiation of the ATMP Directive and by uncertainty over the position of new Member States. Yet, on the other hand, you say that the Austrian Presidency plans to reach “some sort of political agreement” at the June Health Council.

We find this surprising and potentially worrying. It is clear from your letter that a great deal of clarification of the proposals is still needed and the sensitivity of such issues as tissue-engineering arising from the ATMP Directive is bound to be an additional complication. We would be most reluctant to contemplate granting scrutiny clearance to enable “political agreement” as soon as June if serious issues, especially related to ethical considerations, had not been fully and satisfactorily resolved by then.

We would be grateful for your thoughts on this apparent dilemma and will continue to hold the document under scrutiny for the time being.

5 May 2006

Letter from Andy Burnham MP, Minister of State for Delivery and Reform, Department of Health to the Chairman

Thank you for your letter of 5 May to Jane Kennedy responding to her letter of 21st April.

In your letter you express concerns at the Austrian Presidency’s intentions to try and achieve “some sort of political agreement” at the Health Council during their Presidency. Your concern was that there were sensitive issues still to be resolved before any sort of agreement could be reached. The Health Council took place on 1–2 June, and in the event the Presidency simply presented a Progress Report, on which there was no discussion, which highlighted all the issues still to be resolved including the tissue engineering elements
referenced in your letter. The latest position on those discussions is covered in a separate letter from me in answer to your letter on the Advanced Therapy Medicinal Products Regulation.

I will continue to keep you up to date as negotiations progress and will provide you with a revised RIA as promised.

13 June 2006

**Letter from the Chairman to Andy Burnham MP**

Thank you for your letter dated 13 June. This was considered by Sub-Committee G on 29 June together with your separate letter of the same date on the related question of the Advanced Therapy Medicinal Products (ATMP) Regulation (reference 15023/05) to which I am replying separately.

We are glad to see that the Austrian Presidency did not, after all, attempt to achieve “some sort of political agreement” at the June Health Council. Our view remains that much more careful and detailed consideration is needed, especially over the sensitive issues such as tissue engineering and the potential linkage with the ATMP Directive.

We will continue to hold this document under scrutiny and look forward to your further progress reports as negotiations proceed under the Finnish Presidency. We also look forward to seeing your revised RIA as promised.

3 July 2006

**MEDICINAL PRODUCTS FOR PAEDIATRIC USE (13880/04)**

**Letter from Rt Hon Jane Kennedy MP, Minister of State, Department of Health to the Chairman**

The Employment, Social Policy, Health and Consumer Affairs Council met on 8–9 December 2005. I am writing to update you on the discussions that took place on the European Commission’s proposal for a Regulation on medicines for paediatric use.

Political agreement was secured on the Commission’s proposed Regulation. All Member States with the exception of Poland voted in favour of the proposed Regulation. Poland voted against because of concerns about the impact of the proposed six months extension to supplementary protection certificates under the Regulation. Latvia, while supporting the proposal, said it should not lead to unreasonable price increases and entered a minute statement to reflect this point. While supporting the proposal to fund paediatric studies into off-patent medicines through the Community research framework programmes, Germany entered a minute statement to clarify that such funding would be subject to the rules and regulations governing the framework programmes.

The committee will be aware that the Government’s view was that Article 95 of the Treaty was not an appropriate legal basis for this Regulation and that Article 308 should have been used instead for the reasons invoked in case C-66/04 UK v EP and Council (the smoke flavourings case) Judgment in that case was given on 6 December 2005. The UK’s arguments on the correct legal base for establishing a centralised procedure were rejected. I attach a note setting out the UK’s grounds of challenge and the ECJ’s findings (not printed). The Court’s ruling in this case has provided useful clarification as to the appropriate use of Article 95 as a legal base for measures which “lead to” harmonisation.

Given what the Court has said about the breadth of Article 95 and the measure of discretion conferred on the Community legislature as regards its use and the fact that the proposed Paediatrics Regulations do not actually set up a new agency, but rather establish a new committee within an existing agency, similar to the situation in the smoke flavourings case, we withdrew our objection to the legal base for the Regulation at the Council. We are working to secure a common position under the Austrian Presidency in the first half of 2006.

19 January 2006

**Letter from the Chairman to Rt Hon Jane Kennedy MP**

Thank you for your letter dated 19 January which was considered by Sub-Committee G on 2 February.

We are glad to have your confirmation that political agreement on the Paediatric Medicines Regulation was secured, as expected, at the Employment, Social Policy, Health and Consumer Affairs Council on 8–9 December 2005. We were interested to see the details of the voting which you have given and grateful to you for setting out the Government’s position on the legal base in the light of the ECJ ruling on the smoke flavourings case.
As you know, our Inquiry on the Paediatric Medicines Regulation has already been completed. The Inquiry Report was published today (2 February) and a copy has been sent to you already.

We look forward to receiving the Government’s Response to the Report in due course, in the usual way. We note that the Government is working to secure a common position on the Regulation during the Austrian Presidency and would be grateful if you could continue to report significant developments on that.

2 February 2006

Letter from Andy Burnham MP, Minister of State, Department of Health to the Chairman

I am writing to inform you that a second reading agreement was secured on the European Commission’s proposed Regulation on medicines for paediatric use on 1 June 2006. The final text of the Regulation has been agreed and will be published in the Official Journal of the European Communities (OJEC) shortly. The Regulation will enter into force 30 days after publication in the OJEC.

The committee will be aware that this proposal was a key priority during the UK Presidency and political agreement was reached on the Regulation at the Employment, Social Policy, Health and Consumer Affairs Council in December 2005.

18 July 2006

Letter from the Chairman to Andy Burnham MP

Thank you for your letter dated 18 July. Unfortunately it did not reach us in time for submission to Sub-Committee G at their last meeting before the Summer Recess on 20 July, but copies will be circulated to Members of the Sub-Committee.

We are grateful to you for confirming that the final text of the Regulation has been agreed and that it will enter into force in the near future.

As a condition of our releasing the scrutiny reserve on this Proposal before political agreement was reached at the December 2005 Council, your predecessor promised that the appropriate DoH and MHRA officials would brief Sub-Committee G on development of the guidelines for implementing the Regulation. We attach great importance to this aspect and will be in touch with your officials when Parliament resumes following the Summer Recess to arrange a mutually convenient date for this briefing to take place.

24 July 2006

MENTAL HEALTH STRATEGY FOR THE EUORPEAN UNION (13442/05)

Letter from the Chairman to Rt Hon Rosie Winterton MP, Minister for Health Services, Department of Health

In my letter to you dated 12 January 2006,18 I said that we were considering the possibility of setting up an Inquiry into the issues raised by the Green Paper. Sub-Committee G have decided to do so when their present Inquiry into the Proposed EU Consumer Credit Directive is completed around the middle of May. I attach a copy of the Call for Evidence which we are issuing about the Inquiry (not printed).

We would welcome the usual scene-setting oral evidence from your officials at the beginning of the Inquiry towards the end of May and hope that you would be able to give oral evidence to complete the Inquiry towards the end of June or early in July. We will be in touch with your officials about the arrangements for both sessions.

We also look forward to receiving a copy of the Government’s response to the Green Paper, which you have already promised to send us.

The Green Paper will remain under scrutiny during the Inquiry.

30 March 2006

Letter from Rt Hon Rosie Winterton MP to the Chairman

I am writing further to my letter of 20 December 2005, when I discussed the concerns about the Green Paper that your Committee had raised and said that I would let you see the Government’s response to the Commission as soon as it was ready.

I have enclosed a copy of the document that we have just sent to the Commission (not printed). It represents the views of the UK Government, including the devolved administrations. It, together with this letter, also constitutes our formal written evidence to your Committee’s inquiry into the Green Paper.

I hope the response is reasonably self-explanatory. To summarise, it generally concurs with the Green Paper’s proposals subject to two clear principles:

— that any EU strategy that emerges must serve as a contribution to the Helsinki Declaration’s implementation, not as an alternative to it; and
— that it must accommodate and support Member States’ own local priorities (insofar as they are consistent with Helsinki and the strategy).

The main extra points it makes are:

— the need for the strategy to address inequalities in mental health—this maintains consistency with the themes of last year’s UK Presidency of the EU;
— the need for a strategy that integrates health and social care with other policy sectors—for example employment and education that have a role in promoting mental health and social inclusion; and
— the need for the strategy to be clear about what specific action the EU will take and who will be accountable for it.

We expect the Commission to consider the outcome of its consultation over the coming months, and that we will have a proposal for an EU mental health strategy by the end of the year.

Let us know if you need more information. I look forward to discussing the issues with the Committee soon.

26 May 2006

Letter from the Chairman to Rt Hon Rosie Winterton MP

Thank you for your letter dated 26 May which was considered by Sub-Committee G on 22 June.

We are grateful to you for sending us a copy of the Government’s Response to the European Commission and note that this also constitutes the Government’s formal written evidence to our Inquiry into the Green Paper.

The start of our Inquiry has unfortunately been delayed but we are in the process of reviewing the evidence and appointing Specialist Advisers and would welcome an on-the-record oral briefing from relevant officials of the Department to set the scene for the Inquiry. We hope that it might be possible to arrange a mutually convenient date for this before the House rises for the Summer Recess on 25 July.

The Inquiry would then continue when Parliament resumes in the Autumn and we would look forward to taking oral evidence from you towards the end of the Inquiry in the usual way.

23 June 2006

MINIMUM HEALTH AND SAFETY REQUIREMENTS REGARDING THE EXPOSURE OF WORKERS TO THE RISKS ARISING FROM PHYSICAL AGENTS: OPTICAL RADIATION (10678/04)

Letter from Lord Hunt, Parliamentary Under-Secretary of State for Work and Pensions, Department for Work and Pensions to the Chairman

Thank you for your letter of 15 December.

In your letter of 7 April 2005 to my predecessor Jane Kennedy, you regretted that the initial RIA did not include any possible impact on small businesses due to the pace at which negotiations were moving. The Health and Safety Executive had at that time already started to address this matter and carried out a telephone survey of a number of small firms principally involved with laser radiation sources. The companies generally employed less than 10 people and were selected through contact with their trade associations and other relevant sources of information. The companies chosen reflected a geographical spread across the country.

Each company was told about the requirements of the Directive and sent a copy. We did not receive any subsequent responses indicating that there would be an adverse impact on their business. The companies were generally well aware of the need to undertake risk assessments and worked closely with their trade associations from whom they obtained much support.

You already know from my letter of 30 November that the Directive has now changed substantially since the initial proposal following the removal of the natural radiation (sunlight) provisions. As a Directive that now deals solely with optical radiation from artificial sources including laser sources, it is in keeping with the European Commission’s commitment to better regulation. The Exposure Limit Values are based on the well-accepted international guidelines and the requirements in the Directive do not add significantly to dutyholders existing requirements under current health and safety legislation.

The Health and Safety Commission will be issuing a formal consultation document in due course with draft regulations and this will provide an opportunity for all stakeholders to provide comments.

The revision of the RIA on the amended proposal that is now in line with the Government’s position is being undertaken. It will indicate a significant decrease in burdens on business due to the sunlight proposals being entirely removed. I should be able to send you a copy by the end of January.

16 January 2006

Letter from the Chairman to Lord Hunt

Thank you for your letter dated 16 January which was considered by Sub-Committee G on 9 February.

We are grateful to you for explaining about the Health and Safety Executive’s consultation of small organisations and for pointing out that, now the sunlight provisions have been removed, compliance requirements are unlikely to add significantly to the duties required by existing UK health and safety legislation.

As you know, we have already lifted the scrutiny reserve in this matter. Nevertheless, we would be glad to see the revised RIA promised in your letter. As it is not entirely clear from this correspondence whether the amended Proposal has now been adopted, we would be grateful if you could also clarify the position when replying.

10 February 2006

Letter from Lord Hunt to the Chairman

Further to my letter of 16 January, I am enclosing a revised Regulatory Impact Assessment together with a copy of the text agreed at the conciliation meeting on 6 December (not printed). The Council will adopt this text on 20 February and the Parliament shortly thereafter.

As I indicated in my previous letter, the RIA confirms a significant decrease in costs with the removal of the sunlight provisions and the associated decrease in burdens on business. This is a successful outcome that is compatible with the UK’s better regulation agenda.

