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

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

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

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

Our Membership
The Members of the European Union Committee are:
- Baroness Cohen of Pimlico
- Lord Dykes
- Lord Freeman
- Lord Hannay of Chiswick
- Baroness Howarth of Breckland
- Lord Jopling
- Lord Kerr of Kinlochard
- Lord Maclennan of Rogart
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- Lord Richard
- Lord Roper (Chairman)
- Lord Sewel
- Baroness Symons of Vernham Dean
- Lord Teverson
- Lord Trimble
- Lord Wade of Chorlton

Information about the Committee
The reports and evidence of the Committee are published by and available from The Stationery Office. For information freely available on the web, our homepage is http://www.parliament.uk/hleu

There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information
General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at http://www.parliament.uk/about_lords/about_lords.cfm

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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2. We publish volumes of such correspondence, including Ministerial replies and other material where appropriate\(^1\). This volume covers the period from May to October 2007 and includes the text of letters sent\(^2\) and received together with any supporting material. This volume includes not only an index of contents but also a list of documents by Council document numbers, where one is given.

\(^1\) The previous volume of *Correspondence with Ministers* was published as the 30th Report, Session 2007-2008 (HL Paper 184).

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

GOVERNMENT WEBSITE FOR EXPLANATORY MEMORANDA

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

During the debate on 27 October 2006 on your Committee’s report on “EU Legislation—Public Awareness of the Scrutiny Role of the House of Lords” (32nd Report, 05–06, HL 179), my colleague, Lord Triesman, confirmed that the Government was committed to providing a dedicated website where the public could easily access all Explanatory Memoranda (EMs) on EU documents.

I am pleased to tell you that officials in the Cabinet Office now have this site ready to launch. They recently updated your Clerk on these developments.

The site will enable users to:

— Access all Government EMs on EU documents submitted to Parliament from 1 January 2007—the site is currently being loaded with about 400 EMs. EMs can be downloaded and contact details are provided for further information. The Cabinet Office stores earlier EMs electronically dating back to 2003 but committing resources to populating the site with something in excess of 4,000 EMs will be difficult, hence the start from 1 January 2007. The Cabinet Office can be contacted for copies of earlier EMs.

— Find out information about the United Kingdom’s procedures for Parliamentary Scrutiny of EU documents.

— Use links to the websites of your Committee and the House of Commons European Scrutiny Committee, as well as to sites where EU Council of Ministers’ and Commission documents can be downloaded and the passing of EU legislation can be followed.

The EMs website can be found at:
http://europeanmemorandum.cabinetoffice.gov.uk/search.aspx

The Foreign and Commonwealth Office’s europe.gov.uk website and the Cabinet Office website will both provide links to the site. All Departments dealing with EU business will be encouraged to do likewise. You may wish to point those consulting your Committee’s web pages to the site too.

I will also arrange for a short Written Ministerial Statement to be tabled in Parliament to advertise this development.

6 June 2007

INTERGOVERNMENTAL CONFERENCE (IGC) AND THE REFORM TREATY

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

During my evidence session on Thursday 12 July, I promised to write on the following issues.

— Charter of Fundamental Rights

Lord McLennan asked about the relationship between the proposed new Article 6(1) of the Treaty on the European Union (TEU) (which introduces the Charter), the Protocol on the Charter and the Article 6(3) (which in substance reproduces Article 6(2) of the current TEU, on the place of fundamental rights in Union law). The text of the new Article 6 is in Annex 1, paragraph 5, of the IGC Mandate. The Protocol is set out in footnote 19 to that paragraph.

Article 6(1) will give legal force to the Charter and explain how it is to be interpreted. The Protocol relates to this part of Article 6 and to the Charter, and sets out how the Charter will have effect in the UK. The provisions of Article 6(3), which reproduce existing Union law, are unaffected by the Protocol. Union law about the effect of fundamental rights, such as those contained in the ECHR, will continue to apply. This is consistent with our view that the Charter reaffirms existing rights and principles that are already recognised in Union and national law, such as those found in the ECHR.
Extension of national parliaments’ ‘red card’ to cover any use of the Passerelles
The Committee noted that the Reform Treaty provides a ‘red card’ for national parliaments in cases where the Passerelle is used in family law. The Committee asked if the Government would consider extending this ‘red card’ provision to cover any use of the Passerelles.
While I take on board the Committee’s comments, as I set out at our evidence session, we would like to see a rapid conclusion to the IGC. The IGC Mandate was agreed by the Governments of all Member States. We would be very reluctant to reopen the Mandate. As I am sure the Committee is aware, all Passerelles are subject to unanimity. We are content that this is a sufficient safeguard.

Yellow/Orange Cards
The Committee asked whether the ‘orange card’ set out in the IGC Mandate replaced or was in addition to the Constitutional Treaty ‘yellow card’ provision.
Our understanding is that the ‘orange card’ is in addition to the ‘yellow card’. However, there is some lack of clarity on how the mandate provisions enhancing the role of national parliaments will apply in practice. We shall seek early clarification of this in the IGC and keep the Committee informed.

16 July 2007

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

Introduction
The Select Committee is very grateful to you and your officials for briefing the Committee so promptly after the European Council about plans for the IGC and its discussions of the Reform Treaty.
As I indicated during the meeting, the Committee takes it scrutiny of the Treaty very seriously. I also indicated that the Committee would be writing to you soon after the meeting, and in advance of the convening of the IGC on 23 July, with some follow-up questions which we consider the Government needs to take on board at this stage. This letter will be printed in a report to the House before the summer recess, along with a transcript of your evidence.
This letter also replies to your letter of 16 July with further material arising from the session. We are very grateful for that very prompt letter.

The IGC Mandate
It seems that the European Council’s mandate to the IGC represents a fait accompli. We note that the Government will “resist any moves to re-open what has been agreed” except for ensuring that the text of the future Reform Treaty in fact represents what was agreed (Q 13). What room for manoeuvre does HMG have if others seek to re-open the text in a way that goes against UK interests and how will those interests be secured in any such negotiation?

Transparency and Explanation
One of our concerns is that the IGC process needs to be made as transparent as is possible given the inter-governmental nature of the discussions. We note your undertaking to follow the 2004 precedent and make all non-confidential documentation available both to the Committee and to the House more widely in the Library (Q 9). This is a welcome commitment, as is your proposal to challenge any confidential classification with a view to ensuring a document’s disclosure (Q 10). Are you now able to say more precisely when a draft text of the Treaty will be available to us?
We noted also your plans to produce two White Papers next week (Q 2), one of which will “make the case based on the fact that this is indeed a substantial series of changes away from the previous Constitutional Treaty” (Q 6). Will the White Paper set these out in full and give the Government’s position on the IGC Mandate? The Committee will of course wish to be kept informed of issues arising during negotiations. What other documents will be published and when?
Can you expand on the “important piece of work” you will be undertaking over the next few months to deal with the “significant degree of misunderstanding about the scope of the Reform Treaty and what it sets out to achieve” (Q 8)? Does the Government accept that, if they are to succeed in correcting any such misunderstanding, there is a need both for a high level overview that can be presented to the public and a detailed technical document setting out the precise terms how the Reform Treaty amends existing Treaty provisions?
You agreed with us (Q 37) that more could be done to make the work of the Council transparent. What specific issues are the government pressing in this regard, and in what fora?

You stressed (Q 36) that the Government was committed to ensuring the involvement of the devolved executives in policy formulation and you outlined some mechanisms within Government to ensure this, which we welcome. In the interests of transparency, however, could more be done to reveal the extent of consultation with devolved executives, perhaps by enhancing the information in the devolution section of Government explanatory memoranda on EU legislation?

RATIFICATION

Can you confirm that any future amending Treaty presented to Parliament for ratification will be handled in line with established practices which allow both Houses to scrutinise the ratification legislation?

TREATY PROVISIONS: ROLE OF NATIONAL PARLIAMENTS

We note your reassurance (Q 22) that language in a new Article concerning the role of national parliaments is “inappropriate” in so far as it appears to impose certain duties on national parliaments. Has this matter been raised with the Portuguese presidency? Can you assure the Committee that the Government will press for the reform treaty to contain more appropriate wording?

Your letter of 16 July notes the need for clarification concerning the orange and yellow cards. We agree that this is needed. In our discussion we covered the proposed ‘orange card’ for national parliaments’ concerns over subsidiarity (Q 23) and drew attention to the support this Committee has given to Commission President Barroso’s broader initiative concerning responses to more wide-ranging concerns from national parliaments. You argued that the text of the Reform Treaty might not be able to be changed to reflect that arrangement (Q 25). Will the Government nevertheless undertake to ensure that the possibility of enshrining the welcome Barroso initiative in Treaty text is raised in the IGC, given that both the Commission and national parliaments from all Member States (as represented in COSAC) would support such an approach?

We note your reassurance that if the orange card or a similar procedure is introduced, each Member State’s parliament will have two votes, and that in our system this means one for each House (Q 28)?

TREATY PROVISIONS: THE CHARTER

As far as the Charter of Fundamental Rights is concerned, we note your statement that “the Protocol puts it beyond doubt that a binding Charter will have no new impact on UK domestic law and will create no new powers for the EU to legislate and, in particular, will not extend the ECJ’s or national courts’ power to challenge or reinterpret UK employment and social legislation. That is beyond doubt” (Q 15). Are you able to publish a line of legal reasoning to justify this position, while of course protecting the specific legal advice received? Are you able to confirm whether other Member States take the same view of the strength of the UK’s position as regards the Charter? Might the Charter be used as a means of interpreting the extent of ECHR guarantees, which are binding in the UK (Q 16)?

TREATY PROVISIONS: INSTITUTIONAL MATTER—THE COUNCIL AND THE COMMISSION

In discussing the combination proposed of a longer-term Presidency of the European Council and other arrangements for presiding over the Council of Ministers you explained (Q 21) that what was proposed represented a formalisation and extension of current joint working between Presidencies. There are many practical issues to be addressed, including who controls agendas, staffing and rotas among Member States. How are these practical issues being addressed and when will more details of working arrangements be available?

You accepted (Q 34) that proposals to reduce the size of the Commission to ensure efficiency and effectiveness, which we welcome, may lead to friction. How are the concerns of Member States being addressed? Is this an aspect of the mandate that is likely to be re-opened?
Treaty Provisions: Passerelle

We pressed you on the passerelle provisions and you indicated that unanimity would be required before the provision could operate (Q 40) but that the wording of the text would need to be watched closely. Will the Government press for the new Article to contain an express reference to the need for unanimity? Will any provisions for national parliamentary opposition allow for independent action by each chamber of a bicameral parliament? Given that the Government does not wish to reopen the mandate on this point, will the Government undertake to seek parliamentary approval before voting to use a passerelle?

Other Matters

You reassured the Committee that “the issue of competition and the UK’s approach to competition are protected” (Q 20). It is thus our understanding that there is no change from the EU and EC Treaties in a matter to which this Committee, like the Government, will continue to pay close regard.

We also note your explanation of the change of wording regarding “national security” (Q 29), and on primacy and the Pillars (Q 30).

Conclusion

We will publish this letter immediately on our website and to the House by way of a short report. We will look closely at the text of the Reform Treaty once it is made available.

May I once again thank you for your co-operation in this important scrutiny exercise.

17 July 2007
Economic and Financial Affairs, and International Trade (Sub-Committee A)

ACP-EC PARTNERSHIP AGREEMENT: SUGAR PROTOCOL

Letter from Gareth Thomas MP, Parliamentary under Secretary of State, Department for International Development/Department for Business, Enterprise and Regulatory Reform to the Chairman

Under the terms of the Sugar Protocol signed in 1975 and which later formed part of the Cotonou Agreement, the European Community undertook for an indefinite period of time to purchase and import, at guaranteed prices specific quantities of cane sugar originating in 18 signatory ACP states. The Commission at the end of July, brought forward a proposal to unilaterally denounce the Sugar Protocol. The Commission is able to do this under the terms explicitly set out at Article 10 of Protocol 3 of the Cotonou Agreement which allow for the Sugar Protocol to be denounced by either party subject to two years’ notice.

The European Commission’s proposal is a restricted document, so it is not therefore possible for me to submit it for scrutiny. However I wanted to write to explain the current state of play and our intentions on this issue. I also undertake to submit a full Explanatory Memorandum as soon as I am able, once the Decision has been reached.

The denunciation of the Sugar Protocol is a step in order to liberalise further the EU’s sugar industry, building on the EU’s internal sugar market reform of 2005. Importantly, it gives the legal certainty for the Commission to put in place the commitments made to the Least Developed Countries under the ‘Everything But Arms’ initiative which gives their sugar exports duty and quota free access to the EU market. The ending of the Sugar Protocol also provides the legal certainty for the market access offer the Commission made in April 2007 which provides for duty and quota free access to the EU market for all African Caribbean and Pacific exports in the context of the ongoing Economic Partnership Agreement (EPA) negotiations. This includes sugar over a transitional period.

From the UK perspective, we believe this initiative is consistent with UK trade and development policy. The UK set out in 2005 that we wanted EPAs to deliver 100% Duty Free Quota Free Market Access (DFQFMA) for all ACP countries. We are pleased that the Commission have now offered this. While this involves removing the guaranteed quotas and prices for 18 ACP Sugar Protocol countries, it is necessary and consistent with our trade and development policy for two reasons; firstly, there is a technical necessity to provide a legal certainty for commitments made to the Least Developed Countries (LDCs) under the Everything But Arms (EBA) scheme and also to be consistent with the reform of the EU’s internal sugar market. Secondly, the denunciation of the Sugar Protocol is necessary in order to pave the way for the DFQFMA offer to all 79 ACP countries as part of the EPAs which are due to be concluded at the end of this year and which is a key element of the UK’s position on EPAs.

24 September 2007

COMMON CONSOLIDATED CORPORATE TAX BASE (CCCTB) (9415/07)

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

Thank you for your Explanatory Memorandum 9415/07 which was considered by Sub Committee A on 12 June 2007. The Sub Committee agreed to clear the document from scrutiny.

The Sub Committee believe that the CCCTB is an interesting topic and they hope to examine it more closely next year. The Commission has indicated that a legislative proposal will be produced in 2008. If your officials are aware of when in the year this proposal is most likely to be produced then it would greatly assist the Sub Committee’s work if they could make contact with the Clerk, and inform the Sub Committee of any developments.

13 June 2007
EUROPEAN GLOBALISATION ADJUSTMENT FUND: MOBILISATION(11985/07)

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

Thank you for your Explanatory Memorandum 11985/07 regarding the Commission’s proposals to mobilise the European Globalisation Adjustment Fund. This was considered by Sub-Committee A on 16 October 2007. The Committee decided to hold this issue under scrutiny.

The Committee noted that there appears to be a disparity between the amounts being proposed for each application when measured by the amount of assistance requested per employee. Whilst the Committee accepts the Government’s position on the eligibility of these two applications it would welcome further information on how the specific amounts to be applied to each application were arrived at. The Committee are also interested to know whether any UK companies have suffered from the same market forces in the car industry.

The Committee would also be interested to know whether there are any other applications pending for this Fund from the UK or any other countries.

17 October 2007

FREE TRADE AGREEMENT BETWEEN THE EU AND SOUTH KOREA, INDIA AND THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)

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

On 24 April the General Affairs and External Relations Council (GAERC) adopted negotiating directives for a new Free Trade Agreement between the EU and, South Korea, India and the Association of South East Asian Nations (ASEAN). Negotiations for the FTA with South Korea were launched on 7 May and with ASEAN on 4 May. It is expected that negotiations with India will be taken forward in the coming weeks.

The negotiating mandates are restricted documents setting out the mandate granted to the Commission to undertake negotiations with South Korea, India and ASEAN on behalf of the Council. As these directives represent a negotiating position they are not in the public domain and it is not therefore possible for me to submit them for scrutiny. I will, however, submit a full Explanatory Memorandum when a draft Council Decision to conclude the Agreement is submitted to the Council on completion of the negotiations.

The aim of the forthcoming negotiations will be to conclude a deep and comprehensive Free Trade Agreement with South Korea, India and ASEAN and for a Free Trade Area with Central America and the Community of Andean Nations. The Commission will inform the Council on a regular basis on progress of the negotiations. The UK position throughout the discussions has been that an ambitious and pro-development outcome to the Doha Development Agenda should remain the top priority. To this end, we believe that the directives allow for this outcome and we welcomed the emphasis placed on this at the launch of the EU-Korea and EU-ASEAN negotiations.

28 May 2007

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letter of 28 May regarding negotiations between the EU and ASEAN, India & South Korea regarding Free Trade Agreements. This was discussed by Sub-Committee A at their meeting on 12 June.

The Sub-Committee noted that it is not possible for you to submit the negotiating mandates for scrutiny because of their status as restricted documents. We would be grateful if your officials would consider whether there is any means by which these could instead be summarised in a public memorandum for the Committee.

The Sub-Committee would also like to explore the broader issues related to Free Trade Agreements, with the view to a possible inquiry into the bilateral trade agreements later this year. With this in mind, the Sub Committee have asked me to invite you to give evidence to them on this subject in early October.

13 June 2007
IMPORTS OF CERTAIN FROZEN STRAWBERRIES ORIGINATING IN THE PEOPLE'S REPUBLIC OF CHINA: ANTI-DUMPING MEASURES (7580/07)

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

Thank you for your department’s Explanatory Memorandum 7580/07 which was considered by Sub-Committee A at their meeting on 8 May. The Sub Committee noted that the proposal had already been adopted and consider this item to be a scrutiny override. The Sub Committee would be grateful if you would provide more detail of reception the proposal received from Member States: did any oppose it? What position did the United Kingdom take?

The Sub Committee would also be interested to know whether any food processors in the UK will be affected by this measure, and whether you received any representations from British-owned organisations that use frozen strawberries.

9 May 2007

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 9 May seeking further information on the Commission’s proposal to impose definitive measures on imports of frozen strawberries originating in China.

The Commission initially, and prior to the preparation of the document on 7580/07, had drafted a very different proposal recommending that no definitive anti-dumping duties should be imposed. That proposal was sent to the Member States on 19 February and received a very hostile reception, particularly from Member States who generally favour anti-dumping measures. It was due to be discussed at an Anti-Dumping Committee meeting on 6 March and, as it did not then entail the imposition of measures, would not have been subject to Parliamentary Scrutiny. However on 2 March, four days before the Committee meeting, the Commission reversed its previous recommendation and issued a new proposal imposing anti-dumping duties in the form of a Minimum Import Price (MIP).

This was clearly subject to scrutiny, but because of the Commission’s delay in issuing its revised proposal, it was not possible to prepare the explanatory memorandum before the decision was taken.

With regards to your specific questions, I can inform you that a total of 17 Member States supported the revised proposal for definitive measures in the form of a MIP. Aside from the UK, only six other Member States (Czech Republic, Denmark, Netherlands, Slovenia, Finland and Sweden) opposed the Commission’s proposal and three abstained. The UK’s position was determined on the basis of an economic analysis which showed that the imposition of anti-dumping measures would seriously affect food processors. This view reflected representations received from the UK Sweet Spreads Association (UKSSA). This Association represents manufacturers of jam who are a major purchaser of frozen strawberries. Other importers include manufacturers of yoghurt and ice cream. Frozen strawberries are not sold directly to consumers as I am informed that they are not fit for human consumption prior to processing. I have also been informed by DEFRA that UK production of strawberries is almost exclusively of fresh strawberries which are sold directly to consumers and that there is no cultivation of strawberries for freezing.

7 June 2007

INSURANCE AND REINSURANCE (11978/07)

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

Thank you for your Explanatory Memorandum 11978/07 which Sub-Committee A considered at their meeting on 9 October 2007. The Committee broadly support the proposed directive and the Government’s approach. This Directive will clearly have a significant impact upon the insurance industry and the Sub-Committee agreed that it is their duty to bring it to the wider attention of the House and the general public. The Sub-Committee have consequently decided to hold the item under scrutiny and undertake a short inquiry on the Directive, to report early in the New Year.

The Clerk to the Sub-Committee will be in contact with your officials to discuss the arrangements for the inquiry, and the Sub-Committee hope that it will be possible for you or your officials to give evidence to them in due course.
The Sub-Committee also noted that HM Treasury plan to produce a Regulatory Impact Assessment later this year and would be grateful if you could send this to them once it is published.

10 October 2007.

INTERNATIONAL TAX DIALOGUE (12010/07)

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

Thank you for your Explanatory Memorandum 12010/07, regarding the Commission’s membership of the International Tax Dialogue, which was considered by Sub-Committee A on 16 October 2007. The Sub-Committee have decided to hold the document under scrutiny.

The Sub-Committee would be grateful if you could provide some further information about the International Tax Dialogue. In particular, your Memorandum notes that the EU would become a “fourth participating organisation” of the ITD. The Sub-Committee would be grateful if you could clarify this statement, as it appears from the ITD website that a broad range of countries and organisations contribute to the Forum.

The Sub-Committee would also be interested to know what benefit the UK gains from membership of the ITD, and whether any of these benefits would be diminished by Commission membership. In addition the Committee wish to know whether the Commission initiated the decision to join, or whether it was extended an invitation by the ITD. They would also welcome an explanation of your concerns about possible extension of competence: would such concerns not be set at rest by a simple addition to, or change to, the legal base?

17 October 2007

MISSING TRADER FRAUD

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

Thank you for your letter of 5 June 2007 to Baroness Cohen of Pimlico1, (not published) regarding the Committee’s recent report on Missing Trader Fraud in the EU. The letter was considered by Members of Sub-Committee A at their meeting on 12 June and Baroness Cohen has asked me to reply to you. Baroness Cohen and the Sub-Committee were extremely interested in the briefing annexed to your letter and look forward to the official Government response in due course. The Sub-Committee hope that the official response will show more concern for the interests of honest traders and the cost of the extended verification strategy.

The Sub-Committee will be pressing for a debate on the report on the floor of the House before the summer break, and would welcome clarification on some issues prior to this debate. First, on page seven of the briefing you state that in over 95% of cases where traders are subject to extended verification HMRC finds a link to MTIC fraud, or there is sufficient suspicion that HMRC has a duty to continue to investigate. I would be grateful if you could break down that 95% into the two categories and state what percentage of extended verification cases do discover traders participating in or profiting from trading linked to MTIC fraud, and what percentage lead to further investigations.

The Sub-Committee noted HMRC’s policy, outlined on pages 7 and 8 of the briefing, to support firms facing financial hardship because of extended verification. However, the Sub-Committee also noted that HMRC requires a financial guarantee from the trader, before support will be provided. The Sub-Committee would suggest that financial institutions will not provide guarantees for firms facing hardship as, under the Companies Acts, the directors of affected firms would not be able to give guarantees about the viability of their organisation to the financial institutions. We do not feel that this automatically implies that the firms facing hardship are “high risk”, but that instead the financial institutions are prudently exercising their discretion and not lending to firms that are not able to truthfully predict future cash flow.

The Sub-Committee would also be interested in any details you are able to provide regarding the level of the fraud recorded in 2006/07 financial year. The Sub-Committee appreciates that this calculation takes some time and is normally published alongside the PBR in the autumn, but if there is any possibility of providing a figure for the first half of the year, or an estimate which is not based on levels of trade in the affected sectors, then the Committee would be grateful.

13 June 2007

1 Chairman of Sub-Committee A.
Letter from Dawn Primarolo, Paymaster General, HM Treasury to the Chairman

I would like to take the opportunity to respond to the points you raised in your letter of 13 June 2007 to John Healey, Financial Secretary, following his recent letter to Baroness Cohen on Missing Trader Fraud.

You asked about the effect of the verification strategy on honest traders. HMRC knows that most people and businesses want to pay the right tax at the right time and are therefore committed to making this as easy as possible. Customer focus is a core HMRC value and HMRC constantly seeks to achieve the right balance between customer requirements and compliance.

However, HMRC will deal firmly with anyone who intentionally avoids their responsibilities. Government and HMRC have a duty to protect the revenue. The response to VAT Missing Trader Fraud has been, in my view, proportionate, targeted and risk-based. The courts, to date have supported HMRC’s policy and practice.

The strategy for tackling MTIC fraud is risk-and-intelligence based and HMRC’s interventions to verify repayment claims are targeted at specific activity indicative of trading in supply chains tainted by VAT fraud. There was a dramatic escalation of activity by companies trading in goods traditionally associated with MTIC in the first part of 2006 for which HMRC was unable to identify any legitimate commercial reason. This was accompanied with dramatic increases in the value of VAT being reclaimed by these companies. HMRC and I consider it proportionate, given the huge sums of public money involved, that those involved in such a large and unexplained growth in trading should have their large repayment claims investigated before payment.

Given the contrived and highly-orchestrated nature of the supply chains, it is inconceivable that any business can be unaware of MTIC fraud, or not suspicious of the trading patterns and practices encountered. Although the repayment claims have been pre-selected on risk criteria, verifications are not commenced with any pre-determined outcome in mind, and the aim from the beginning is to establish the facts and the true nature of the relevant transactions as soon as possible. It is only when this has been established that HMRC can then determine the validity of the claim. Of 95% of the traders whose repayments have been selected for verification, HMRC have to date found firm evidence of fraud in 34% of cases by value. Of the remaining 66% they have identified strong indicators of links to MTIC fraud, requiring them to undertake further investigation to determine the veracity of these claims.

If at any time it becomes clear that the transactions HMRC are verifying do not form part of an overall scheme to defraud—for example, when a claimant has purchased goods direct from a manufacturer for wholesale distribution to the retail market—then arrangements are made to release any monies withheld. Similarly, HMRC pay input tax claimed in respect of legitimate business overheads such as accountancy costs or freight forwarder charges, once satisfied of their veracity.

The introduction of the reverse charge on 1 June 2007 will remove immediately the threat of fraud in the goods to which it applies, enabling honest genuine traders in those goods to continue trading free of the risks of MTIC fraud in their industry.

Financial Guarantees

You also commented on the provision of financial securities to businesses facing hardship. I note the point you make here, but to date HMRC have found that questions and comments about financial security from traders under verification have not focused on the fact that they are unable to convince banks about the long-term viability of their businesses.

Fraud Levels

As you have stated, our practice is to publish fraud estimates alongside the PBR and we are unable to provide an interim figure. However, HMRC has updated the trade statistical data that was previously provided to the Committee and the table is below:

### Estimates of Missing Trade Associated with MTIC Fraud in the UK

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<thead>
<tr>
<th>Quarter ending</th>
<th>Value of MTIC-related trade (£bn)</th>
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<td>3.5</td>
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<tr>
<td>December 2005</td>
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ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

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</thead>
<tbody>
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</tr>
<tr>
<td>June 2006</td>
<td>14.7</td>
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<td>September 2006</td>
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<tr>
<td>December 2006</td>
<td>0.4</td>
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<tr>
<td>March 2006</td>
<td>0.3</td>
</tr>
</tbody>
</table>

25 June 2007

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

You will be aware that, in May this year, the House of Lords EU Select Committee published a report *Stopping the Carousel: Missing Trader Fraud in the EU.* While taking evidence for the Report, Sub-Committee A heard from the Paymaster General. In the evidence session on 6 February, the Minister told the Sub-Committee that

“our [i.e. HMRC’s] current administrative arrangements are having a downward pressure to the point where it [i.e. MTIC fraud in the VAT system] is now miniscule.” (Q229, p53)

and, when asked whether the extent of the Missing Trader Fraud through existing mechanisms is likely to decline,

“the indications from the trade figures, ONS figures, indicate there has been an absolutely massive drop.” (Q231, p54)

This second statement was noted by the Committee in the report, and quoted at paragraph 28.

The Sub-Committee were therefore surprised to read in the *Pre-Budget Report and Comprehensive Spending Review* that there were still considerable levels of MTIC fraud in 2006/07. Paragraph 5.104 of the *Pre-Budget Report and Comprehensive Spending Review* notes that levels of attempted fraud in 2006/07 were £2.25–£3.25 billion. While the Sub-Committee are pleased to note that this is considerably lower than the level of attempted fraud in 2005/06, it remains higher than the estimated figures for every other year this decade. The Sub-Committee would therefore be grateful if you could clarify these figures. Are these figures an indication that the fraud has mutated to other sectors?

You will also be aware that one of the issues raised by the Report was the impact of extended verification upon small businesses operating in the affected sectors. The Sub-Committee continues to receive representations from industry about the impact of extended verification. The Sub-Committee would therefore be grateful if you could provide an update on whether the number of businesses currently subject to extended verification has risen or fallen since the Report’s publication in May this year.

As is the practice with letters regarding scrutiny items, I feel that I should let you know that the Committee intends to publish this letter and your reply.

23 October 2007

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

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

Thank you for your Explanatory Memorandum 13237/07 which was considered by Sub-Committee A at their meeting on 23 October 2007. The Sub-Committee decided to hold the document under scrutiny.

The Sub-Committee support the Government’s position, but would welcome more information before they clear the item from scrutiny. On Galileo, the Sub-Committee endorsed the position taken previously by Sub-Committee B, and continue to hope that a PPP deal can be agreed.

You may be aware that Sub-Committee G reported on the EIT in July. Sub-Committee A supported their view, which is that we would wish to see a rigorous evaluation of the EIT, focussed on the work of the Knowledge and Innovation Communities at a local level, carried out before the EIT’s funding is expanded significantly.

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The Sub-Committee noted that the margins will be reduced for budget Headings 2 and 5 for the years 2007 and 2008. The Committee is concerned that the margins for 2008 would be too low to counter any unforeseen problems in the fields, and particularly under Heading 2, and would be interested to know whether the Government is content with the scale of the reductions. Your Explanatory Memorandum notes that the Government is pressing for a discussion on this proposal at October ECOFIN Council. The Sub-Committee would welcome an update on whether this discussion occurred, and if so, the outcome of the discussion.

23 October 2007

MUTUAL ASSISTANCE BETWEEN ADMINISTRATIVE AUTHORITIES (5048/07)

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

Further to the letter from my predecessor, the former Paymaster General, dated 27 March 2007, I am writing to update you further on the position regarding negotiations for the proposed amendment to Regulation 515/97.

The detailed Article by Article discussion of this proposal in the Council’s Customs Union Group finally commenced in June, but progress to date has been slow. Nonetheless, the Portuguese Presidency of the Council has indicated that concluding the Council’s discussions will be one of its priorities in the customs area. The European Commission has reported that it expects the First Reading of the proposal in the European Parliament to take place in September.

Several Member States including the UK have expressed concerns about the definition of “customs legislation” in the proposal, which as drafted extends to VAT and would be unacceptable to the UK, and there are associated questions as to whether the proposal has been made under the correct legal base. The discussion on these points is ongoing.

Member States have also raised questions and concerns about the plans for the creation of a central “data directory” of public and private sector databases relating to movement of goods, and the Commission has agreed to prepare a presentation to inform further debate on this. As regards data protection issues generally, the discussions are still in the very early stages, but all are agreed that it is important to achieve clarity as to which data protection legislation applies and when.