28 February 2006

Letter from the Chairman to Lord Hunt

Thank you for your letter dated 28 February which was considered by Sub-Committee G on 16 March.

We are pleased to see that the RIA confirms that a significant decrease in costs is expected, following the removal of the controversial sunlight provisions.

We are also grateful for the copy of the text agreed at conciliation meeting on 6 December 2005. We note that the Council adopted this text on 20 February and that European Parliament is expected to do so shortly.

16 March 2006

MORTGAGE CREDIT IN THE EU (11500/05)

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

Thank you for your letter dated 23 November 2005,22 enclosing a copy of the Government’s Response to the Commission Green Paper. This was considered by Sub-Committee G (Social Policy and Consumer Affairs) on 12 January.

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As I explained in my letter to you dated 31 October 2005, Sub-Committee G’s main concern is for the consumer protection aspects of any proposals which may emerge from this consultation, as well as for any comparisons with the Commission’s parallel proposals for Consumer Credit Harmonisation on which the Sub-Committee’s Inquiry has now been resumed. But the possible implications of this consultation are also of concern to Sub-Committees A (Economic and Financial Affairs) B (Internal Market) and E (Law and Institutions).

We are struck by the cautious approach adopted thus far by the Commission in the Green Paper, and especially by the extent to which the Commission has already studied the case and scope for market integration, and by the Commission’s commitment to a full cost/benefit analysis. This contrasts with the Commission’s approach to the Consumer Credit Proposal. We will want to pursue that difference of approach with the Commission and the Government in the Consumer Credit Inquiry.

From what we have seen so far, both the Green Paper and the Consumer Credit Proposal appear, for similar reasons, to beg the question whether a fully integrated single cross-border market in either mortgage or consumer credit transactions between individual lenders in one country and borrowers in another is feasible or desirable in the near future. But we note that the Green Paper extends the scope of the consultation to the acquisition or establishment of branches or subsidiaries in other Member States and would be interested in the Government’s view of the desirability of that approach for both mortgages and consumer credit.

Even if full harmonisation in either market is unlikely to be attainable in the short-term, we would like to consider the extent to which other aspects of the proposals, such as the requirements for consumer information, advice, data-sharing, early repayment, interest rates and redress, might be standardised to give greater certainty, improved market access and appropriate common levels of consumer protection to mortgage and consumer credit transactions throughout the EU.

We note what you say in your paper about the cost of regulation and the need to explore alternatives. We agree that these aspects should be fully explored for both mortgages and consumer credit. But this would need to be balanced by consideration of the desirability of adequate consumer protection at an EU, as distinct from a national level. This may be especially relevant for those Member States where national consumer protection is not as developed as in the UK and the Government may wish to consider to what extent UK regulations and good practice may offer an appropriate model.

The Green Paper also invites views on the feasibility of a Euromortgage that would be legally recognised in all Member States proposal and the related idea of a so-called 26th regime for mortgage credit, which would not displace national laws but would sit alongside the existing legal regimes and would apply if the parties opt into it. We note the Government’s initial response to the latter, but suggest that these ideas may be worth exploring more fully.

We see that the Government’s response was submitted jointly by the Treasury and the FSA, but would be glad to know to what extent it reflects consultation with UK financial services and consumers representatives and what the Government’s plans are for consulting those sectors as this exercise proceeds.

We will continue to hold this document under scrutiny.

12 January 2006

Letter from Ivan Lewis MP to the Chairman

Thank you for your letter of 12 January.

I note the importance that Sub-Committee G has attached to the protection of consumers. That is a concern we share.

As regards the development of these markets, the Commission is quite right to pay careful attention to the ease with which lenders can enter new markets. This is how choice and competition can be enhanced throughout Europe. We told the Commission that their priorities should lie, for example, in increasing access to consumer credit data as part of a broader strategy to increase market access.

Clearly there is a balance between regulatory burdens and consumer protection. We have told the Commission and other Member States that we believe we have struck the appropriate balance for the UK in the new rules that took effect here in 2004. The process that informed UK mortgage policy development, of cost-benefit analysis, widespread consultation, and consumer facing research, is a model that others could usefully follow.

Our Green Paper response indicated that we are content for further work to be undertaken on a 26th regime, building on existing academic research.
The UK response to the Green Paper was developed with UK stakeholders and informed by a seminar jointly hosted with the FSA. That brought together consumers, UK lenders and intermediaries, and others. My officials will continue to work closely with all interested parties.

The Commission hosted an all-day consultative hearing in December in Brussels, which was well attended, with UK speakers active in the discussions. The Commission are expected to publish their White Paper on mortgage credit in July.

The DTI, with whom we work very closely, may wish to comment additionally on the points you make about the Consumer Credit Directive.

31 January 2006

Letter from the Chairman to Ivan Lewis MP

Thank you for your letter dated 31 January which was considered by Sub-Committee G on 2 March.

We note that the Commission are expected to publish a White Paper on Mortgage Credit in July, based on the recent consultations. We will examine that document closely when it is submitted for Parliamentary scrutiny. Meanwhile, we intend to pursue any aspects related to our current Inquiry on the Consumer Credit Directive with Gerry Sutcliffe when he gives oral evidence to the Inquiry on 30 March and will continue to keep an eye on any other related developments.

We have, however, decided to release the Green Paper from scrutiny.

2 March 2006

MULTI-LINGUALISM: A NEW FRAMEWORK STRATEGY (14908/05)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills

Thank you for your Explanatory Memorandum dated 20 December 2005 which was considered by Sub-Committee G (Social Policy and Consumer Affairs) on 2 February.

We support the creation of the High Level Group on Multilingualism as long as it acts only as an advisory body to the Commission. We agree that further clarification of the role and scope of this group of experts should be sought.

We are grateful to you for the detailed information on the national policies that the Government is pursuing in the areas on which the Communication makes recommendations. We read with interest the policies you are developing for language teacher training, language learning for all 7–11 year olds and Content and Language Integrated Learning (CLIL). But we hope that the framework, and the national policies related to it, will also pay adequate attention to the needs of older learners.

Moreover, we would remind you that our April 2004 report on the Proposed EU Integrated Action Programme for Life-long Learning (HL Paper 104-I) recommended that the Government should carry out an urgent reappraisal of language-teaching policy across the board. The Eurobarometer survey mentioned in the Communication shows that the Government cannot afford to be complacent about promoting language teaching when some 70 per cent of UK citizens still speak only English.

While we are content to release the above document from scrutiny, we trust that Government will bear all these factors in mind when responding to this initiative.

2 February 2006

NOMINAL QUANTITIES FOR PRE-PACKED PRODUCTS (15570/04, 15614/04, 8680/06)

Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman

Thank you for your letter of 24 November23 in which you seek a clearer picture of the final proposal that you are being asked to endorse, before agreeing to lift scrutiny. I am afraid that we are still some way away from being able to see the final picture, but at all events I am now in a position to update the Committee on the latest development, namely the First Reading in the European Parliament on 1 February.

The Parliament has agreed to propose a number of amendments to the text of the Commission’s proposal and I attach a copy of these. Many of the amendments represent relatively minor changes. However, there are some more significant amendments which I would like to bring to the attention of the Committee.

The Parliament supported the broad deregulatory nature of the proposal put forward by the European Commission, which is to remove mandatory nominal quantities from all but four pre-packed products—those being wines, spirits, white sugar and soluble coffee. However, they agreed to amendments to retain mandatory nominal quantities for six additional products—drinking milk, butter, ground or unground roasted coffee, dried pasta, rice and brown sugar (Amendments 33, 21, 22, 23, 24, 25, and 19). This would have the effect of requiring those products to be sold only in the specified ranges in every Member State (so far as milk is concerned, the ranges specified include both metric and imperial sizes).

A further amendment (Amendment 32) was agreed to exclude pre-packed bread, spreadable fats and tea from the scope of the Directive and to allow Member States to retain national rules with respect to those products. The effect of that amendment in the UK would be to allow us to retain the existing national rules for those products.

The net effect of the proposal, with these amendments, would be to remove all size restrictions from over 40 types of products covered by current EC rules, together with all products falling outside these rules except pre-packed bread, spreadable fats and tea.

The European Parliament also agreed to amendments (Amendments 16 and 11) to require the Commission to review the operation of the Directive eight years after it comes into effect rather than the 20 year sunset clause proposed by the Commission.

The next stage of the legislative process will be for the Council to adopt a common position in relation to the draft Directive and the European Parliament’s proposed amendments.

As you know the UK’s position has been to support the overall deregulation of the proposal and to seek an early agreement. A great deal of work was undertaken during the UK Presidency to seek such an agreement but unfortunately it was not possible to reconcile the initial views of the Parliament and Council at that stage.

The UK remains committed to seeking an early agreement that will bring the benefits of the deregulation of specified sizes for most products, to UK businesses and consumers as soon as practicable. However, although the Council has not yet adopted its common position, earlier discussions in Council have shown that there is widespread support for deregulation and little support for extending the range of products which would be subject to mandatory restrictions. It therefore seems unlikely that agreement between the European Parliament and Council will be reached quickly. However, we do expect that the proposal for a review clause rather than a sunset clause will be acceptable.

As I have previously mentioned, our own consultations with business and consumer groups have shown that there is support for the retention of fixed sizes for particular products, or broadly for a wider range of staple products than proposed by the Commission. In particular, there is support from UK trade associations for the retention of mandatory specified quantities for milk, bread, tea, margarine and butter; and consumer groups would also support such changes. The likely effect of the European Parliament’s proposed amendments would be to require mandatory specified quantities in all Member States for butter and milk (including imperial sizes in the UK) and to allow the retention of national rules for pre-packed bread, margarine and tea. These amendments will therefore be widely satisfactory to UK interests.

In your letter, you also ask for a better justification for retaining restrictions in those cases where we would be prepared to support them. I do not think there is, in practice, much I can add, on this point, to what I said in my letter of 10 November. We are firmly in favour of deregulation, and we seek a very large degree of deregulation of package sizes on the basis of the Commission’s proposal. However, we also recognise that consumer groups would prefer restrictions to continue for a wider range of products in everyday use, and that producers and packers in certain sectors also see advantage in retaining restrictions. Accordingly, we would be content for restrictions to be maintained for a few sectors additional to those covered by the Commission’s proposal, and we do not consider that doing so will materially detract from what will remain a major measure of deregulation. We do, however, agree with you that it would be right to review the situation after a reasonable period of time, and we are quite content with the proposal for a review after eight years which has emerged from the Parliament’s consideration.

In seeking to agree with our partners in the Council on a common position in response to the Parliament’s amendments, the UK will therefore be guided first of all by our strong support for the principle of deregulation and by the desirability of removing all unnecessary or outdated restrictions. Naturally we will
take full account of the strong support of your Committee on that principle. We will also take full account of the concerns of UK trade associations and consumer groups which I have mentioned. We will be working constructively with the Austrian Presidency and if necessary with their successors, as well as with all members of the Council, with a view to securing the significant advantages of a very substantial measure of deregulation, as soon as may be practicable.

I will, of course, update your Committee on any further developments on this proposal.

16 February 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 16 February which was considered by Sub-Committee G on 9 March.

We note that the European Parliament First Reading has resulted in proposed amendments which include adding drinking milk, butter, ground or unground roasted coffee, dried pasta, rice and brown sugar to the Commission’s original list of wine, spirits, white sugar and soluble coffee for which mandatory restrictions would be retained and that Member States would also be allowed to retain national rules on pre-packed bread, spreadable fats and tea.

You say that these additions are acceptable to the Government and would not materially detract from the essential deregulatory purpose of the Proposal. But we note your comment that you are still some way from being able to see the final picture and that you do not expect early agreement to be reached between the Parliament and the Council. Indeed, your letter suggests that further consideration may well stretch beyond the tenure of the current Presidency.

You do not mention the Impact Assessment for which the European Parliament had called, according to your letter dated 10 November 2005. We would be glad to know what has happened about this and what effect it might have on the final outcome.

As it is, we appear to be faced with the prospect of more protracted negotiations about a widening range of exemptions which are contrary to the reforming spirit of the proposed Regulation. It is hard to believe that those negotiations will not produce further demands for yet more exemptions. We would be reluctant to see this process culminate in a package of agreed exemptions that were more the product of political horse-trading than an objective assessment of the justified needs of European producers and consumers.

We continue to believe that the nettle of deregulation should be firmly grasped and that all remaining restrictions should be swept away, so long as a reasonable time is allowed for producers, retailers and consumers to adapt to the changes. We consider that, in modern circumstances, the essential safeguards for consumers should be clear, consistent and reliable labelling and product description, buttressed by regular inspection from Trading Standards Officers or their counterparts.

As you know, the Scotch Whisky Association is the only organisation which has given us an argued case for retention. If you have had similar representations from producers or consumers organisations, we would be glad to see copies so that we may assess their merits. It would also be helpful to know whether the Government has had dialogue with those organisations about what might be a reasonable period for phasing out any restrictions that they advocate.

In the circumstances, this document will remain under scrutiny pending your reply.

9 March 2006

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 9 March on the above proposal in which you seek more information about the Extended Impact Assessment produced for the European Parliament.

The European Parliament commissioned an Extended Impact Assessment for this proposal in August 2005 to assess the impact that different policy options would have on consumers, vulnerable consumers and manufacturers. The findings, published in November last year, supported the policy option favoured by the European Parliament of deregulation for most products while retaining fixed sizes for certain basic products (pasta, milk, butter, coffee and sugar). I am attaching a copy of that study, which was taken into account by the Rapporteur appointed by the European Parliament before making his final Report to the Parliament.

You also ask about representations received from trade associations on this subject. As I have mentioned in earlier correspondence, we have received views from many trade associations on this issue, including some that
favour deregulation and others that favour retention of fixed sizes for their sectors. However, no other trade association has put forward the kind of detailed submission which the Scotch Whisky Association have presented to you. We can, of course, invite other trade associations to make their views known to your Committee, if you would find that helpful.

I will, of course, update your Committee when there are further developments on this proposal.

31 March 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 31 March which was considered by Sub-Committee G on 4 May.

We are grateful to you for making available a copy of the European Parliament’s Impact Assessment study, which we are still considering. We would be glad to know what you think about the validity of this study and the conclusions it reaches.

It is surprising that none of the other trade associations that have made representations to the Department have put forward the kind of detailed case which the Scotch Whisky Association have made to the Committee. We would be glad if you would invite them to make a detailed justification of their case, as you have offered. We suggest this should include asking them not only to justify their case but also to consider whether they might be prepared to contemplate a reasonable timescale for phasing-out any requested restrictions in the longer run. That should help you and us to have a fuller understanding of the relevant factors than we currently seem to have.

To balance those representations, however, we suggest that consumers’ organisations should be given a similar opportunity to make a more detailed explanation of their views to the Committee than they appear to have done to the Government so far. Again this should include asking not only why they might want particular restrictions to be retained but also whether it might be reasonable to phase them out in time.

You have not commented on the suggestion in my letter to you dated 9 March that the continuing negotiations might culminate in a package of agreed exemptions that were more the product of political horse-trading than an objective assessment of the justified needs of European producers and consumers. We continue to believe that such an untidy outcome is more than likely unless all concerned grasp the nettle of deregulation and set a reasonable date for all restrictions to be swept away.

When you last wrote on 16 February you said that you did not expect early agreement to be reached between Parliament and the Council and that further consideration might well stretch beyond the tenure of the current Presidency. It would be helpful to know whether you now have a clearer idea of how the continuing negotiations are likely to proceed and when a Council decision might be expected.

We will continue to retain this document under scrutiny pending your reply.

5 May 2006

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

Your Explanatory Memorandum (8680/06) dated 13 June was considered by Sub-Committee G on 13 July.

We note that, although the Government is apparently prepared to accept the Commission’s amended Proposal, it would be equally content to go along with a more extensive range of retained specified quantities along the lines proposed by the European Parliament.

You should be aware from our correspondence with your predecessor that the Sub-Committee has consistently taken the view that:

(a) on the whole, simplification and liberalisation would be in the best interests of producers and consumers;
(b) the proposal should help to develop a more effective single market in pre-packed products and stimulate innovation and competition;
(c) the proposed restrictions are no longer necessary and should be removed completely, so long as reasonable time is allowed for producers, retailers and consumers to adapt; and,
(d) in modern circumstances clear and reliable labelling for product description is a much more important and effective safeguard for most consumers.
Thanks to the intervention of your predecessor and his officials, we have now had detailed statements supporting the case for retention from organisations representing the interest of UK coffee, bread, milk and sugar processors. We have also had representations from Which? and Age Concern on behalf of consumers and are awaiting representations from the RNIB on behalf of the visually-impaired. Copies of all the representations received so far have all been sent to the Department and we will forward a copy of whatever representations are received from the RNIB.

We understand from your officials that the incoming Finnish Presidency has still not set a timetable for Council decision. Given that the positions of the Commission and the European Parliament are at variance, it seems quite likely that it will be some time yet before a Common Position can be achieved.

That being so, we suggest that the best way forward might be for you to give oral evidence of the Government’s position to Sub-Committee G fairly soon after Parliament resumes from the Summer Recess. We would then take account of that, as well as of the representations we have received and the documentation produced by the European Parliament, and produce a short Report summarising our Conclusions.

If that is acceptable to you, my staff will be in touch with your officials to make the necessary arrangements.

In the meantime, we are releasing the original Commission Proposal (reference 15570/04) from scrutiny and maintaining the amended Proposal (8680/06) under scrutiny.

14 July 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 14 July, about the above proposal.

No date has been set down yet for further discussions of this proposal in the Council.

I have noted the comments you make and I look forward to talking to the Committee about the proposal after the Summer Recess.

2 August 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

I am writing to inform you of the necessity for a scrutiny override on the above proposal. I had accepted your invitation to speak to the Committee on this proposal after the recess. However, events in Brussels have moved more quickly than anticipated and the proposal has been added to the agenda for political agreement at the Competitiveness Council on 25 September. As the House of Lords will remain in Recess until 8 October, there will be no opportunity for the Committee to consider the proposal before that date.

An Explanatory Memorandum on the Commission’s revised proposal was submitted to the Committee on 13 June (EM8680/06). That set out the Government’s position in support of deregulation for the large majority of products, but which accepted the arguments put forward by particular industry sectors and consumer groups for the retention of specified quantities for a small number of staple products.

I will, of course, update your Committee on the outcome of discussions after the meeting on the 25 September.

19 September 2006

NUTRITION AND HEALTH CLAIMS (11646/03)

Letter from Caroline Flint MP, Parliamentary Under-Secretary of State for Public Health, Department of Health to the Chairman

I am writing to report progress of the negotiations on this proposal. The Committee was informed on 17 February of the adoption of the Council’s Common Position text at the Health Council in December 2005 and this allowed the European Parliament to commence its second reading of the proposal in January of this year.

A series of trialogue meetings is currently taking place involving the Council (represented by the Austrian Presidency), the Parliament’s rapporteurs and the Commission. It is possible that the plenary session of the European Parliament in the week commencing 15 May will adopt amendments amenable to Council, which could lead to a second reading deal.
The Committee was concerned during the first reading about the proportionality of this proposal, and this has been one of the key UK objectives in this negotiation. The European Parliament has also been pressing for amendments which would minimise the burdens on business. There are three principal issues still at stake:

— Nutrient profiles—this is where a claim (for example of vitamin or mineral content) would be restricted on a food not meeting a profile to be established by the European Food Safety Authority (EFSA). The Council agreed the appropriate control would be to prohibit the claim. This was unacceptable to the European Parliament. A compromise has been suggested by the Parliament where, if only one nutrient did not meet the profile (eg high fat content), the claim would not be prohibited but information about the nutrient would be highlighted so the consumer was not misled about the nutritional content of the food. This would be acceptable to the UK provided there were clear practical safeguards to avoid misleading the consumer.

— Authorisation of new health claims—this concerns the process to apply to new health claims not eligible for the lighter generally accepted claims list (described in the explanatory memoranda submitted on this proposal). The concern here was about the effect on industry innovation of a lengthy approvals process and the European Parliament has proposed a compromise that sets strict time limits. This could be acceptable to Council. Whilst this would improve the Council’s Common Position, the UK has argued for a provisional authorisation approach pending a fuller assessment by EFSA.

— Trade marks—this is about how to control claims that have been registered as a trade mark. A difference of opinion remains between the Council and European Parliament. The Parliament may back down from its proposed exemption for these claims, to acceptance of the Council’s suggested solution but with a longer transition period than the 10 years offered. Indeed, longer transition periods overall are a likely outcome of the current discussions.

A second reading deal would allow formal adoption of the Regulation, with entry into force some six months later. This is unlikely at the June Health Council, but may be finalised by September or October. The Regulation will be directly applicable in the UK, but statutory instruments in England and each of the devolved administrations would be required to set penalties for offences. I will write again to provide a further update of the position.

4 May 2006

Letter from the Chairman to Caroline Flint MP

Thank you for your letter which was considered by Sub-Committee G on 18 May.

We note what you say about the progress towards a Second Reading deal. As you know, this document has already been cleared from scrutiny but we are grateful to you for promising to report further developments.

19 May 2006

PANDEMIC INFLUENZA PREPAREDNESS (15127/05)

Letter from the Chairman to Rt Hon Rosie Winterton MP, Minister for Health Services, Department of Health

Thank you for your Explanatory Memorandum (EM) which Sub-Committee G considered at its meeting on 26 January 2006.

We accept that the Commission may have a useful role to play in preparing for a possible influenza pandemic. The Commission’s outline of the roles that the Commission and the European Centre for Disease Prevention and Control would have during the defined four levels of EU alert action during a WHO Phase 6 or pandemic period is therefore welcome, but requires careful consideration.

Your fear that differences between the UK and EU plans relating to planning assumptions and alert levels could lead to misunderstanding at a time of public health crisis is particularly worrying. Clear agreement over respective roles and early planning for effective co-ordination are essential to avoid this in our view.

Therefore we agree that, if the contingency plan is to run smoothly, it is extremely important to seek clarification of specific points in the EU Plan, such as when the Commission would issue advice, the exact roles, of key European bodies such as the European Centre for Disease Prevention and Control and how these activities will complement action by Member States. We also believe it is important to have a clear understanding of how action by the EU and Member States will mesh with the actions of the WHO and
national governments outside the EU. We hope that you will press for greater clarity on all these aspects in negotiations as a matter of urgency and would welcome a report on any progress made.

It would also be useful to know whether you believe other EU countries have sound pandemic contingency plans in place. If more could be done by other Member States what effect might that have on the need for active involvement by the Commission?

We would also draw your attention to the House of Lords’ Science and Technology Committee report Pandemic Influenza which was debated in the House on 20 January 2006. Among other things, this argued that it is essential that proper contingency plans are in place at all levels and that these are carried through to the local level including to health services and food supply chains.

We have retained the document under scrutiny, pending your reply.

1 February 2006

Letter from Rt Hon Rosie Winterton MP to the Chairman

Thank you for your letter of 1 February 2006 regarding Explanatory Memorandum 15127/05 on pandemic influenza preparedness and response planning in the European Community.

As you have requested, we are seeking clarification from the European Commission on the various issues which you have raised in your letter.

As you may well be aware, on 16 February, the Government published its response to the House of Lords Science and Technology Committee report on pandemic influenza as Command Paper Cm 6738. Copies have been placed in the Library. The response provides details of UK on-going contingency planning that is taking place at all levels through to the local level, including the NHS and the food supply chain.

I will write again once my officials have obtained further details on the issues that you have raised.

19 February 2006

Letter from the Chairman to Rt Hon Rosie Winterton MP

Thank you for your letter dated 19 February which was considered by Sub-Committee G considered on 9 March.

We note that you are seeking clarification from the Commission on the points raised in my letter to you dated 1 February. We hope the Commission will respond promptly and look forward to knowing what they have to say. Given what appears to be a growing threat to Europe from avian influenza, we would be glad to know what timescale is now envisaged for consideration of the Commission’s Communication.

In the meantime, we are grateful to you for drawing attention to the Government’s Response to the Science and Technology Report on Pandemic Influenza.

The Commission Communication remains under scrutiny.