I shall continue to keep you informed of progress.

26 July 2007

Letter from the Chairman to Rt Hon Jane Kennedy MP

Thank you for your letter dated 26 July 2007 regarding Explanatory Memorandum 5048/07. This was considered by Sub-Committee A at their meeting on 9 October. The Sub-Committee are grateful for this update and look forward to details of progress in due course.

10 October 2007

PRELIMINARY DRAFT BUDGET (PDB) OF THE EUROPEAN COMMUNITIES 2008

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

Thank you for your Explanatory Memorandum dated 6 June 2007.

Sub-Committee A discussed the procedure for scrutiny of the 2008 Preliminary Draft Budget at their meeting on 12 June. They have asked me to express our regret that prolonged contact at Official level has suggested that you are unable to give evidence to the Committee this month. The scrutiny of the Preliminary Draft Budget has become a mainstay of Sub-Committee A’s annual work programme and is an issue that the Select Committee takes most seriously. The scrutiny of this item, alongside that of the Commission Annual Work Programme and Annual Policy Strategy, is a crucial part of the Select Committee’s work examining cross-cutting European issues as they are being developed. We consider it would be inappropriate if there was an override of the scrutiny reserve on this item.

4 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 49.
The Sub-Committee would be happy to accommodate an evidence session with you on any sitting day this month. Should this not be possible then the Sub-Committee would wish to insist on an evidence session in the first week of July.

The Sub-Committee also noted that it would help their deliberations if the Explanatory Memorandum could be submitted in a more timely manner in future years. They would also find it helpful if a Minister or Officials were able to give oral evidence between the First Reading of the Budget and its final agreement, to update the Committee on the period of negotiations.

13 June 2007

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

Thank you for your Ministry’s Explanatory Memorandum dated 6 June and for meeting with Sub-Committee A on 5 July. The Sub-Committee have now considered the Preliminary Draft Budget and have cleared the item from scrutiny. As is usual practice, the Committee plans to publish a Report on the Budget in due course.

We broadly agree with the Government’s position and endorse your priorities. We fully support the Government’s efforts to ensure that the principles of affordability, efficiency and value for money underpin all proposed expenditure to the EC budget. The Sub-Committee were also pleased to hear that the Government is still minded to focus the Regional Development and Social Funds where they are most needed. In giving evidence, you discussed hoped-for improvements in the draft budget to be agreed on 13 July. We would be grateful if you would write to the Committee after 13 July to update us on progress at Budget ECOFIN.

As the Sub-Committee discussed with you at the meeting last week, the Committee has particular concerns relating to the form and transparency of the funding of the Galileo Project. We support your stance to refuse to raise the Financial Perspective ceilings to fund the Project. However, we remain concerned that other Member states will not support your position and that the Government’s views may not prevail at Transport Council. The Sub-Committee would appreciate regular updates on the progress of this dossier.

The Sub-Committee also noted that there appear to be a variety of opinions on the form and purpose of the European Institute of Technology. The Sub-Committee strongly opposes the dedication of a contingency fund towards any purpose other than a reserve for an urgent situation, and so does not support the Commission’s planned use of this as a funding mechanism for the European Institute of Technology. We support your stance that funding for the European Institute of Technology should be found by transparent means within the existing Financial Perspective headings, and also urge the Government to work with all stakeholders to agree on the purpose of the Institute.

The lack of transparency surrounding the funding of the Commission’s Agencies remains a concern, and is a subject which we may choose to return to in the future. We would welcome news of any steps you are able to take in Budget ECOFIN to improve monitoring of their management, budgets and output.

You agreed to write to the Committee with more information regarding the External Borders Funds, which appears to have had its budget frozen; to give more information on the purpose of the “mobility” line of the administration budget and the reason for its significant increase. The Sub-Committee also noted your aim to negotiate a lower number of additional sta.

The Sub-Committee have asked me to emphasise the conclusions of their Report Financial Management and Fraud in the EU. Although this is not directly related to the matter at hand, the Committee noted that some progress has been made in this field. Given the orders of magnitude involved, the Sub-Committee urge the Government to show real determination in energising other Member States to scrutinise actively their own expenditure of EU funds.

Finally, Baroness Cohen and the Sub-Committee’s Members have asked me to thank you for giving evidence so promptly after taking up your new post. We look forward to working with you both on this issue and on other dossiers in the future.

11 July 2007

Letter from Kitty Ussher MP to the Chairman

Thank you for your letter of 11 July clearing the Preliminary Draft Budget from scrutiny and also expressing the Committee’s broad endorsement of the Government’s position and priorities. I should also thank Baroness Cohen and the Sub-Committee for their thorough questioning and scrutiny. I am pleased to update you on the progress made at Budget ECOFIN on 13 July.

The Council of the European Union formally agreed the 2008 Draft Budget (DB) of the European Communities at the ECOFIN (Budget) Council on 13 July, following conciliation with the European Parliament. The DB was agreed by Council unanimously and was based on a package put together by the Portuguese Presidency following discussions of the Commission’s 2008 Preliminary Draft Budget (PDB) in the Council’s Budget Committee.

My Explanatory Memorandum of 6 June 2007 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 €128,401.2 million in commitment appropriations, and €119,410.3 million in payment appropriations. This represents a reduction of €717 million (or 0.5%) for commitments and €2,122.8 million (or 1.7%) 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 €3,902.0 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 2008, across-the-board reductions to increases for Heading 1a. 1b and 2 taking into account implementation trends, and reductions to increases in budgets of decentralised agencies to ensure these are subject to the same budget discipline as other institutions.

— **Under Heading 1a (Competitiveness for Growth and Employment),** commitment appropriations were reduced by €266.4 million and payment appropriations by €548.4 million compared to the PDB, leaving a margin of €343 million below the FP ceiling for commitments. These overall reductions consist of:
  — across-the-board reductions to commitments of €250 million;
  — reductions to the subsidies for decentralised agencies of €16.4 million;
  — a transfer of commitment appropriations for Galileo into the Reserve, pending a decision on the issue; and
  — similar across-the-board reductions for payments.

— **Under Heading 1b (Cohesion for Growth and Employment),** commitment appropriations were not reduced, leaving a margin of €11.1 million. The PDB’s proposed increase in payment appropriations was reduced by €498.0 million, consisting of:
  — reductions to budget lines relating to the completion of 2000–2006 programmes, particularly the European regional Development Fund, of €298.8 million; and
  — reductions to 2007–2013 programmes, taking into account completion and implementation rates, of €199.2 million.

— **Under Heading 2 (Preservation and Management of Natural Resources),** commitment and payment appropriations for agricultural expenditure were reduced by €553.2 million respectively compared to the PDB, leaving a margin of €3,077.3 million below the FP ceiling for commitments. Rural Development spending has not been affected by these reductions, which come from:
  — an across-the-board commitments and payments reduction of €350 million for interventions in agricultural markets, except for budget lines relating to food programmes, the free distribution of fruit and vegetables and school milk;
  — a targeted commitments and payments reduction of €200 million to the budget line relating to the clearance of accounts; and
  — reductions to the subsidies for decentralised agencies of €3.2 million.

— **Under Heading 3a (Freedom, Security and Justice),** commitment appropriations were reduced by €4.3 million and payment appropriations by €18.3 million compared to the PDB, leaving a total margin of €60.3 million under the FP ceiling for commitments. These overall reductions were achieved through:
  — a targeted reduction to commitments for the Prince programme of €1 million;
  — a targeted reduction to payments for budget lines relating to the European fund for the integration of third country nationals, the European return fund, Fundamental rights and citizenship, and Fight against violence (Daphne) or €15 million in line with absorption capacities and past implementation rates; and

6 For Sterling equivalents of key figures quoted, please refer to the tables in Annex 1.
have welcomed a more ambitious reduction to administrative expenditure, the DB represents a balanced
continues to cater for the needs of enlargement in a budget-disciplined fashion. Whilst the Government would
delivering savings and increased flexibility.

In addition, the 2008 DB remains fully consistent with the financial settlement agreed in December 2005 and
the likelihood of another large surplus. It also protects allocations for Afghanistan and Iraq and other UK
appropriations in Headings 1 and 2, to bring the budget closer to the likely implementation rate and to reduce
negotiations. In particular the DB maintains budget discipline: it significantly reduces the level of payment
appropriations in Headings 1 and 2, to bring the budget closer to the likely implementation rate and to reduce
the impact of inter-institutional co-operation;

— retaining specific decreases on individual budget lines for some institutions taking into account
real needs;

— increasing the standard flat rate abatement on salaries for some institutions, taking into account
their current vacancy rate;

— accepting only a few new posts for new tasks on the basis of justified needs.

— 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.

During a conciliation meeting between the Council and the European Parliament, five Joint Statements
relating to the budget were agreed. These concerned: Structural and Cohesion Funds and Rural Development
2007–2013 programmes; Recruitment in Relation to the 2004 and 2007 Enlargement; Decentralised Agencies;
Executive Agencies; and Assigned Revenues. The Government is supportive of these statements, which call for

— reductions to the subsidies for decentralised agencies of €3.3 million.

— Under Heading 3n (Citizenship), commitment appropriations were reduced by €14.6 million and
payment appropriations by €44.6 million compared to the PDB, leaving a total margin of €31.1
million under the FP ceiling for commitments. This represents:

— targeted reductions to commitments and payments for the budget lines, Multimedia actions, Information for the media and specific actions under the “Going Local” communication article of €5 million;

— targeted reductions to payments for the budget lines Media 2007, Culture 2007–2013, and Youth in action of €30 million; and

— reductions to the subsidies for decentralised agencies of €9.6 million.

— Under Heading 4 (The EU as a Global Partner), commitment appropriations were increased by €217.6 million and payment appropriations reduced by €364.2 million (including a reduction of €239.2 million to the Emergency Aid Reserve) compared to the PDB, leaving a total margin of €112.2 million below the FP ceiling for commitments. This allows for increases in commitment appropriations of €80 million for assistance to Palestine and of €180 million for assistance to Kosovo.

The reductions were mainly achieved through:

— targeted reductions to commitments for the Instrument for pre-accession (€18.5 million), the evaluation of results, the co-ordination and promotion of awareness and the Prince programme (€10.5 million) and regional and horizontal programmes (€13.4 million) taking into account absorption capacities and past implementation rates;

— targeted reductions to payments for the same budget lines and those relating to transition and institution-building, and the completion of former co-operation with Turkey, taking into account absorption capacities and past implementation rates totalling €125 million; and

— a reduction of €239.2 million in payments to the Emergency Aid Reserve.

— Under Heading 5 (Administration), the large increase in commitment and payment appropriations proposed by the PDB was reduced by €96.2 million, leaving a total margin of €266.8 million below the FP ceiling for commitments. The approach taken by Council was to set an appropriate level for the administrative budget of each institution taking into account their own specificities and their real and justified needs while accepting all new posts relating to the 2004 and 2007 enlargements. In particular, the reductions were achieved through:

— limiting the global increase of the Council’s own budget to 0.2%;

— applying for other institutions a 2% reduction taking into account efficiency gains and the impact of inter-institutional co-operation;

— retaining specific decreases on individual budget lines for some institutions taking into account real needs;

— increasing the standard flat rate abatement on salaries for some institutions, taking into account their current vacancy rate;

— accepting only a few new posts for new tasks on the basis of justified needs.

The Government believes the Council’s 2008 DB goes a considerable way to meeting its key objectives for the negotiations. In particular the DB maintains budget discipline: it significantly reduces the level of payment appropriations in Headings 1 and 2, to bring the budget closer to the likely implementation rate and to reduce the likelihood of another large surplus. It also protects allocations for Afghanistan and Iraq and other UK priority areas (Adjustment Support for Sugar Protocol Countries, Cooperation 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 2008 DB remains fully consistent with the financial settlement agreed in December 2005 and continues to cater for the needs of enlargement in a budget-disciplined fashion. Whilst the Government would have welcomed a more ambitious reduction to administrative expenditure, the DB represents a balanced
overall package to put to the European Parliament, and the Government will continue to pursue its key objectives in the subsequent stages of the 2008 budget process.

25 July 2007

Annex A

Table 1

**SUMMARY OF 2008 PDB AND DRAFT EC BUDGET—EUR MILLION**

<table>
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<tr>
<th>Heading</th>
<th>Financial Framework Ceiling</th>
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<td>PA (3)</td>
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<td>0.95%</td>
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</table>

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

Table 2

**2008 PDB AND DRAFT EC BUDGET—GBP MILLION**

<table>
<thead>
<tr>
<th>Heading</th>
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<td>PA (3)</td>
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7 The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (£500m).
8 Excludes £234.5m from the Emergency Aid Reserve.
9 The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (£500m).
16  ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

<table>
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<tr>
<th>Heading</th>
<th>Financial Framework Ceiling</th>
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<th>2008 DB</th>
<th>Difference DB/PDB</th>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes
(2) CA = commitment appropriations.
(3) PA = payment appropriations.
(4) Due to rounding, the sum of the lines may not equal the total
Sterling figures converted the exchange rate on 29 June 2007: £1 = €0.674.

Letter from the Chairman to Kitty Ussher MP

Thank you for your letter dated 25 July 2007 regarding the 2008 Draft Budget. This was considered by Sub-Committee A at their meeting on 9 October. The Sub-Committee are grateful for this update, and look forward to receiving details of progress in due course.

10 October 2007

TAXATION OF UNLEADED PETROL AND GAS OIL USED AS MOTOR FUEL (7512/07)

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

Thank you for your Explanatory Memorandum 7512/07 which was considered by Sub Committee A at their meeting on 1 May 2007. The Sub Committee notes the proposed increase in the minimum tax rates for diesel and unleaded petrol. It is the Sub Committee’s view this is a superior proposal to that which both the Government and the Committee opposed in 2003. The Sub Committee decided to hold the Explanatory Memorandum under scrutiny.

The Committee would welcome details of the Commission’s argument for compulsory use of a non-discriminatory refund mechanism once you have obtained this from the Commission. In addition, the Committee would be grateful if you could provide more detail regarding your argument that this would not need to be a common system, as it appears that there might be benefits for consumers from a common approach.

The Committee would also be grateful if you could confirm that this proposal only applies to motor fuel and not to supplies for excepted vehicles.

2 May 2007

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

Thank you for your letter of 2 May about the above proposal. I am writing to provide some initial information to the Committee in reply to your questions.

Member States’ have now discussed the proposal at official level in the Council.

10 Excludes €234.5m from the Emergency Aid Reserve.
You asked for details of the Commission’s argument for a compulsory refund mechanism in the event a Member State takes advantage of the flexibility to lower its rate of commercial diesel duty. The Commission has not provided any detailed evidence to support making a refund mechanism compulsory for Member States. Thus far, it has argued that this is the only way that such a differential could be applied so as to be non-discriminatory. In addition, it says this is the option strongly favoured by the oil industry as it does not want to face a double streaming option (where there are two different pump prices).

The Government does not consider the Commission’s arguments convincing as a justification for establishing harmonised rules in this area. It is not clear why another means of implementing such a differential could not also be non-discriminatory, for example an option which involved two pump prices. Furthermore, the Government considers that it is for Member States to consider, in the context of any decision to lower its rate of commercial diesel duty, how best to implement this, having taken into account all relevant factors, including the burdens on oil companies and hauliers, the administrative costs, and the risk of fraud of any particular scheme. Following such an assessment, the most appropriate means of implementing a differential may well prove to be different in different Member States, suggesting that they should retain flexibility in this regard.

In terms of whether there should be a common approach to any refund scheme, as set out in the EM, the Government does not believe this necessarily requires a common approach. First of all, we expect the number of Member States applying a separate, lower rate of commercial diesel duty to remain minimal in the short to medium term, meaning the number of Member States applying any refund scheme if it were agreed is likely to be low. Furthermore, while it is possible that there would be some minor benefit to hauliers from having one system, we expect that this would be matter of degree rather than kind—whether a haulier must fill out a number of similar forms or a number of slightly different forms to claim a refund is unlikely to result in significant benefits. The most important thing is that, if a refund scheme is applied by a Member State, it is non-discriminatory and simple for hauliers to use from an administrative point of view. For now, we intend to maintain our reserve on this aspect of the proposal and consider our position further in light of any compromise proposal produced during negotiations.

I can also confirm that the proposal applies only to motor fuel and not to supplies for excepted vehicles.

I will update the Committee again when there is further progress on the proposal.

I hope you find this information helpful.

1 June 2007

Letter from the Chairman to John Healey MP

Thank you for your letter of 1 June regarding the above proposal which was considered by Sub Committee A at their meeting on 12 June.

The Sub Committee noted that the Commission has not yet provided any evidence to support making a refund mechanism compulsory for Member States. The Sub Committee would be grateful if you could update them with this once it is received. In the meantime, the Sub Committee will retain the document under scrutiny.

13 June 2007

TRADE IN SERVICES: COMPENSATORY ADJUSTMENTS UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES (8121/07)

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

Thank you for your Explanatory Memorandum 8121/07 which was considered by Sub Committee A at their meeting on Tuesday 8 May. The Sub Committee decided to hold the item under scrutiny.

The Sub Committee noted your concerns regarding the legal base for issues where competence is shared. The Committee agrees that consideration needs to be given to including Article 133(6) as a legal base. We would be grateful if you would confirm that the decision had been amended to reflect this and let us know what other steps are being taken to ensure compliance with that Article.
Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 9 May. I am writing to update you on the latest position.

Discussions on this item are still ongoing at Council Working Group level. The key issue that you noted in your letter remains the legal base and, in particular, whether Article 133(6) should be added to the legal base of the proposed Council Decision.

To date, the Decision has yet to be amended. This issue is the subject of detailed legal consideration in Brussels. We expect the discussions to progress only when that consideration is complete. I will write again when discussions have moved forward substantively.

31 May 2007

Letter from Rt Hon Ian McCartney MP to the Chairman

I am writing further to my letter of 31 May.

I am pleased to say that discussions on this dossier have now moved forward. In particular, the proposal has been the subject of detailed legal argument in Brussels.

The issue remains that noted in your letter of 9 May—the legal base. Most debate has focused on whether Article 133(6) should be added to the legal base of the proposed Council Decision but other additional legal bases have also been proposed. Specifically, and on the grounds that some of the measures withdrawn relate to transport, Articles 71 and 80(2) have been proposed. These legal bases would bring with them a further legal base—Article 300(3)—which would necessitate the Council consulting the European Parliament.

At present, discussions in Council are finely balanced. The German Presidency has presented a compromise containing the full suite of legal bases proposed to date—Articles 133(5), 133(6), 71, 80(2), 300(2) and 300(3)—and amending the text of the proposed Decision to be consistent with the new legal bases added. We have supported the Presidency’s efforts and, ideally, would hope to secure an outcome on this basis. However, given that agreement in Council will depend on securing unanimity among the Member States to amend the Commission’s proposal, that the Commission is firmly opposed and that some Member States appear less confident of the arguments on Articles 71, 80(2) and 300(3) than they appear on Article 133(6), it may be that in order to secure agreement to the addition of Article 133(6) we may need to drop Articles 71, 80(2) and 300(3) from the Presidency compromise.

Without minimising the reservations expressed in your letter of 9 May, in view of the likelihood of this dossier coming to rapid agreement, I would be grateful if your Committee could consider lifting its scrutiny reserve.

25 June 2007

Letter from the Chairman to Rt Hon John Hutton MP, Secretary of State, Department for Business, Enterprise and Regulatory Reform

I am writing in response to Ian McCartney’s letters of 31 May and 25 June. These were considered by Sub-Committee A at their meeting on 3 July. The Sub-Committee agreed to clear the item from scrutiny to all agreement either on the German Presidency compromise that you have outlined, or on the original proposal in your Explanatory Memorandum that Article 133(6) be added as a legal base.

The Sub-Committee would be grateful if you were to write to them following the agreement to update them of the outcome of these negotiations. I trust that you are content that, should the German Presidency proposals be agreed to, the procedure envisaged under the legal bases proposed are compatible.

3 July 2007

UK’S LISBON NATIONAL REFORM PROGRAMME (NRP)

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

I am writing to you to announce publication of the 2007 Update to the UK’s Lisbon National Reform Programme (NRP). Publication of this year’s Update is earlier than usual, due to the Chancellor of the Exchequer’s announcement that both the 2007 Pre-Budget Report and the 2007 Comprehensive Spending Review will report in October.

Following the relaunch of the EU’s Lisbon Strategy at the Spring 2005 European Council, the UK submitted its first National Reform Programme (NRP) to the Commission in autumn 2005, setting out the key reforms the UK is undertaking to promote growth and jobs. The UK submitted its first NRP update in autumn 2006,
and is now required to submit a further progress report on reform implementation, in common with other Member States. The 2007 update has been prepared with the valuable input of a number of Whitehall departments, the Devolved Administrations and external stakeholders.

The 2007 update describes the approach we are taking to promote macroeconomic stability and sound public finances, stronger productivity growth and higher employment, consistent with the Lisbon Strategy, the Integrated Guidelines of the EU, and the priorities identified by successive European Councils. It also responds particularly to the country-specific recommendation addressed to the UK, which was agreed at the 2007 Spring European Council.

The 2007 Update is complemented by a reporting grid required by the European Commission, which sets out as full a picture as possible of main reform measures undertaken by the Government and the Devolved Administrations.

The UK is at the forefront of economic reform in Europe, and as such it is vital that we meet the EU-level NRP publication deadline of 15 October. Unfortunately, on this occasion publication during recess is the only way to ensure this deadline is met. As agreed with the European Commission, we will also submit a follow-up letter setting out relevant announcements in the PBR and CSR.

Copies of the 2007 NRP update will follow by post.

18 September 2007

VAT SIMPLIFICATION (14248/04, 9405/06)

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

The Paymaster General wrote to you about this particular legislative package on 19 February 2007. It is due to return to ECOFIN in June and the German Presidency has continued with the technical discussions, as expected, in the meantime. This letter provides an update.

Overall, there has been very little real progress on the proposed Directive to introduce a range of simplification measures, including the electronic One Stop Scheme and the proposal to give Member States more flexibility in setting National Thresholds. By contrast, the technical work on the proposed Directive to reform the existing cross-border refund procedure is almost concluded. There is therefore a very real possibility that the German Presidency could push for agreement to that proposed Directive, while technical work on the other elements of this legislative package continues.

The proposed changes to the cross-border refund procedure will greatly improve the current system from a business perspective, and this proposed reform is something UK business wants and has been pushing for, for some time. As a result, the Government would be prepared to agree to this reform separately and to a quicker timescale to the other elements of this legislative package continues.

The other VAT proposals that are likely to feature as part of an overall discussion at the June ECOFIN are the proposed changes to the rules on the place of supply of services (EM 5051/04 and 11439/05). The Committee cleared those proposals last year, but they have yet to be agreed in ECOFIN. On issue likely to give rise to some debate at ECOFIN will be the possible implementation date for these changes.

As you are aware, this implementation date creates some uncertainty with regard to Directive 2002/38/EC, which concerns the VAT treatment of radio and television broadcasting services and certain electronically supplied services. That Directive was last extended in November last year (EM 15428/06) and that extension is due to expire on 31 December 2008. If the changes to the rules on place of supply of services were to be introduced with effect from a date after 31 December 2008, it would be necessary to extend those arrangements once again. In addition, if the rules on place of supply of services were to be introduced with effect from a date before the completion of work on the proposed electronic scheme, it would also be necessary to introduce some form of appropriate simplification mechanism for EU businesses as an interim measure. Directive 2002/38/EC sets out an electronic scheme for non-EU businesses that could potentially be used by EU businesses and that is one possibility the German Presidency may well suggest.

10 May 2007
Internal Market (Sub-Committee B)

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

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

I last wrote to you on Explanatory Memorandum 14357/06 on 22 December 2006 with an undertaking to update your Committee on further negotiations.

The postal services dossier made substantive progress under the German Presidency of the European Council during the first half of 2007, but a consensus was not achieved on the date for full liberalisation of the postal sector.

Parallel discussions in the European Parliament resulted in a decisive vote in plenary on 11 July, with 512 votes in favour and 155 against, for:

— A two year derogation from the Commission proposal of January 2009 for full market opening.
— A further two year derogation for both 2004 and 2007 Accession States, and those countries with either ‘difficulty topography’ or ‘a large number of islands’.


The Portuguese Presidency is preparing a Council compromise text for discussion in September, with a view to a First Reading at the Transport Telecoms and Energy Council on 1 October.

The UK Government continues to make the case in support of postal liberalisation, which is in the interests of consumers of postal services, including SMEs. Both the Netherlands and Germany have committed to fully opening their own domestic markets in 2008, and Finland, Sweden, and the UK have already done so. There is no case for substantive delay for other Member States. I shall update the Committee later in the autumn, following the first reading.

4 September 2007

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

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

Your Committee considered the Explanatory Memorandum on the above proposal on 9 October 2006 and responded that it would like to see the outcome of our consultations before considering further. The Committee also raised questions about the significance of the issue of wet-leasing for UK airlines, and about the Government’s position on pricing. I am writing to update you on these issues, to inform you of the conclusions of the Department’s consultation on the proposed Regulation, and to update you on the Council negotiations. I also attach a Partial Regulatory Impact Assessment (not published), which takes account of the outcome of the consultation.

As you may recall from the Explanatory Memorandum, the Government was happy with the general direction and intent of the proposal, but had some concerns which we intended to discuss with industry. The Department conducted a stakeholder consultation on the proposals which included a Stakeholder Symposium. This generated a significant amount of interest from industry, and twenty-three separate responses were received in total. Respondents were invited to comment on a number of aspects of the Commission’s proposal. The proposed restrictions on wet-leasing of aircraft and crew from outside of the Community caused particular concerns for charter air carriers, the majority of whom rely on wet-leasing to address the seasonal fluctuations in their business. Restrictions on this practice in the form originally envisaged by the Commission were a serious concern for the UK charter industry, which operators stated could cost them several millions of pounds per year. Respondents also commented on the issues of licensing, pricing and Public Service Obligations (PSOs). The Explanatory Memorandum also commented on the issues of the time period necessary for demonstrating financial fitness (which the Commission proposed to increase from two to three years), and the definition of

1 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 57.
‘principal place of business’. Following discussions in the Working Group, and working closely with the Civil Aviation Authority (CAA) and industry I am content that the text now meets the UK’s concerns on these issues.

There have been a number of Working Group discussions of this proposal, most recently on 15 May, and I am happy to be able to report that we have achieved a number of improvements to the text, aided by the views expressed during the consultation. The Commission’s original proposals would have significantly restricted the ability of EU carriers to lease aircraft with crew (known as ‘wet-leasing’) from outside of the Community—which would have been allowed only in exceptional circumstances. This was a major concern for UK charter carriers, many of whom, including First Choice and Thomas Cook, have long-term arrangements to wet-lease aircraft and crew in from the United States for the summer season, and out to the US in the winter months. Many UK charter carriers expressed grave concerns about these proposals, and predicted that this restriction would seriously damage their business model, costing them several millions of pounds.

Our position in the Council, in line with our existing practice, has been to allow carriers to wet-lease to satisfy both seasonal capacity needs and to cope with exceptional circumstances such as technical problems. At the same time, we believe that it is important to retain the ability to monitor leasing for safety purposes, and to prevent carriers from becoming overly-dependent on wet-leasing. The text of the Commission proposal has been considerably modified in this regard, and now meets the UK’s concerns by allowing wet-leasing to meet seasonal capacity needs, and for this lease arrangement to be renewable consecutively. In addition, the proposed restriction on wet-leasing with third countries where reciprocal agreements are not in place has been removed. I am satisfied that the current text meets the concerns of UK industry, allowing charter carriers to continue to operate their business model, whilst also ensuring appropriate safety oversight.

The proposed Regulation also seeks to tighten up the rules for establishing PSOs on routes vital for the economic development of a region. This is welcome, as the process has in recent years been used by some Member States to protect their national carriers from competition and as a means of providing direct and indirect State subsidies. At the same time, we have sought to reduce the burden of the regulations on existing PSOs in the UK, nearly all of which are lifeline routes to and between the Scottish Highlands and Islands.

The Regulation, as revised following the Working Groups, is satisfactory in meeting both these objectives. In particular we have worked closely with the Scottish Executive and secured an amendment creating a de minimis exemption from the notification procedure for very thin routes of less than 10,000 passengers per annum, which include a number of the PSOs in Scotland. However, the Government could not support Scottish Ministers’ preference for extending the contract period for PSO services to 5 years to further reduce administrative burdens and improve competition from airlines to provide PSO services. On balance, we believe this would unduly restrict access to PSO routes and go against the Government’s general position in favour of increased liberalisation. The Regulation already extends the contract period to 4 years from 3 under the current arrangements, which should go some way to meeting Scottish Ministers’ objectives.

There are two remaining issues that need to be resolved, and it is likely that these will be determined during Ministerial discussions at the Transport Council on 8 June.

The first relates to the scope of the provisions on the transparent advertising of air fares. These provisions will end the practice of apparently low headline fares which turn out to be much higher once various taxes, fees and charges are added. You may recall that we initially wished to consider these further to ensure that they were workable. Following our consultations with industry and some clarifications to the text in the course of the negotiations I now believe that this measure will improve consumer clarity and allow passengers to compare fares more easily. Some Member States are proposing that these rules should apply to intra-EU flights only. However, I believe that the rules on pricing should apply to all flights departing the EU, whatever the final destination, and hope that it will be possible to achieve this. The UK industry broadly shares this view.

The second issue concerns a proposal by one Member State which would stipulate the social law applying to airline staff employed outside of that airline’s home country. I believe that such provisions are inappropriate in the context of a Regulation that deals with the technical matters of airline operations, a view that is shared by a number of other Member States. Furthermore, this proposal appears to cut across established EU legislation on posted workers and the co-ordination of social security systems. My officials have been in contact with the Department for Work and Pensions on this issue, and I propose that we continue to argue against this text. If a compromise becomes necessary, we might consider neutral language which simply asserts that all relevant social provisions of Community law would apply to such workers.

The German Presidency has indicated that it hopes it will be possible to reach a general approach on this dossier at Transport Council on 8 June. The European Parliament has begun its consideration of the proposal, and its plenary first reading is currently scheduled for July. I will of course keep the Committee informed of the progress of the proposed Regulation.
Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 24 May which Sub-Committee B considered at its meeting on 4 June.

We were grateful for your reply regarding the significance to industry of ‘wet-leasing’ of aircraft and crew from outside the European Union.

We welcome the clarification of your position regarding the proposals for the transparent advertising of airfares and are reassured that you are now able to support the proposal.

We have decided to clear the document from scrutiny, but we would be grateful to be kept informed of progress on this dossier in the European Parliament.