9 March 2006

Letter from Rt Hon Rosie Winterton MP to the Chairman

Further to my letter of 19 February, my officials have written to officials at the European Commission to clarify a number of issues that you raised in your letter of 1 February. Whilst we await a response from the Commission I would like to take this opportunity to clarify a few of the other issues that you raised in your letter.

I can confirm that all EU Member States have pandemic preparedness plans in place. The Commission and Member States are continuing to work to improve these national plans as necessary. In March and October 2005, the Commission together with the WHO, organised meetings in Luxembourg and Stockholm with representatives from the 52 countries of the WHO European Region to discuss their national preparedness plans. The meetings helped to determine the stage of pandemic planning in the different European countries, facilitated planning for influenza pandemic preparedness and discussed the main components of such national planning. A further meeting is scheduled for May in Sweden.
Further work by individual Member States on their national preparedness plans will not significantly affect the need for active involvement by the Commission during a pandemic. As the Committee will be aware, there are EU requirements to share information, and through exercising this function in collaboration with Members States and the European Centre for Disease Control, the Commission believes that it can add value to the national level response.

I will write again once the Commission has clarified the remaining issues that you raised.

25 April 2006

Letter from the Chairman to Rt Hon Rosie Winterton MP

Thank you for your letter dated 25 April which was considered by Sub-Committee G on 11 May.

We note that your officials are still waiting for the Commission to respond to the request for clarification prompted by my letter to you dated 1 February.

It is good to know that all EU Member States do have their own pandemic preparedness plans in place. We note your view that the continuing work on those plans should not significantly affect the need for active involvement by the Commission during a pandemic.

It is also good to know that the Commission have been working jointly with the WHO to organise meetings for the 52 countries belonging to the WHO region to discuss their national preparedness plans and that another such meeting is due to take place in Sweden in May.

That is all fairly encouraging, so far as it goes. But it is still not clear to us what is the appropriate role for the Commission in preparing for and helping to deal with pandemics, including the specific role of the European Centre for Disease Prevention and Control, and how those activities should dovetail most effectively with those of Member States and the WHO. It is important to get this right and clearly understood and agreed by all concerned without delay. Since avian influenza has already washed up on our shores and broken out in neighbouring Member States, it seems to us high time that this was settled.

We would therefore be grateful if you would press the Commission for an early response to the clarifications you have sought and report back to us as soon as they have done so. We would also be grateful for a reply to the question in my letter to you dated 9 March about the timescale envisaged for consideration of the Commission’s Communication.

We are continuing to hold this document under scrutiny pending your reply.

12 May 2006

Letter from Rt Hon Rosie Winterton MP to the Chairman

With reference to your letter 12 May 2006, I am now in a position to provide additional information on the issues raised in your letters of 1 February 2006 and 9 March 2006.

In broad terms the role of the Commission will be risk management whilst the role of the ECDC will be risk assessment. Nevertheless, despite this division of responsibilities it will be important for the Commission and the ECDC to work closely together during a pandemic, and this is reflected in the Communication which highlights a number of actions on which the two bodies will have to act together. As a consequence, there is a degree of flexibility inherent in some aspects of the roles of the two bodies. Hence, the ECDC also undertakes some risk management work.

The appropriate role of the Commission in preparing for and helping to deal with a pandemic is defined by Article 152 of the Treaty establishing the European Community. This role is to support and complement the action of the Member States, and it can also propose measures to encourage and promote co-ordination and co-operation. The mission of the ECDC under Regulation (EC)851/2004 is to identify, assess and communicate current and emerging threats to human health from communicable diseases. All of the actions that are assigned to the Commission and the ECDC in the Communication can be considered to fall within their respective fields of competence.

The Communication indicates that the Commission may issue advice during phases 3, 5 and 6 of a pandemic although the exact times at which communications may be issued will depend upon the circumstances prevailing at the time. The Commission has established a network of EU Communication Officers which has also been meeting with the ECDC. This network has been sharing experience and best practice with the aim of achieving as much consistency in communications on avian and pandemic influenza as possible.
The Communication will complement action by Member States (MSs) in a number of ways, for example by enhancing co-ordination and co-operation between MSs; helping to identify gaps in MSs national level plans; improving communication between the MSs; working to ensure that MSs communications are consistent to the greatest possible extent; and ensuring that MSs have all of the information they need.

Whilst the Communication itself makes little reference to how the actions it contains will mesh with the work of the WHO, numerous links have been established between the Commission, the ECDC and the WHO at the operational level. We are confident that these links will be effective in ensuring that actions undertaken by the EU during a pandemic will integrate effectively with those of the WHO.

No timescale is envisaged for further consideration of the Communication, since the Commission does not intend to issue a revised version. However, work will continue at operational level on the implementation of the Communication.

20 July 2006

PARTNERSHIP FOR THE CHANGE IN AN ENLARGED EUROPE—ENHANCING THE CONTRIBUTION OF SOCIAL DIALOGUE (12002/04)

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 13 October 200524 I am writing to formally update you on matters relating to this Communication.

On 17 November 2005 the UK Presidency held a Conference on the European Social Dialogue that included a very useful exchange of experience and good practice on the implementation of European social partner agreements—with presentations made by social partners from the UK, France and Hungary as a basis for the discussion. This discussion highlighted the importance of effective implementation of such agreements and recognised that this could be achieved in very different ways according to the different traditions and structures that prevail in different Member States. I attach a copy of the Conference Report.

There has, as yet, been no notification of the proposed ad hoc meeting of technical experts nor have there been further moves to establish a specific social dialogue expert group under the auspices of the committee of Directors General of Industrial Relations. I understand that the last Directors General meeting did not discuss the communication further; neither were the results of the legal study on transnational collective bargaining made available.

I will of course inform the Committee if there are any further significant developments arising from the Communication.

21 March 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 21 March which was considered by Sub-Committee G on 30 March.

We note the absence of any significant progress on this long-outstanding item, about which we continue to have the reservations expressed in earlier correspondence.

On looking again at the papers we notice, however, that the present informal arrangements for dialogue between social partners do not appear to include any representation for SMEs. That omission seems regrettable if this process is to have significant value. We would be glad to know whether the Government share that view and, if so, what might be done about it without formalising the process or creating unnecessary bureaucracy.

The document will remain under scrutiny. We look forward to hearing from you when you have some progress to report.

30 March 2006

Letter from Jim Fitzpatrick MP, Minister for Employment Relations and Postal Services, Department of Trade and Industry to the Chairman

Thank you for your letter of 30 March, to my predecessor Gerry Sutcliffe, asking about representation of small business in the European Social Dialogue.

The Government agrees with the Committee about the importance of engaging small business in European Social Dialogue. Since November 1998 the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), that is the employer’s organisation representing the interests of European crafts, trades and SMEs at EU level, has been a recognised European Social Partner and as such is recognised by the Commission for the purposes of consultation. We welcome this.

However there remain a number of barriers to effective small firm engagement in European Social Dialogue. This emerged as a particular concern of new Member States, many of which have particularly high concentrations of small firms.

That is why the UK Presidency held a conference to focus on this issue, and bring together a range of actors to look at ways in which this could be achieved. That conference identified a number of ideas on how small firm engagement might be developed that set out in the report of the conference (a copy of the report was attached to my predecessor Gerry Sutcliffe’s previous letter of 21 March).

Beyond the formal European Social Dialogue there is also the question of engaging small business in European policy making more generally. The European Commission appointed a special Envoy for SMEs to step up exchanges with SMEs and their representative bodies. It acts as a key interface with the SME community, considering their specific interests and needs in EU Programmes and legislation. We would look to the SME Envoy to take a particular interest in the whole range of small business engagement in EU policy and regulation including the European Social Dialogue.

17 May 2006

Letter from Jim Fitzpatrick MP to the Chairman

Further to my predecessor’s, Gerry Sutcliffe, letter of 21 March 2006 and mine of 17 May 2006, on the above, I am writing to update you further.

PROPOSED EXPERT GROUP ON SOCIAL DIALOGUE

The Directors General for Industrial Relations met on 19 May 2006 in Helsinki. However there continues to be no notification of the proposed ad hoc meeting of technical experts nor further moves to establish a specific social dialogue expert group under the auspices of the committee of Directors General for Industrial Relations.

Transnational collective bargaining

Regarding the results of the legal study on transnational collective bargaining, I attach a copy of the final Report which has just been made available to my officials. The Report provides an appraisal of existing transnational tools in Europe and the definition of reasons and means to develop an optional framework for transnational collective bargaining at EU level.

13 June 2006

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letters dated 17 May and 13 June which were considered by Sub-Committee G on 22 June. We are grateful to you for explaining the existing arrangements for representing SMEs and for drawing attention to the UK Presidency conference on social dialogue held in London on 17 November last year. While we appreciate the difficulties, we continue to believe that every effort should be made to ensure that SMEs have a proper voice in this process, as well as in European policy-making more generally. We are glad to note that the Government shares that view. We look forward to hearing whether the SME “Envoy” is able to make a positive contribution to this process and what British SMEs think about this innovation.

Thank you for sending us a copy of the lengthy Commission legal study on transnational collective bargaining. It would be helpful to know what the Government think about this document and how it is expected to contribute to the overall process.
The continuing lack of any apparent progress with either the proposed ad-hoc meetings of technical experts or the social dialogue expert group is both puzzling and regrettable. It seems to us to be symptomatic of a general lack of any sense of urgency or enthusiasm over this initiative on the part of the Presidency, and perhaps of other Member States. It is not clear from your letters where, if anywhere, it is going.

After this Communication was first considered by the Committee I wrote to your predecessor on 28 October 2004 sharing the Government’s caution about any legislative intervention by the Commission in this field. I commented then that we found it hard to judge precisely what this initiative would amount to in practice and whether it was likely to make a significant and cost-effective contribution to the Lisbon objectives, as intended. Our reservations remain while our understanding of what is involved does not seem to have advanced any further in any of these respects since then. We are beginning to wonder whether the time has not come to ask the Commission either to formulate some specific proposals, based on this Communication, or to shelve it altogether, and would be glad to know how the Government see the way forward.

We will continue to retain the document under scrutiny pending your reply.

23 June 2006

PROMOTING ACTIVE EUROPE CITIZENSHIP: NEW IMPELUS FOR EUROPEAN YOUTH

Letter from the Chairman to Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills

In November 2001, the Commission published the White Paper “A New Impetus for European Youth”. It proposed a framework for cooperation in the youth field. On 27 June 2002, the council adopted a resolution approving the framework and calling for the “open method of coordination” to be applied to four priorities known as the common objectives: these were participation, information, voluntary activities and the greater understanding of youth.

All member states were subsequently required to undertake the compilation of information sharing questionnaires both within Government and the voluntary and community services and report their findings back to the Commission. The information and participation questionnaires findings were submitted back in 2002, with voluntary activities and the greater understanding of youth following in 2003.

The 8489/03 follow-up to the White Paper “A New Impetus for European Youth” proposed common objectives for the participation and information of young people, and 8490/03 “Analysis of Member States” replies to the Commission questionnaires on youth participation and information.

The documents were cleared by letter to the then Minister, Margaret Hodge on 16 June 2003 (progress of Scrutiny EUC–10, 2002–03). The sub-committee raised further questions with the Minister and following an exchange of correspondence on 3 November 2003 and 4 December 2003 the sub-committee asked to be kept informed of developments.

In November 2003 EU Ministers agreed a council resolution requiring the Commission to seek national reports from member states by the end of 2005, assessing their progress against the participation and information objectives.

Reports on voluntary activities are due later this year and the greater understanding of youth in 2008. The EU objectives are in line with existing and developing UK policies in these areas and the reports reflect considerable activity and progress in recent years, whilst also looking at the challenges that remain to be addressed.

16 February 2006

PROMOTING DECENT WORK FOR ALL IMPLEMENTING THE DECENT WORK AGENDA IN THE WORLD (9988/06)

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

Your Explanatory Memorandum dated 15 June was considered by Sub-Committee G on 6 July.

We note that this is a non-binding Communication which has no financial implications and amounts to what you describe as “largely a declaration of intent”. As such, we are prepared to release it from scrutiny.

Nevertheless, you should know that we share your concern about the possibility that the Commission may attempt to stray beyond its advisory role at the ILO into areas where Member States have sole competence. We also share your reservations over the possible implications of applying the “decent work agenda” to WTO
negotiations, Commission development policy and the multilateral framework on labour migration. We fully agree that the Government needs to be vigilant to those possibilities and hope that other Member States will endorse that need for vigilance.

Although internal employment and social policy issues are the responsibility of Sub-Committee G, the document deals mostly with Commission policy towards Accession states and neighbourhood and third countries, including trade and development aspects. These aspects are of potential interest to Sub-Committees C (Foreign Affairs, Defence and Development Policy), A (Economic and Financial Affairs) and B (Internal Market). We have informed those Sub-Committees and will need to take account of their interests when the Commission’s follow-up report is published in 2008.

6 July 2006

PROTECTION OF MINORS (5593/06)

Letter from the Chairman to Shaun Woodward MP, Parliamentary Under-Secretary of State for Creative Industries and Tourism, Department for Culture, Media and Sport

Your Department’s Explanatory Memorandum (EM) dated March 2006 was considered by Sub-Committee G on 11 May.

We understand from your officials that things have moved rather rapidly since the EM was written and that a compromise revised text of the Recommendation may be considered for political agreement by the Council on 18 May. We are told you may be considering whether to ask for the scrutiny reserve to be lifted to enable the Government to vote in favour of political agreement at that meeting.

That places us in some difficulty. Above all, we still do not know whether you are content to support political agreement at this stage and, if so, why.

Nor are we confident that we are entirely clear what will be on the table for consideration at next week’s Council meeting. The EM did not indicate any particular urgency when it was sifted for scrutiny on 27 March and it was not until last week that we were sent all the supporting documents to enable it to be properly considered. Even so, we are not sure that we have the full picture of what this Proposal entails and the background to the present position.

The EM referred to the Government’s reservations, which were based on extensive consultation of UK stakeholders, about the earlier text of the Proposal. It reported that, at that stage, the Government was still dissatisfied with the compromise text which the Commission had produced following amendments proposed by the European Parliament (EP). According to the EM, this document was too long, detailed and prescriptive for a Recommendation and painted a very negative picture of the internet and the media generally.

In particular, the EM noted Government objections to references in the EP amendment to the need to enact legislative measures to protect minors over the content of all audiovisual and information services. The Government considered that this would be inappropriate in a Recommendation and that Member States should be left to decide for themselves how best to deal with these problems in the light of their own circumstances, national traditions and practices. The EM also mentioned other Government objections over how to deal with portrayal of the sexes in the media and advertising and over media literacy, although these were not fully explained.

But the EM reported that negotiations were continuing and that the Austrian Presidency were trying to secure removal of the references to legislative measures over the content of all audiovisual and information services. The Government considered that this would be inappropriate in a Recommendation and that Member States should be left to decide for themselves how best to deal with these problems in the light of their own circumstances, national traditions and practices. The EM also mentioned other Government objections over how to deal with portrayal of the sexes in the media and advertising and over media literacy, although these were not fully explained.

Since then your officials have done their best to explain by telephone and by supplying additional documents how things have changed in further negotiation. Although improvements have seemingly been made, it is not entirely clear to us from the rather complex additional documentation which was produced on 9 May what those improvements are, how they relate to the original text and what the full implications of the revised text will be if it is approved at next week’s Council.

We note, however, that the text still contains seemingly objectionable references to legislative measures and that the Government still has other objections to the Recommendation, although again we are not entirely clear what they are.
More surprisingly, in view of those objections, we understand that officials are now recommending that, since the UK is almost certain to be outvoted by QMV at Council, it would be tactically wiser to go along with the unsatisfactory compromise text in the hope that it would improve UK leverage when decisions have to be taken on the Television Without Frontiers Directive.

We are unable to comment on that assertion, not least because it has not been fully explained to us, and it has not been possible in the time available to consult Sub-Committee B about the implications for the Television Without Frontiers Directive.

We also need more time to consider the legal implications of the references to legislative measures in the Recommendation, which has apparently been raised in correspondence with the Commons Committee which we do not appear to have seen.

We do try to be helpful to the Government whenever we can in clearing items from scrutiny at short notice where urgent Council decisions are needed and clearance can be justified. But, in this case, I regret to say that the notice is much too short and the information available insufficiently clear, to enable us to take such a decision with confidence, even if we were sure that it was what you wanted. The scrutiny reserve is therefore maintained and we will expect you to make that clear in discussion at next week’s Council.

We look forward to a full report on what happened at the Council meeting and how the Proposal stands as a result.

12 May 2006

Letter from Shaun Woodward MP to the Chairman

Thank you for your letter of 12 May about this Recommendation, following the Explanatory Memorandum which we submitted in March and the contacts which officials here had with your own staff early in May.

I hope I may first of all say that we regret any difficulty or confusion which there may have been as a result of the approaches which DCMS officials made. This was a complicated issue and there was not, as you say, a lot of time. For reasons which I expand on below we felt that there might be an argument for the UK—despite the reservations which we all have about this document—to vote in favour of it at the Council of Ministers in Brussels on 18 May.

Our officials felt that it was worth discussing this with yours. But we do of course entirely accept the Committee’s absolute right to reach its own judgement on these matters. When I attended the Council, I abstained from voting on this Recommendation and made it clear, as you have suggested, that it had not passed scrutiny in our Parliament.

As compared with the document on which James Purnell commented in his Explanatory Memorandum in March, the 18 May Council of Ministers discussed a revised text of the Recommendation, attached to this letter. The changes which had been made reflected discussion that had taken place since January among the Member States and between the Presidency, the Commission, and the Rapporteur.

There had been some progress, though this was as you will know a difficult dossier for the UK and we were not been able to achieve as much as we should have liked. So far as the specific points which James Purnell made in the Memorandum are concerned, the dubious assertion that “legislative measures” needed to be taken to protect minors was still part of the text.

However, the Parliament’s reference to “appropriate measures” being taken in relation to the portrayal of the sexes in the media has been removed, and I am glad to say that Annex II, on actions in relation to media literacy, was much shortened and improved. It conveys a much more positive message than before and no longer contains the redundant material to which paragraph 2.22 of your Report quite properly drew attention.

But many of the UK’s objections to this Recommendation remained. In the event, the only speakers in discussion of this item at the Council on 18 May were the Dutch Minister, the Slovakian Minister, and me. The Minister from the Netherlands tabled a Declaration, which I am attaching to this letter, setting out some important objections to the Recommendation.

As James Purnell’s Explanatory Memorandum had suggested (at paragraph 26 onwards) there is a possible link between this Recommendation and the Commission’s proposals for amending the Television Without Frontiers Directive (TVWF). We feel that there could be some merit in trying to explore with other Member States and the Commission the possibility of using a Recommendation instead of a Directive to cover the online, non-scheduled audio-visual media services which the draft revision of TVWF would cover.

If we do that, we will want to argue for self-regulation for these services, and self-regulation is of course much better delivered by a Recommendation than by a Directive. There might then be an argument, though it may not necessarily be a very strong one, for the UK being sufficiently in favour of this Recommendation to have
voted for it, despite misgivings. That might make it easier for us to support, or promote, any further Recommendation we wanted in a credible way.

In my Council contribution on the Recommendation on 18 May, I therefore said that the UK supports a lot of what is in the text, endorsing in particular its emphasis on media literacy, on the importance of protecting children and young people from harmful media content, and the possibility of using industry self-regulation to achieve these objectives.

I made it clear however that the Recommendation is too long, detailed, prescriptive and negative. I abstained from the vote on the grounds that the Recommendation had not passed Parliamentary scrutiny in the United Kingdom, and formally associated the UK with the Netherlands Declaration.

But we were as you will know in a very small minority on this dossier, which fell of course to be determined by Qualified Majority Vote. Every other Member State except for Slovakia, which also abstained and supported the Dutch Declaration, voted favour of it. Even Holland, despite its Declaration, voted in favour. The Council reached political agreement on the text without amendments.

5 June 2006

Letter from the Chairman to Shaun Woodward MP

Thank you for your letter dated 5 June which was considered by Sub-Committee G on 29 June.

We are very glad to know that, quite properly, you abstained from voting on this Recommendation at the Council meeting on 18 May because Parliamentary scrutiny clearance had not been given. We are also grateful for your apology about the confusion over the paperwork which meant that, when a last-minute decision was needed before the Council meeting, we were not able to take one with any certainty.

Although we are glad to learn that some belated improvements were made to the text in the process of negotiation, we note that the Government continues to have specific objections to some aspects of the Recommendation, as well as finding it generally too long, detailed, prescriptive and negative. It seems a great pity that all the other Member States except Slovakia, including even the Dutch who had their own formal reservations, should have voted for such an unsatisfactory Recommendation.

In the circumstances, since the die is now cast, we will release the document from scrutiny. But, in doing so, I must stress that we are not satisfied with the outcome. We are still not entirely clear what the final text is likely to mean in practice. Some of your objections were not fully explained in previous correspondence. We also remain puzzled by the seeming inconsistency between the objectives that seek to protect children and control offensive material and the other aim of giving rights of reply. Nor is it entirely clear how the passing of this Recommendation might affect the Government’s attempts to moderate the related Television Without Frontiers (TVWF) Directive, which remains under scrutiny by Sub-Committee B.

Even if the Recommendation turns out not to matter much in itself, important and controversial issues of wider significance lie behind it. We would therefore welcome your clarification of the position regarding the Recommendation and of the Government’s overall policy towards those issues, not least to assist our consideration of the TVWF Directive.

3 July 2006

Letter from Shaun Woodward MP to the Chairman

Thank you for your letter of 3 July about the EU Recommendation on the protection of minors. I am grateful for your confirmation that the document is now released from scrutiny, albeit you continue, like the Government, to have reservations about it. You asked some further questions, in particular about what the passing of this Recommendation will mean in practice and how it relates to the Government’s attempts to moderate the Television without Frontiers Directive.

I am sorry that you felt that it was unclear precisely what the basis was for the Government’s objections to the Recommendation, as summarised in our Minute Statement of 16 November 2004. Of course, the final Recommendation is much improved, but some of our concerns remained. First, the recommendation that Member States encourage the audiovisual and online information services industry to avoid all discrimination on various grounds and, especially, to combat such discrimination goes too far in the direction of interfering in editorial policy. That this should be done “without infringing freedom of expression or of the Press” seems to us, as a general proposition, an impossible task, since encouraging the media actively to combat discrimination would require intervention by Government.
A similar point arises in relation to Article II 4, which effectively requires Member States to endorse a Recommendation directed not at Government action but industry action and goes so far as to suggest that audiovisual and online information services consider effective means of promoting a diversified and realistic picture of the skills and potential of men and women in society. This also seems to misunderstand the nature of online services, which are already diverse and disparate in themselves and accessed unpredictably by users; they cannot be treated as a coherent industry which could meaningfully respond to such a proposition, however apparently well-intentioned.

Like the Netherlands, we have doubts as to whether the proposition that all Member States impose a right of reply or equivalent remedy in online media is either desirable or enforceable. To the extent that enforcement was attempted, we see this as risking chilling both free speech and the development of these media. In the UK we have a remedy in the broadcast media (the system of adjudicating on complaints of unfairness or unwarranted invasion of privacy by Ofcom—formerly the responsibility of the Broadcasting Standards Commission and before them of the Broadcasting Complaints Commission) which we believe works more to the benefit of members of the public and of journalistic standards than a simplistic right of reply. We also have arrangements under the Press Complaints Commission’s Code of Practice which address these issues in a manner more appropriate to the print medium (although it is also applicable to online versions of PCC members’ publications). We think that these arrangements address the truly mass media which are by definition those of most concern. There is a huge number of other online information sites to which it would be inappropriate to apply such requirements and where the easiest means of reply might, for example, be the establishment of an alternative online site. As the Dutch emphasised, these matters need to be addressed in ways sensitive to national traditions and culture and this argues for a high degree of subsidiarity. Against this background, the inclusion of the indicative guidelines of Annex 1, which reflect a particular model, are not helpful.