5 June 2007

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

I am writing to update you on the progress of negotiations on this dossier which consolidates and updates three Regulations from 1992. These regulations have been essential for the expansion and success of the single market in aviation, and their reform is intended to update these Regulations, to close certain loopholes that have emerged, and to ensure consistent application across member states.

Since Douglas Alexander’s letter of 24 May 2007, a General Approach was reached on the proposal at the Transport Council on 7–8 June. This letter explained that an amendment had been put forward that would require an airline to apply to its employees the social legislation of the Member State in which the employees are based. The UK, supported by a number of other Member States, had argued that such legislation was not appropriate in this Regulation. This issue was discussed by Ministers at Transport Council. Instead of an article in the Regulation a joint statement was agreed. The statement says that the Council will await the outcome of a study launched by the Commission to investigate the effects of the internal market in aviation on employment and working conditions before considering whether further legislation is necessary. The study is expected to report at the end of the year. A second outstanding issue raised in the letter of 24 May related to Public Service Obligations (PSOs). At that time, that the Scottish Executive had favoured proposing a de minimis exemption from the notification procedure for very thin routes of less than 10,000 passengers per annum. This amendment has now been incorporated into the text of the general approach.

The European Parliament had its plenary first reading at its meeting on 10–12 July. At plenary the EP adopted 55 amendments.

Many of the EP’s amendments are welcome to us as they have improved the original Commission proposal. For example, in terms of wet-leasing (the leasing of aircraft and crew) the Commission’s proposal sought to impose significant restrictions on the ability of airlines to wet-lease aircraft from carriers outside the Community. A number of charter carriers in particular expressed grave concerns about the measure, which they stated could cost several million pounds per year. These carriers have long-term arrangements reflecting the seasonal nature of the European charter market, under which a number of their aircraft are leased to North American charter airlines during the winter months, and other aircraft leased in from the same source during the summer season. An EP amendment which would enable wet-leasing to continue of the basis of exceptional needs; seasonal capacity needs; or due to unforeseen operational difficulties including technical problems, was adopted in plenary.

However, the amendments adopted by the EP require that a valid reciprocity agreement exists between a member state and the third country in order for leasing to take place. These provisions are unwelcome because they restrict access by Community air carriers to safe and well-regulated sources of aircraft and crew—particularly from the North American market—and will therefore disadvantage consumers.

We do not support a number of other EP amendments relating to pricing, insurance and social legislation. We strongly support the principle that air fares should include all applicable and non-optional taxes, fees, charges and surcharges at all times, in order to allow consumers to compare prices and to make informed purchases. This principle is widely supported in the EP, although a number of amendments require a full breakdown of any taxes, fees and charges, including security costs. We believe that this level of detail is undesirable, as it is likely to confuse consumers and will be operationally difficult to implement.
Similarly, a number of amendments require Community air carriers to provide evidence of sufficient insurance cover to refund and repatriate consumers in the event of bankruptcy or revocation of the operating licence. We are opposed to these amendments as many passengers are already covered in this regard by the Package Travel Directive which is currently under review by the Commission as part of the Consumer Acquis. Any changes should be taken forward in that context, to prevent confusion. We have already encouraged airlines operating in the UK to include airline failure in the insurance they offer passengers to purchase, and several airlines have amended their insurance products accordingly including BA, easyJet, Flybe and Ryanair. This allows consumers to make a choice about whether they purchase such insurance (as consumers do for medical insurance when travelling abroad) rather than raising the cost of air tickets for all to protect against a very rare risk.

Finally, three amendments were adopted on social legislation; two of which would require an airline to apply to its employees the social legislation of the Member State in which the employees are based. The third amendment requests the Commission to propose legislation on this issue. We believe that the third aviation package is not the appropriate place to review social legislation, which should be considered in a much wider context. The Commission has launched a study on the effects of the single aviation market on social and working conditions which will report at the end of 2007. We believe that we should await the outcome of this study to determine whether any specific action is necessary.

The proposal is expected to be on the agenda for a political agreement at the Transport Council on 1–2 October, which will not incorporate the European Parliament’s amendments, except where they are in agreement with the position of the Council, which does not include any of the amendments that are unwelcome to the UK. The Presidency is expected to start informal discussion with the European Parliament and the Commission on the issues where the EP’s opinion differs from the Council’s position, in the early autumn. If these discussions are successful it should be possible to reach a second reading agreement on this proposal. I will of course keep the Committee informed of the progress of the proposed Regulation.

23 July 2007

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

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

Thank you for your letter of 24 April 2007 which followed the meeting of Sub-Committee B on 23 April. In that letter you requested a clarification of the Government view on the inclusion of both flights arriving at and departing from EU airports.

It is our view that an EU scheme covering all arriving and departing flights would have the greatest environmental benefit—the Commission’s impact assessment estimates that by 2020 a total of 183 million tonnes of CO\textsubscript{2} would be saved per year on the flights covered, a 46% reduction compared with business as usual.

While we are aware that the inclusion of third country airlines in the EU scheme has been controversial, our assessment is that the EU is legally justified in including international aviation and that tackling climate change is too important to allow non-discriminatory action to be delayed by slow progress at international level.

But we have also been working at an international level to promote emissions trading as the most efficient way to tackle aviation’s climate change impacts. The UK has played a key role in recent discussions on emissions trading in the International Civil Aviation Organisation (ICAO), and assisted in finalising draft guidance on emissions trading through ICAO’s Committee on Aviation Environmental Protection (CAEP), due to be considered at the triennial ICAO Assembly in September. The UK, along with the Commission, has encouraged an open dialogue with third countries and has also begun to explore non-confrontational ways forward with non-European states.

For ease of reference, please find below the three questions you asked in your letter, along with our responses.

2 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 60.
1. **What is the legal basis for including flights originating from outside the EU?**

I can, of course, reassure the Committee that the UK Government would not take action on aviation and emissions trading that was not legally justifiable. Having considered the relevant legal framework we have concluded that the EU proposals are lawful and consistent with the provisions of and principles underlying the Chicago Convention which governs international civil aviation.

This judgement is consistent with the EU Commission’s view. The Commission has conducted its own analysis on the legal base of including aviation in the EU emissions trading scheme, the main summary of which is available in the CE Delft report *Giving wings to emission trading*, July 2005, which I believe your Committee considered as part of its report on *Including the Aviation Sector in the EU Emissions Trading Scheme*. The Commission has continued to keep in contact with their legal advisors on this subject, and has reacted to legal questions raised by Member States through the Environment Council working groups.

2. **How will their emissions be measured?**

Emissions by non-EU airlines flying into or out of the EU would be measured in the same way as flights by EU airlines included in the scheme. The Commission’s draft Directive states in Part B, Annex IV, that monitoring of carbon dioxide emissions would be achieved through calculations based on fuel consumption multiplied by an emissions factor. Where actual fuel consumption data were not available, the Commission proposes to use a ‘standardised, tiered method’ based on ‘best available information’, probably supplied by Eurocontrol, the European Organisation for the Safety of Air Navigation.

3. **How will the scheme be enforced on these flights?**

The current Directive on emissions trading (2003/87/EC) addresses the issue of penalties in Article 16, and aircraft operators would be subject to these penalties as any other operator would be. In terms of the potential application and enforcement of these penalties, the UK has yet to explore which are the most appropriate enforcement provisions for those airlines that it would administer. We shall ensure that there is a full analysis of all the options and that stakeholders are consulted and kept informed of any developments.

We would also like to update you on the progress to date with European negotiations. Since the Commission published its proposal in December 2006, the UK has been participating in Environment Council Working Groups to consider the key issues for Member States. Negotiations have gone well so far, with most Member States agreeing to the all arriving and departing geographical scope and the inclusion of third country operators.

There remain a number of issues on which we still have to reach a consensus, broadly these are: the start date of the scheme; measures to accommodate new accession states and peripheral regions; the allocation methodology of free allowances and the level of the cap. The UK has actively participated in the discussions. We have also undertaken work to enable decisions to be based on the best information. For example, we have commissioned research on the implications of different methods for allocating emissions permits to airlines. This will help to ensure that decisions on this issue will be based on a better understanding of the practical effects for different operators.

We expect a discussion and progress report on this dossier to be considered in the June Environment Council. The German Presidency intends to present a progress report to the Council, outlining areas of agreement, compromise and disagreement between Member States. As yet we are unaware of the Portuguese Presidency’s plans regarding aviation and the EU ETS.

In parallel to progress in the Environment Council, the European Parliament has now begun scrutiny of the Commission’s draft proposal. I understand the proposed timetable involves consideration of the draft report at the end of June, with a deadline for amendments in the first week of July, all of which will lead to the first reading of the proposal scheduled for October.

I will, of course, continue to keep your Committee informed of progress, including the outcome of the June Environment Council and the European Parliament’s first reading.

*14 June 2007*
Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 14 June. Sub-Committee B considered it at its meeting on 25 June.

Your letter referred to ongoing negotiations, with particular reference to the issue of allocation of free emissions permits. As you may recall, our report ‘Including the Aviation Sector in the European Union Emissions Trading Scheme’ (21st Report, session 2005–06, HL 107) recommended that such allocations were made on the basis of ‘benchmarking’, whereby free permits are allocated with reference to a level of emissions fixed according to industry best practice. We believe that this is consistent with the ‘polluter pays’ principle. We would be grateful if you could update us on what discussions have taken place about the allocation of free permits and, in particular, what consideration has been given to the benchmarking system.

Your letter mentions that “the UK has yet to explore which are the most appropriate enforcement provisions for those airlines that it would administer”. We would like to know what decision you have come to about enforcement provisions.

We will maintain scrutiny of this document pending your reply.

26 June 2007

AVIATION SECURITY: COMMON BASIC STANDARDS

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

Sub-Committee B considered this draft Regulation at its meeting on Monday 9 July. The Committee was content to lift scrutiny.

However, we would be grateful for further clarification of paragraph 14 of your EM in which you refer to ‘the development of technologies and operational procedures capable of physical screening of potential threat liquids’. Could you tell us what testing of such technologies is taking place, and when you expect such screening devices to be installed in Member State airports? We understand that they are already operational in some countries outside of the European Union.

11 July 2007

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 11 July requesting further information about the development of technologies and operational procedures around the screening of liquids.

The main thrust of this work is directed towards identifying a means of routinely screening for possible threat liquids, to obviate the need for the present close limit on the amount of liquids which may be taken through airport screening points, and for such liquids to be presented separately. No such equipment is yet in operational use, here or overseas, but much intensive research and development work is going forward, including in Europe under the aegis of the European Civil Aviation Conference’s (ECAC) Technical Task Force, and in the USA under that of the Transportation Security Administration. The Department’s own technical experts are closely involved in the work being led by ECAC, and we and ECAC naturally maintain a continuing dialogue with the US agencies about their own work. This enables results to be shared, and prevents duplication of effort. There is also a close engagement with equipment manufacturers, so that product development can be properly informed.

A number of technologies of potential value are being explored, including in particular special x-ray applications, electromagnetic analysers, and trace and vapour systems. Some are technically innovative, yielding novel methods of detection, whilst others are modifications and enhancements of current methods. All are intended to address the considerable operational and detection challenges of this specific problem. You will understand that the detail of this research and development is sensitive, and not made public in order to avoid compromising the effectiveness of any resulting applications.

There are encouraging signs, as some of these technologies move towards a reasonably mature stage of investigation or approach the operational trial stage, that a viable solution for routine liquids screening will be found. It is still however too soon to say when one or more may be judged sufficiently mature, and proven through trialling, to be sanctioned for front line deployment at EU airports. In the meantime we and our opposite numbers overseas are also looking, within this mass of research effort, for processes and equipment
which, while not suitable for mass screening, may have value in smaller scale or niche applications to address particular problems, and which may be available sooner. Trials of such applications are typically not publicised, once again in order to avoid putting information about possible future counter-measures into the wrong hands.

10 August 2007

BRIDGING THE BROADBAND GAP (7622/06)

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

Following from the explanatory memorandum in 2006, I would like to forward a copy of a report produced by the Broadband Stakeholder Group ‘Pipe Dream’ (not printed) that provides an overview of broadband status in the UK. I would also like to briefly update you on developments since publication of the report and outline future work plans.

The report led to a significant degree of debate amongst companies and industry analysts about how future broadband needs of the UK could be met. This was encouraging and we have sought to capitalise on this interest by bringing together key stakeholders from across the public and private sectors to discuss next steps. This group includes national and regional government and companies that include existing telecoms suppliers, equipment manufacturers, content developers, construction companies and utilities, as well as consumer interest groups.

The Broadband Stakeholder Group have identified four key themes that they will pursue in partnership with Government to help determine how best to develop the broadband access infrastructure over the forthcoming years. These are: determining the public value of broadband, alternative private investment models, appropriate regulatory environment to encourage investment and efficient public sector interventions.

The culmination of this work, together with the ongoing dialogue will provide a deeper understanding of the market dynamics involved with developing the broadband market and help us to assess what are the most appropriate approaches for delivering efficient investments in next generation networks for the broadband access infrastructure.

13 September 2007

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

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

Thank you for your letter of 23 April 2007, which Sub-Committee B considered at its meeting on 30 April. As we have concluded our scrutiny of the Seventh Framework Programme, we can confirm that we are content to lift scrutiny on this Communication.

1 May 2007

CIVIL AVIATION SECURITY (12588/05)

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

Further to your letter of 9 January 2007 to my predecessor Gillian Merron, I am writing to provide a short update on the further progress of the proposed framework Regulation, which was the subject of Gillian’s letter of 15 December 2006.

I am afraid the report is short because progress has continued to be only modest. The German Presidency, like that of the Finns before it, was not able to find an acceptable compromise with the European Parliament on those matters which most divide Parliament and Council, in particular around the question of the funding of the implementation of security measures and Member States’ freedom to impose more stringent measures, where this is warranted, than those mandated in the EU aviation security baseline. At its second reading the Parliament re-inserted very problematic amendments which had previously been rejected by Council, thus

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3 www.broadbanduk.org
4 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 61.
5 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 62.
making conciliation inevitable. We expect this to get substantively under way in September, under the Portuguese Presidency. I cannot be sanguine that an acceptable compromise agreement will be reached, and so there is some possibility of the regulation being lost.

In your letter of 9 January you also asked for the Government’s views on questions thrown up by the “Heinrich case”, about which Gillian Merron had written in her 15 December letter. You may recall that the case concerns a request to the European Court of Justice for a preliminary ruling on certain questions bearing on unpublished annexes to EC Regulations. Briefly, the ECJ has been asked to determine whether non-publication of annexes forming part of EU aviation security regulations is contrary to EU law on public access to Community documents; and whether an annex to an EU Regulation can be said to be not in force, if the requirement for publication in the EU Official Journal is not met.

Much EU aviation security legislation is not made public, for the obvious reason that it contains material that is sensitive on security grounds—for example, methods by which baggage may be screened, or to be adopted for protecting aircraft on the ground. An affirmative answer by the Court to either of the questions above would bring some obvious difficulties for the EU aviation security regime.

The letter of 15 December detailed our intention to submit comments to the ECJ on this case. Regrettably this has not been possible, due to an administrative oversight by the Treasury Solicitor’s Department, and we shall instead be putting views to the Court orally in the Autumn, via Counsel, when we anticipate the case will come to court. We are satisfied that the UK’s position has not been compromised by this oversight and that our ability to make oral representations will enable us to advance our arguments forcefully in front of the Court. We will be encouraging the Court to limit any findings it may reach to the specifics of the case in question, and not to rule in ways which would inflict damage on the larger framework of EU legislation.

In the meantime we have shared our observations informally with other interested Member States and with the European Commission. We are pleased to note that the Commission has adopted the UK’s arguments. I shall, of course, continue to keep your Committee informed of further developments.

19 July 2007

CLASSIFICATION, LABELLING AND PACKAGING OF SUBSTANCES AND MIXTURES (11497/07)

Letter from Lord McKenzie, Parliamentary Under Secretary of State, Department for Work and Pensions to the Chairman

On 17 July 2007 I submitted to Parliament an Explanatory Memorandum (EM 11497) and initial Regulatory Impact Assessment (RIA) for a proposed European Regulation that will replace the current EU system for the classification and labelling of hazardous chemicals with a new system based on the United Nations Globally Harmonised System (the GHS).

In the European Council a first ‘read through’ of the articles of the Regulation is nearly complete, and detailed work on the Annexes (2,000 + pages) has just started. In the European Parliament the relevant committees are appointing rapporteurs, but there has been no discussion so far by MEPs.

I can therefore confirm that there have been no developments to significantly affect the EM and the initial RIA I forwarded back in July and I would welcome consideration of this proposal by your committee as soon as is possible.

In Great Britain the Health and Safety Commission launched a 12 week consultation on the proposed Regulation and the initial RIA, which is due to close on 2 November. HSE officials will review all responses to the consultation, taking on board comments, as appropriate, and feeding them into the UK negotiating position and using the information to update and refine the initial RIA.

Officials will continue their dialogue with all UK stakeholders throughout the European negotiation process, with the aim of realising as far as possible the benefits of a global system without undue cost.

The European Presidency and European Commission are hoping to secure a first-reading deal with the European Parliament, with adoption of the Regulation in the second half of 2008. At this stage this goal appears achievable.

4 October 2007
Letter from the Chairman to Lord McKenzie

I am writing in response to your EM on the classification, labelling and packaging of hazardous substances. Sub-Committee B considered the document at its meeting on 8 October.

We recognise the merits of moving towards a global harmonised system of classification, even though the benefits to the UK, and indeed other Member States of the European Union, may be slow to emerge. Given the substantial cost to industry of migrating from one system to another, we would be grateful for an indication of how you expect to assist industry, whether financially or in practical terms.

We are also concerned about the possibility of a precedent for adapting or amending European Regulations without recourse to the usual legislative procedures. We would be grateful if you could share with us any guidance you have received from the Cabinet Office on this matter, and what you expect your negotiating position to be.

We will hold this document under scrutiny pending your reply.

9 October 2007

Letter from Lord McKenzie to the Chairman

I am writing in response to your letter dated 9 October following the consideration of Sub-Committee B of the Explanatory Memorandum on the classification, labelling and packaging of substances and mixtures.

The Committee raised two issues: how the Government plans to assist industry and the Government’s position on the proposed process for future amendment of certain provisions within the Regulation.

Industry Assistance

As outlined in the initial Regulatory Impact Assessment, several sources of advice and guidance are planned, or are already in preparation, to help industry meet the requirements of the proposed new Regulation.

At European level one example is a project that has just commenced known as REACH Implementation Project 3.6 (RIP 3.6). This project is coordinated by the European Chemicals Bureau, its aim is to produce detailed guidance on the entire process of classification, labelling and packaging of substances and mixtures. The project involves the European Commission (EC), Member States and representatives from industry. The Health & Safety Executive (HSE) and Environment Agency (EA) officials are active participants in this work.

We anticipate that in the future this guidance will be supplemented by guidance produced by the newly formed European Chemicals Agency based in Helsinki.

The proposed Regulation itself also includes two Annexes that will assist industry. One (Annex VII) provides a “translation table” for suppliers of substances and mixtures which can be used to convert the classification of many of their existing products to new GHS-based system. Another (Annex VI) provides a conversion from the existing classification and labelling system to the new GHS system for around 8000 harmonised substances.

We understand that the European Commission is also considering developing an on-line tool to assist business to comply with the GHS Regulation. At this stage no further details are known about this work.

Once the nature and extent of the available European level guidance is clear, the Government will consider what further information and guidance would be useful for UK industry and other stakeholders. However, as with the recently agreed REACH Regulation, industry must take responsibility to develop general or sector-specific tools and guidance to classify and label their products under the new GHS-based system.

In the interim, and in so far as resources allow, HSE officials will continue to work with industry and others to help them prepare for the transition to the GHS. Presently HSE officials respond to a steady stream of telephone and email queries (though we are clear that only industry knows its products and can decide the appropriate classification). In future, HSE may consolidate this activity into a GHS helpdesk, perhaps running together with HSE’s existing REACH helpdesk.

Neither the European Commission, nor the UK Government envisage providing direct financial assistance to industry.
ADAPTATION/AMENDMENT OF REGULATION

The existing EU classification and labelling legislation, which has been in place for nearly 40 years, incorporates a well used procedure for amendment and adaptation to technical progress. This ensures the system reflects the latest scientific knowledge. The comitology procedure used is one that provides the most robust control over the exercise of delegated power, i.e. the recently adopted regulatory procedure with scrutiny.

The new proposed Regulation maintains this approach and applies the same comitology procedure. However, as the Regulation is adopting the GHS system, amendment and adaptation is necessary both to keep up with scientific knowledge on individual substances and the latest scientific techniques, but also to introduce technical changes to the GHS agreed at UN level.

In the first draft of the proposed Regulation, circulated as part of the European Commission Internet-based consultation in August 2006, the comitology procedure was applied to update the Annexes only, as is the case now in the existing EU system. However, following advice from the Commission legal services, and in line with good legal drafting practice some of the duties within the Annexes were transferred to the Articles.

The proposed Regulation, therefore, now includes a comitology procedure to amend and adapt not only the technical annexes, but also a limited number of Articles that refer to technical elements of the UN GHS.

HSE officials flagged this as an issue requiring further investigation within the Explanatory Memorandum. HSE officials have subsequently discussed the issue with the Cabinet Office legal advisors, UKRep, the European Commission, and its own legal advisers. The outcome is a consistent view that:

(i) The legal status of the Articles and the Annexes is the same, therefore there is no legal reason why the Articles cannot be amended and adapted to Technical Progress in the same way as the Annexes currently are.

(ii) The same criteria apply when deciding whether it is appropriate to amend or adapt Articles or Annexes. The criteria are set out in Council Decision 1999/468/EC (as amended by Council Decision 2006/512/EC).

(iii) The ‘regulatory procedure with scrutiny’ as proposed in this Regulation can be used to amend and update ‘non-essential elements’ of a legal instrument (including both the Articles and the Annexes). ‘Non-essential’ in this case means technical or scientific matters not affecting the essential elements.

HSE officials negotiating the Directive consider that the comitology procedures proposed in this Regulation meet the policy and legal criteria for their use, and that no precedent has been set. However, they will continue to monitor the position as negotiations develop.

I trust this fully answers the Committee’s concerns.

22 October 2007

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

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

I am writing, in advance of the meeting of the Transport, Telecommunications and Energy Council on 7–8 June, to inform you of the current position in respect of the draft Directive amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.

You will recall that I provided you with an Explanatory Memorandum (No 5171/06 dated 2 February 2006) on the Directive (not printed). Subsequently, I wrote to you on 18 May on progress in the negotiations, and on 5 July 2006, informing you of the outcome of the Transport, Telecommunications and Energy Council on 9 June 2006 at which a general approach on the Directive was achieved.

There have now been further developments, and the German Presidency are hoping that it will be possible to reach a political agreement at the Transport Council on 7–8 June 2007. On 25 April 2007, the European Parliament conducted its First Reading of the Directive. The European Parliament voted on 66 proposed amendments to the Commission’s text, and passed 62 of them.

The Government has concerns about a substantial number of the amendments which the European Parliament has voted through, on the grounds that they are not consistent with the text on which the Council achieved a general approach and that, rather than improving on that text, they are less acceptable to the UK than the general approach text. Our concerns—many of which are on points of substance, rather than mere detail—relate to amendments dealing with a range of subjects, including: the carriage of Automatic...
Identification Systems (AIS) on fishing vessels; dangerous and polluting goods; financial guarantees and compensation; Long Range Identification and Tracking; rights of navigation in EU Member States’ waters; and the timetable for SafeSeaNet.

The European Parliament’s amendments will be discussed at one or more Working Groups in May. We propose to work with the Presidency and other Member States to defend the improvements which are encapsulated in the Council’s general approach text and which were an acceptable result for the UK, and to reject the unhelpful amendments proposed by the European Parliament, which we do not expect to be included in the political agreement. We will then continue to work with future Presidencies and MEPs in order to seek an acceptable agreement at Second Reading.

In Explanatory Memorandum 5171/06, I indicated (at paragraph 27) that there was insufficient information to develop a Regulatory Impact Assessment (RIA) and committed to submit one when we had a clearer idea of the impact on business. I also stated that we would submit an EM when the Commission’s Impact Assessment became available in English. In the event the Commission did not translate their Impact Assessment into English (their own Guidelines for Impact Assessment specify that these can be produced in English, French or German and do not require them to be translated). Nevertheless, the further information promised in my original EM is now provided in the draft partial RIA enclosed with this letter (not printed). I am sorry that this is being submitted later than we had originally hoped.

The main focus of the RIA is on the mandatory carriage of AIS equipment on fishing vessels as the other elements of the Directive are unlikely to have a financial impact. This part of the Directive aims to reduce the number of fishermen’s lives lost but this will have a financial cost to the fishing industry of installing the equipment. We will be developing the RIA in due course, in discussion with the fishing industry. They are aware of this proposal as we have raised the issue of mandatory carriage of AIS with the fishing industry in the forum of the Fishing Industry Safety Group’s Fishing Safety Technical Operations Group in January 2006.

Throughout the negotiating process, the UKs national position has been informed by what we understand to be the concerns of the fishing industry, most especially the anticipated costs to the fishing industry. Some—although not all—other Member States also indicated that the cost to their fishing industry was an important consideration.

I will, of course, keep you informed of any further developments on this proposal.

14 May 2007

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 14 May, which Sub-Committee B considered at its meeting on 21 May.

We were grateful to you for your progress report on the proposal ahead of the Transport Council in June. As you will be aware, the Sub-Committee cleared the proposal from scrutiny at its meeting on 5 June last year.

We note your concerns over some of the amendments to the proposal made by the European Parliament, and would welcome a further report from you if progress in negotiations is made towards a Second Reading agreement.

22 May 2007

COMPENSATION FOR AIR PASSENGERS (8708/07)

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

Sub-Committee B considered this document and your Explanatory Memorandum, at its meeting on 21 May 2007.

We share your welcoming of the Commission’s review of the operation of Regulation (EC) 261/2004; and agree that the decision to promote a code of conduct seems a sensible alternative to any legislative changes to the Regulation. We would be grateful to you if you could provide us with a copy of the Government’s proposed paper on complaints-handling, which your EM mentions, when it is available.

We are content to lift scrutiny on this proposal.

22 May 2007
Letter from Gillian Merron MP to the Chairman

Thank you for your letter of 22 May in which you lifted scrutiny on the above mentioned document. In line with your request, I am pleased to enclose a copy of the paper on complaints handling procedure that was presented to the European Commission and other National Enforcement Bodies (NEBs) on 14 May.

The paper was written and presented by the Air Transport Users Council (AUC), the body designated under UK law to handle complaints pertaining to Regulation (EC) 261/2004. Its content was agreed with the Civil Aviation Authority (CAA)—the body designated under UK law to enforce Regulation (EC) 261/2004—and the Department for Transport.

The paper is not in the public domain and the AUC does not envisage publishing it. As such, I would be grateful if you would not distribute or reproduce it directly (not printed).

COMPETITIVE AUTOMOTIVE REGULATORY FRAMEWORK FOR THE 21ST CENTURY (5746/07)

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 19 April 20077 advising that the Committee is content to lift scrutiny and asking various questions.

Government is committed to ensuring close consultation with industry on policy proposals as they are developed and progressed—which we see as integral to better regulation. The automotive sector is consulted in a variety of ways—in particular, through the Vehicle Industry Policy and European Regulation Group (VIPER), as well as through formal consultation exercises; in addition to the daily contacts between DTI’s Automotive Unit and industry.

The key role of the VIPER Group is to enable a process for effective, timely and deep engagement by Government in the EU regulatory and policy development process, on behalf of the sector. As part of this process, a cross-section of industry representatives (including all the major vehicle manufacturers) are brought together with officials from across Whitehall on a regular basis. Since VIPER’s inception, it has helped to frame UK policy on a wide variety of issues, including the European Commission’s proposals on air quality. In addition, the Low Carbon Vehicle Partnership, comprising organisations from automotive, fuel, academia and other stakeholders, provides a forum for action and advice in the area of low carbon vehicles and fuels.

The stringent ‘Euro 1’ emissions standards for passenger cars and light goods vehicles (LGVs) were first introduced in the early 1990s. Compliance with these became mandatory for all new cars from 1 January 1993, and from 1 October 1994 for LGVs. These standards were subsequently tightened by Euro 2, 3 and 4 standards. Euro 4 became mandatory for all new cars and car-derived LGVs from 1 January 2006 and 1 January 2007 for heavier LGVs.

Between Euro 1 and 4, emissions limits on the regulatory test cycle for NOx and particulate matter were indeed tightened by around 70–90%. Whilst, in most cases, these have resulted in similar emissions reductions in real-world driving conditions, diesel NOx emissions do not appear to have reduced significantly between Euro 1 and 4. Overall diesel vehicle emissions have, of course, reduced. However, the market share of diesel vehicles has increased.

NOx and particulate matter comprise a very small fraction of a percent of everything that comes out of the tailpipe of cars, and the quantities are significantly different for petrol and diesel vehicles. More relevant, I believe, is that—despite the substantial reductions in emissions achieved—emissions from cars and LGVs remain a significant contributor to exceedences of our air quality objectives on NO2 and PM10. Recent estimates in DTI’s Regulatory Impact Assessment on proposed Euro 5 and 6 standards8 suggest that by 2010, cars and LGVs will account for 18% of UK NOx emissions and 12% of UK PM10 emissions. However, the contribution in areas where air quality objectives on PM10 and NO2 are exceeded (urban areas and close to busy roads) is substantially higher.

10 May 2007

7 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 66.
8 http://www.dft.gov.uk/consultations/closed/emissionstandardsuro5/attachmentpartialregulatory1694
Letter from the Chairman to Rt Hon Margaret Hodge MP

Thank you for your letter of 10 May, replying to my letter of 19 April. Sub-Committee B considered your letter at its meeting on 21 May.

We were grateful to you for your response to the questions we raised and share your concerns over the contribution of Light Goods Vehicles to the current level of pollution, particularly NO2 and PM10 emissions.

22 May 2007

ELECTRONIC COMMUNICATIONS REGULATION AND MARKETS 2006 (8089/07)

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

Thank you for your Explanatory Memorandum dated 25 April 2007 which Sub-Committee B considered at its meeting on 14 May 2007.

We are pleased with the developments achieved in the UK regarding competition and the constructive role Ofcom is playing in the regulatory framework. We are keen to monitor the forthcoming legislative proposals by the Commission in the summer; especially with regards to concerns expressed by the Commission on the attainability of the single market under the existing framework. We would be grateful if you could keep us informed of any progress made with these proposals and note that the Commission wishes to address those concerns through its review of the framework.

We are content to clear the document from scrutiny at this stage.

16 May 2007

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

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

I am writing to update you on the progress of negotiations on this dossier, which would extend the responsibilities of EASA to cover rulemaking and the standardisation of flight operations and personnel licensing. The proposal will be discussed at the Transport Council on 7–8 June, where a political agreement is expected to be reached.