Turning to the implications of adoption; of course, as a Recommendation, it is not legally binding on Member States and as the UK had serious concerns about it and we abstained from the vote, we do not plan any new measures in the areas covered by the Recommendation as a result of its adoption. The question is more, therefore, whether the Recommendation reveals a direction of policy development at the European level which we would see as unhelpful—the evidence of our discussions on revision of the Television without Frontiers Directive is that it does. Your sub-Committee B is, of course, planning to hold a hearing on the TVWF Directive later this autumn and we shall, if you wish, be able to expand on this point then.

And, secondly, there is the question of what changes other Member States might make as a result of the Recommendation and whether the existence of the Recommendation might serve to inhibit the development of on-line services in Europe by having a chilling effect on free speech: we think that that is indeed a risk. In short, the Recommendation has proved to be an unhelpful dry-run for consideration of the revised TVWF Directive—the AudioVisual Media Services Directive (AVMS) as we must learn to call it.

On the positive side, as I was able to indicate in Council, there is much in the Recommendation which lies fully with the grain of Government policy, notably our belief in the importance of media literacy and in working co-operatively at international level to improve co-ordination of action so as to secure a safer Internet especially for children. There is therefore an opportunity to extend initiatives of this kind, working either directly with Member States or through the Commission.

28 August 2006

PYROTECHNIC ARTICLES (13568/05)

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 5 December 2005 was considered by Sub-Committee G on 26 January.

We were rather surprised that, having initially opposed this Proposal, the Government has now apparently decided to go along with it. It is not entirely clear from your EM why you did so, rather than continuing to support the Swedish view that the Proposal is unlikely to have any benefits.

It seems to us that much depends on the apparent assumption that the cross-border trade in fireworks is not only low, but expected to remain so. The other key factor, as we see it, is the extent to which the essential level of consumer protection in other Member States is adequate and unlikely to be improved significantly by harmonising standards. We would welcome your considered views on both aspects.
Your EM gives us the impression that not enough attention has been paid so far to the possible benefits for vehicle component manufacturers. We hope that your consultations will throw more light on that aspect, as well as on the effect on SMEs.

We do not know what is meant by the reference in your EM to “issues relating to one-off pyrotechnic articles (particularly set piece fireworks)” and would be glad if you could clarify this.

Although we hope that you will be able to find out more about the extent of injuries caused by badly-manufactured and malfunctioning fireworks, we note that the Commission’s EM indicates that firework accident information in some Member States is inadequate. More attention may need to be paid to this aspect.

Your view that the Proposal does not raise any subsidiarity concerns struck us as rather sweeping, given the very prescriptive nature of the Directive, and we would be glad if that could also be given further consideration.

In the circumstances, we will continue to hold the document under scrutiny. We would welcome a further report when you have considered the above observations and taken stock of your consultations.

26 January 2006

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 26 January regarding the above.

You raise a number of important issues for our consideration, which require further discussion and development with the Health and Safety Executive and other stakeholders.

I will of course ensure that we provide you with a further report when we have considered your observations further.

24 February 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter dated 24 February which was considered by Sub-Committee G on 16 March.

We await with interest the promised substantive response when you have completed your consultations and consideration of the issues raised in my letter dated 26 January. The document will be retained under scrutiny pending that response. We assume that it will cover the concerns which we understand that some UK trade organisations have already expressed about the possible implications of the Directive.

Your officials report that the Austrian Presidency has still not made arrangements for Council Working Group negotiations on the Proposal, although consideration by the European Parliament Internal Market Committee is already under way. We would be grateful if you would let us know as soon as the Presidency has fixed the timetable for Council consideration.

16 March 2006

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 16 March.

My officials are still continuing consultations with the relevant Trade Associations and other interested parties and as promised I will let you have a substantive response when these are complete. The response will cover the concerns raised by those bodies. At present the consultation process is being slowed down by the lack of progress in the Council. To date the Austrian Presidency have still not picked up the dossier and started discussions. The Presidency has repeated that inter-departmental wrangling in Vienna has not resolved the question of “ownership”.

I will keep you informed of progress.

10 April 2006
**Social Policy and Consumer Affairs (Sub-Committee G)**

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

Gerry Sutcliffe's letter to me dated 10 April was considered by Sub-Committee G on 11 May.

We are glad to know that the Department are continuing consultations about this Proposal with the relevant trade associations and other interested parties, although the letter does not say who those other parties are. We trust that they include representatives of consumers’ interests, as well as the Health and Safety Executive. We look forward to your report on the results of those consultations.

We note that there is still apparently no progress in starting Council Working Group discussions on this dossier. Please let us know as soon as those discussions have started and you have a clearer sense of how long they are likely to take.

Gerry’s letter has still not replied to the points raised in my letter to him dated 26 January, following our initial consideration of the Proposal. We are content to leave that for the moment so long as you ensure that when you do report on the outcome of your consultations all those points are also covered in your letter.

In the meantime, we will continue to hold the document under scrutiny.

12 May 2006

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**Roadmap for Equality Between Women and Men 2006–11 (7034/06)**

**Letter from the Chairman to Meg Munn MP, Parliamentary Under-Secretary for Women and Equality, Department of Trade and Industry**

Your Explanatory Memorandum dated 23 March was considered by Sub-Committee G on 4 May.

These proposals are indeed important. We fully endorse the broad policy aims. But I am sure you will agree that the detailed plans are highly ambitious and we must ask whether you consider them to be realistic and achievable in the timescale set.

Your EM says that the Government welcomes the approach proposed by the Commission in the Roadmap, although it does not say why you have apparently concluded that the Roadmap approach is preferable to the alternative sectoral policy approach which the Commission considered and rejected. We would be grateful if you could explain this.

We agree with you that the emphasis on non-legislative action and exchanges of good practice is to be commended and are grateful for the assurance in your EM that the proposals accord with the principle of subsidiarity. But the effective co-ordination and monitoring of such a wide-reaching set of cross-cutting objectives is bound to pose a formidable challenge to the Commission and Member States. So will ensuring consistency of approach and keeping up the momentum.

It is not clear to us from either the Commission documentation or your own EM how all this activity is to be managed. We are anxious to ensure that it does not lead to excessive bureaucracy, duplication of effort or unforeseen extra expenditure. Nor should it infringe on the competence of Member States or the principle of subsidiarity.

That said, the main areas for action set out by the Commission seem at first sight to be generally acceptable. We welcome especially the emphasis on eradication of gender-based violence and human trafficking. The proposals on immigrant women and ethnic minorities within the EU are also important, but will need very sensitive handling. So will the proposals for action in Accession States and third countries, and we will want to be sure that the Commission has an adequate mandate for pursuing the latter.

We note that EMs on the specific proposals for action planned on the gender pay gap, demography, comparable statistics on crime victims and criminal justice and the European Vision on Gender Equality in Development Co-operation will be submitted for Parliamentary scrutiny as they arise. We will want to examine these very carefully when they do, as we will the Commission’s promised progress report in 2008 and their full evaluation in 2010. But your EM indicates that the implications of some of the other planned activities are not yet clear. We would be grateful if you could explain how those implications will be submitted for Parliamentary scrutiny.

Your EM says that the Department has consulted informally with other relevant Government Departments, but does not mention any wider consultations. We would be glad to know what has been done, or is planned, about that.
We notice that the Commission’s proposals for improving governance for gender equality include the setting up of the European Gender Institute by 2007. As you know, this Committee has recently issued two Inquiry Reports recommending that gender equality work should be incorporated with the activities of the proposed European Fundamental Rights Agency, rather than by a separate institute, which would reflect the Government’s own approach to equality work in this country.

We would welcome your comments on all the above points and will retain the document under scrutiny in the meantime.

5 May 2006

Letter from Meg Munn MP to the Chairman

Thank you for your letter of 5 May responding to the Explanatory Memorandum on a Communication from the Commission on a Roadmap for Equality between Women and Men, 2006–10. I must apologise for taking so long to respond.

The Impact Assessment sets out in some detail why the Commission has chosen a roadmap over a sectoral approach to progress on gender equality. An overarching, coherent and global structure should allow for a greater focus on priority areas, as well as emphasising the need for commitment to the advancement of gender equality in all policies. A unified roadmap should also give gender equality policy more visibility at European and international levels: the challenge will be to ensure action is taken at Member State level.

It is to be hoped that this global approach will also make it easier to monitor progress effectively and improve co-ordination and management of activity. The section on monitoring progress in the Roadmap itself details measures for monitoring progress, including adapting existing tools such as the annual Work programme for the implementation of gender mainstreaming. Progress will be monitored and evaluated by existing gender equality indicators and new ones under development.

The Roadmap also states that countries joining the EU must fully embrace the fundamental principle of gender equality. Monitoring the transposition, implementation and enforcement of EU gender equality legislation will be an EU priority for future enlargement processes. In addition the EU already plays a key role in international development efforts and is already promoting gender equality in its development policy, for example by including gender equality as a key element in its Strategy for Africa.

With regards to your query on other planned activities, as soon as the specific proposals and implications for other planned activities are made clear I will inform you in writing, and where appropriate, issue an Explanatory Memorandum.

The consultation that has taken place has been across Government Departments with the policy leads for the issues included within the Roadmap. We will of course continue to consult relevant colleagues and Departments as necessary when the Commission brings forward each specific proposal.

Finally, I understand your concerns regarding the European Gender Institute and the Fundamental Rights Agency and I was pleased to have the opportunity to discuss this issue with your Committee in further detail on 13 July. I will of course, continue to update you on the progress in the next stages of this regulation.

9 August 2006

SOCIAL SECURITY SYSTEMS (5896/06, 9584/06)

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

Your Explanatory Memorandum dated 15 February was considered by Sub-Committee G on 23 March. We note that the Government is still assessing the Proposal and hopes to submit a supplementary Explanatory Memorandum before the end of this month. The document will be retained under scrutiny in the meantime.

24 March 2006

Letter from the Chairman to James Plaskitt MP

Your supplementary Explanatory Memorandum dated 30 March was considered by Sub-Committee G on 4 May.

We are grateful to you for setting out the Government’s main concerns at this stage and note that the full implications cannot be assessed until they have been clarified through the negotiations which are currently under way.
In the circumstances, we will continue to retain the document under scrutiny. We would be grateful if you would keep us informed of significant progress, including the outcome of the discussion expected at the Employment, Social Policy, Health and Consumer Affairs Council in June.

5 May 2006

Letter from James Plaskitt MP to the Chairman

My Explanatory Memoranda of 15 February 2006 and 30 March 2006 refer. I am now writing to provide a progress report on the negotiations to amend the Regulation that implements the European Social Security Coordination Regulations.

OUTCOME OF JUNE EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS COUNCIL (ESPHCA)

The proposal to agree an implementing Regulation for the simplified coordination provisions is complex and will take some time to work through in the Council. Consequently the Member States have decided that the Council will reach a general approach on a chapter-by-chapter basis. This matches the successful approach already taken with the main coordinating Regulation. The June Council agreed a general approach on Titles I and II. This is a provisional agreement, and the final text may be changed as a result of issues that arise in future discussions.

As I explained in my Supplementary Memorandum in March, an important issue was the Electronic Exchange of information. The Commission wants to improve coordination by using electronic exchange rather than depending on paper forms in the post. The UK has welcomed this, but only agreed to it on the basis that Member States will have adequate time to make the transition as there will be considerable work involved in preparing for this. A feasibility study is underway and work will continue at official level to ensure a successful move to electronic exchange in the long term.

Co-ordination requires the exchange of data between social security institutions of all the Member States. This includes personal identification data, social insurance and career history and benefit claim details. In most cases such exchanges are still made by paper involving over 80 different standard forms. Electronic exchange of this information will improve European coordination. The agreed text provides a clear statement that all States will exchange data electronically.

Reaching agreement on the issue of electronic exchange was the most important aspect of these negotiations. Other areas of interest are:

Provisional application of legislation

There is currently no provision to protect people in the rare cases where Member States cannot decide which scheme they should be insured with. The Council agreed that where there is a difference of views between two or more Member States about which legislation should be applied, the individual will provisionally be made subject to the legislation of one of the Member States concerned by reference to a set of criteria set out in order of priority. The priority ensures that there is no conflict of laws and that the principle of making contributions in the State of employment is maintained. There is also a provision for a safe amount of benefit to be paid if a Member State does not have all of the details it needs to make a final award.