Since my letter of 28 November 2006,9 the Council reached a general approach on the proposal at its meeting on 11–12 December 2006. The European Parliament had its plenary first reading on 13–14 March 2007. At the plenary, the EP adopted 31 amendments, including all of those put forward by the EP’s Transport Committee.

Many of the EP’s amendments were welcome to us as they improved on the original Commission’s proposal in a number of respects. For example one amendment proposed that cabin crew involved in the operation of commercial aircraft should hold an attestation in line with the existing EC Regulation 1899/2002 (EU OPS), which was welcome for reasons of consistency and proportionality. Other amendments proposed that EASA should distinguish more clearly in its annual work programme which of its tasks had changed from the previous year.

However we do not support a number of the other EP amendments. This includes the proposal to give EASA a role in determining aviation security, which we did not judge to be appropriate, given that safety and security are two very separate issues. The proposal that EASA should not fund its continuing airworthiness activities from fees and charges paid to EASA by the aviation industry was also unwelcome to us. Continuing airworthiness activities constitute a critical safety area and we are keen to ensure that EASA has an assured funding mechanism for carrying out this work. The proposals to change the definition of non-commercial operations involving ‘complex motor-powered aircraft’ and create a new definition of ‘light aircraft’ were also not welcome, on the grounds that they would introduce unnecessary complexity into the regulation and would not provide for an adequate safety oversight by the authorities.

Since the plenary the Aviation Working Group has met twice to discuss the EP’s amendments. There was a large degree of consensus among Members of the Working Group regarding the reaction to the EP’s amendments. 12 amendments were not considered acceptable, including those of concern to the Government mentioned above. The rest were either acceptable or acceptable subject to drafting modifications. The political

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9 Correspondence with Minister, 30th Report of Session 2007–08, HL Paper 184, p 74.
agreement which is expected in June will take account the EP’s amendments that were acceptable to Member States.

The European Scrutiny Committee in the House of Commons requested more information on our efforts to allay concerns regarding the provisions applying the basic principles and essential requirements to airlines and aircraft from third countries. The Government’s main concerns were about the compatibility of such provisions with our international obligations. Under the Chicago Convention the responsibility for the safety regulation of aircraft rests with the State in which they are registered. The Council’s General Approach addressed these concerns by including a new article (Article 6c) specifically on aircraft used by a third-country operator, which makes clear references to the applicability of ICAO standards and recommended practices. The article states that these standards must be used as the basis for the implementing rules to be drawn up by the Commission. The article also requires that the process by which authorisations are obtained by third-country operators must be simple, proportionate to the complexity of the operation, cost-effective and efficient in all cases.

The Presidency has started informal discussions with the European Parliament and Commission on the issues where the EP’s opinion differs from the Council’s position. If these discussions are successful, it may be possible to reach an early second reading agreement on this proposal. I will, of course, keep you informed of the progress of the proposed Regulation.

11 May 2007

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 11 May 2007, which Sub-Committee B considered at its meeting on 21 May. We were grateful to you for your report on the Regulation ahead of the June Transport Council. We note your concern over some of the amendments adopted by the European Parliament, and trust that you will keep us informed of the progress made in the trilogue discussions towards a possible Second Reading deal. We are content to lift scrutiny on this proposal.

22 May 2007

EUROPEAN GNSS PROGRAMMES (13112/07, 13113/07)

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

Sub-Committee B considered your Explanatory Memorandum at its meeting on 29 October. It is not clear to us what level of support you expect to be met with. We would like some reassurance as to the likelihood of success, the robustness of cost estimates, and a strategy for achieving your objectives.

We were reassured by, and indeed supportive of, the Minutes statement which you tabled at the June Transport Council. However, it has clearly not been heeded by the Commission. We therefore doubt the effectiveness of pressing the Commission on any of these matters, and would welcome your views on how the Government’s objectives can best be met. Furthermore, we wonder how a meaningful cost comparison between public procurement and a PPP can be achieved when there is no prospect of such a partnership being entered into.

We will maintain scrutiny of the Proposal for an Amended Regulation subject to your replies. However, we are content to clear from scrutiny the Communication, as it contains no legislative proposals.

30 October 2007

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

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

Your letter of 7 February 2007,10 noting the Commission’s proposals to simplify the Regulatory framework of the EU railways, asked to be kept informed of developments. Council Working Group discussions began on 16 February and the negotiations are making good progress. It is expected that the Council should be able to agree its position on the whole package during the Portuguese Presidency.

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10 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 78.
In your letter you stated that you agreed with the Department’s concerns that more clarity was needed on some of the proposed revisions regarding the maintenance of rolling stock as well as the extension of the Interoperability Directive to the whole of the main line network. Since the original Commission proposal in December 2006, the Articles relating to cross acceptance that were set out in the Rail Safety Directive (2004/49) have now been moved to the Interoperability Directive and the Presidency has focused on this as a priority. Therefore, discussions on the Safety Directive have not yet progressed but we will keep you informed of any key outcomes.

In relation to the Interoperability Directive, the UK has lobbied for a clearer approach in the Directive to how the extension to the whole of the Member States rail system will be taken forward. This view has been shared by a number of Member States, and the Commission and the German Presidency have submitted revised proposals which resolve our and other Member States’ concerns. One of the key changes is to include a specific Article that allows Member States to specifically exclude certain parts of the rail system, including heritage railways (referred to in Europe as “historic railways”), which the UK has supported because it allows flexibility in how the Directive is applied. With these changes the UK is content.

The European Parliament has begun its consideration of the proposals, and is currently scheduled to have its Plenary First Reading in October. I will, of course, continue to keep you informed of further progress.

7 June 2006

Letter from the Chairman to Tom Harris MP

Thank you for your letter of 7 June. Sub-Committee B considered at its meeting on 18 June.

The Committee was grateful for the update on progress made on the Interoperability Directive. We would be grateful for more information on the Safety Directive once those discussions have progressed. We also look forward to seeing the Regulatory Impact Assessment once it is available.

We will maintain scrutiny at this stage.

19 June 2007

EUROPEAN RESEARCH AREA: NEW PERSPECTIVES (8322/07)

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

Thank you for your Explanatory Memorandum dated 30 April 2007 which Sub-Committee B considered at its meeting on 14 May 2007.

The Committee noted with interest the issues raised by the Green Paper and will monitor possible legislative initiatives that might emanate from it. In the mean time we are content to clear this document from scrutiny.

We note that you expected the Paper to be discussed in the Informal Competitiveness Council meeting on 26–27 April: were any decisions on the Paper made in this meeting?

16 May 2007

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 16 May, in which you reported the conclusions of Sub-Committee B’s consideration of the Explanatory Memorandum on the above EU Documents.

I can confirm that no decisions concerning the Paper were made at the Informal Competitiveness Council on 26–27 April; discussion of the Paper at that Council was cast in very general terms.

23 May 2007

EUROPEAN SPACE POLICY (9052/07)

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

Thank you for your Explanatory Memorandum dated 10 of May 2007 which Sub-Committee B considered on 21 May 2007.
The Committee considers the issues surrounding European Space Policy both very important and currently fast-moving, and will maintain scrutiny at this stage. It wishes though to be kept informed of the outcome of the Competitiveness Council on 21 and 22 May and the response given by the Council to the Commission’s Communication. We would also be interested to know how the Commission responds to your concerns regarding the possible military use of Galileo and GMES as well as the UK supported approach of user-driven exploitation of satellite technology.

22 May 2007

EU-US AVIATION AGREEMENT (8656/06)

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

You may recall there was an exchange of correspondence on this subject between yourself and Douglas Alexander earlier this year before and after the Transport Council meeting on 22 March at which the Council decided to authorise signature of a Stage 1 agreement. The correspondence rests with your letter of 24 April 2007, in which you said you would welcome the opportunity to take further evidence from the Department (either at Ministerial or official level) about the possible conclusion of a Stage 2 agreement next year.

We will, of course, be happy to participate in a further evidence session. However, under the timetable set out in the agreement, negotiations on Stage 2 are not due to start until 60 days after the Stage 1 agreement comes into effect on 30 March 2008. This means that the further negotiations will not begin until May/June 2008—and we would expect them to require several rounds, so our judgement is that a second stage agreement is unlikely to be concluded before 2010.

With that in mind, as there is little new to report to your Committee at this stage, we would like to suggest that any further evidence session be postponed until shortly before negotiations are due to recommence, at which point we would expect to have a better sense of what our aims for Stage 2 are likely to be, and of what may be achievable and in what timescale.

If that is agreeable to you, should you still wish to take evidence from the Department, I suggest that Department officials keep in contact with your Committee Clerk on this issue to establish a suitable time.

13 July 2007

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter of 13 July. Sub-Committee B considered it at its meeting on Monday 16 July. We are content to postpone the evidence session until closer to the commencement of negotiations, as you suggest. We would like to arrange an evidence session early in January to enable the Committee to be informed of the Government’s position as early as possible. We would be grateful if you could keep us informed of any changes in the expected timetable, or of any developments in the positions that Member States are likely to take.

In the meantime, as the current proposal for a Council decision has been superseded by the agreement being signed between the EU and US, we are content to clear this document from scrutiny.

18 July 2008

FIRST INTELLIGENT CAR REPORT (13922/07)

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

Sub-Committee B considered your Explanatory Memorandum at its meeting on 29 October 2007. We note that the Commission’s Communication covers a number of different objectives, potential solutions and stakeholders concerning the achievement of safer, cleaner and smarter vehicles, but it is not entirely clear to what extent different initiatives are being co-ordinated centrally. We would welcome assurances that the Government is working with the Commission to ensure that the proposed roadmap will bring each of these workstreams together in a coherent manner, and we look forward to receiving a copy of the roadmap in due course.

11 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 79.
We note that a number of issues raised by the Communication have been considered previously by Sub-Committee B in earlier meetings, and relate to documents which we are still holding under scrutiny. We would welcome in particular, the results of your analysis of the impact of the eCall project, which we had hoped to receive earlier in the year.12

In relation to clean fuels, the Sub-Committee looks forward to receiving the results of your stakeholder consultation on the proposed Directive on the specifications of petrol and diesel fuels.13

And finally, there is no mention of the Commission’s earlier proposal for a Directive promoting the use of clean road transport vehicles.14 We are holding this document under scrutiny in expectation of the results of your stakeholder consultation. We would welcome an update as soon as possible.

Meanwhile, we are content to clear this document from scrutiny.

30 October 2007

FLAG STATE REQUIREMENTS (6843/06, 8010/06)

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

I am writing to notify you of the outcome of the European Parliament’s first reading of the proposal on compliance with flag state requirements.

The proposed Directive was the subject of my Explanatory Memorandum (EM) 6843/06 dated 26 June 2006. The EM was referred to Sub-Committee B on 12 July, and you wrote on 19 July 200615 confirming that the Committee shared the Government’s concern on this proposal and that it was being kept under scrutiny. In your letter, you also asked to be kept informed of any news as it develops on this proposal.

Although detailed discussions in the Council have, as expected, not yet commenced on this proposal, the European Parliament’s Plenary First reading took place on 28 March 2007 and adopted 51 amendments on it. These amendments seek to:

— expand the scope of the information required to be included by Member States in their ship database, for example, by including a description of any deficiencies found in an inspection and details of any repairs performed on the ship;
— include a requirement to hold data on ships for a period of 12 months after they have left the register; and
— change the minimum qualifications required by Flag State surveyors.

As I outlined in my EM, the Government is concerned that this proposal could limit the ability of Member States to work independently in the International Maritime Organization and thus reduce the influence we have within it. The Government is keen therefore to see this proposal substantially amended if not dropped altogether, not only because of the possible impact on our relations with the IMO, but also because the Commission has failed to demonstrate that the proposal is necessary or tackles the real problem of improving the safety and quality of vessels flagged in non-EU Member States.

The European Parliament’s amendments add further requirements on Flag States and make the proposal even less attractive. We still do not know when discussions on the proposal will begin in Council, since successive Presidencies have been reluctant to commence negotiations on a measure which is strongly opposed by a number of Member States.

10 May 2007

12 12383/05 COM (05) 431: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: The 2nd eSafety Communication bringing eCall to citizens 15932/06 COM (06) 723: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Bringing eCall back on track—Action Plan, 3rd eSafety Communication.
Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 10 May 2007, which Sub-Committee B considered at its meeting on 21 May.

We were grateful to you for your report following the European Parliament’s First Reading of the Directive. We continue to share your concerns over the necessity of this proposal, given the alternative of non-legislative action, over the implications for Community competence and the possible impact on the relationship of the United Kingdom with the International Maritime Organisation. It is a matter of some concern to us that the Parliament’s amendments make the proposal “even less acceptable” in your view.

We note that that the timetable for the Council’s consideration of this Directive remains unknown, and that the majority of Member States remain opposed. We would be grateful to you for a further report should there be any prospect of the proposal being considered in Council.

We will hold this proposal under scrutiny.

22 May 2007

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

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 7 March 2007 in which you requested further information on the interaction of the proposal with national legislation and on the plans for establishment of a Product Contact Point.

Negotiations on this proposal have moved extremely swiftly. The German Presidency has signalled its firm intention to reach agreement on a General Approach for the text of the proposal at the May 21 Competitiveness Council. The UK has expressed concern over the speed at which this text has been negotiated, due to the possibility that potential benefits may be missed and potential problems not fully addressed.

The text of the proposal is, accordingly, still very much in flux. However, with all seven working groups scheduled by the Presidency now having taken place, almost all Member States have given their support to the Regulation and we must proceed on the basis that the Presidency will push for agreement at the forthcoming Council.

The Government’s negotiating position has not changed from that outlined in the Explanatory Memorandum. The Government supports the proposal in principle but believes that it is important for Member States to be able to take action swiftly when there is a genuine threat to public safety. The UK has put forward this line robustly in working group meetings.

INTERACTION OF THIS PROPOSAL WITH NATIONAL LAW

Through careful consideration of the potential effects of the proposal, we have identified concerns in four areas that we have highlighted in Working Groups:

(a) how the procedure (and in particular the twenty day “standstill” period) outlined in the Regulation would interact with national laws relating to bans and prohibitions. The UK has banned a range of non-harmonised products that can legally be sold in other Member States (and vice-versa). These include flick-knives and other kinds of offensive weapon, certain kinds of material which incite racial hatred and certain kinds of pornography. We have been working closely with the Home Office and other Departments to identify these areas and to seek ways to exempt these from the procedure. The Presidency and Commission are sympathetic to our concerns in this area and have proposed text which seeks to address this issue.

(b) how the procedure would interact with UK laws on the safety of consumer goods. The procedure provides an exemption for measures taken under the General Product Safety Directive (GPSD) and we are working with the Presidency in order to ensure that all domestic safety regulations are exempt. The current text now includes a proposal for a safeguard clause which would serve as a catch-all for all safety-related measures would appear to address this.

(c) how the procedure would interact with national laws on the safety of non-harmonised non-consumer goods: the GPSD exemption does not apply to non-consumer goods. Most non-consumer goods are harmonised, but some are not (including fairground equipment and scaffolding equipment). Again, the above-mentioned safeguard clause would appear to address this issue.

16 Correspondence with Ministers, 30th Report of Session 2007-08, HL Paper 184, p 103.
(d) how the procedure would affect national laws on the hallmarking of precious metals. This issue is different from those above as it is not a safety-related issue but relates instead to consumer protection. Nevertheless, the case has been put to the Government that introducing a twenty-day standstill clause could undermine enforcement of UK Hallmarking legislation. Several other Member States have similar concerns to ours and we are working actively with the Presidency and Commission to address this issue.

**The Government’s Plans for Establishing the Product Contact Points in the UK**

The government has not yet taken a decision as to who would be best placed to carry out the Product Contact Point (PCP) service in the UK. The vast majority of enforcement related to this Regulation will be carried out by Trading Standards Officers (represented by LACORS) in the case of consumer goods, and the Health and Safety Executive (HSE) in the case of non-consumer goods. Officials in this Department has been in regular contact with LACORS and HSE about this Regulation and the details of how the Regulation will work in practice are being discussed with both bodies.

During negotiations, the UK has secured assurances that the PCP objectives can be achieved by setting up a website with links to the necessary information. The Regulation enters into force six months after its publication in the EU Official Journal. The requirement to establish a PCP is unlikely to be effective until Summer 2008 at the earliest. We will consult extensively with the relevant authorities in setting up the PCP.

*9 May 2007*

**Letter from the Chairman to Rt Hon Ian McCartney MP**

Thank you for your letter of 9 May 2007, replying to my letter of 7 March, which Sub-Committee B considered at its meeting on 14 May.

We were grateful to you for your helpful response to the issues we raised, and are content to clear the draft Regulation from scrutiny ahead of the Competitiveness Council. However we note, and share, your concern over the speed of the negotiations on a Regulation which will require a careful and rigorous approach to ensure that it does not undermine national standards.

Further to my letter to your colleague Malcolm Wicks of 1 May on EM 6377/07, the Sub-Committee would stress that the proper consultation of industry and those bodies which will be responsible for the enforcement of these Regulations is vital. The rapid political progress on this Regulation should not have circumscribed the consultation process; and it is a matter of concern to us that industry may not have had a full opportunity to put forward its views.

Because the text is “very much in flux”, we would be grateful to you for a copy of the text agreed in Council, together with a report on whether your four areas of concern were addressed. We would also be grateful for a report when the decision on the body to be responsible for the running of the UK’s ‘Product Contact Points’ is made.

*16 May 2007*

**Letter from Rt Hon Ian McCartney MP to the Chairman**

Thank you for your letter dated 16 May, in which you requested a copy of the text agreed in Council, together with a report on whether our concerns were met.

I wrote on 9 May to provide you with detailed information on the proposal and to request scrutiny clearance in expectation of political agreement at the Competitiveness Council on 21–22 May. This was granted by your committee, for which I am grateful. Subsequently, the German Presidency decided not to put the proposal for agreement at the Competitiveness Council on 21 May. Instead, it presented a progress report to the Council.

This means that negotiations are still continuing and we will continue to strive to ensure that the four areas of concern which I outlined in my letter of 9 May are addressed in the final text.

I will ensure that the Committee is updated on future developments on this proposal.

*13 June 2007*
Letter from Gareth Thomas MP, Parliamentary Under Secretary of State for Trade and Consumer Affairs, Department for International Development/Department for Business, Enterprise and Regulatory Reform to the Chairman

Thank you for clearing the draft Regulation from scrutiny. Since Ian McCartney wrote to you on 13 June 2007 there have been significant progress with the draft text and the Governments concerns.

The German Presidency was pursuing an aggressive timetable by attempting to reach a political agreement in May 2007, this goal was not reached and an update was presented in the May Competitiveness Council. The Portuguese Presidency are seeking to achieve an agreement in the November Competitiveness council. This is a laudable goal and one HMG continues to support due to the benefits particularly SMEs will enjoy from adopting this Regulation.

When Ian McCartney wrote to you in June, the Government’s four concerns remained. The Portuguese Presidency and the Commission are acutely aware of the benefits to the internal market and have been receptive to significant changes in the text. I am pleased to inform you that with their continued engagement, the four concerns have been reduced to two, these are:

(i) Health and Safety: proposals ensure that both the user of a product and third parties are afforded the same level of protection (including against products that may result in the spread of serious disease or contribute to the Commission of violent crime).

(ii) Hallmarking: proposals allow member states to operate prior authorisation procedures.

Both the Commission and Presidency are supportive of our approach and agree that there is some further refinement required to the text in respect of Health and Safety and Hallmarking. Furthermore, HMG is seeking to influence the European Parliamentary process and have tabled several amendments, with acceptable language to other member states. The appropriate European Parliament committee is likely to seek to vote early 2008.

I will continue to keep you updated on the progress of the Regulation through the Council of Ministers and the European Parliament.

24 October 2007

GALILEO: COMMISSION GREEN PAPER ON SATELLITE NAVIGATION APPLICATIONS (16540/06)

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

On 11 January I submitted Explanatory Memorandum 16540/06 and 16540/1/06 COM (06) 769 on the European Commission’s Green Paper on satellite navigation applications. The EM was referred to Sub-Committee B at the 1273rd sift and was cleared by your letter of 25 January 2007. Both Scrutiny Committees asked to see a copy of the Government’s formal response to the Green Paper.

The Department’s reply to the Commission’s Green Paper was submitted on 4 April and I am now pleased to enclose a copy for information. In preparing this response, my officials consulted other Government Departments.

As you may recall from the EM, the Government feels that the Green Paper itself is not a well-focussed consultation document. It makes a number of over-optimistic assumptions about satellite navigation systems. We have challenged these assumptions in our response as it is important not to create false expectations of any system.

The Green Paper is primarily aimed at non-public sector stakeholders—for example manufacturers and innovators. There were, however, important points of principle on which we needed to respond, such as our opposition to mandating Galileo charged services through EU Regulation. In our response we chose to emphasise the following points:

— The need to have Galileo operational as soon as possible, so it will have the opportunity to establish itself in the marketplace before its competitive advantages are challenged by other competing systems.
— The Department’s firm opposition to the mandating of Galileo charged services.
— The need to provide an appropriate competitive environment for Small and Medium Enterprises (SMEs).
In September 2007, the Commission expects to present an analysis of the responses to this Green Paper accompanied by an action plan with practical measures proposed from 2008 onwards. It is highly likely this analysis may be delayed because of the difficulties set out in my letter of 23 April on progress with the Galileo programme. I will keep you informed of any issues arising from this Green Paper as well as our response to them.

8 May 2007

Annex A

DEPARTMENT FOR TRANSPORT RESPONSE
COMMISSION GREEN PAPER ON SATELLITE NAVIGATION APPLICATIONS

INTRODUCTION

The Department for Transport welcomes the Commission’s desire to launch a discussion on what the public sector can do to support the development of satellite navigation applications. The Department agrees that the role played by Global Navigation Satellite Systems (GNSS), such as GPS and Galileo, is likely to grow in the coming decade, although forecasts inevitably have large margins of error. Studies forecast that downstream applications (rather than infrastructure) will deliver the largest proportion of the economic benefits. The Government considers that it is important that all member states of the Union should be able to reap these economic benefits.

In discussing GNSS it is important not to create false expectations of what such a system can provide. The technical limitations of a GNSS system (for instance in cities or underground) are important in considering its applications. For that reason, we believe that the Commission should bring forward discussion of the European Radio Navigation Plan so that GNSS can be seen in context. If the public sector insists on a technology that is not yet able to cope with the demands placed upon it then we weaken public confidence in that technology. It is equally important not to tie the hands of service providers. The method or technology most suited to a particular project or system should be used. It is up to the contractor to choose the best solution based on existing knowledge, and to provide the service specified to the required standard. This avoids the public sector mandating a technology which might be inappropriate, go out of date or be superseded by something better. Such an approach stifles innovation.

A further consideration is that manufacturers and end users need more information if they are to provide knowledgeable replies on the development of potential applications. Ideally, potential manufacturers and users need further information on:

- Technical matters, the signals themselves.
- More information on what services will be provided; performance specification of each service and what Service Level Agreement (SLA)/ guarantees the concessionaire is going to provide.
- An indication about the cost of each service and of components.

Whilst the latter will depend on the outcome of the PPP discussions with the concessionaire, consultees would have benefited from a summary of the latest information on the first and second items in the form of an annex.

Another omission from the paper was EGNOS. It would have been useful to gather information on the opportunities for ‘early introduction’ of some services through EGNOS.

The Commission’s consultation document is primarily aimed at non-public sector stakeholders. Not all questions are therefore suitable for governmental reply and we have structured our response accordingly. We look forward to beginning discussions on the Commission’s action plan in autumn. We believe a roadmap might be a good product of such a discussion—first versions of UK roadmaps for Galileo have already been prepared.

As the topics covered in the Green Paper are varied and extensive we would invite the Commission to consider whether targeted and restricted consultations on specific policy areas may be necessary in future. In preparing this response, DIT has consulted colleagues across government and wishes to thank departments and agencies which contributed to this response.
**Question 1**: After indicating your area of interest in the above list (3.1 to 3.12), please give your opinion on:

— what measures should be taken to accelerate the market introduction of your application,
— the appropriateness of the legal and regulatory framework and the need to further develop it, the benefits of compulsory use of GNSS or equivalent positioning systems for your selected application, in accordance with the World Trade Organisation rules and commitments,
— the role of public authorities,
— the protection of citizens (in terms of safety and security and other aspects of civil protection),
— the benefits of GNSS,
— the market perspective in your domain (in relation with the expected volume of use),
— sensitivity to costs,
— minimum accuracy requirements and other performance parameters,
— the certification process,
— integration with communication systems and
— other issues you deem important.

This question is directed at those wishing to develop commercial applications for GNSS and therefore not suitable for a Government answer. It might have been helpful to provide basic information on WTO rules and commitments and conditions in other relevant international agreements.

On the basis of UK experience there are certain considerations that must be borne in mind. In this sector, the aim of a regulator must be to provide, as far as is practicable, a flexible commercial environment in which companies can operate.

Galileo should be a useful tool for delivering a variety of policy aims and improved services in transport and other sectors. Decisions however, should not be driven by the development of one particular technology. There are other technologies that provide position and timing information, such as RFID tags, microwave beacons, mobile phone cell ID and Loran C. These could be used to backup, augment or as an alternative to the GNSS signal and need to be considered in the context of the ERNP.

The UK would oppose the mandating of Galileo charged services through EC regulation. To do so would be to constrain governments from providing the best possible service for their specific needs. The one constant we can observe, both in the market and in technology itself, is change. Legislating in favour of one particular provision of service would prevent governments from taking informed decisions on a range of options. A technology neutral approach is preferable.

The experience with GPS has shown that applications came about once the service was provided. It is useful to foster debate prior to the provision of Galileo however it may not be possible for service providers to give a reasonable estimate of the sensitivity to costs of their potential application. In the first instance, the measures that need to be taken to accelerate the market introduction of a Galileo related application are the same as those needed to accelerate the introduction of the Galileo system, and these are clearly the priority: Unless Galileo becomes available within the next few years, the market for Galileo related applications is reduced. GPS benefited from being the only commercially available global satellite navigation system—if Galileo is to enter this market with a competitive advantage it must do so before its technical benefits are matched by competing systems. We should also be careful not to overstate those benefits.

A further consideration is that generic legislation may impact on applications which perform a related function. Legislation on the tracking of individuals, vehicles or objects may be constrained by or have consequences for legislation on individual privacy and data protection.

The position of the Council, the Commission and the European Parliament is that Galileo is a civil programme under civil control. This is the baseline for all applications.

**ETHICAL AND PRIVACY ISSUES**

**Question 2**: What is your perception of the existing legal framework governing privacy issues regarding the introduction of services based on GNSS? Do you see a need for any additional measures to address specific privacy issues?

This is a complex subject, which cannot be resolved on the basis of consultation responses. It will require a thorough investigation and a debate at political level. Many of the privacy issues that arise from GNSS applications may be similar for applications that use other new technologies (such as RFID tags). It is important that any proposal for increasing/decreasing protection of personal privacy in relation to GNSS technology does not ignore the impact on other complementary and competing technologies. There may also
be experience gained in relation to privacy from other technologies—eg from the introduction of speed cameras.

If one takes the example of road pricing, the capturing of data could impact on the privacy of individuals. In the UK, stakeholders have expressed serious concerns over the privacy implications of systems based on GNSS. The context (choice, benefits) in which data is captured can have an impact on a stakeholder’s sensitivity to the privacy implications and this is an area which may benefit from social research. In developing a legislative environment that fosters innovative technology the regulator must not lose sight of the need to maximise the ability to offer privacy protection.

The UK view is that, before we take any decisions about a national road pricing scheme, we have to have a system that works, that respects the privacy of individuals and is fair. Any national road pricing scheme will be subject to public consultation and Parliamentary debate. There is a clear need to inform the public, not only in relation to what the technology can and cannot do, but also to confirm why the data is needed and what is done with it.

Regulation may not be required for some applications. In the UK, there are codes of practice covering privacy issues for the retail and telecoms industries for providing communication and LBS services to the public. These work reasonably well and can be revised very quickly, when required.

The Commission should also consider ways of providing incentives for people willing to disclose personal data. Clearly, some people are more willing to be tracked if they have a choice, or if they benefit from so doing (ie pay less for providing more data).

RESEARCH AND INNOVATION

Question 3: Is the overall research effort in Europe commensurate with the general objective of giving Europe state-of-the-art competence? In which relevant fields and sectors of research should efforts be concentrated? What needs to be done to increase the research effort and exploit research results at best?

In the field of applications commercial factors will ultimately determine the success or not of any application. At the EU level, the public sector is investing €350 million over the next seven years in research initiatives under the Framework 7 Programme (FP7) and a GNSS Evolution programme is proposed in the European Space Agency. In parallel to this public funding the private sector is funding significant levels of research—this will increase closer to the operational date of Galileo. There is therefore already a significant level of funding dedicated to the general objective of giving Europe state of the art competence.

We believe that, at this stage, research should be concentrated on applications with revenue generating potential, and on ensuring the reliability of the system. It is too soon to identify ‘second generation’ requirements. Galileo’s advantages over current systems in accuracy and integrity will be a major selling point for applications and the Department invites the Commission to consider whether research should be directed towards applications that make use of these features.

SMALL AND MEDIUM-SIZED ENTERPRISES—EXCELLENCE CENTRES

Question 4: How should public authorities stimulate SMEs? Should competence centres, training programmes or any other instruments be supported (and in that case, which ones)?

The role of a public authority in stimulating SMEs must be to provide an appropriate competitive commercial environment in which they can operate and prosper. SMEs benefit from a level playing field and a confidence that they can profit from the IPR that is generated by their work and research. There is unlikely to be any difference between the measures appropriate for SMEs interested in Galileo from the measures in force for other SME support.

INTERNATIONAL CO-OPERATION

Question 5: What is the most important co-operation issue to be implemented? Is there a particular sector of the world that needs to be targeted?

The EU-US agreement provides for the interoperability of GPS and Galileo. This will be a major benefit for users and manufacturers. Co-operation amongst countries that provide GNSS signals is to be encouraged to ensure signals are compatible. A UN committee is being set up to this end. In all cases, proposals for EU co-operation with third countries require political decision.
STANDARDS, CERTIFICATION AND LIABILITY

Question 6: Do you believe that more effort should be devoted to the establishment of standards for satellite navigation devices and services, and at which level?

It is vital that industry and commerce are able to draw on internationally recognised time and frequency standards, and that the role of international bodies is respected in other forms of certification, for instance in transport. Common standards for transport modes are best done at European level or higher. Some aviation and maritime standards and services will need to be agreed at international level through ICAO and the IMO respectively. Standards for railway services are governed to a large extent by the European interoperability directive (and to some extent, by safety directives). Equipment that is used for safety of life applications should have a back up and must not be vulnerable to a single point of failure.