Guidance for Member States to decide where a person is resident

The Commission and many Member States wanted to have a provision in the implementing regulation to formalise the factors that should be taken into account when there is a dispute about the Member State of residence. The UK worked to ensure that the text was as uncontroversial as possible. We have succeeded in this as the text is based on existing case-law of the ECJ and makes clear that the relevant criteria to be taken into account depend on the circumstances of the individual case.

Collection of social security contributions

The current provisions are slightly amended and in future an employer based in another Member State will have an obligation to pay the appropriate employer’s contribution. At the moment this obligation only exists if the Member States have an agreement to that effect. The UK has no such agreements. Later in the negotiations Member States will discuss the actual recovery provisions which will be necessary in order to enforce the payment of contributions from employers in other Member States.
**PROGRESS IN COUNCIL WORKING GROUP SINCE JUNE ESPHCA**

With the agreement of the incoming Finnish Presidency, the Austrian Presidency started negotiations on the next chapters directly after their Council. The Finnish Presidency decided to concentrate on provisions relating to pensions, incapacity benefits, and survivor’s benefits during their Presidency, and Member States were able to raise initial points of view in June. Discussions continued in July and will start again in September. I mentioned our concerns about a draft article relating to periods of child-raising in my Supplementary memorandum (Article 44). First discussions in June confirm that this is a proposal that will be among the most controversial for the UK.

*12 September 2006*

**UNIVERSITIES MODERNISATION AGENDA (9166/06)**

**Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills**

Your Explanatory Memorandum dated 26 May was considered by Sub-Committee G on 22 June.

We have no particular objection to the broad objectives outlined by the Communication so long as it is clearly understood that this is a basis for voluntary collaborative activity by Member States within their own national competence for higher education. We note particularly in this context what you say about the proposal that Member States should devote 2 per cent of their GDP to higher education within a decade which clearly cannot be mandatory. We are also inclined to agree about the targets for mobility programmes, where quality and inclusion seem to be more important than quantity.

We are content to release this document from scrutiny. In doing so, however, we would point out that it is not at all clear how this Communication is expected to be taken forward. Your EM refers to the use of OMC and to the setting up of “peer learning clusters”, without giving details. While we see some value in sharing information and good practice between Member States, we believe that it should be coordinated with a light touch so as to avoid unnecessary bureaucracy, duplication and nugatory work. We would want you to be sure that the objectives have been clearly-defined and agreed at the outset, with the aim of adding significant practical value to the development of national strategies, and that satisfactory arrangements had been made to co-ordinate and analyse any information gathered and to disseminate it effectively.

We also note the Commission’s references to the role of the European Institute of Technology, which appear to assume that it is a foregone conclusion. You should bear in mind our reservations about that proposal, as outlined in my separate correspondence with you under reference 6844/06.

We are holding this document under scrutiny pending your reply.

*23 June 2006*

**WORKING TIME DIRECTIVE (12683/04, 9554/05)**

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

When I met your Committee on 17 January, I undertook to provide written answers to some of the questions that we did not reach during the session. As agreed with the clerks, I set out below an answer to the question on the Working Time Directive.

The Government are to be congratulated on a valiant, though ultimately unsuccessful, attempt to solve this problem. But, however welcome a solution based on varying the terms by national legislation may be, wouldn’t this approach suggest that the initiative was fundamentally flawed in the first place? What does the impasse reveal about the tension between the Lisbon agenda and traditional European attitudes to social protection?

At the Employment Council on 8 December, we got further than ever before towards reaching a compromise on this difficult and complex issue which included the continuation of the opt-out.

One of the main stumbling blocks to agreement was how to apply the Directive: per job or per worker. This confusion has arisen from the discovery that some Member States were applying the limits in the Working Time Directive per job, which allows some people in these countries to work more than 48 hours per week, without using the opt-out, by taking a second job. We are working closely with the new Austrian Presidency, Commission and EU partners to find a solution acceptable to Member States and to build on the progress made in 2005.
The Government is committed to the overall aims of the WTD. We are adamant in our belief that workers deserve decent standards of protection. Effective European legislation can and should support that aim. We need to ensure that European legislation promotes EU competitiveness and national best practice—and doesn’t destroy the very jobs we are seeking to create. It’s vital all workers have the right not to be forced to work more than 48 hours a week. Equally, it’s important that companies have the flexibility to offer additional hours where necessary, and for workers to have the freedom to choose to work longer hours, without coercion, where it suits them to do so. UK proposals on the WTD achieve that critical balance.

23 January 2006

Letter from Jim Fitzpatrick MP, Minister for Employment Relations and Postal Services, Minister for London, Department of Trade and Industry to the Chairman

I am writing to outline the Government’s position on the renegotiation of the Working Time Directive in advance of the next Employment Council on 1 June. The Austrian Presidency has not yet published their final proposal but I understand they are committed to resolving this dossier and Working Time is on the agenda of the Employment Council for political agreement. We have been told informally that the Presidency will publish their ideas a few days before COREPER on 24 May.

While we are doing everything we can to support Austria’s hard work, and achieve a solution that is in line with UK objectives, we do not yet know what the Austrian proposal will contain. I am sure you understand that this is a very tight timetable and it will be difficult for me to send you the Government’s response to the Presidency proposal in time for you to discuss the scrutiny position before the Whitsun recess begins on 25 May.

I am therefore writing to reassure the Committee that the UK’s policy and negotiating priorities have not changed since my predecessor, Gerry Sutcliffe, last wrote to you in December 2005. They remain:

— a solution to the problems caused by the ECJ SiMAP and Jaeger judgements, and
— the retention of the individual right to opt out of the 48 hour maximum working week, without unnecessary restrictions.

I know that many Member States agree with these views and that the Austrian Presidency has been working hard to find a way forward that is acceptable to the majority of Member States in order to end the current impasse.

This does, however, mean that Austria’s proposal is likely to contain a number of safeguards for those using the opt out and additional provisions intended to ensure proper protection of workers. So long as the priorities recorded above are respected, we would be willing to consider and might be willing to accept, such provisions.

There is also the separate issue of whether the limits in the Directive apply per job or per worker that my predecessor informed you of in his letter dated 4 November 2005. At the December Employment Council, this issue split Member States and political agreement proved impossible. The Commission have clarified that the limits apply per worker, but some Member States have concerns that when a worker has more than one job, the limits are very difficult to enforce in practice. The UK of course correctly applies the limits per worker. While we believe that the final directive should respect the labour market traditions of all Member States, we could not support any proposal that allowed a worker freely to extend their hours by taking a second job, but not via the opt out.

If possible, I will endeavour to send you the formal proposal we receive from the Austrian Presidency, with the Government’s view, in time for the Committee to consider their scrutiny reservations. However, should this not be possible, and a deal acceptable to the UK (allowing individuals to continue to use the opt out, solving the problems caused by the SiMAP/Jaeger ECJ judgements), appears achievable at Council, I do hope the Committee will understand I might need to override the Committee’s scrutiny reservation on this occasion.

I would of course write to you as soon as possible after the Council. I do hope you and the Committee find this information helpful.

19 May 2006

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 19 May setting out the scene, as far as you can, in preparation for consideration of this dossier at the Employment Council on 1 June. This was considered by Sub-Committee G on 25 May.

We understand the difficulties which you outline and fully support your wish to secure a solution to this long-running problem which fully meets the UK’s essential objectives.
You should be aware from my previous correspondence with your predecessor that our consistent aim throughout these exchanges has been to ensure that any agreement meets the essential national objective of allowing the UK to retain the voluntary individual opt-out in a manner that is appropriate to British circumstances and which combines the necessary blend of flexibility and worker protection which we advocated in our Inquiry Report.

Similarly, it must provide an effective and workable solution to the problems created by the SiMAP and Jaeger ECJ rulings over the on-call duties of resident hospital personnel and other employees in similar circumstances. That solution must meet the needs of the NHS and other affected employers, including the needs not only of hospital staffing but also for adequate medical training.

We also note the difficulties that have arisen over the application of limits to those who have more than one job. That issue was not raised with us at the time of our Inquiry Report, and we were not aware of it until your predecessor reported on it following failure to secure the UK Presidency deal at the December 2005 Council.

We understand that different Member States have different traditions in this respect and acknowledge that where a worker has more than one job it may be difficult to enforce the Directive in practice. But, in principle, we agree with you that the concept of the maximum working week should apply to the worker rather than to the job and that, in UK circumstances, the best way of extending working hours beyond the 48-hour maximum working week is by the voluntary individual opt-out.

In the absence of the expected Presidency text and your comments on it, we are exceptionally prepared to accept the solution you propose. We will expect you only to support a deal which meets the objectives outlined above and would be prepared, if necessary, to acquiesce in your overriding the scrutiny reserve to secure such a deal at the Council on 1 June.

We hope that that will give you the leeway you need to protect essential UK interests and look forward to your report following the Council meeting.

25 May 2006

Letter from Jim Fitzpatrick MP to the Chairman

I am writing to update your Committee on events at the Employment Council in June and prospects for the Finnish Presidency following the Informal Employment Council in Helsinki earlier this month.

I know you are aware that Member States failed to reach agreement at the June Employment Council despite long and arduous discussions. In the end, Member States that want to end the opt out insisted that the Directive include the ending of the opt out, which is unacceptable to the UK and many other Member States so the discussions ended in stalemate.

We were obviously disappointed that the June Employment Council ended in stalemate, however, our policy and negotiating priorities remain unchanged. As the Committee will be aware, we have suggested a number of ways forward to agreement since discussions in Council began, and now believe it is time for the other side to seek to meet us. As outlined in my previous letter, the UK Government will continue to fight hard in order to achieve:

— a solution to the problems caused by the ECJ SiMAP and Jaeger judgments, and
— the retention of the individual right to opt out of the 48 hour maximum working week, without unnecessary restrictions.

The dossier has now officially passed to the Finnish Presidency. We have been informally told that they hope to organise an extra Employment Council during November, probably with a main focus on the Working Time Directive. From initial contact during the Informal Employment Council, it seems the Finns are committed to finding a way forward. However, it is not yet clear exactly how they plan to proceed. At my recent meeting with the Finnish Minister for Labour, Tarja Filatov, I made the UK’s position clear but also gave a commitment that the UK would, of course, seek to work closely with the Finns and other Member States in order to find agreement on this dossier.

I hope your Committee will find this information helpful.

18 July 2006
Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 18 July which was considered by Sub-Committee G on 20 July. We are grateful to you for bringing us up-to-date on developments since we last exchanged correspondence in anticipation of the June Employment Council.

Our essential view of the position remains as set out in my letter to you dated 25 May. In that letter I said that we would continue to retain the scrutiny reserve but would be prepared to acquiesce in your overriding that reserve if it was judged necessary to secure a deal at the June Council which met the essential UK objectives outlined in that letter and our previous correspondence.

From what you say in your latest letter, it seems unlikely that a similar situation will arise during the Summer Recess. But in case circumstances change unexpectedly before Parliament resumes in October, you should know that we would still be content for you to have similar contingency provision to override the scrutiny reserve in this case should you judge it to be necessary to secure a settlement that would protect essential UK interests as described above.

When we return from the Summer Recess in October we would be grateful if you would write again to bring us up-to-date on any moves by the Finnish Presidency aimed at producing a solution in time for the November Employment Council and on any other significant developments.

When you reply, it would be helpful to know how the continuing failure to resolve the impasse over the Directive is affecting British interests. We assume that those employers and employees who wish to go on using the individual voluntary opt-out are content with the present position. But we would like to know how the failure to solve the problems caused by the SiMAP and Jaeger ECJ rulings is affecting the day-to-day running of hospitals and the training of junior doctors and whether it is exposing hospital authorities to a serious risk of litigation or intervention by the Commission. It would also be interesting to know how other Member States are coping with these difficulties.

We will continue to hold the Amended Proposal under scrutiny on the basis outlined above and look forward to receiving your report in good time before the expected November Council meeting.

20 July 2006

WORKING TOGETHER, WORKING BETTER: EU SOCIAL PROTECTION AND INCLUSION POLICIES (5070/06)

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

Thank you for your Explanatory Memorandum dated 23 January. This was initially considered by Sub-Committee A (Economic and Financial Affairs and International Trade) and transferred to Sub-Committee G (Social Policy and Consumer Affairs) who considered it on 23 March.