There is a tendency for users and service providers to specify a higher standard than is actually required. In the UK we have found it useful to compare standards across the different transport modes. For example, if the rail industry concludes that a 1 second alert time was required for SoL applications, it begs the question why the rail industry should be pushing for a higher standard than the aviation industry.

The UK has also completed a pilot study to track prison offenders whilst they are on probation (ie in the community). Although some of the requirements (integrity, enforceability) are similar to those for road pricing, standards can be agreed at national level for this type of service.

Question 7: Which safety applications do you believe require certification? Are the GALILEO infrastructure safety-related requirements sufficient to constitute the basis for system certification, including infrastructure lifetime? What are your liability concerns and how do you think they could best be addressed?

Certification will have to be addressed in a sector by sector approach as in some self-responsibility will be adequate while in others more will be required.

Aviation will require separate measures to those for commercial applications. Aviation is a small (less than 4%), but highly significant segment of the GNSS market, with especially demanding requirements. Aviation will therefore need a distinct legal and regulatory framework for aviation applications, in line with ICAO requirements, and work has been ongoing within Eurocontrol to establish this for sometime.

At its meeting on 13 March the GNSS Task Force decided that the best way of progressing the work already done in the International Civil Aviation Organisation (ICAO) was to provide an Information Paper to the next Assembly. This would say that while the contractual framework has not been further elaborated, there have been a number of important developments, and for now this is work in progress, which will eventually lead to a finalised framework.

The key areas that need to be addressed are state sovereignty, liability, certification and a co-ordinating body to oversee system performance. For certification the most important factor is the implementation of the Single European Sky (SES). The key remaining issues are responsibilities of the individual state, under Chicago Article 28 and the various potential liabilities of states and other actors ranging from primary signal providers, through to the ultimate users of the system.

That liability is perhaps less of a concern while GNSS is used alongside other navigation aids. As ground based traditional nav aids start to be removed and GNSS moves towards sole system status, this will be an increasing problem. Indeed there are many parts of the world where GNSS is already largely in that position because of the absence of alternative navigational aids.

While the SES undoubtedly helps to set a framework for certification, there still remains the complex question of how this will be done and by whom (assuming that a system operator can be found). The suggestion has been made by the GSA that this would be for the National Supervisory Authority (NSA) of the State where the operator was based, in accordance with normal certification principles. The Green Paper (Section 5.4) discusses the appointment of “a certification supporting body”. The GSA mandate, under its regulation, is to ensure certification and “empower the appropriate authorised certification bodies”. Some hold the view that what is needed is a coordinated and pan-European approach to certification, involving a number of NSAs. So on the fundamental issue of system safety, there remains important structural work to be done.
Frequencies

**Question 8:** Do you foresee the need for a better co-ordination of spectrum at the international and European level? Should measures be adopted regarding potential sources of interference?

The Department assumes the question relates only to Radio-navigation Satellite Service Spectrum (RNSS) co-ordination. We welcome the efficient and transparent co-ordination of Galileo RNSS at the European Union level, remembering that the UK is committed to the flexible and technology neutral use of spectrum within the international and European radio regulatory processes.

We believe that there is no requirement for co-ordinated measures for protection of RNSS receivers from potential terrestrial sources of interference, as any sources of this nature would be local and within the affected Member State.

Within the RNSS, ITU filing co-ordination is conducted for Galileo through Member States’ signatures to a Memorandum of Understanding (MoU). Through the same MoU, the EU could co-ordinate any necessary response to sources of interference due to foreign satellite signals.

**Intellectual Property Rights**

**Question 9:** Do you consider that the current IPR rules are adequate to ensure that innovators will be able to benefit from their activities while allowing users to enjoy these innovations?

It is not clear whether “the current IPR rules” means those applicable to the FP6 programme or otherwise. The Department expects that industry will provide the Commission with the required information on IPR and looks forward to seeing the results of the consultation, and the analyses that have been done in the Galileo Joint Undertaking, in due course.

Overall, the Department wants to see Galileo IPR kept within the public sector, when it is clearly reasonable to do so. We are aware however, that some firms are concerned about retaining their background IPR if they get involved with Galileo (notably in relation to R&D under the FP6/7 programmes). This was an issue that we raised last year when the amendment to the GSA regulation was being discussed.

For SMEs the threat of losing IPR is two-fold:

(a) From the GSA, which owns Galileo IPR, and

(b) From other firms (particularly large companies) who are partners in the same consortium bidding for Galileo R&D projects.

We are also aware of at least one UK SME who refused to participate in last year’s call by the GJU for ideas on Galileo applications, because it did not want others to profit from their ideas.

Subject to the views from industry, the Commission should give serious consideration to reviewing the guidelines on IPR and doing more to reassure SMEs about their concerns.

**National Laws and Systems, EU Directives and Regulations**

**Question 10:** Are there any legal or regulatory barriers at national or EU level that need to be overcome for the market introduction of your application? Are national laws or EU directives or regulations required in your application domain? Give details of the relevant sectors and the benefits anticipated. What approach should be followed for the European Radio Navigation Plan?

The Department is strongly opposed to the mandating of Galileo charged services through EC regulation. In the UK, a regulatory impact assessment is required before national legislation is introduced or EU regulation implemented. We consider that, European legislation should be focused on achieving a particular goal or outcome, rather than prescribing the technology to be used.

European Radio Navigation Plan (ERNP): The Green Paper does not provide enough information about the ERNP for consultees to comment on it. Consideration of the ERNP is urgent to provide the strategic framework and vision for developing communication and navigation components (eg EGNOS, Galileo, eLoran).

We would expect it to be the subject of a separate consultation, to be initiated shortly.
Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 8 May 2007, which Sub-Committee B considered at its meeting on 21 May. We were very grateful to you for sending us a copy of your Department’s formal response to the Commission’s Green Paper.

As you will be aware from our earlier correspondence on the Galileo Progress report, we share your desire that the Galileo programme should become operational as soon as possible, and your wariness that “false expectations” are not created. We would of course be grateful to you for keeping us informed of developments, and the likely prospects for the Commission’s action programme.

22 May 2007

GALILEO PROGRAMME (10427/06, 10431/06, 11282/06, 7828/07)

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

My letter of 23 April 2007 provided your Committee with an update on the Galileo Programme. The Commission has since issued its Communication Galileo at a cross-road: the implementation of the European GNSS programmes which is the subject of EM 7828/07, submitted with this letter. The Galileo Public Private Partnership (PPP) negotiations will be an agenda item of the June Transport Council.

As I reported in my last letter, the contract negotiations with the consortium bidding to run the Galileo PPP have been at a standstill for a number of months for a variety of reasons. There are difficulties in reaching agreement with the merged consortium on the level of risk transfer and mitigation. They remained concerned about the long term certainty of public sector funding and there were various institutional issues on the In Orbit Validation (IOV) phase of the programme and the transfer of the EGNOS augmentation programme to the concessionaire. While all of these are important issues which need to be addressed, the principal reason for the problems in the negotiations was the inability of the merged consortium to agree on its governance structure, including the appointment of a CEO with full negotiating powers and the distribution of infrastructure and workshare.

Discussions at the March Transport Council ended with the adoption of conclusions in which Ministers issued a strong message to the consortium, with a deadline of 10 May for its governance to be satisfactorily agreed. At the same time Council asked the Commission to prepare an analysis of the consortium’s response and to develop alternative options for taking forward the project. Ministers would decide whether to proceed with current negotiations or adopt an alternative approach for delivering the programme. The June Transport Council would provide the opportunity for a detailed discussion.

The Commission has reported in its Communication: Galileo at a cross-road: the implementation of the European GNSS programmes—Com (2007) 261 that it is not satisfied that the consortium has satisfactorily met the conditions laid down by Council. The Commission has recommended to Council that it should conclude that the current negotiations have failed and should be ended.

We have been analysing the proposals set out by the Commission for the programme. Discussions have taken place in several Council working group meetings. The UK is committed to the PPP principle. In terms of funding, we are strongly committed to the budget ceilings and to ensuring that there is no re-opening of the Financial Perspectives. We are not confident that the Commission Communication includes a thorough assessment of the financial implications, especially in the light of timetable and cost overruns on the current programme.

We will require more information on funding sources and provisions before any final decision. Member States need a greater degree of certainty on the total cost of the programme required, the level of risk, the sources of private sector revenue and the sources of funding from the EC Budget.

Ending the current PPP and delivering Galileo through other means will inevitably have significant financial implications. To ensure that the principles of budget discipline and sound financial management are upheld, we will argue that it is essential finance Ministers in Council are given the opportunity to discuss this dossier. For an informed discussion more certainty is required on the predicted private sector revenues, costs, associated risks and budgetary implications. We take the view that Council can only be expected to make a decision on how to proceed once it is clear on all these areas of the Commission proposal.

17 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 104.
At working group level we have maintained our commitment to the UK priority objectives for the programme. We have argued for sound financial management and for open public procurement with competitive tendering. We have made clear that HMG would be unhappy with a final decision being taken in June with such little time to consider the Community’s options. At working group level, however, the majority of Member States were pushing for a decision to be taken quickly in order to minimise delay to the project. Nonetheless, we will continue to press for a longer timescale for consideration, which would also allow national parliaments time to consider, and other Council formations as appropriate.

The discussion has been difficult with important divisions on matters of principle between some Member States and the Presidency. The outcome is still not settled in all aspects. We will continue to promote our objectives. At the June Council, Ministers will be asked to agree a resolution. We will, of course, keep your Committee informed of the outcome of the Ministerial discussions at Council.

We are in regular contact with the Foreign and Commonwealth Office and are agreed that we will continue to monitor the roles and responsibilities of the GSA and the Council in co-operation with them. We consulted them on my previous letter and made the FCO aware of the Committees’ responses. There have been no further developments since I last wrote. If circumstances change and it is required, we will insist on a further Joint Action as stated in my letter of 23 April.

4 June 2007

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter dated 7 June. Sub-Committee B considered it at its meeting on 11 June.

The Committee is aware that decisions were taken at the June Transport Council, after your letter had been received, and it will maintain scrutiny pending an update on events.

13 June 2007

Letter from Stephen Ladyman MP to the Chairman

My letter of 4 June provided your Committee with an update on the Galileo Programme. I have since attended Transport Council on 8 June at which Galileo was discussed and I am writing, as promised, to inform your Committee of the outcome of the Council discussions.

As you may know, when the Commons Scrutiny Committee considered my letter on 6 June 2007 it stated that it would not find it acceptable if the Council Resolution went beyond accepting that:

— the present public private partnership (PPP) negotiations should not be continued; and
— the Commission should produce a fully substantiated case for continuing the Galileo project in terms of methods of implementation (public procurement or PPP), governance and finances, including the total cost of the programme required, the level of risk, the sources of private sector revenue and the sources of funding from the Community Budget.

I am pleased to report that the Council adopted a Resolution which meets these conditions. I have enclosed the Resolution with this letter. It concludes that the current concession negotiations have failed and should be ended. The Resolution asks the Commission to prepare detailed alternative proposals for taking the project forward, to be put to the October Transport Council. Council underlined that these should be based on an additional thorough assessment of costs, risks, revenues and timetable. The Commission was also asked to submit financing options, a procurement strategy, concepts for the subsequent operation and exploitation phase, and proposals for a sound public sector governance structure. The Presidency made clear the possibility that, if suitable answers were not found, the project would be ended. It was also noted that the Council should not rule out the involvement of private finance.

In the ensuing debate, I accepted that Galileo had the potential to be a key project, as it is described in the Resolution, but that we should not proceed with it unless the costs were justifiable. I stressed that, while we accepted that the current PPP negotiations had failed, we were committed to a PPP model. This was the best way to ensure risk and cost are effectively managed. The risks in terms of costs and timetable would not be reduced, and might be increased by moving to a public procurement. Open tendering and competitive procurement was essential. We had to ensure that we learn from the problems there have been, and improve governance and risk management. It was also important that funding for Galileo had to be found within the limits of the current budget allocations, without reopening the current EU financial perspective.

I welcomed the Presidency’s recognition that the project could be ended if acceptable solutions were not found, and that the involvement of private finance was not ruled out.
I was thus able to accept the Council Resolution. I also submitted, jointly with the Netherlands (and supported by Slovakia and Cyprus), a minutes statement, also enclosed with this letter. It stresses our commitment to the PPP principle for major infrastructure projects, our concerns on the potential increased costs of public procurement, the need for a reassessment of the business case for Galileo, competitive procurement, better governance and sound risk management. We also require that any additional funding be found within the limits of the EU financial perspective.

In the discussion, a clear majority of Member States underlined the strategic nature of the Galileo programme and the importance they attach to the project. Concerns were expressed that decisions should be taken as quickly as possible in order to avoid further delays. We did, however, attract support for our robust stance on risk, cost and competition in the programme. By contrast, several of our major partners emphasised the need to respect existing industrial or infrastructure agreements.

In October we expect Council to be asked to take a decision on the basis of the Commission’s detailed proposals. My officials will continue to work to ensure there is a realistic, timely and detailed assessment of all proposals for taking the project forward. We will continue to argue that a fully substantiated case for continuing the Galileo project must be made by the Commission for Transport and Finance Ministers take an informed decision. We remain committed to our UK priority objectives for the programme.

We will, of course, continue to keep your Committee informed of developments.

14 June 2007

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 14 June which Sub-Committee B considered at its meeting on 25 June.

We were grateful for your update of discussions at the June Transport Council and we support the Government’s commitment to the public private partnership model.

We agree that finance and transport ministers need to be able to make an informed decision about whether to proceed with the project. However, we would welcome clarification as to when finance ministers are expected to discuss the Commission’s report, due to be presented to the October Transport Council. If it is intended that a decision will be made at the October Transport Council, how will the views of finance ministers be taken into account, when they are due to meet a week later?

Furthermore, we realise that the timing of the October Transport Council (1–2 October) makes it difficult for Parliament to scrutinise the Commission’s report as neither House will return before 9 October. What plans do you have to ensure an element of parliamentary oversight of this important decision? We hope that there is a possibility that your Department could provide some communication during the recess. The Clerk to Sub-Committee B will be in discussion with your officials about this.

26 June 2007

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

Thank you for your letter of 26 June to Stephen Ladyman, who I have now replaced as Minister of State for Transport. I note Sub-Committee B’s concerns on the difficulties for Parliamentary scrutiny in view of the summer recess. We will be happy to provide information to the Committee during the recess, although we will not be able to do this before we get firm information from the Commission. My officials are in contact with the Clerk to your Committee about the arrangements.

You also asked about the timetable for finance ministers to discuss Galileo. We have consistently argued that finance ministers, and their transport colleagues, need a full assessment before they can decide on the way forward for the programme. We expect them to discuss Galileo at their meeting on 9–10 July 2007, but there will be no new evidence. We expect the ECOFIN Council in October to consider the Commission’s new proposals for an integrated decision on the programme. The decision may therefore be taken in two stages, each dependent upon the other. My officials are pressing for detailed information from both the Presidency and the Commission. We expect more information on the Presidency’s plans in July.

My Department will of course keep both Scrutiny Committees informed of progress.

5 July 2007
INTERNAL MARKET (SUB-COMMITTEE B)

Letter from the Chairman to Rt Hon Rosie Winterton MP

Thank you for your letter of 5 July. Sub-Committee B considered it at its meeting on 16 July.

We are reassured to hear that finance ministers will play a role in the decision about the future funding of Galileo. It is sensible that both transport ministers and finance ministers are party to this decision. We also welcome the Economic Secretary’s recent statement, in an evidence session with Sub-Committee A, that the Government is determined that the current budget ceilings should remain as they are.

The Clerk to Sub-Committee B will remain in close contact with your department to ensure that the Committee has sight of the revised proposals from the Commission as soon as they are available.

In light of this arrangement, we are content to lift scrutiny on the current Commission Communication, which has in any case been superseded by the June Transport Council Conclusions.

18 July 2007

i2010: ANNUAL INFORMATION SOCIETY REPORT 2007 (8108/07)

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

Thank you for your explanatory memorandum dated 8 May 2007 which Sub-Committee B considered at its meeting on 21 May 2007.

We are content to clear this document from scrutiny but we would be grateful if you kept us informed on how the Telecoms Council in June reacts to the Commission’s proposals for ICT policy over the next 12 months. We will monitor any emerging legislative proposals with great interest.

22 May 2007

INLAND TRANSPORT OF DANGEROUS GOODS (5080/07)

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

You wrote on 7 February 200718 asking to be kept updated on any significant progress made in the negotiations on this proposed Directive.

The proposal has been discussed at Working Group on a number of occasions during the German Presidency and I am happy to be able to report that the principle policy issues identified in my Explanatory Memorandum have been satisfactorily resolved during these discussions. The Presidency now hopes that it will be possible to reach a General Approach at the Transport Council on 7–8 June.

As you may recall from our EM, we were concerned that the proposed Directive should not be applicable to UK inland waterways as its provisions would not be relevant for the UK’s relatively narrow inland waterways. While Article 1 (2) will apply the Directive, as originally proposed, “to the transport of dangerous goods by road, by rail or by inland waterway within or between (Member States . . .)” the Directive as it now stands retains appropriate exemptions for certain waterways (including those within the UK), and this precludes the need for the UK to legislate.

Sub-Committee B shared our concern over the proposed extension of the scope of the current European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) to agricultural tractors with a design speed exceeding 40 km/h. At the 4 May 2007 Working Party meeting, there was little support for the UK position that agricultural tractors with a design speed exceeding 40 km/h tractors should not come within the scope of ADR. However, agreement was reached that these vehicles would remain out of scope of ADR provided that they did not exceed 40 km/h when transporting dangerous goods. This avoids placing additional regulatory burdens on the agricultural sector, within which the transport of dangerous goods is not a primary activity.

The Committee also shared our view that the proposed date of application of the new Directive (31 December 2008) would not permit adequate consultation. A transposition date of 30 June 2009 was agreed at the 4 May 2007 Working Party meeting, thus allowing sufficient time to carry out a consultation exercise on normal UK timescales and apply the provisions of the 2009 ADR Directive19 which would come into force on 1 January 2009.

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I regret to say that there was an error, regarding the proposed date of application, within paragraph 7.2.3 of our Explanatory Memorandum: the second sentence should, of course, have read “The Commission proposes a date of application of 31 December 2008—which would shorten by six months . . .” A Corrigendum to our explanatory memorandum will be issued.

The European Parliament has begun its consideration of this dossier and is currently scheduled to hold its Plenary First Reading in September. We will, of course, keep you informed of any further developments.

31 May 2007

Letter from the Chairman to Tom Harris MP

Thank you for your letter of 31 May. Sub-Committee B considered it at its meeting on 4 June.

We are satisfied with the updates that you have provided on the outstanding issues of concern. We would be grateful to be kept informed of progress of negotiations in the European Parliament.

5 June 2007

Letter from Tom Harris MP to the Chairman

I wrote on 31 May 2007 updating you on significant progress that had made in the negotiations on the proposed Directive. I was able to report that policy issues identified in the original Explanatory Memorandum had been satisfactorily resolved, and that the European Parliament had begun its consideration of this dossier.

I undertook to keep you informed of any further developments, and I can now report that the European Parliament has had its plenary First Reading of the proposal. The EP adopted 42 amendments, including several of a technical nature. The Parliament’s Rapporteur had worked in close co-operation with the Presidency, with a view to making a first reading deal possible, and the amendments reflect the changes already agreed in working group discussions and reported in my previous letter.

The UK is content with the Parliament’s amendments, since all previous issues of concern have been resolved. In consequence, the Council should be in a position to adopt the Directive at First Reading.

24 October 2007

ITU WORLD RADIOCOMMUNICATION CONFERENCE 2007 (11425/07)

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

Thank you for your Explanatory Memorandum dated 19 July 2007 which Sub-Committee B considered at its meeting on 8 October 2007.

The Committee welcomes the co-ordinating role that the Commission plays in the effort to ensure that the interests of EU Member States in the World Radiocommunication Conference (WRC) are best served. We feel that the Community as a whole, and Member States individually, should, in the context of the WRC negotiations, take advantage of the expertise developed by the Commission in this very technical area.

The Committee has been following closely developments and legislative initiatives in the area of radio frequency and we would be grateful if you could keep us informed on the progress of the negotiations at the next WRC as well as the conclusions the Conference will reach.

In the meantime the Committee is content to lift scrutiny of the above mentioned Communication.

10 October 2007

JOINT TECHNOLOGY INITIATIVE (JTI) ON INNOVATIVE MEDICINES (9686/07)

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

Thank you for your explanatory memorandum on the proposed Joint Technology Initiative (JTI) on Innovative Medicines. Sub-Committee B considered the memorandum at its meeting on 18 June.

It was not clear to the Committee why the development of new methodologies which are more effective at predicting the safety and efficacy of new drugs would make the European Union a more attractive location for pharmaceutical research. It was suggested by Committee members that it was rather the cost of testing new...
drugs which made it more attractive to invest in countries outside the EU. We would welcome your comments on both points.

The Committee was, however, content to lift scrutiny.

19 June 2007

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

Thank you for your letter of 19 June to Malcolm Wicks, about the proposed Joint Technology Initiative (JTI) on Innovative Medicines. I am replying as the matter falls within my portfolio and am grateful for your comments on Malcolm Wicks’ explanatory memorandum.

There is general agreement between European governments and the pharmaceutical industry that urgent steps need to be taken to improve the competitiveness of the European pharmaceutical sector. The US has been more successful than Europe in recent years in attracting pharmaceutical R&D investment and we are also facing increasing threats from countries such as India, China and Singapore. Action needs to be taken on numerous fronts to address this problem.

I agree that the cost of research in Europe needs to be tackled. The IMI will address the cost issue by:

— enabling researchers to identify promising drug candidates much more quickly, through speeding up the drug development process and eliminating the costs currently incurred through unproductive research; and

— encouraging and facilitating academic-industry collaboration, which has recently been declining in Europe, partly because of increasing costs.

There are also other competitiveness issues, indirectly related to research costs, which the IMI will focus on. For example, one of its four pillars is education and training. This work will address the decline in Europe’s biomedical skills base, and widen its pharmaceutical knowledge base.

IMI will address scientific hurdles, which fit within the translation gap identified by the Cooksey Review on UK Health Research. It will complement the UK’s activities in enhancing translational medicine, and will maximise opportunities for securing a leading role for UK/Europe in pharmaceutical development.

IMI has the full support of European pharmaceutical industry. The industry led on drawing up the IMI’s strategic research agenda and objectives. IMI therefore reflects industry needs in securing the EU as an attractive location for pharmaceutical R&D.

It is also of note that the USA which, like Europe, is not a low-cost environment has already started a similar programme to IMI (the Critical Path Initiative). I believe that it is vital that the IMI is launched shortly in order that Europe does not lose further ground to the USA.

11 July 2007

JOINT TECHNOLOGY INITIATIVE (JTI) ON EMBEDDED COMPUTING SYSTEMS (ARTEMIS) (9685/07, 9884/07)

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

Thank you for your explanatory memorandum on the proposed Joint Technology Initiative (JTI) in Embedded Computing Systems. Sub-Committee B considered the memorandum at its meeting on 18 June.

The Committee agrees that this is an important area for research and development and we welcome the proposed initiative. However, we share your concern regarding the detailed arrangements for membership of the JTI—such as the contribution required of founding members and, in addition, the link between national contributions and voting. Your memorandum says that you “will seek to ensure that these issues are addressed in the negotiations”. We would be very grateful for an update on negotiations as soon as one is available, with particular reference to the exact level of domestic funding required, what the relationship to voting rights is, and what position the Government intends to take once these details have been agreed.

19 June 2007
Letter from Ian Pearson MP, Minister of State for Science and Innovation, Department for Innovation, Universities and Skills to the Chairman

You wrote to my predecessor, Malcolm Wicks, on 19 June asking to be kept apprised of developments in negotiations with particular reference to the national contributions required of Member States, the relationship to voting rights and the government’s negotiating position.

The government’s broad negotiating position was set out in my letter to you ahead of the 28 September Competitiveness Council.

There is no specific requirement, but clearly an expectation, of Member States to contribute financially to ARTEMIS. In the first two years of operation, voting rights will be assigned uniformly across founding members, the ARTEMISIA Industry Association and the representative of the European Commission. Subsequently, Member States voting rights will be proportional to their previous two years actual contributions to projects.

The current regulation does not envisage voting rights for non-contributing Member States. The UK favours a more inclusive approach and is proposing that 50% of Member States’ voting rights be allocated equally with the other 50% allocated proportionally to contributions.

Any national funding for ARTEMIS projects will come from the Technology Strategy Board. DIUS and BERR have held initial meetings with TSB. TSB does not object, in principle, to national funds being available but has yet to determine budgets.

I shall write again once voting arrangements and budgets have been agreed.

23 September 2007

Letter from the Chairman to Ian Pearson MP

Thank you for your letter of 23 September, in reply to mine of 19 June. Committee B considered it at its meeting on 8 October.

We were grateful for clarification of the issues raised by the Commission’s proposals on voting rights, and the link to financial contributions. As there will be some Community expenditure associated with ARTEMIS it seems appropriate to us that non-contributing Member States should also have voting rights. We support your proposal which would allow all Member States to have a say.

We would be grateful for an update on the negotiations when possible. We will maintain the scrutiny reserve, subject to further updates.

9 October 2007

JOINT TECHNOLOGY INITIATIVE (JTI) ON NANOELECTRONICS (10149/07)

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

Thank you for your explanatory memorandum 10149/07 regarding the proposal for a Joint Technology Initiative on nanotechnology (ENIAC). Sub-Committee B considered it at its meeting on 8 October.

We agree that this is an important area for research and development and we welcome the proposed initiative. However, as with the proposal for a Joint Technology Initiative on embedded computing systems (ARTEMIS), we share your concern regarding the detailed arrangements for membership—such as the contribution required of founding members and, in addition, the link between national contributions and voting.

We were grateful for your letter of 23 September in response to our queries about the ARTEMIS proposal. However, as the same issues are raised by the ENIAC proposal, we would also be grateful for an update on these negotiations, with particular reference to the exact level of domestic funding required, what the relationship to voting rights is, and what position the Government intends to take once these details have been agreed. Will the Government’s position be the same as for ARTEMIS?

Furthermore, in reading the documents, it was not clear to us who would own the research data, and indeed the technology, generated by the Joint Technology Initiative. What are the implications for intellectual property rights? We would welcome clarification on this point.

10 October 2007

20 Refer to 9685/07
JOINT TECHNOLOGY INITIATIVE (JTI) ON AERONAUTICS AND AIR TRANSPORT (CLEAN SKY) (10148/07)

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

Thank you for your explanatory memorandum 10148/07 regarding the proposal for a Clean Sky Joint Technology Initiative. Sub-Committee B considered it at its meeting on 8 October.

We are content that this is a worthwhile proposal with the potential to benefit the UK significantly. However, we note that two UK operators have been excluded from associate membership for being “not sufficiently European”. We would welcome more detail on the selection criteria for membership, whether as leaders or associates.

Furthermore, in reading the documents, it was not clear to us who would own the research data, and indeed the technology, generated by the Joint Technology Initiative. What are the implications for intellectual property rights? We would welcome clarification on this point.

We will maintain scrutiny of the document pending your reply.

10 October 2007

MARITIME ACCIDENTS INVESTIGATION (6436/06)

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

I am writing to bring you up to date with progress in negotiations on this dossier and to inform you of the outcome of the European Parliament’s first reading of the proposal.

As you may recall from my EM of 14 March 2006, the Government supports the concept and underlying rationale of the proposed Directive. The EM was referred to Sub-Committee B and you wrote on 29 March 2006 confirming that the Committee had some concerns on this proposal and that it was being kept under scrutiny. In your letter, you asked to be kept informed of any news as it developed on this proposal.

Detailed discussions have begun in the Council Working Group and are continuing on a number of Member States’ detailed concerns. I am pleased to report that negotiations are progressing very well from the United Kingdom point of view. Political agreement is likely to be achieved at the Transport Council on 7–8 June which will preserve the existing United Kingdom system, extend some important elements of that system, including the independence of the investigating body, to other Member States and remove elements of the Commission proposal that would have required a significant increase in workload for the Marine Accident Investigation Branch for no commensurate benefit.

You will recall that my original EM expressed concerns about these issues and also about ensuring that the Directive does not depart from the IMO Code in relation to the rights of coastal states to conduct parallel investigations. On this matter, discussion has yet to yield a consensus but the United Kingdom is holding its position, with the support of other Member States, that coastal states retain these rights since any amendment would undermine the independence of investigative bodies, and I am hopeful that this issue will be resolved before or during the Council.

The European Parliament’s first reading took place on 3 May 2007 where it adopted 23 amendments. These amendments seek to:

— indicate a common methodology for the investigation of marine accidents;
— incorporate the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident;
— recognise Member States’ obligations under the United Nations Convention on the Laws of the Seas (UNCLOS);
— promote the concept of parallel investigations and, when necessary by Commission recommendation, which Member State should lead;
— impose time limits on investigations;
— recognise that judicial concerns might require safety investigation records to be made available; and
— establish a three year reporting regime on implementation and compliance.

The European Parliament’s amendments on a common methodology are unwelcome since they serve to increase the prescriptive and rigid nature of any such framework. In addition, the United Kingdom is opposed to any amendment which seeks to remove the immunity of witnesses from prosecution or seeks to undermine the independence of investigative bodies.

The Government also opposes the imposition of time limits since there is no safety basis for introducing an arbitrary cut off, as such a provision needlessly restricts the ability of Member States to investigate accidents that may yet yield important recommendations. Finally, the United Kingdom supports the principle that records obtained during investigations should not be made available for purposes other than that investigation. Other Member States have also expressed concerns about these amendments and they are unlikely to be taken on board.

In your letter of 29 March 2006 you mentioned consultation with industry. The United Kingdom’s maritime industry has not been formally consulted about this proposal since, as I said in my EM, it is expected that the directive will simply preserve the current United Kingdom system, which the industry accepts and supports, and it is therefore not expected that there will be any resistance. However, the industry is, of course, aware that the proposal is being discussed and has raised no concerns with officials in the Department for Transport or the United Kingdom’s Marine Accident Investigation Branch. Nevertheless, should the proposal unexpectedly contain any amendments that were to alter the current situation, it might be necessary to consult industry on any such amendments. A decision on this can only be taken if such amendments come to light.

I will, of course, keep you informed of future progress on this dossier.

10 May 2007

Letter from the Chairman to Stephen Ladyman MP

Thank you very much for your letter dated 10 May 2007 updating the Committee on the progress of negotiations in the Council and the state of play during the first reading in the EP. Sub-Committee B considered it at its meeting on 21 May 2007 and decided to clear it from scrutiny.

The Sub-Committee is content with the fact that the existing UK system governing investigations of accidents in the maritime sector is likely to be preserved and we encourage the Government to continue its efforts in that respect. We note though your concerns that the Directive should not depart from the IMO Code in relation to the rights of coastal states to conduct parallel investigations (a position echoed by the Committee in its last letter on 29 March 2006) and the fact that discussions haven’t produced a consensus yet.

22 May 2007

MARITIME: ILO MARITIME LABOUR CONVENTION (10900/06, 10901/06)

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

Thank you for your letter of 12 December 2006 in reply to mine dated 4 December 2006. You asked for updates in respect of this proposal in the light of discussions at Transport Council and the Plenary first reading of the European Parliament.

In December, the Council reached a General Approach on the proposal. This proposed decision would enable Member States, to ratify the parts of the Convention which are within the Community’s exclusive competence, and authorise them to do so for those parts which are within joint competence. It is acceptable to the Government following the improvements to the text reported in my letter of 4 December.

Since then, the European Parliament has held its Plenary First Reading of the proposal. No substantive amendments were tabled: the Parliament adopted three drafting amendments on changing the reference to the Convention from “2006 Consolidated Maritime Labour Convention of the International Labour Organisation”, as originally proposed, to “Maritime Labour Convention, 2006 of the International Labour Organisation”. It is the intention that the draft Decision will now be adopted at the Transport Council in June.

Your letter of 12 December noted that the Committee remained concerned at the prospect of Community legislation making existing voluntary arrangements under the Convention compulsory. I have noted the Committee’s concern, but the adoption of the Decision does not entail or imply any compulsion to implement those parts of the Convention which are discretionary. Any proposals to that effect would have to be brought forward separately and would of course be subject to scrutiny in the normal way.

25 May 2007

22 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 108.
Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 25 May. Sub-Committee B considered it at its meeting on 4 June.

We are reassured that, in your view, the adoption of the decision does not entail or imply any compulsion to implement those parts of the Convention which are discretionary. We also welcome the fact that any such proposals would be subject to scrutiny in the normal way.

In light of these reassurances, we have decided to clear the document from scrutiny.

5 June 2007

MARITIME POLICY FOR THE UNION (11510/06)

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

I am writing to provide information in response to your letter of 17 October 2006 addressed to Dr Stephen Ladyman on the above document.

The Government has undertaken a full public consultation. We received detailed and helpful representations from a wide range of stakeholders, which were broadly positive towards the Green Paper. The consultation found, however, that there was little support for significant, additional legislation with the majority of UK stakeholders seeking a better co-ordinated approach with existing measures, and to this end the Government is encouraging the Commission to explore wherever possible the options for such measures where that approach could achieve the original policy objectives. The consultation also reflected the concerns expressed in the original EM, and shared by the Sub-Committee, that the Green Paper should not lead to policies that impede the UK’s ability to manage and utilise its own marine resources.

The input from the public consultation has been used to develop the Government response to the European Commission which was cleared through all Central Government Departments and the Devolved Administrations through Ministerial correspondence in June 2007. The response has now been submitted to the Commission. I attach a copy of this response for your information.

The response sets out some key principles for developing maritime policy within the EU. Namely, the need for EU action to add value; the need to respect subsidiarity; the importance of ecosystem based management; the importance of the international dimension and existing international and EU legal and policy frameworks; recognition of the circumstances of coastal communities; protection of the marine environment, combined with a respect for the limits of marine resources; and co-ordination of EU proposals to ensure delivery of the Lisbon strategy.

The response also calls for the inter-agency and multinational nature of maritime security to be acknowledged as an important tenet of future work.

The Commission have indicated that they will be reflecting upon the comments of consultees over the summer and will be bringing forward proposals for community action in the autumn of this year. The Government will, of course, keep your Committee informed concerning any future proposals.

23 July 2007

Annex A


Introduction

This document outlines the UK Government response to the EU Maritime Green Paper consultation process. This response has been developed following a UK-wide public consultation, discussions between UK Government departments and scrutiny by the UK Parliament. The response is broken down into high level comments on the content of an EU Maritime Policy and specific responses to each question raised in the Green Paper.

23 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 112.
Overview

Importance of the Maritime Sector to the UK

The UK is an island State with 10,500 miles of coastline. The UK’s history is tightly bound to the sea and today the UK remains a major maritime nation. The significance of the seas around the UK and the expertise in managing marine issues means that the UK is well placed to assist the Commission in developing an EU Maritime Policy.

As a coastal State the UK has one of the world’s busiest shipping lanes in close proximity and our maritime space is heavily utilised by a huge variety of sectors -from tourism, leisure sailors to the offshore sector, alternative energy generation, merchant shipping and fishing. The attractiveness of the coastal zone as a place to live in the UK has never been higher and coastal tourism makes a substantial and growing contribution to the UK economy. The waters around the UK are highly diverse and productive, containing over 44,000 species, which is up to half the UK’s biodiversity.

The UK is a major centre for the global shipping industry with the International Maritime Organization based in London. Shipping is an integral part of the UK transport network and an integral part of our economy. The City of London itself is the world’s leading maritime centre, controlling about one fifth of the world fleet, and overseas owners with agencies in the UK sustain a significant number of jobs in sectors including shipping law, banking and insurance.

Fishing remains a significant industry in the UK, particularly in Scotland and the south west. The waters around the UK are some of the most productive fishing grounds in the world and the UK is one of the EU’s most significant fishing nations. Fishing remains the economic mainstay of many of our remote and fragile coastal communities providing wealth and social cohesion.

The maritime industry is vital to the UK economy and the UK maritime sector directly employs more than a quarter of a million people. Ninety-five per cent of the UK’s international trade in goods travels by sea and the combined net overseas earnings of maritime services and shipping is worth about £2.5 billion a year.

The Maritime sector offers opportunities to help address climate change with the development of offshore renewables. The expansion of the offshore renewables sector in the UK has generated significant investment and job opportunities and, if carefully managed offers scope for improving energy security and reducing dependence on more polluting means of energy generation.

Marine biodiversity plays a fundamental role in supporting a wide range of goods and services essential for the maintenance of the social and economic well-being of our society. In the UK alone, the value of marine ecosystem goods and services has been estimated to exceed £52 billion.24

The effective management, protection and utilisation of the maritime sphere is vital for the UK and the consultation on the Green Paper has reflected this importance with responses received from a diverse range of stakeholders. The responses have been broadly positive and the UK Government looks forward to working with the Commission Maritime Task Force on developing the ideas expressed in the Green Paper.

Key principles for the EU Maritime Policy

We are supportive of the development of an integrated Maritime Policy that provides better coordination of existing Community policies and assists in the development of a healthy, sustainable maritime economy that delivers both socio-economic benefits and environmental protection. There are some key principles that we would expect to see reflected in the EU Maritime Policy and any proposals that result from it:

— the need for EU Maritime Policy to clearly add value to existing national EU and international measures;
— the need for subsidiarity to be respected in all cases and for any proposals to be directed at the appropriate level;
— the importance of the Policy being underpinned by ecosystem-based management. The UK sees this as key to the sustainable use of marine resources, including addressing the particular issue of climate change. This approach needs to be integrated across economic sectors and the Community’s institutions;
— the importance of the international dimension in the maritime sector and the need to respect the existing international and EU legal and policy frameworks;

24 DEFRA and Plymouth Marine Laboratory, Marine biodiversity: An Economic Evaluation 2006
— a recognition of the important role that the maritime sector and particularly offshore renewable energy can play in addressing climate change;
— the recognition that some fragile coastal communities are reliant on the sustainable, economic utilisation of marine resources;
— the need to respect the limits of marine resources and to protect the marine environment for future generations; and
— the need for the proposed Maritime Policy to deliver co-ordination between proposals originating in the EC to ensure that the Lisbon Strategy objectives of sustainable growth can be delivered in a stable regulatory climate.

As part of a holistic review of EU Maritime Policy and noting Europe’s dependence on maritime trade, the UK would also wish for the inter-agency and multinational nature of maritime security to be acknowledged as an important tenet of future work. It will be imperative not to break down existing competencies, but rather to ensure the necessary mechanisms are in place to allow improved co-ordination.

Specific Response to Questions in the Green Paper

1.0 Introduction to the Green Paper

Should the EU have an integrated Maritime Policy?

We are supportive of the development of an integrated Maritime Policy that provides better co-ordination of existing Community policies and assists in the development of a healthy, sustainable maritime economy and protection of the marine environment.

We believe that such a policy should be developed at a high level setting out principles that should be taken into account when developing any maritime related policy or legislation and would expect that this would contribute to improved internal co-ordination of community policies.

What the UK Government and majority of UK consultees would not wish to see are new legislative proposals that further complicate the current situation and result in a substantial increase in legislative burden—the focus should be on consolidation, adding value and improving co-operation between existing policies.

How can the EU add value to the many national, local and private initiatives which already exist in the maritime field?

This question is key to the success of any EU Maritime Policy—any measures brought forward after the completion of the Green Paper consultation must demonstrate that they add value and are established at the appropriate level in line with the principle of subsidiarity. This is of particular importance as many of the matters discussed in the Green Paper are regulated internationally through the UN or regionally through bodies such as the regional seas conventions.

The UK consultation response made it clear that most UK stakeholders believe that while there is considerable scope for community action to add value there were concerns about inappropriate action taken at the wrong level that would create unnecessary conflicts with existing local, national and international regimes.

One area where we feel value could clearly be added would be in improving co-ordination between existing and developing Community legislation and policies to avoid uncertainties and overlaps, in particular we would urge that the Maritime Policy seeks to develop the links between DGs that the Green Paper process has already established in order to improve the quality and content of proposals brought forward.

2.1 Competitiveness of the Maritime Industry

How can European maritime sectors remain competitive, including taking into account specific needs of SMEs?

Broadly speaking EU Maritime Policy should be seeking to encourage the conditions for sustainable growth of EU maritime sectors through efficient and effective regulation and guidance on areas of existing community competency. For European business to compete, the regulatory framework must be consistent and make best efforts to eliminate uncertainty.

In particular the EU Maritime Policy should ensure that globally applicable standards are followed where they exist and are not deviated from unless there is a truly pressing reason for such a change. This will assist the EU maritime sectors in competing globally.
UK Small and Medium Enterprise stakeholders have indicated that the greatest problem they face is complicated and sometimes ill-considered legislation that prevents them from effectively competing in the marketplace. Given the importance of such SMEs to the UK and European maritime economy and their role in maritime clusters this issue needs careful consideration. We would suggest that the Commission consider the current regulatory framework and seek better regulation solutions. In addition we would urge that any proposals resulting from the Maritime Policy focus if at all possible on non-legislative approaches that minimise the additional burden to industry and in particular to SMEs.

What mechanisms should be in place to ensure that new maritime development is sustainable?

Any major new maritime development should demonstrate that it is sustainable and addresses the need for environmental protection as well as providing social and/or economic benefits.

In pursuit of this goal the UK believes that EU Maritime Policy should reflect the objectives and principles set out in the EU Sustainable Development Strategy adopted at the European Council in June 2006.

These include the use of high quality impact assessments to ensure that the social, environmental and economic dimensions of proposed developments are considered in a balanced way, taking account of appropriate public and stakeholder participation. In the development of an EU Maritime Policy consideration should be given to streamlining such assessments to ensure that information and actions are not overlapping in separate assessments and creating an undue burden to industry.

Related to this is the need for EU Maritime Policy to take a wider view on climate change impacts. We would expect for example that in any major development there would be a need to understand what the impacts are in terms of carbon emissions.

2.2 The Importance of the Marine Environment for the Sustainable Use of Marine Resources

How can Maritime Policy contribute to maintaining our ocean resources and environment?

Any Maritime Policy needs to contribute to the maintenance of our ocean resources and environment and in this the approach of the EU Marine Strategy Directive can usefully help build a wider oceans vision among policy makers and other stakeholders. We would expect the proposed Maritime Policy to take account of the aims of the Marine Directive and other relevant marine legislation (such as the Habitats and Birds Directives) to ensure joined-up policy.

The Maritime Policy must be consistent with the existing environmental policy framework and commitments. In particular, it should be consistent with the EU’s commitment to halt the loss of biodiversity by 2010, the World Summit on Sustainable Development commitments and the Common Fisheries Policy’s commitment to minimise harmful effects of fishing techniques and intensities on fish stocks, seabed habitats and non-target species.

The Maritime Policy should seek to balance the many legitimate uses of the sea with the need to promote healthy marine ecosystems and we remind the Commission of the need to ensure that existing marine environmental protection policies are considered and the desired outcomes placed at the heart of the eventual policy.

How can a Maritime Policy further the aims of the Marine Thematic Strategy?

What is important here is not so much the need for the Maritime Policy to further the Marine Thematic Strategy, but rather that any policies or legislative proposals developed from the Maritime Green Paper should reflect the content of the Marine Thematic Strategy.

In particular it is important that proposals resulting from this process reflect the need for sustainable development and are compatible with existing community and international instruments.

The important message from the UK Government and UK stakeholders here is the need for co-ordination between EU Maritime Policy, any proposals brought forward and existing instruments.
How can risk assessment best be used to further safety at sea?

Risk assessment methodology should be at the heart of any consideration of Maritime Safety and is already used extensively by the maritime industries and regulators when making decisions that could impact on safety at sea.

We support the use of well developed risk assessment when addressing issues of maritime safety and would highlight the importance of continued support from the Commission, EMSA and the Community on the use of risk assessment tools.

We would however caution that the consideration of international safety issues belongs in the IMO and that we cannot see the development of parallel systems in the EU and international sphere—the results of risk assessments carried out by the Community and individual Member States should be communicated to the appropriate international fora for consideration by the global community.

2.3 Remaining at the Cutting Edge of Knowledge and Technology

How can a European Marine Related Research Strategy be developed to further deepen our knowledge and promote new technologies?

Research is at the core of the Lisbon strategy and it is important that EU Maritime Policy recognises this role in delivering a competitive, world beating knowledge economy. For the EU Member States to remain competitive against lower cost locations we need to maintain and develop our advantages in research and innovation and this is particularly the case in the truly global maritime sector.

A more co-ordinated way of managing EU-wide research offers benefits in delivering the goals of the Lisbon strategy and would also assist other areas of community Maritime Policy in delivering objectives—there is a clear need to ensure that the different areas of community supported and directed research are joined-up and working towards the same high level goals. It would be useful for the EU Maritime Policy to reflect this and provide some direction to this end.

There is the potential for useful research on the precise mechanisms that could be used to reduce carbon emissions from the shipping sector, particularly in terms of the operation of carbon trading schemes.

We support the stated goal of developing a more co-ordinated approach to such research with better sharing of information and the inclusion of a high level ‘vision’ in the Maritime Policy but we expect that any measures taken forward in this area are balanced and proportional—EU Maritime Policy should not develop research strategies that only serve to further complicate an already complex area.

Should a European Marine Research Network be developed?

A new network is not necessarily needed but, rather, EU Maritime Policy should strengthen existing bodies, such as ICES, and promote better co-operation between them. Similar networks already exist and it would be better to focus resources on achieving better co-ordination and raising awareness than developing a parallel system that complicates research efforts.

UK stakeholders felt that while you can always have more and better coordination a new network would run the risk of confusing matters and further complicating the sharing and comparison of research carried out in Member States. It was generally felt that better use of the current mechanisms and a high level community vision would offer better value.

What mechanisms can best turn knowledge into income and jobs?

The important issue here is creating the conditions for a successful maritime sector and allowing it to flourish rather than attempting to engineer the growth of specific areas through research.

Europe already has considerable expertise and success in this area and the UK for example is a world leader in many maritime fields such as marine insurance, financial services, ship repair and conversion and the design of marine equipment.

EU Maritime Policy should focus on improving the availability and dissemination of information and research developed with EU assistance to ensure that maritime industries and policy makers make best use of it and that there is a level playing field for information access across the EU.
UK consultees indicated that technological innovation and research was a key factor in maintaining European competitiveness and in particular that it was important for Small and Medium Enterprises who otherwise would not be able to compete effectively with larger companies with existing market share—this difference should be reflected in any research/knowledge economy proposals emerging as part of future EU Maritime Policy.

In what ways should stakeholders be involved?

It is our considered opinion after the UK consultation that in the main stakeholders are already adequately engaged and we are not aware of any significant problems with engagement.

There is always room for improved and strengthened co-operation and co-ordination but we do not see any scope for community action in this area beyond work to improve dissemination of information and the encouragement of networks of stakeholders.

The development of a high level statement on the importance of maritime-sector research and improved co-ordination discussed above would be helpful in ensuring stakeholders are informed and able to participate.

2.4 Innovation under Changing Circumstances

What further steps should the EU take to mitigate and adapt to climate change in the marine environment?

The EU Maritime Strategy can add value by sending a high level cross-sector message about the need to bring together climate change and energy policies and impacts and in so doing change presumptions in favour of measures and policy approaches which support CO₂ reductions.

In particular, it needs to develop and promote key strategic themes:

— The need to strengthen understanding of the role of the oceans in regulating climate change and the impacts of climate change on the marine environment so as to ensure high quality evidence is transferred to policy makers—the UK’s Marine Climate Change Impacts Partnership (MCCIP) is an example, reflecting the need for a multi-disciplinary approach.

— The need to see the maritime area as a possible source of solutions to climate change. There are climate change mitigation measures to be taken in the maritime area—particularly carbon storage in the sub-seabed and offshore renewables (wave, wind and tidal developments) and modern efficient shipping tonnage itself offers some persuasive environmental benefits when compared to other transport methods.

How can innovative offshore renewable energy technologies be promoted and implemented?

This issue is of significant importance to the UK particularly as we are moving towards a greater proportion of our energy needs being met by renewables including offshore renewables. If we are to address the threat of climate change to our environment and economy we will need to generate a significantly increased percentage of our energy from such renewables.

The UK is particularly concerned about potential conflicts between the expansion of offshore renewable energy to tackle climate change and existing EU and international legislation affecting the marine environment, which might have been designed before the full implications of climate change were recognised and may prevent us from taking action needed to address the threats posed by climate change.

These conflicts need to be resolved as a matter of priority if offshore renewables are to help tackle climate change. The need to balance the development of offshore renewables with the existing, legitimate uses of the sea such as ensuring safe navigation for vessels and protection of the marine environment as a whole is also vital. The Maritime Policy can assist by promoting strategic messages across Community policies and institutions, as well as supporting and promoting policy frameworks which consider and address these conflicts.
How can energy efficiency improvements and fuel diversification in shipping be achieved?

Increasing energy efficiency in shipping is largely a technical matter relating to hull form, engine operation and vessel design. We can foster such improvements through work to strengthen European and national Research and Development networks and encourage investment in green technologies by shipping companies through awareness raising such as the SeaTrade Green Shipping award sponsored by the UK which rewards environmental best practice.

Fuel diversification is an area of considerable interest and we would support efforts to promote the development of new and innovative systems such as Biofuels, gas powered ships and fuel cell technology. Again this should be addressed in the first instance through “soft” mechanisms such as the direction of research funding and support rather than legislative approaches.

Consideration should also be given to emissions trading mechanisms that should be sought in the first instance internationally through the IMO.

What is needed to realise the potential benefits of blue biotechnology?

As part of a co-ordinated approach to energy and climate change, Maritime Policy could usefully point to the potential of marine biomass—growing and harvesting algae etc—by encouraging scoping studies on issues including carbon saving through the recommendations on research.

On the issue of fully realising the potential of bio-technology in areas beyond national jurisdiction, we agree that effective steps should be taken to help conserve the resource base from which genetic resources are derived, but we would re-iterate that we do not believe that reopening the main text of UNCLOS would be the best mechanism to do this. Member States have already put on record their support for an implementing agreement on marine biodiversity and will need to assess their position on the issues raised by the use of marine genetic resources in the light of the discussions in the United Nations in summer 2007.

2.5 Developing Europe’s Maritime Skills and Expanding Sustainable Maritime Employment

How can the decline in the number of Europeans entering certain maritime professions be reversed and the safety and attractiveness of jobs ensured?

Threats to the number of UK citizens working in the maritime sector is of great concern to the Government and we support the Commissions efforts to improve the attractiveness of jobs in this sector and the value added of employing EU citizens.

Currently the Government is working with social partners to consider a number of initiatives to address this issue, including looking at how to maximise the employment benefits from the tonnage tax training link and the UK’s Support for Maritime Training (SMarT) scheme within the framework of the EU Maritime State Aid Guidelines. The Commission should consider examining these approaches and considering their value in a wider European context. The introduction within the UK of a Foundation Degree in marine operations or marine engineering is also helping to make a maritime career more attractive. It is important to market maritime careers in the context of the wider opportunities available across the maritime sector as a whole.

The SMarT scheme is seen as key to attracting both officers and ratings and the Government hopes to continue to maximise its effect. However, owing to the nature of seafaring careers, funding cannot be provided under the current Commission State Aid Guidelines (2004) except when a trainee is supernumery. This greatly restricts the training support that we can offer our seafarers. We would appeal to the Commission for some flexibility here, so that we can attract more people to the sea and on to wider maritime careers.

From a fisheries perspective, key to maintaining the attractiveness of the industry, competitiveness and safety is ensuring sustainable fisheries across the Community, ensuring that there is a level playing field and that capacity and, therefore, catch levels do not over-exploit fish stocks, but optimise long term benefits.

High level support through the Maritime Policy would assist the successful implementation of processes.

How can better working conditions, wages and safety be combined with sectoral competitiveness?

This is an important issue for improving the attractiveness of the sector and ensuring that seafarers experience an acceptable standard of employment.

Key to this is the implementation of the existing maritime conventions addressing seafarers and in particular the recently adopted Maritime Labour Convention which was agreed with unanimity at ILO in 2006.
This convention lays down detailed standards for seafarers and shipping on a diverse range of labour issues and its rapid implementation will ensure a global minimum standard providing decent conditions for seafarers and maintaining a global level playing field for ship owners. In that respect, it is important that issues of safe manning and fatigue are also addressed on a global scale.

We would remind the Commission of the importance of this and other ILO conventions and suggest that value could be added by the Commission seeking early amendment of those aspects of community legislation that are touched on by the ILO MLC in order to facilitate early adoption by Member States.

How can the quality of education, training and certification be assured?

The UK Government is of the view that this area falls outside the scope for the Green Paper and proposed Maritime Policy as to an extent it addresses matters relating to national education and training policy and areas falling within the remit of the International Maritime Organization and other UN bodies such as ILO. Checks on UK seafarers are already rigorous and the level of quality assurance substantial. We would suggest that for now the Commission restricts itself to reviewing the practices of member states and establishing best practice guidance.

Consideration of investment in improving maritime training would be another area we would suggest the Commission could usefully explore.

This does not however preclude continued Community/EMSA work in quality assuring third country certificates and we would propose further EU work in the Maritime Policy to both strengthen these checks and improve the transparency of the process.

2.6 Clustering

What role can maritime clusters play in increasing competitiveness, in particular for SMEs, in improving the attractiveness of maritime jobs, and promoting a sense of maritime identity?

The UK Government sees a role for clusters in promoting the maritime sectors and believes that they can assist in fostering both a sense of identity and a cohesiveness of action amongst the various maritime interests.

Clusters can assist in the improving the shoreside communities’ understanding of the maritime sphere and can advertise the presence of the maritime industries to potential recruits. The improvement in co-ordination that a cluster can provide can additionally boost the effectiveness of a region in accessing external investment and funding and can create a virtuous circle of improving profile and inward investment.

We would encourage the Commission to explore the ways in which to foster both clusters and informal co-ordination between clusters as a way to improve the competitiveness of the EU industry through the sharing of best practice and increased attractiveness of the sector to high quality staff.

How can the EU promote synergies between interrelated sectors?

This is not considered to be a role of the EU as of itself but should form an element of all other aspects of the Maritime Policy. The encouragement of informal networks and the sharing of best practice will have the result of encouraging such synergies.

2.7 The Regulatory Framework

Green Paper questions: How could the regulatory framework for the maritime economy be improved to avoid unintended and contradictory impacts on maritime goals?

A key message which the proposed Maritime Policy can send is that there needs to be a focus on the outcome that is sought and that such objectives must be shared across Directorates. The eventual goal should determine the mechanisms to be used, including existing ones and non-legislative approaches.

The Maritime Policy should promote better regulation, with proposals based on robust impact assessments. Excessive regulation should be avoided, especially where existing legislation will suffice. A clear focus on outcomes and the need for less formal regulation can be achieved by appropriate integrated frameworks and approaches when considering legislative action.
It may be appropriate to revisit some existing Commission guidelines, to ensure that they do not unwittingly cut across higher level policy objectives. For example, studies in the UK have shown that the critical period of training for merchant navy officer cadets, during which they make the transition between being “employable” (ie technically able to be legally employed) and “marketable” (ie highly sought after in the global labour market), is the period during which they are training to achieve their Second Certificate. Yet, during this same period, it is difficult to provide support for their training, because, while gaining sea time, the cadets are not supernumerary, as required by the Maritime State Aid Guidelines.

Which exclusions of the maritime sector from some EU social legislation are still justified?

This issue is of considerable interest to the UK Government and we have received representations from all major UK stakeholders on the matter.

We support the Commission’s efforts to catalogue the existing exemptions and consider the reasons for their continued existence.

At this time the UK Government supports the Commission’s intention to consider the range of exemptions but we would need to review carefully any proposals to alter the current exemptions as this could negatively impact on the employment of UK seafarers. It is important that any changes proposed in the Maritime Policy consider the implications for the employment of EU nationals, the impact on EU Member State flagged shipping and the economies of EU Member States as a whole.

Should further specific legal instruments on employment conditions in the maritime sector be encouraged?

The UK Government believes that for the vast majority of employment issues international regulation is best and that, for the moment, it would be most useful if the Commission was to focus upon encouraging Member States to implement existing ILO instruments.

In addition it would be useful if the Commission reviewed the current Directives and regulations in this area to ensure they are in compliance with the international regime and thus facilitate Member State ratification and implementation of ILO instruments.

It is important to maintain the current levels of protection offered within Europe on employment conditions but in the main any new proposals should be dealt with internationally in order to ensure a level playing field for European seafarers and ship owners.

How can EU safety regulation be simplified while maintaining high level standards?

While the Commission’s consideration of better regulation approaches is laudable here we would remind the Commission that the key safety legislation in play in much of the maritime sector is international in nature and cannot be amended or simplified in any substantive way on a regional basis.

Any process of altering such rules must be carefully risk assessed and considered before being taken to the correct international forum for discussion and negotiation.

In areas of Community competence where international rules do not exist we can see some scope for review and simplification but these must be carefully balanced against safety concerns and the need to protect the marine environment.

To what extent can economic incentives, self-regulation and corporate social responsibility complement government regulation?

The UK Government is fully committed to the concept of better regulation and we support the Commission fully in seeking to use such non-regulatory approaches whenever possible.

In the UK consultation we have found little support for significant, additional legislation with the majority of UK stakeholders seeking a better co-ordinated approach with existing measures.

To this end we would encourage the Commission to explore wherever possible the options for such measures although we would caution that any such approach would need to be carefully reviewed in order to assure ourselves that it was achieving the original policy objectives.
What further EU action is needed to reply to the inadequacies of sub-standard flags and to provide incentives to register under European flags?

The Government does not believe that it is appropriate to take further EU action on the issue of flag State performance, excepting the need for targeted measures aimed at tackling IUU fishing.

The correct fora to address this matter are the IMO and the Port State Control MOUs such as the Paris MOU and the Tokyo MOU.

The Commission should focus here on establishing the case for additional international action rather than considering EU measures, this action could include tougher port state control for poor quality flags and a reduction in the inspection burden for good quality flags.

On the second point we do not believe that the Commission should be considering incentivising EU flags—the Commission should instead seek to ensure that all Member States are operating to the same international standards and are fulfilling their existing commitments on matters such as Port State control—this will promote quality across the EU and support the efforts of flag States to attract quality tonnage to the EU.

Should an optional EU register be made available?

The UK Government is strongly opposed to the development of such a register and we have detected little enthusiasm for this proposal among UK stakeholders. The UK believes that there are three natural roles for the Commission, supported by the European Maritime Safety Agency (EMSA) within the maritime sector governance structure:

— to quality assure service provision to EU maritime states, where this will add value by improving consistency, effectiveness and efficiency;
— to promote high and uniform standards of service delivery by EU maritime states (by auditing and identifying and promulgating best practice); and
— to initiate or co-ordinate policy development where the need for EU level intervention is supported by evidence, is proportionate, and will clearly add value to the actions of Member States.

Effective delivery of key governance roles would be weakened by the Community taking on other incompatible roles. The idea of establishing an EU Register of Shipping would put the Community in the position of a flag State. International maritime law confers privileges and responsibilities on sovereign flag States. As the EU is not a State, ships sailing under a true EU flag would have no standing in international law. This would obscure the governance structure and potentially close off opportunities to add value to the regulatory process.

At best an EU shipping register can amount to a list of ships flagged to EU Member States and registered in the ports of the Member States. Not only would it be of no practical benefit, it would risk confusing and blurring the standing and responsibilities of individual EU flag States for the conduct and condition of their ships.

What conditions and incentives could be contemplated for such a register?

As we do not support the establishment of such a register we have no substantive comments on this question. If such a register is developed it should not benefit from incentives or conditions that undermine the attractiveness of existing EU Member State flags.

How should the Common Fisheries Policy be further developed to achieve its aim of sustainable fisheries?

The Maritime Policy should underline the need for co-operation between the various Directorates of the Commission so that fisheries and other sectors are effectively integrated with a view to developing genuinely sustainable fishing. This will help marry ecosystem based approaches of the Marine Directive and climate change considerations together with sustainable fisheries. Additionally it could usefully seek to clarify the application of Member States legislation to all EU vessels.

The regulatory approach of the CFP can be made more effective in a number of key ways:

— the provision of more extensive and accurate data on fishing activities, to improve the quality of stock assessments, and address the true nature of the scale of discarding;
— by adopting a more outcome focused approach; and
— more widespread and better application of controls on fishing effort and use of fishing gear, working in parallel with catch limits and other management measures designed to restrain fishing activity.
The Maritime Policy should also promote coherence across the Community so that fisheries policy is consistent with the EU’s broader international sustainable development policies and other Community legislation, for example in relation to third country fisheries agreements and subsidies.

3.1 Coastal Areas as a Place to Live and Work

How can the quality of life in coastal regions of Europe be maintained, while continuing to develop sustainable income and jobs?

The key to maintaining and improving the quality of life in the EU’s coastal regions while fostering economic development is to approach developments in an integrated and holistic manner.

In order to balance the need for regeneration and sustainable industry with the protection of valuable natural and cultural resources on which many coastal communities depend, the Maritime Policy should adopt an integrated approach to the management of coastal zones, to help reduce overlap and conflict between different management processes. It should encourage the use of planning tools such as marine planning to help manage the impacts of individual projects with due reference to other legitimate uses and interests.