Although we accept, in principle, the Open Method of Coordination (OMC) we have developed the following criteria in examining previous proposals for OMC which we believe should be consistently applied as a yardstick:

— the objectives must be clearly-defined at the outset;
— the exercise should concentrate on adding significant practical value to the development of strategies on a given topic where a sufficient basis of common understanding has been agreed between Member States;
— it should be carried out with as light a touch as possible;
— it should not be over-burdened by indicators and should avoid causing duplication or nugatory work existing work; and
— it must not infringe on the competence of Member States or the principle of subsidiarity.

We would be glad to know to what extent you consider these proposals meet our criteria.

From your EM it appears that co-ordinating policies between Members States through OMC may help to add some value to the social dimension of the Lisbon Agenda. We also note that the Government supports the Commission’s proposals to streamline the objectives for social inclusion, pensions, health and long-term care into a single more coherent framework and believes that learning from others in this way may help to inform national policy decisions and encourage Member States to modernize their social protection schemes in the Lisbon context.
The Commission’s proposal to simplify the required reporting process also appears welcome, although we support your aim of ensuring that the most appropriate indicators are chosen. We also strongly agree with you that it would not be appropriate for the Commission to set EU-level numerical targets for an OMC exercise in any of these policy areas.

We also share your concern over the ambiguous references to the involvement of the European Parliament in this process, which must be clarified. We would not want to see any erosion of the essential informal, non-legislative nature of the OMC process for voluntary co-operation between Member State Governments in areas of national competence. We have serious doubts about the appropriateness of a formal role for the European Parliament in OMC and fear that greater involvement of the Parliament could add to the administrative burdens and weaken the incentives for co-operation by Member States.

We note from your EM that the proposals were expected to feature in informal Ministerial discussions on 19–21 January, as well as at the March Employment and Social Policy Council, and would be glad to know whether there is anything of significance to report about either discussion and how you expect consideration of the proposals to proceed.

The document will be kept under scrutiny pending your reply.

24 March 2006

Letter from James Plaskitt MP to the Chairman

Thank you for your letter of 24 March. I apologise for the delay in responding but I am now able to give you a full update on progress.

The Austrian Presidency put the streamlining proposal on the agenda of the Informal Meeting of social affairs Ministers in Villach on 20 January. As I reported to Parliament (Hansard 30 January 2006 Column: 6WS):

“I called for practical discussion about real policies rather than theoretical debate of principles. I suggested that the aim should be to integrate social policy making within an overall reform strategy where it could contribute to the delivery of employment aims. There was a consensus that a visible social dimension to the Lisbon strategy must be maintained and that streamlining the open method of co-ordination would help.”

The Presidency Conclusions from this meeting which stress the importance of improved exchange of information.

Following the Informal, officials attended meetings of the EU Social Protection Committee (SPC) and agreed an Opinion on the Commission Communication jointly with the EU Economic Policy Committee (EPC). The Opinion contained a slightly revised set of common objectives from those set out in the Commission Communication. This Opinion was transmitted to the 10 March Employment and Social Policy Council in Brussels which I also attended. This Opinion was endorsed by the Council but there was no substantive discussion. It contributed to a Key Messages paper sent to the Spring European Council.

The Spring European Council Conclusions from 23 and 24 March (paragraph 70) welcomed the new common objectives and working methods in the area of social protection and social inclusion. Member States within the SPC have since agreed a set of guidelines for the preparation of the National Reports, based on a Commission proposal, which provide a balance between allowing Member States to report on the issues which are greatest importance to them, and maximising the scope for a consistent approach to maximise the opportunity for mutual learning.

I attach a copy of the Presidency Conclusions from Villach, the Joint SPC/EPC Opinion endorsed by the Council, and the Guidelines for the National Reports for your information (not printed).

Work under these objectives has now begun and member states are currently preparing their first National Report on Strategies for social protection and social inclusion which are due to be submitted to the Commission by 15 September. I shall, of course, ensure that a copy of the UK report is sent to your Committee.

You asked whether the Commission’s proposals met your criteria for OMC that:

— the objectives must be clearly defined at the outset;
— the exercise should concentrate on adding significant practical value to the development of strategies on a given topic where a sufficient basis of common understanding has been agreed between Member States;
— it should be carried out with as light a touch as possible;
— It should not be over-burdened by indicators and should avoid causing duplication or nugatory work; and
— it must not infringe on the competence of Member States or the principle of subsidiarity.

I confirm that in the Government’s view, these criteria are met. However, we will monitor progress to ensure that the streamlined process does indeed reduce the administrative burden.

Early signs are reasonably encouraging. The indicators sub-group of the Social Protection Committee has produced a streamlined set of indicators for use in the National Reports. The synchronisation of the National Reform Programme for Growth and Jobs with the National Reports on social protection and inclusion have allowed for cross-referencing between the two documents to reduce duplication. In particular, the pensions and health care elements involve little more than a statement of Government policy to enable exchange of information. In addition, the change to a three yearly reporting cycle (from 2008) will enable more effective peer reviews and exchange of best practice in the intervening years.

On your point about infringing competence, the joint Opinion of the EU Social Protection Committee and the Economic Policy Committee on this dossier, endorsed by ministers at the 10 March 2006 Employment and Social Policy Council, reiterated that the OMC is “to support Member States in their efforts to reform and modernise their systems on the basis of common agreed objectives, while respecting the competence and responsibility of the Member States for the organisation, design, financing and implementation of social protection policies, according to the principle of subsidiarity” (page 2).

I am pleased to be able to inform you that the joint Opinion made it clear that Member States could set targets at national or sub-national level to monitor progress but there are no proposals for EU level targets.

I can also reassure the Committee that in the final agreed working methods that there continues to be no formal role for the European Parliament in the open method of co-ordination.

19 July 2006

YOUTH IN ACTION (11586/04, 9838/06)

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to update you on recent developments in negotiations of the European Commission’s proposals for a Youth in Action Programme as promised in my letter of 12 October 2005.25 I apologise for the delay in doing so.

In my previous letter I set out the opinion of the European Parliament Culture and Education Committee and said that the Parliament was set to adopt these opinions in plenary on 25 October.

Five further amendments in addition to those from the Committee, which were discussed by the working party, were proposed following the plenary vote. Of these, only one, adding a reference to “social cohesion” in Article 2(3) which deals with general objectives of the programme, diversity and non-discrimination, amended the text for partial political agreement.

I can now confirm that these opinions were adopted and were incorporated in the Partial Political Agreement reached at the Council on 15 November 2005. This Agreement excluded all budgetary aspects of the programme, including the age range, on which there remains a scrutiny reservation. I enclose a copy of the final document agreed at the Council (not printed).

As you know, the December European Council reached agreement on the overall EU budget for the new Financial Perspective period 2007–13. This is now subject to an Interinstitutional Agreement between the European Parliament and it is therefore still not clear what budget will ultimately be agreed for the Youth in Action programme. Once this has been agreed, later this year, the programme will then return to the Youth Council and Youth Working Party for the outstanding issues to be negotiated and for a political agreement to be sought—possibly at the 18 May Youth Council. I will of course consult you further before that point.

Your letter of 31 October also asked me to confirm that I was content that the new procedures would be simpler and easier to follow, and would lead to greater decentralisation, while assuring proper accountability.

I am pleased to be able to tell you that I believe the provisions in Article 8, covering the administration of the programme and roles of National Agencies, Member States and the Commission, which have now been agreed, meet these criteria.

In addition to simplifying access, some of the amendments agreed in Council working parties specifically commit to making a particular effort to assist young people who have particular difficulties in taking part in the Programme for any reason. Time limits for signing contracts have also been introduced.

In particular the criteria in Article 8 around the appointment of National Agencies have been considerably reduced and made less onerous. For example, the proposal now stipulates that the National Agency should have sufficient staff with appropriate skills to work in an international co-operation environment. The original proposal specified that staff should have language skills and qualifications in youth work. The stipulations around following Community fund management rules and contractual conditions and financial guarantees remain.

I believe that this should address your concerns.

I would also like to use this opportunity to clear up any confusion over another document, 13856/04 Communication from the Commission to the Council Follow-up to the White Paper on a new Impetus for European Youth: Evaluation of activities conducted in the framework of European co-operation in the youth field, also relating to EU Youth Policy, which some records show as not having cleared scrutiny. My officials have discussed this issue with Gordon Baker. The document in question replaced two earlier documents, 9182/04 (Communication from the Commission to the Council: Follow-up to the White Paper on a New Impetus for European Youth. Proposed common objectives for voluntary activities among young people in response to the Council Resolution of 27 June 2002 regarding the framework of European co-operation in the youth field) and 9183/04 (Communication from the Commission to the Council): Follow-up to the White Paper on a New Impetus for European Youth. Proposed common objectives for a greater understanding and knowledge of youth, in response to the Council Resolution of 27 June 2002 regarding the framework of European co-operation in the youth field), and was sifted to your committee for information only. The confusion arose because my predecessor referred to it in correspondence with you about the Youth In Action Programme, although you had stated in your letter of 28 February that you were “prepared to release” 13856/04 from scrutiny so long as the Committee’s reservations about the Open Method of Coordination were borne in mind. I apologise for the confusion caused and would be grateful for your confirmation that this document is no longer subject to scrutiny.

13 February 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 13 February reporting on recent developments in negotiations on the Commission’s proposals for the Youth in Action Programme. This was considered by Sub-Committee G on 2 March.

As you know, document 11586/04 was released from scrutiny by my letter to you dated 31 October 2005. We are grateful for your confirmation that partial political agreement was reached on all but the budgetary aspects at the Education, Youth and Culture Council meeting on 15 November 2005.

We are glad that the final text is expected to make the new procedures simpler and easier to follow and should lead to greater decentralisation, while ensuring proper accountability. We welcome the commitment to making a particular effort to assist young people who have difficulties in taking part in the programme and note that the criteria for the appointment of national agencies are now considered to be less onerous.

All this appears to be satisfactory. But, as I stressed in my letter to you dated 31 October 2005, we will want to examine the financial aspects of the programme very carefully once they are submitted for scrutiny. We will also want to consider what is finally proposed about the age ranges where, as stated in previous correspondence, we share the Government’s reservations that the range from 13–30 years currently proposed by the Commission is not justified and may pose practical difficulties.

Thank you, too, for clearing up the confusion arising from correspondence with your predecessor about document 13856/04 on the follow-up to the White Paper on a New Impetus for European Youth. We confirm that this document was indeed released from scrutiny by my letter dated 28 February 2005 to your predecessor.

2 March 2006
SOCIAL POLICY AND CONSUMER AFFAIRS (SUB-COMMITTEE G)

Letter from the Chairman to Bill Rammell MP

Your Explanatory Memorandum (9838/06) dated 14 June was considered by Sub-Committee G on 22 June. We note that the Government is content with the overall budget of €885 million in 2006 prices as now proposed, as well as with the proposed budget allocation arrangements. We are glad that UK representatives on the Management Committee will be instructed to monitor administrative costs closely to ensure that the maximum funding possible will be available for projects and participants.

Although we continue to share your doubts about the age ranges of the programme, we agree that the Proposal to attach different age ranges to each activity is an improvement.

In the circumstances, we are prepared to release this document from scrutiny but would be grateful if you would report if the expected Common Position is reached by the Council on 26 June.

23 June 2006

Letter from Bill Rammell MP to the Chairman

In your letter of 23 June, you asked to be updated on the progress of the Youth in Action programme after Council. I am pleased to report that the Youth in Action proposal reached political agreement as an “A” point at the Environment Council on 26 June. It will now move to a second reading in the European Parliament, with formal adoption scheduled for later in the autumn.

17 July 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter dated 17 July which was considered by Sub-Committee G on 20 July. We are grateful to you for reporting that the “YOUTH IN ACTION” Proposal secured political agreement at Council on 26 June and that formal adoption is expected, following a Second Reading in the European Parliament, in the Autumn.

Although the scrutiny reserve has been released, we would be grateful for your confirmation for the record once the Amended Proposal has been formally adopted.

20 July 2006