What data needs to be made available for planning in coastal regions?

The majority of the data or planning is available at the appropriate level of Government—the major challenge is ensuring it is integrated in such a way that it is accessible to local, regional and national interests.

Drawing on the work of the INSPIRE Directive there could be a useful role for the Commission in investigating the Maritime Policy information that would be needed to draw up a basic understanding of the marine environment. This could then be layered with sectoral data to produce a functional map of the EU marine environment.

3.2 Adapting to Coastal Risks

What must be done to reduce the vulnerability of coastal regions to risks from floods and erosion?

An EU framework for the management of risks from sea flooding is provided by the Directive on the Assessment and Management of Floods, currently undergoing its second reading.

It would not be sensible to contemplate further action, when the need for Community Action in this area has so recently been considered and the new legislation arising has still to be finalised and implemented.

As a result this matter should not be included in the proposed Maritime Policy.

What further cooperation is needed in the EU to respond adequately to natural disasters?

The proposed Maritime Policy could helpfully include some high level statements to ensure cooperation in the event of a natural disaster and, in particular, to focus on the existing community cooperation mechanisms.

In addition a stocktake of these mechanisms could usefully be undertaken to consider the suitability of current arrangements.

We cannot see at this time a need for any other significant Community action on this issue and UK consultees have not shown any substantial degree of concern that this area needs action at this time.

How can our shores and coastal waters be better policed to prevent human threats?

Co-operation between Member States is the key element here and is best facilitated using existing fora wherever possible.

In addition, the Commission could usefully consider reminding Member States, through its Maritime Policy, of the importance of applying existing community and international law and ensuring that it is being applied effectively across Europe.

Encouraging and facilitating data exchange is another area where the EU can and is making a useful contribution and deepening the role of SafeSeaNet net could be considered to assist in this in the longer term.

What we do not support is the development of new EU bodies or mechanisms at this time. In particular we do not believe that an EU coastguard would add value.
3.3 Coastal Tourism

How can innovation in services and products related to coastal tourism be effectively supported?

Innovation is not simply about developing new technologies and products—it is about making new and novel uses of existing resources.

In particular we feel the Commission should carry out an information gathering exercise to review best practice throughout the EU and make available its findings to the tourism sector throughout the EU—this may not however be best addressed in a Maritime Policy.

One area that is worth consideration by the Commission in developing the Maritime Policy is tourism that makes protection of the resource in question the focus of the activity—a good example of this is whale watching.

What specific measures promoting the sustainable tourism development of coastal regions and islands should be taken at EU level?

National policies and local initiatives should encourage innovative approaches to tourism that enable the long term protection of valuable local resources, and where possible make that protection the focus of tourism activity as outlined above.

The EU can assist in this through the promotion of best practice and by including investment in such sustainable tourism in the various sources of community funding such as the social cohesion fund.

3.4 Managing the Land/Sea Interface

How can ICZM be successfully implemented?

It is important that an integrated approach and attitude to coastal management becomes embedded into planning and decision-making structures at national, regional and local levels in coastal areas. This will ensure that ICZM is a way of thinking that is intrinsic to all coastal management activity and is not promoted solely through a small number of specific initiatives.

At EU level the Recommendation of 2002 on ICZM has provided a useful focus on the principles of the approach. Further practical work to share examples of good practice across Europe would be useful.

It would not however be appropriate to create strict or legislative measures for ICZM across Europe as a whole; this would be too generic and would not apply effectively to the varying decision making structures and domestic responsibilities within each Member State, each of which have developed to suit local traditions, industries and geography of coastal areas.

How can the EU best ensure the continued sustainable development of ports?

UK experience, from the recent 5 years, suggests that sustainable marine development is possible, taking account of the benefits of development and the environmental impacts. It is proposed to build on this experience through the introduction of marine spatial planning, together with a streamlining of the application process.

The UK’s current approach to ports on environmental matters is twofold: to seek to ensure they are aware of the environmental duties placed upon them, and to seek to ensure those duties are proportionate. We suggest the EU’s approach should be the same, with the added duty of ensuring that all EU ports are operating not only within the same environmental frameworks but within similar regimes of interpretation and enforcement.

The UK Government would also underline the importance of consistent policy outputs in this field and the need to factor in other relevant and parallel work being taken forward by the Commission, namely the emerging new European ports policy and the Communication on freight transport logistics.

What role can be played by regional centres of maritime excellence?

The Government is in favour of the recognition of regional maritime sectors of excellence and we urge the Commission to consider assisting in the development of linkages between such centres and maritime clusters in order to share best practice. These centres can function as exemplars of such practice and be used as focal points for the development of maritime clusters.
Additionally it would be helpful if the Maritime Policy could review the current sources of funding available to such centres and produce guidance to facilitate application for such financial support.

4.1 Data at the Service of Multiple Activities

On what lines should a European Atlas of the Seas be developed?

On the question of an Atlas, the key is that Member States supply their own ‘layers’ of quality assured data to be overlaid or accessed, ie competence for and production of each layer should rest with Member States. A common format for transfer of data layers should be agreed.

Issues of Intellectual Property rights should be agreed at the outset so the system for sharing the layers of data (and the underlying data sets) is transparent and fair.

How can a European Marine Observation and Data Network be set up, maintained and financed on a sustainable basis?

We are not persuaded that a new European Marine Observation and Data network is needed. There are existing fora, such as ICES, which could be strengthened and funded to provide such a service.

For example, at present survey work relies heavily on short term funding through research monies. This does not ensure that long time series data is available and therefore the significance of changes observed in the marine environment are very difficult to determine. It would be better to fund these networks effectively and collect this data on a longer term basis than establish another network.

Should a comprehensive network of existing and future vessel tracking systems be developed for the coastal waters of the EU?

At this time we believe that work should focus on assessing the existing data collected and analysing any gaps or overlaps in the data that is needed to achieve effective and sustainable management of our coastal waters.

A wide range of reporting systems now exist and the ‘ownership’ of these vary between UN bodies, regional measures and national initiatives. It is important that the interplay between these systems and those under development are considered before any network could be considered.

What data sources should it use, how would these be integrated, and to whom would it deliver services?

Until the stocktake and other considerations outlined above are dealt with we do not believe there are adequate grounds for the development of such a network. Therefore, we cannot comment on the content of such a network at this time.

4.2 Spatial Planning

What are the principles and mechanisms that should underpin maritime spatial planning systems?

Marine spatial planning systems must be driven strongly by integrated, carefully thought out national policies, which balance the need to protect natural and cultural resources, whilst supporting national and local industries.

They should not therefore focus solely on maritime activities but on the consideration of marine ecosystems as a whole. They must involve transparent consultation and involvement of a range of stakeholders and communities, throughout the planning process.

For marine planning systems to achieve tangible benefits, they must enable policies and objectives to be achieved through specific decisions that are made about marine activities. They must therefore work effectively with the diverse range of national decision making competences that exist within each Member State and which reflect national needs and the use of national resources.

Any action taken within EU Maritime Policy needs to reflect the diverse decision making structures and jurisdictions within Member States, without which sensible benefits to the way the seas are managed could not be delivered. The UK does not wish to see any form of international marine spatial planning, which would seek to control the sovereign activities on Member States.
Integration between marine and land planning systems is critical. UK experience has shown that a marine planning framework must be developed carefully in a way that supports diverse local needs and arrangements around coastal areas. If done in this way marine and land planning systems can together reinforce national and local objectives for land and sea, and contribute to the effective and sustainable management of coastal areas. A national overview of marine planning, in addition to land planning, is critical to this integration.

The connection between existing Community instruments such as the Water Framework Directive and the draft Marine Strategy Directive will be key to this process. In particular we urge the Commission to recognise that while it is sensible for a basic understanding of marine spatial planning to exist across the EU this should be flexible enough to allow individual Member States to manage their own maritime space and resources.

How can systems for planning on land and sea be made compatible?

The land/sea interface is a complex mix of jurisdictions and this can make it difficult for users to fully assess the impacts of their activities and the opportunities that exist.

We therefore support the need to consider this area and would suggest that the Maritime Policy encourages Member States to examine their current planning regimes and consider the opportunities that marine spatial planning and particularly Integrated Coastal Zone Management offer for bridging between the two regimes.

We would caution however that the land and sea are subject to very different legal regimes and that the Commission will need to consider the existing rights of users and in particular those established under UNCLOS.

4.3 Making the Most of Financial Support for Coastal Regions

How can EU financial instruments best contribute to the achievement of Maritime Policy goals?

It is essential that EU instruments when taken together operate coherently in supporting overall policy goals to deliver both environmental and economic objectives, looking beyond the short term and are applied consistently across the Community.

By way of example, instruments should be designed and deployed to ensure that EU funding is not used in ways that increase the capacity of the fishing fleet increases in this capacity are neither economically nor environmentally sustainable.

Is there a need for better data on coastal regions and on maritime activities?

Yes, although the UK would note that data can always be “better”. Data for maritime activities are not easy to access in many cases. We do need more information about which industries are working in each area but we also need their future projections ie which areas of the sea/coast will be under pressure in the future. We need this information to ensure and assess if the seas are ‘productive’ as well as clean, safe, healthy and biologically diverse.

The coastal regions have not been well mapped due to the difficult nature of the data capture. New technologies are emerging which allow mapping in shallow waters and therefore these should be encouraged in the Maritime Policy in order to fill this knowledge gap.

How should Maritime Policy be reflected in the discussion relating to the next EU Financial Framework?

It would be useful for the Policy to have some input during the discussions on the next Financial Framework given that the maritime sector is a cross cutting activity. In particular it would be helpful for these discussions to explore the current availability of financial support for the maritime sector and to what extent funding could be directed to areas of interest such as research networks and maritime clusters.

Any proposals relating to the Financial Framework would need to demonstrate that they add value and in particular that they will result in a better economic outcome than the existing measures that they will replace.

Finally any proposals to assist financially would need to be assessed to ensure that they will contribute effectively the Lisbon strategy and deliver sustainable growth with environmental protection.
5.1 *Policy Making within the EU*

How can an integrated approach to maritime affairs be implemented in the EU?

The Maritime Policy approach should be to focus on delivering a high level set of broad principles to act as an overall guide for the development and implementation of policy in the EU that affects the maritime sector. This approach should focus on the improvement of coordination within the Commission, seek to provide a more holistic approach when implementing existing EU legislation and seek to encourage light touch non-legislative approaches whenever possible.

At a more detailed level the Commission should recognise the differences between Member States and the diverse nature of the waters surrounding the EU—the Maritime Policy should not seek to deal in such specificities but establish a set of higher level objectives and guiding concepts that allow the EU’s maritime sector to flourish and deliver economic, social and environmental benefits.

What principles should underlie it?

The key principles that the UK believes should underlie policy making within the EU were set out in the introduction to this document. Namely, the need for EU action to add value; the need to respect subsidiarity; the importance of ecosystem based management; the importance of the international dimension and existing international and EU legal and policy frameworks; recognition of the circumstances of coastal communities; protection of the marine environment, combined with a respect for the limits of marine resources; and co-ordination of EU proposals to ensure delivery of the Lisbon strategy.

Should an annual conference on best practice in maritime governance be held?

This proposal is supported by the UK Government as it offers an opportunity for the Maritime Policy to add value without generating an increased burden of regulation or requiring a long gestation period. An annual conference would allow practitioners to meet to discuss high profile issues related to community maritime sectors and ensure that there is a mechanism for spreading best practice in the field.

Such a conference should be focused upon open discussion and should not of itself be decision making—its outcomes should be recommendatory in nature.

5.2 *The Offshore Activities of Governments*

How can the EU help to stimulate greater coherence, cost efficiency and coordination between the activities of government on EU coastal waters?

The UK view is that the EU should work to promote better co-ordination and co-operation through the encouragement of informal networks and support for the dissemination of best practice.

The Maritime Policy could also usefully provide a high level statement on the need for better co-ordination and co-operation between and within EU Member States and the need to engage more fully at Member State level in developing national maritime policies.

Should an EU coastguard service be set up? What might be its aim and functions?

The UK Government is opposed to the development of an EU coastguard service. From our perspective an EU Coastguard would not only add no value it could potentially undermine the existing responsibilities of coastal States. It would be best for the proposals emerging in the Maritime Policy to provide value added rather than repeating debates that have already been extensively rehearsed throughout Europe.

The UK Government and consultees were strongly in favour of neighbouring EU coastal States co-operating on a regional basis to add value in terms of the capacity to respond to incidents including major pollution incidents and/or SAR operations. A number of such regional co-operation agreements exist already such as the Bonn Agreement covering North Sea States, to which the UK is party.
For what other activities should a “Common European Maritime Space” be developed?

The UK is in principle in favour of mechanisms that lower barriers to trade and movement throughout the EU and believes this would be a useful area for the Commission to consider the role of a Common European Space. However, we would caution the Commission that such measures should not create external barriers or create the perception in the wider world that we are moving towards a form of EU-wide cabotage that results in negative implications for trade and external relations with the wider world.

We can see little scope for moving beyond consideration of internal trade barriers and we would remind the Commission of the importance of security concerns when reviewing such barriers. We do not see a case for extending the concept of a common maritime space to wider activities as that could infringe the rights of coastal states and/or vessels under UNCLOS.

5.3 International Rules for Global Activities

How can the EU best bring its weight to bear in international maritime fora?

The UK is concerned that the Maritime Policy may seek a greater role in UN Organisations without considering to what extent there is a need for this role and whether it will add value.

We do not see the need for a general review of the roles of the Community and Member States as we consider that existing competences are working well in the vast majority of cases and do not need to change.

We recognise that on occasion practical problems can arise but generally Member States and the European Commission work effectively together, including in fora where competencies are mixed.

Each UN body is different and a single approach is likely to create new tensions in some fora while resolving issues in others. We would recommend the Maritime Policy seeks to function within the current arrangements unless there is a clear and pressing case for changes to be made.

Should the European Community become a member of more multilateral maritime organisations?

There is no single answer to this question—each convention/organization needs to be considered individually and the case for community membership made clearly and persuasively. We believe that the starting point for such considerations should be the assumption that unless a pressing case can be made and value clearly added the Community should not seek membership. A blanket decision to seek Community membership of multilateral instruments is not supported by the UK Government.

On the specific issue of IMO membership the UK believes that the current arrangements for co-ordination and Community involvement are working and that an attempt to seek a wider Community role is likely to be counterproductive as it carries the risk that non-EU IMO actors will perceive the EU bloc as a threat to IMO’s tradition of honest, open technical debate.

What action should the EU undertake to strengthen international efforts to eliminate IUU fisheries?

We agree that we need to make faster progress in relation to fisheries on questions of flag State control, and welcome the acknowledgement in the Green Paper of the work of the High Seas Task Force, which also underlines the importance of more effective Port State controls and co-operation with developing countries.

EU Maritime Policy could usefully send a strong message about practical improvements, such as support for the FAO Global Record and the International MCS. Continued support to Member States is also needed to ensure they play their role in denying access to IUU products and trade in EU ports.

This progress could be assisted via Fisheries Partnership Agreements, bilateral aid programmes as well as Economic Partnership Agreements; the Maritime Policy should consider supporting developing states so they are able to properly govern their fisheries resources. This will enable them to better manage their own fisheries fleets as well as broker equitable bilateral agreements with other countries, where these are still relevant.

We also fully support the extension, both geographically and by species, of Regional Fisheries Management Organisations to eliminate unregulated fisheries.
How can EU external policy be used to promote a level playing field for the global maritime economy and the adoption of sustainable maritime policies and practices by third countries?

The UK Government believes that the key element of EU external policy in this area needs to be the recognition of the global nature of the maritime sector and therefore the need for globally agreed policies.

We believe in the first instance that the importance of the existing international instruments and mechanisms should be recognised and supported by any EU Maritime Policy.

EU external policy should focus upon encouraging non-member states to sign up to implement internationally agreed rules and ensure that they engage fully at the UN level in matters relating to the maritime sector. EU external policy should not operate in parallel to these processes but should seek to support them.

5.4 Taking Account of Geographical Realities

What regional specificities need to be taken into account in EU maritime policies?

Europe and the seas that border it cannot be viewed as a single unit. There are significant physical differences between Europe’s seas and significant socio-political differences in the pressures upon them. However, EU Maritime Policy should ensure that high level policy objectives are applicable throughout Europe in order to ensure that the overall approach taken is holistic.

In relation to the Marine Directive, we support the use of the Regional Seas processes and recognise the need for regional co-operation (such as OSPAR), whilst underlining the importance of countries producing their own strategies. This will allow for Member States to reflect particular circumstances, including their planning regimes and third country engagement.

Regional characteristics may also shift in the light of climate change and policy frameworks developed will need to be sufficiently flexible to allow for this.

How should maritime affairs be further integrated into the EU’s neighbourhood and development policies?

The maritime sector is arguably the most global of all industries and any policy relating to the seas and oceans must take into account that which occurs outside of EU Member State jurisdictions.

The best mechanism for such work is the continued, strong involvement of Member States in the relevant International bodies and Regional seas conventions.

The Maritime Policy can however add value by ensuring that work undertaken with EU neighbours and further afield reflects the high level objectives of the EU Maritime Policy and the global nature of the seas. This would include for example urging non-EU states to engage more closely with the UN process and ensuring that they are well informed about areas like marine spatial planning which will require cross border support to function.

6. Reclaiming Europe’s Maritime Heritage and Reaffirming Europe’s Maritime Identity

What action should the EU take to support maritime education and heritage and to foster a stronger sense of maritime identity?

The UK agrees with the Commission that a greater emphasis on maritime heritage may have both economic and social benefits for coastal communities. In particular we would urge the Commission to consider in the Maritime Policy opportunities to link maritime heritage with the protection and enhancement of such historical assets to ensure they are not degraded through greater utilisation.

Maritime education is important both to understand our past but also to re-establish the link between modern maritime industry and wider society which, at times seems to have disappeared. This can be delivered by establishing links between existing maritime businesses and clusters and the wider community.

On the international level, the United Kingdom was disappointed with the results of the discussions in UNESCO on maritime cultural heritage and does not believe that the UNESCO Convention represents the way forward on this issue.
MARITIME TRANSPORT (16106/05)

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

As a result of my letter of 6 November 2006,\textsuperscript{25} which provided an update on the Commission’s ‘issues paper’, you asked to be kept informed of any developments in relation to the proposed Commission guidelines for the liner shipping and tramp industry.

The Commission has now produced so called ‘pre-draft’ guidelines, ‘Guidelines on the application of Article 81 EC to maritime transport services’, which are to be discussed by officials in Brussels on 24 May. Officials from both the Department for Transport and Department of Trade & Industry will attend. In preparation for the meeting my Department, together with Department for Transport and Office of Fair Trading, have met the Chamber of Shipping and will meet with the Freight Transport Association to hear their views on what they would like guidelines to contain.

The pre-draft guidelines are confidential for Member States, and will be sent to the industry for consultation in September. The final version of the guidelines will be issued before the end of the transitional period for liner conferences, which expires in October 2008.

I can also confirm that the Commission has completed their fact-finding exercise on the tramp industry. A report of their findings has been published.

12 May 2007

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letter of 12 May 2007, which Sub-Committee B considered at its meeting on 21 May. We were grateful to you for enclosing the Commission’s “pre-draft” guidelines; and would welcome a further update when the final guidelines are issued, which you expect to be in October.

22 May 2007

MARKETING OF PRODUCTS (6377/07, 6378/07)

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

Thank you for your letter of 16 April 2007,\textsuperscript{26} which Sub-Committee B considered at its meeting on 30 April. We were grateful to you for confirming that your Department is in “close contact” with representatives of the Trading Standards Departments, as well as Health and Safety Executive Officials. Could you clarify whether any formal consultation has taken place?

We look forward to receiving your progress report on negotiations; and will maintain scrutiny on the draft Regulation at this stage.

1 May 2007

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 1 May in response to my letter of 16 April 2007. You asked whether any formal consultation has taken place with the Trading Standards Departments and Health and Safety Executive (HSE). I can confirm that both the Local Authorities Coordinators of Regulatory Services (LACORS) and the HSE are represented on the Standards Policy Committee—the inter-Departmental body through which my officials are developing policy positions and reporting on developments in Brussels.

17 May 2007

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 17 May. It was considered by Sub-Committee B on 11 June.

We are grateful for the information regarding your ongoing consultation with trading standards officers and officials from the Health and Safety Executive.

\textsuperscript{25} Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 112.

\textsuperscript{26} Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 113.
We will maintain scrutiny of the document at this stage, and look forward to receiving your progress report on the negotiations.

13 June 2007

MEDIA 2007 PROGRAMME: SWISS PARTICIPATION (12417/07)

Letter from Rt Hon Margaret Hodge MP, Minister for Culture, Creative Industries and Tourism, Department for Culture, Media and Sport to the Chairman

I am writing to inform the Committee that the Swiss Confederation has reached an agreement with the European Commission for Switzerland to join the MEDIA 2007 funding programme.

You will be aware that Switzerland was a participant in MEDIA 2007’s forerunner, MEDIA Plus and this agreement is therefore not controversial. Indeed, this is a positive agreement, since it has the potential to lead to more opportunities for cultural co-operation between Member States.

The Agreement is subject to Qualified Majority Voting and therefore to Parliamentary reserve.

However, the Commission and the Swiss Confederation are extremely keen to be able to sign the agreement ahead of the Swiss federal elections. In order to do this, Member States would need to give their formal agreement to the decision at the Competitiveness Council on 27 September 2007. Both the Foreign Office and the UK Representative to the EU in Brussels have advised that the UK is currently the only Member State not able to give its formal agreement to the signature due to the current scrutiny reserve. As this is a fairly minor and non-controversial decision I feel that it would be preferable to override scrutiny on this occasion.

I want to reassure the Committee that I do not view the overriding of Parliamentary Scrutiny on any decision to be a minor matter. However, I have agreed that it would be preferable to do so in these exceptional circumstances.

I trust that the Committee will sympathise with this decision and accept my reassurances that this represents the exception, rather than the rule.

25 September 2007

Letter from the Chairman to Rt Hon Margaret Hodge MP

Thank you for your letter of 25 September. Sub-Committee B considered it at its meeting on 22 October. We are grateful for the information provided in your letter and, subsequently, by your department, about the circumstances leading to the necessity to override the scrutiny reserve while Parliament was in recess.

The proposal to allow Switzerland to join the Media 2007 programme appears routine and non-controversial, but we appreciate the tone of your letter, since a decision to override the scrutiny reserve should not be taken lightly. We also appreciate the fact that you wrote to us before the Competitiveness Council on 27 September.

However, we were concerned not to have received your letter until 10 October. We would be grateful if in future ministerial letters could be scanned and emailed, as well as being sent in hard copy. This is now standard practice for many departments, and greatly assists the Committee in the consideration of urgent matters. While it would not have altered the outcome in this case—Sub-Committee B would not have met before 8 October—it would have allowed the Chairman to be consulted. This could be important in future when, under similar circumstances, a more controversial matter may be subject to such time pressures.

23 October 2007

Letter from Rt Hon Margaret Hodge MP to the Chairman

Thank you for your letter of 23 October. Please accept my apologies for not receiving my letter dated 25 September until 10 October.

I have spoken with my Private Office who assure me that while it is normal practice for ministerial letters addressed to the committee to be scanned and emailed, as well as being sent in hard copy, this procedure was regrettably overlooked in this instance. They had assured me this will not happen again.

30 October 2007
PAYMENT OF SERVICES IN THE INTERNAL MARKET (15625/05, 8758/06)

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

I am writing to inform you of progress in respect of the Payment Services Directive (PSD) (Explanatory Memoranda 15625/05 and 8758/06). You will recall that our negotiating position on the PSD was considered by the European Scrutiny Committee and cleared scrutiny on 14 December 2006.

I am pleased to report political agreement on the PSD at first reading between the Council and the European Parliament. The Directive aims to create a European internal market in payment services, by enabling non-bank payment service providers to supply their services across the EU on the basis of a licence obtained in any one Member State. It also harmonises the conduct of business rules for the provision of payment services in the EU.

In my letter of 28 November 2006,27 I noted that the key challenge for the Government in the negotiations on the draft Directive was to support a proportionate approach, whilst securing improvements throughout the text to ensure that the Directive remains beneficial to payment service providers and users. I am therefore pleased to inform you that the Government has defended a proportionate approach, and secured several improvements throughout the Directive to ensure that the regulatory regime set up can promote transparency, competition, technical neutrality, growth and innovation in the UK and European payments market.

Whilst formal adoption in the Council will not occur for some months as we await the translation of the Directive into all Community languages, I wanted to write and inform you of this outcome as soon as possible.

14 May 2007

Letter from the Chairman to Ed Balls MP

Thank you for your letter of 14 May, which Sub-Committee B considered at its meeting on 21 May.

We were grateful to you for your report on the political agreement of the Payment Services Directive, and hope that the amendments to the text secured by the UK will indeed ensure a regulatory regime which promotes transparency, competition, technical neutrality, growth and innovation in what is a very important market.

22 May 2007

PORT STATE CONTROL (5632/06)

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

You wrote on 12 December 200628 asking to be kept updated on the progress of the proposed Port State Control Directive following its First Reading by the European Parliament. I am writing to provide that information and also to notify you that the German Presidency hope to reach a political agreement on the dossier at the June Transport Council.

The Directive has now had its First Reading in the European Parliament, which voted on over 100 amendments to Commission’s text. Most of the detailed amendments approved by the Parliament are on points of detail with which the UK has no difficulty, and many others simply align the Commission’s text with the Council’s general approach.

It is expected that the June Council will reach a political agreement on the text as amended by the Parliament only where the Parliament’s amendments have the affect of aligning the text with the Council’s general approach. At present the Council is not prepared to accept any of the other amendments passed by the Parliament.

We do not have any difficulty with the large majority of the Parliament’s amendments, which it is being proposed are rejected in the political agreement to be reached in June. We are, however, concerned that the Parliament has not amended the Commission’s proposal for permanent ban from community waters of those ships which have been detained for a third time following inspection at a Community port. The Council does not feel that a permanent ban is proportional or legally enforceable and believes that ships which have been banned under the terms of the directive should be allowed back into Community ports once stringent safety criteria have been satisfied and that the vessel has been re-registered to a more responsible flag State and/or has had a change of ownership.

27 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 194, p 117.
28 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 119.
We are also concerned that the Parliament has supported the Commission’s proposal to allow no more than an 18 month transposition time for the Directive. The Council does not consider this period to be long enough and that it should be increased to 36 months. That would be to allow sufficient time for the new inspection regime database to be set up and fully tested before it has to be used by Member States. Since the new database will underpin the new inspection targeting regime envisaged in the recast directive, it is vital that there is time to ensure that it is capable of delivering the data streams required before the recast directive comes to force. I anticipate it will be possible to reach a Second Reading compromise with the Parliament which addresses these concerns, which, as I have indicated, are shared by other Member States.

I will, of course, continue to keep you informed of the progress of this dossier.

10 May 2007

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 21 May. We welcome the significant progress made on this Directive since the summer of 2006. We share your support for the line taken by the Presidency that the Commission’s proposal for a permanent ban from Community waters for those vessels detained for a third time is not “proportional or legally enforceable”. We also recognise the need for a longer implementation period.

We would be grateful to you for a report on progress ahead of any Second Reading deal with the European Parliament; and are content to lift scrutiny on the proposal ahead of the June Transport Council.

22 May 2007

PORTUGUESE PRESIDENCY: TRANSPORT EXPECTATIONS

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

I thought your Committee might find it helpful to have an update on transport proposals that will be progressed in the next few months, including the Portuguese plans for their Presidency.

The dates for the next two Transport Council meetings have been confirmed as 1–2 October and 29–30 November. The Portuguese have stated that they wish to give priority to maritime and aviation issues during their Presidency, but road and rail also feature heavily in their programme.

AVIATION

The proposals on airport capacity (5886/07) and airport charges (5887/07) will be taken forward by the Presidency. The Presidency hopes to reach conclusions on the airport capacity action plan in October, with a possible general approach on airport charges in November.

The Presidency is aiming for a political agreement on the third aviation package (11829/06) in October, following the European Parliament’s first reading of the dossier this month. They also intend to continue work on SESAR (Air Traffic modernisation project), and the Commission will present a report on the Single European Sky to the November Council.

The Presidency is hoping to secure a second reading deal with the European Parliament on EASA (European Aviation Safety Agency, 14903/05). The EP’s second reading is currently scheduled for January 2008. The Presidency also hopes to reach an agreement with the EP through conciliation on the aviation security framework directive (12588/05).

External relations agreements will be a priority. The Commission’s proposals to open negotiations on comprehensive aviation agreements with Canada, Australia, New Zealand, and China are all likely to be discussed, and a Decision on Canada is expected to be on the October Council agenda. The Presidency will also give time to preparation for the ICAO general assembly in October.

The Presidency has also indicated that they hope to reach initial political agreement on the inclusion of aviation into the EU emissions trading scheme (5154/07) at the 17 December Environment Council. My Departmental officials are working closely with Defra officials to facilitate this.

The Commission intend to produce a report and proposal in November for an amendment to the directive on aviation noise restrictions. It is also possible that further proposals will be produced on airport landing slots and on computerised reservation systems (CRS). These are expected towards the end of the year and so are likely to be progressed during the Slovenian Presidency.
**INTERNAL MARKET (SUB-COMMITTEE B)**

**LAND**

The Presidency will continue discussions in working group on the current proposals on rail interoperability (17038/06), rail safety (17039/06) and the European Railway Agency (17040/06), with a view to reaching political agreement in November.

The Presidency has begun discussion of the proposal to recast the rules on access to the road haulage market (10092/07), with the aim of reaching a general approach in November. Discussion of the two linked proposals, on access to the profession of road transport operator (10125/07) and access to the road passenger market (10102/07), will be taken forward as time permits. The Presidency will continue work on the road safety infrastructure directive (13874/06), with a progress report at the October Council.

The Presidency hopes to conclude a first reading deal with the EP on the inland transport of dangerous goods (5080/07) following the general approach reached in June.

The Commission is planning a new proposal on international coach passenger rights, probably limited to persons with reduced mobility provisions, which they aim to publish in November. They are also working on Communications on: land transport security (for publication in September); freight-oriented rail network (for publication in October); multi-annual contracts for the development of the rail network (for publication in November); NAIADES (inland waterways) for publication in November; rail noise (for December); and an urban transport green paper which they intend to publish in October.

The Commission have informed UKRep that the proposed directive on cross-border enforcement of road safety offences is on hold; there may instead be a Communication on this by the end of the year, but this is uncertain. With regard to external agreements, the Commission intends to propose a mandate to negotiate a road and rail agreement with the countries of the Western Balkans.

**MARITIME**

The Presidency will continue work on two proposals with the aim of reaching political agreement by November; these are carrier liability for passengers (Athens Convention) and classification societies. If there is time, negotiations on flag state requirements will be opened.

The Presidency hopes to get a Council resolution in October on establishing a regional LRIT (Long Range Identification and Tracking) data centre.

An informal Ministerial conference has been planned for 23 October in Lisbon; the topic will be Motorways of the Sea and freight logistics. Prior to this on 22 October there will be a high level conference on EU maritime policy which follows last year’s Green Paper (11510/06).

The Commission is planning to publish a Communication on ports policy and a proposal on maritime passenger rights for Passengers with Reduced Mobility in October.

**MULTI-MODAL ISSUES**

The Presidency will aim for a decision during their term on next steps in the implementation of the Galileo programme, and is aware that close co-operation of Member States will be essential to achieving this.

It is expected that the freight logistics action plan will be published in time for presentation at the October Council; the Presidency hope that conclusions can be reached in November.

**FUEL/VEHICLES**

The Presidency will continue work on the proposal for a Directive amending the existing Fuel Quality Directive (EM 6154/07), with a progress report at the 30 October Environment Council and possible inclusion on the 17 December Environment Council agenda depending on progress in negotiations.

On vehicle standards, the Commission has indicated that it will bring forward alternative requirements for Phase 2 of the Pedestrian Protection Directive (2003/102/EC) concerning the protection of pedestrians in the event of a collision with a vehicle. The matter is of some urgency as the amendment will affect existing measures that take effect in September 2010.

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.

18 July 2007
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 and Commonwealth Office

Thank you for your letter of 21 April 2007,29 replying to my letter of 20 June 2006. Sub-Committee B considered your letter at its meeting on 14 May.

We were grateful to you for your report on the progress made in negotiations on the public procurement remedies under the German and Finnish Presidencies. You mentioned four areas of concern from Member States, which the German Presidency has addressed. Could you clarify the issues surrounding the treatment of direct awards; and whether these issues have been resolved? We are aware that the high levels of accreditation required for companies to bid for government contracts can lead to SMEs being prevented market access and trust that the Government are ensuring that this is addressed in discussions on this Directive.

We will continue to hold this proposal under scrutiny; and would be grateful to you for a further report following the discussions in the forthcoming Competitiveness Council and the European Parliament’s first reading of the proposal.

16 May 2007

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 16 May 2007 replying to my letter of 21 April which provided an update on the negotiations on the Commission’s proposal (9138/06: COM (06) 195) to revise the remedies (public procurement) Directives. In your letter, you asked about the issues concerning the treatment of direct awards and about access of SMEs to public contracts.

On the first point, the issues relate to the penalties applied where direct awards are made illegally and also whether post award transparency is needed where direct awards are allowed under the directives. These have been resolved satisfactorily in the discussions with the European Parliament (EP), which I mentioned in my previous letter. Indeed, the discussions between the Presidency, the EP’s Rapporteur and the Commission have been so successful that a first reading agreement is in sight.

There is agreement that where the public procurement directives do not require the publication of an initial notice in the Official Journal, then a standstill period between contract award and conclusion need not apply. If contracting authorities are concerned that direct awards could be challenged then they could either use the standard ten day standstill period or put a contract award notice in the Official Journal following the conclusion of the contract, following which any review would need to be requested within a period of thirty days. If these transparency provisions were to be followed, the penalty of ineffectiveness, where a contract is unenforceable, would not be applied. Ineffectiveness would be applied where there had not been any transparency at the beginning without this being justified and at the conclusion of the procurement procedure, in other words where there had been a very serious breach of the rules.

The UK and other Member States have also been keen to make sure that the penalty of ineffectiveness was only applied for a serious breach of the rules and not a minor breach of, for instance, a mistake in applying the time periods set out in the directives. The discussions between the Presidency, the EP’s Rapporteur and the European Commission have led to an approach where ineffectiveness would be applied, in addition to the case of illegal direct awards mentioned above, only to cases where a combination of infringements has taken place. For a contract to be ruled ineffective, there would need to be an infringement of the procedural rules of the remedies proposal, which deprives the tenderer of the possibility to pursue pre-contractual remedies and an infringement of the underlying public procurement directives, which would have affected the chances of the tenderer of obtaining the contract. Such a combination would amount to a serious breach. Where ineffectiveness is not applied or where there was a breach of the procedural rules, alternative penalties such as the imposition of fines or shortening the duration of the contract, would be applied.

The other area of key concern for the UK, which I mentioned in my previous letter, was that the proposal introduced a mandatory second standstill when call-off contracts were awarded under frameworks following further competition, in addition to the standstill period applied when the framework agreement was originally awarded. The EP supported this approach whereas the Presidency text provided for a derogation for these contracts. This derogation has been agreed for the utilities sector, but a compromise has been agreed for the public sector, which allows for review in cases of breaches of the rules covering mini-competitions. This compromise avoids a mandatory standstill period where mini-competitions are used under framework

29 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 121.
agreements, which would have undermined the points of using mini-competitions, but instead applies voluntary transparency provisions to above threshold mini-competitions alone, in a similar way to direct awards as described above. Where these transparency provisions are properly applied there is no risk of the contract being made ineffective, but where there is a breach of the rules covering mini-competitions the contract could be declared ineffective. The avoidance of the double standstill is a major improvement.

I am satisfied that the amended proposal meets the main UK policy interests set out in the Explanatory Memorandum of June 2006, namely that the proposal’s approach should be proportionate to its objectives of providing for effective remedies where the rules have been breached. The outcome on direct awards, the application of ineffectiveness only for significant breaches and the avoidance of a double standstill for mini-competitions indicate that this proportionate approach has been realised. If the EP votes for the amended proposal on 21 June and the Council agrees it, (which it could do as an “I” point at the Competitiveness Council on 25 June) then the proposal is likely to be adopted this summer.

Your letter also asked about the access of SMEs to public contracts. This matter is not specifically dealt with in the remedies proposal. The UK Government Action Plan for Small Business (January 2004) includes the commitment to create “an environment in which small business are able to compete effectively for a bigger proportion of government contracts”. There are a number of initiatives across government to deliver this policy, including the provision of an opportunities portal to make it easier for small business to find out about public sector opportunities (www.supply2.gov.uk), a standardised pre-qualification questionnaire for sub-threshold contracts aimed at reducing the amount of paperwork that SMEs need to compete, the training of small businesses to become fit to supply and the launch of a Small Business Friendly Concordat—a statement of principles that local government will follow when doing business with small businesses.

13 June 2007

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letter dated 18 June. Sub-Committee B considered it at its meeting on 25 June.

The Committee was grateful for clarification of the issues surrounding the treatment of direct awards, and for the news that these have been resolved satisfactorily.

We are content to lift scrutiny.

26 June 2007

PUBLIC TRANSPORT SERVICES BY RAIL AND ROAD (11508/05)

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

I am writing to let you know the outcome of the European Parliament’s Second Reading of this proposal, and that after nearly seven years the public service obligations (PSO) Regulation will shortly be adopted.

I last wrote to your Committee on 29 June 200610 when I reported on the political agreement that had been reached at the Transport Council on 9 June. You may recall that the outcome on the more contentious points in that agreement:

— provided for direct award for all rail contracts;
— set a 500,000 vehicle-kilometre limit for directly awarding small contracts;
— included measures on transparency that the UK had been arguing for;
— had a maximum duration of 10 years for directly awarded rail contracts, compared to 15 years for competitively tendered contracts;
— included reciprocity provisions only for operators for whom 50% of their business is not compliant with the regulation;
— provided for a transitional period totalling 15 years before the Regulation would come fully into force.

In order not to spread what were expected to be difficult negotiations with the EP over two Presidencies, the Finnish Presidency chose not to process the political agreement to a common position until 11 December 2006 as Germany had made it a priority to seek a deal with the Parliament in the first six months of 2007.

10 Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 184, p 124.
The EP’s Transport and Tourism (TRAN) Committee adopted 42 amendments to the Council’s common position at its meeting on 27 March. But in Council Working Group discussions member states made clear to the Presidency that many of these were unacceptable. The Presidency entered into negotiations with the EP with a view to reaching a compromise without recourse to Conciliation. As a result, a text was agreed and later adopted by the EP at its Plenary Second Reading on 10 May which is acceptable to member states, and the Regulation will be formally adopted once various administrative processes have been completed.

The main changes to the common position are as follows:

— the Regulation may now be applied to passenger transport services by sea in national sea waters insofar as such services are not covered by Council Regulation (EEC) No 3577/92 on maritime cabotage;
— a requirement that an operator awarded a contract must perform a major part of the services itself (except in the case of design, build and operate contracts) has been added. And an internal operator would be required to perform the major part of the services itself;
— the threshold for directly awarding a contract to an SME has been increased from €1.7 million or 500,000 km of services to €2 million or 600,000 km of services;
— provisions to ensure that satisfactory arrangements are in place for the review of contract award decisions have been inserted;
— the transitional period before the Regulation would come fully into force has been reduced from 15 years to 12 years.

The changes continue to avoid negative impact on existing UK public transport arrangements and maintain the transparency measures we wanted. And, while the threshold for direct contract award to SMEs has increased a little, this is offset by the reduced transitional period. Most importantly, the adoption of the new Regulation will significantly increase legal certainty.

20 June 2007

PURSUIT OF TELEVISION BROADCASTING ACTIVITIES

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

Thank you for your letter of 24 April 200731 about the Explanatory Memorandum which I submitted at the end of March concerning the European Commission’s revised proposal for revision of the Television Without Frontiers Directive (TVWF—89/552/EC).

I am grateful for the attention which your Committee continues to give to this issue, and am looking forward to meeting your Sub-Committee B for a second time to discuss it further. I understand that the date for this has been fixed for 21 May.

In advance of that it is right that I let you know that discussion in the Council under the German Presidency has been proceeding very quickly. We think there is a very strong possibility that the Ministerial Culture Council on 24 May—three days after Sub-Committee B’s meeting—will be able to reach political agreement on a text of the Directive which is also acceptable to the European Parliament and the Commission.

My Explanatory Memorandum suggested (para 38) that the proposal would return to the European Parliament for a Second Reading. As we now understand it, however, the process may now be foreshortened, and it is very likely that there will be no substantive Second Reading discussion of the proposals in the European Parliament. If so, we can expect that the revised TVWF Directive—to be renamed of course the ‘Audiovisual Media Services Directive’—would be formally adopted fairly quickly, probably during the term of the Portuguese Presidency in the second half of this year.

NEW PRESIDENCY TEXT

I am attaching a copy of the text upon which the Presidency intends to proceed (not printed). There is very little difference in substance between this and the Commission’s revised proposal which your Committee has recently examined, and I shall therefore confine myself in this letter to discussing the differences.

One of them concerns product placement. This is a difficult issue, which has been the subject of a great deal of discussion between Member States and in the European Parliament.

31 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 118.
The overall UK position which the Government has expressed in these discussions is that there is no objection to bringing specific EU provisions on product placement into the Directive, so long as the text does not require Member States effectively to ban programming acquired from abroad, especially the US, if they wish to continue to prohibit product placement in domestic TV programming (as the UK currently does).

UK-made soap operas, for example, do not contain product placement, whereas US-made films and series—for instance Desperate Housewives or the Spiderman films—routinely do. As long as any product placements are not ‘unduly prominent’, UK viewers do not expect to see these programmes cut or pixilated. The Presidency’s text in our view achieves this objective.

The Presidency’s text is not in our view entirely satisfactory as regards its requirements on media service providers to signal product placement and prop placement to viewers. Article 3f 2(c) requires media service providers to advise viewers of the presence of product and prop placement at the end of each ad break as well as the start and finish of the programme.

There is in our view no need for the Directive to prescribe what should be done in this degree of detail. However, the Presidency’s text does usefully add that the signaling requirement will not be necessary in the case of programming which has not been produced or commissioned by the media service provider and which therefore might contain product or prop placement without the media service provider’s knowledge.

This avoids the potential pitfall of requiring media service providers to make extensive background checks on how programmes that they buy from outside producers were originally financed.

Advertising in Children’s Programmes

The Presidency’s text requires that films and news programmes that contain an advertising break must have a scheduled duration of at least 30 minutes. This is a liberalization as compared with the current Directive, and we do of course welcome that. But there is then a further requirement that children’s programmes with an ad break must have ‘a scheduled duration of more than 30 minutes’.

It is hard to see why children’s programmes need to be singled out in this way. The effect can only be to place even more strain on a genre which is already under threat on commercial free-to-air TV stations.

Access for Disabled People and Food Advertising

At the European Parliament’s insistence new provisions have been introduced relating to accessibility for disabled people and the advertising of food to children. These are at Articles 3ba and 3d.2 of the Presidency text, respectively.

We believe that these texts would not cause implementation difficulties for the UK. Our arrangements in these areas are already advanced.

Conclusion

None of the minor reservations I have described in our view justify the United Kingdom opposing or abstaining the Presidency’s text when it is put to the 24 May Council for political agreement. Should political agreement not be reached then, the risks of further discussion then leading to an undesirable outcome in other, more important areas of the Directive, especially the Country of Origin Principle, would be too great.

In the light of this explanation, I should be grateful for your Committee’s clearance of the Presidency’s document.

3 May 2007

Letter from the Chairman to Shaun Woodward MP

Thank you for giving evidence to Sub-Committee B on Monday 21 May. The Sub-Committee were most grateful to you for your foil engagement with its inquiry into the Directive; and particularly for giving its Members the opportunity to question you on the final consolidated text of a much-changed Directive.

We are satisfied that this represents the best outcome for the UK in the circumstances; and are content to clear the Directive from scrutiny ahead of the Culture Council meeting on 24 May.

22 May 2007
RADIO FREQUENCY IDENTIFICATION (RFID) IN EUROPE (7544/07)

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 30 April. We share your support of research and development in the radio-frequency identification technology sector; and note the many potential applications which such technology has. As such, we welcome this Communication. We note the potential use of RFID in combating counterfeiting and theft; could you clarify what access police services, both national and across the EU, will have to such data; and what provisions there are governing the transfer or sharing of the data?

We are content to lift scrutiny on the document and will await the anticipated legislative proposals. We would also be grateful to you if you could keep us informed of any key developments in this area.

1 May 2007

**Letter from Rt Hon Margaret Hodge MP to the Chairman**

Thank you for your letter of 1 May welcoming the European Commission Communication 7544/07 + ADD 1 COM (07) 96 — Radio Frequency Identification (RFID) in Europe.

You asked for clarification relating to the access that national and European police services will have to RFID data in their efforts to combat counterfeiting and theft.

The majority of RFID data is generated and held by private companies in the ordinary course of business, and there is no legal distinction drawn between this and data generated by other means. In view of this, domestic police services may request and share such data in the normal way, under the data exchange guidelines published by the then Home Office in 2002.

This guidance stipulates that:

“Exchanges of data must have a lawful basis, and must also take place within the constraints of all the relevant legislation, essentially the common law duty of confidence, the Data Protection Act 1998, the Human Rights Act 1998 and various statutory provisions for exchange or prohibitions on disclosure”.

Responsibility for policy on data sharing has passed to the Ministry of Justice, and further information can be found at: http://www.justice.gov.uk/whatwedo/datasharingandprotection.htm

Similarly, Europol does not differentiate between sources of data, and hence the usual arrangements for the sharing of data between national police agencies apply.

There will be further Communications and likely Decisions on RFID, and I shall keep you informed of developments.

22 May 2007

RAPID ACCESS TO SPECTRUM FOR WIRELESS ELECTRONIC COMMUNICATION SERVICES (6280/07)

**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 19 April 2007, which concerned the Explanatory Memorandum of 22 March on this dossier.

I am glad that we agree on the importance of a more technology and service neutral approach to the allocation spectrum across Member States in Europe. I also agree with you that it was right for the European Commission to take a lead (largely following the example of OFCOM) in identifying frequency bands where this new approach was required. It clearly makes little sense in the dynamic and converging market place for Member States to decide specific spectrum allocations.

As stated in the Explanatory Memorandum, I have concerns for the Commission’s apparent desire to take matters a step further and involve themselves in the further coordination and authorisation of the spectrum identified.

32 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, pp 122.
An example here is the spectrum that will become available in each member state when they switch to digital television over the next five years (this spectrum is often referred to as the ‘digital dividend’).

Similar to several other member states, the UK believes that it should be businesses that decide what purposes the freed spectrum should be used for. We do not see a need for the European Commission to either ‘co-ordinate’ this process or be in any way involved in it. This is purely a matter for each member state.

As regards the amount of spectrum that might be available from former military use; I am advised—as you might have expected—that the answer is not that simple. Although the MOD has started to release spectrum, some of it is shared with other organisations (such as the Coastguard or National Rail) and thus how much might be available for new users is unclear. The picture will become clearer after extensive work by OFCOM and other relevant bodies is completed later this year. It therefore follows that it is currently difficult to determine the value of the spectrum that might eventually be freed up; although I can confirm that any decisions made will be used for the benefit of the UK as a whole.

As you know, the Commission are due to bring forward legislation this year, as part of the Review of the Regulatory Framework, which may well take further the obligations of service and technology neutrality in certain frequency bands. We will of course advise you if this happens.

23 May 2007

REDUCTION OF CO\textsubscript{2} EMISSIONS FROM PASSENGER CARS AND LIGHT COMMERCIAL VEHICLES (6204/07)

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

Thank you for your letter of 19 April 2007,\textsuperscript{33} asking for elaboration on aspects of the European Commission’s intention to legislate on car fuel efficiency.

We support in general the Commission’s legislative objective, welcome the ambition shown in aiming for a 130g/km CO\textsubscript{2} target, and believe that this is around the right level for a target. However, we have made clear that our support would be dependent on the results of a thorough impact assessment, and on what mechanism the Commission would propose for implementing the target. As you will realise, there are many possible ways the target could be set (from a simple average across all car sales to setting emissions caps according to vehicle characteristics); preliminary analysis suggests that the form of the target would make a large difference to the costs of implementation.

Regarding the proximity of the target date, we recognise concerns over this. We intend to address this uncertainty, firstly, through pressing for a thorough examination of effects and explanation of the likely legislative approach as mentioned above, and secondly, by reinforcing the importance of a long-term strategy for efficiency improvements. We believe that by giving industry the certainty to plan for the future now, fuel efficiency may be made more achievable in the short term as well.

You mention tyre rolling resistance limits as one instance where the Commission’s intended scope is as yet unstated. As you intimate, the ‘integrated approach’ measures in general have not been explored in detail. Once again, we will be pressing the Commission for a more thorough explanation of how it proposes these measures should work before we can give full support to their anticipated contribution (ie equivalent to a 10g/km improvement).

We will, of course, keep you informed when the Commission’s legislative proposals become available.

21 May 2007

RESEARCH AND DEVELOPMENT: EUROSTARS (13088/07)

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

Sub-Committee B considered this document at its meeting on 22 October.

We support the proposal and in particular efforts to enhance access to funding for research-performing SMEs. With this in mind, what assurance can you give us with regard to the application process for funding under the ‘Eurostars’ projects? We are aware that for many SMEs the amount of ‘red tape’ involved in obtaining

\textsuperscript{33} Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 123.
such funding can be off-putting, and it would be unfortunate if ‘Eurostars’ was subject to the same procedures. We would welcome clarification on this point.

In the meantime, we are content to lift scrutiny.

23 October 2007

ROAD SAFETY: VISIBILITY FROM LARGE VEHICLES (13869/06)

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

Thank you for your letter of 6 December 2006 confirming that Sub-Committee B considered this document and that scrutiny will be maintained at the moment. I am writing to update your Committee on the proposal’s progress and to answer your concerns about subsidiarity and the outcome of our stakeholder consultation.

UPDATE ON LEGISLATIVE PROCESS

As you may recall from my original EM, the aim of the proposal is to improve road safety by increasing the field of vision and reducing blind spots from the existing large vehicle fleet. There has been a considerable amount of progress with this proposal and it is now hoped that a first reading deal will be possible at the 7 June Transport Council. The European Parliament first reading took place on 10 May and adopted 26 mainly textual amendments which are, following discussions between the Rapporteur and the Presidency, consistent with the outcome of the negotiations in the Council Working Group. In particular, this includes an agreement to apply the requirements to vehicles first registered on or after a fixed date, 1 January 2000, rather than 10 years prior to the date of entry into force of the Commission proposal.

On the issue of enforcement, compliance will be the responsibility of the individual Member State with the most likely method being as part of the routine annual roadworthiness test. The procedures for compliance testing as part of the roadworthiness tests will be determined separately and by comitology.

In addition, during negotiations the UK requested that the following items be included in the proposal:

— retro-fitting of front mirrors; and
— that lenses complying with the new requirements bear identification marks to provide both a clear indicator to the consumer when buying replacement lenses and a simple enforcement mechanism.

These items received insufficient support from other Member States to persuade the Presidency to include them. However, in the light of the UK’s intervention, the final Directive will require that the European Commission report on blind-spot accidents generally and review the cost effectiveness of remedial measures which will include retro-fitting front mirrors to heavy goods vehicles.

SUBSIDIARY

The Commission proposal allowed only 12 months for implementation of the requirements. This represents the date by which the national requirements must be in place. It also included mandatory requirements upon Member States to conduct national awareness campaigns highlighting the dangers to road users arising from vehicle blind spots which, as you may recall, was unwelcome to us. The Council recommended that two years should be allowed for implementation and that the mandatory national awareness campaigns should be omitted on the basis that this is a matter of subsidiarity. I am pleased to report that negotiations, including discussions with the European Parliament, have resulted in an amended implementation deadline of 31 March 2009 and, as part of this, the requirement for mandatory national awareness campaigns has been dropped.

CONSULTATION

Our consultation, which concluded on 4 May, sought views from 77 stakeholders including vehicle manufacturers, road haulage sector representatives, police, road safety organisations and other Government Departments and received 19 replies.

Organisations concerned with vulnerable road users welcome the proposal, citing the fact that cost should not be a consideration when lives can be saved, whereas, the road haulage associations believe the cost of fitting additional mirrors would be an excessive burden on their members when compared to the benefits to road safety. They have also expressed concern over the difficulty of fitting mirrors retrospectively and that

34 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 124.
manufacturers will not be able to design and produce the mirrors required to ensure full compliance of the national fleet in the time frame allowed. Since the consultation concluded we have given the responses a preliminary review and our initial findings show that 70% of the respondents are in favour of the proposals, although 53% had some concerns about the impact on industry. The initial findings are attached at Annex A.

We are content with the outcome of negotiations and the responses from the consultation. We believe that the road safety benefits of these proposals outweigh the costs and that we should continue to support the proposal.

As a point of interest, although the Fresnel lens trial, mentioned in my original EM, has now officially concluded, the final report is not yet available.

10 May 2007

Annex A

CONSULTATION RESPONSES

We asked the consultees the following specific questions as well as for their general comments on the proposal. Our initial findings and initial responses are:

Q1. Do you Support Proposal? 70% of respondents support the proposal and 20% are against it.
Initial DfT Response: The majority of respondents are in favour of any road safety initiatives—Those who are not in favour are concerned about the initial cost compared with the projected benefits.

Q2. Do you Foresee any Problems? 53% of respondents foresee problems with supply and compliance and 16% see no problems. 16% did not respond either positively or negatively but expressed concerns.
Initial DfT Response: Industry is concerned that the supply of suitable mirrors will not be readily available in the time scale available.

Q3. Is Front Mirror a Good Idea? 63% of respondents agree with front mirror, 10% disagree and 16% did not respond either positively or negatively but expressed concerns.
Initial DfT Response: The majority of respondents are in favour of any road safety initiatives—Those who are not in favour are concerned about the difficulty and cost of installation on cabs not designed for these mirrors.

Q4. Are PRIA Costs and Benefits Reasonable? 21% of respondents agree with PRIA costs. 36% disagree and 10% did not respond either positively or negatively but expressed concerns.
Initial DfT Response: Some respondents appear to show bias according their support for the proposal and others appear to have confused the EP and UK PRIA figures.

Q5. Competition and Small Business Effect Reasonable? 26% of respondents agree. 26% disagree and 10% did not respond either positively or negatively but expressed concerns.
Initial DfT Response: Most respondents did not answer this question. Those that did, appear to show bias according their support for the proposal.

RESPONDENTS VIEWS

Industry representatives (53%) were concerned about the:

1. financial impact, which would be borne by their members over a short time period—financial support should be given by Government
2. evidence in PRIA not justified, overestimates benefits and underestimates costs
3. mirror manufacturers, who may not be able to supply the quantity of mirrors required in the short time frame available—phased implementation preferred
4. difficulty of installing additional mirrors onto older vehicles—fitment should be optional
5. difficulty of verifying mirror compliance
Local Government and Police Forces (15.5%):
1. fully supported the proposals
2. wanted awareness campaigns included in the proposal
3. had no concerns

Vulnerable Road User representatives (21%):
1. PRIA underestimates benefits and overestimates costs
2. wanted the front mirror included in the proposal
3. wanted awareness campaigns included in the proposal
4. were not concerned about the financial impact on industry
5. some wanted full 2003/97 compliance included in the proposal

Camera/monitor manufacturers (10.5%) were concerned that:
1. camera/monitor systems are not an option and the proposal should be reworded to include these
2. one mirror manufacturer (allegedly) supplies more than 50% of the EU market.

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<td>70% of respondents support proposal.</td>
<td>53% of respondents foresee problems with supply and compliance.</td>
<td>63% of respondents agree with front mirror.</td>
<td>21% of respondents agree with RIA costs.</td>
<td>26% of respondents agree with small business effects.</td>
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<td>20% against (main industry stakeholders).</td>
<td>16% see no problems and 16% have concerns (mainly pro camera).</td>
<td>10% disagree and 16% have concerns (mainly pro camera).</td>
<td>36% disagree and 10% have concerns (mainly pro camera).</td>
<td>26% disagree and 10% have concerns (mainly pro camera).</td>
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Respondent Representation

| 10 of 19 = Road Haulage Industry (53%) | 1 of 19 = Local Government (5%) | 2 of 19 = Police Force (10.5%) | 4 of 19 = Vulnerable Road Representatives (21%) | 2 of 19 = Camera/ Monitor Manufacturers (10.5%) |

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 21 May. The Committee subsequently decided to hear evidence on the Directive from the Road Haulage Association, which it did on 4 June. We will in due course send you a transcript of the session.

In light of the evidence received, the Committee has a number of questions regarding the Directive, and the Government’s position on it. We would be grateful for such responses as you can offer ahead of the Transport Council, and for a summary of negotiations and agreements reached after the Council.

We would like to know what arrangements will be made to police the compliance of vehicles arriving in the UK from other EU member states. The addition of rear-view mirrors to Heavy Goods Vehicles is comparatively easy to police, based on a simple visual assessment. Given the importance of the rear-view mirror to preventing blind-spot accidents we would be grateful for an indication of what plans you have to prevent the onward journey of Heavy Goods Vehicles arriving in the UK without the required rear-view mirror.

We understand that estimates of the projected cost of complying with the Directive have been produced. However, we would be grateful to know what procedures will be put in place to monitor the actual cost to industry.

Turning to the process of consultation, despite the impact of this Directive on the road haulage industry, we understand that no meeting took place between the Road Haulage Association and officials from the Department for Transport during the actual consultation period. Could you explain why this is the case?
Finally, we would be grateful for your response to the Road Haulage Association’s view that a more sensible date for full implementation of the Directive should be put back to 2010.

We will maintain scrutiny of this document at this stage.

5 June 2007

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 5 June confirming that Sub-Committee B had considered my letter of 10 May concerning this document and that scrutiny will be maintained at the moment. I am writing to answer your concerns about the policing of the measures, particularly with respect to visiting vehicles, the actual cost of compliance to industry, the consultation with the Road Haulage Association and the date of implementation.

Policing of the Measures, particularly with Respect to Visiting Vehicles

The issue of cross border traffic was raised during the Council negotiations, this being of concern to Member States in mainland Europe as well as ourselves. While the UK had sought a marking requirement to identify compliant mirrors this did not receive enough support to be adopted. The Directive will place a responsibility upon the Member States to ensure that their national fleet is modified in accordance with the enhanced vision requirements.

It is expected that most Member States will elect to include the compliance check as part of the annual inspection requirement; this would reduce the cost impact on the haulier. An alternative view is that the revised mirrors could be supplied with documentation that could be carried on the vehicle as evidence that the mirror has been modified. As you may recall from my last letter the procedures for compliance testing have still to be agreed and this will be the responsibility of separate discussions under comitology. However, if compliance with this retrospective requirement is completed as part of the national annual inspection I would anticipate us continuing to accept visiting vehicles through reciprocal recognition of standards in much the same way as is already the case with respect to other areas of vehicle roadworthiness.

The Actual Cost of Compliance to Industry

Our consultation document included both the European Commission proposal, which included their cost benefit analysis, and our Partial Regulatory Impact Assessment. The European Commission had consulted with vehicle manufacturers in order to establish the costs of retrofitting both the improved rear view mirror and the side mirror and had established a cost for compliance of £150 per mirror. We were not convinced that this analysis had taken proper account of the installation costs that could be expected for certain vehicles, especially the older fleet.

In our analysis we considered separately the cost for a simple change in the lens (£115) and the cost where a replacement (or new) mirror assembly was required (£236). We also considered the cost of installation to the vehicle (£50). In addition to the conversion costs, our Partial Regulatory Impact Assessment included an estimated increased operating cost associated with increased fuel consumption and possible mirror replacement resulting from breakages. The conclusion of our analysis was that the compliance cost would be higher than those promoted by the European Commission. Nevertheless, benefit/cost ratio for the retrofitting measure still returned a positive result. We have no plans to conduct a post implementation compliance cost analysis.

The Consultation with the Road Haulage Association

This dossier is concerned with the protection of vulnerable road users and has proceeded through the negotiating stages with unusual speed and this timing has affected our handling of the consultation. In this instance, we did not hold consultation meetings with any of the 77 stakeholders although the issue was raised at a meeting with the Society of Motor Manufacturers and Traders (SMMT) immediately before the consultation process began. The Freight Transport Association (FTA) were present at this meeting but the Road Haulage Association were not.

Nonetheless, the Road Haulage Association has routine contact with the Department and officials would have been available to meet with them and discuss the dossier had this been requested. The Road Haulage Association did provide written comment in response to the consultation exercise. They raised two issues. The
first was of cost and I have dealt with this matter earlier in my reply. The second concerned the possible retrospective fitting of a front mirror on which, although not part of the proposal, the Department took the opportunity to canvass views as part of the consultation exercise.

THE DATE OF IMPLEMENTATION

We are not aware of any representation to the Department, or others, that sought an implementation date of 2010. This may be misunderstanding of the original European Commission proposal.

The Commission originally proposed that the Directive would be retrospective by 10 years from the date of adoption. This anticipated that the affected fleet would be those registered on or after a date in 1998. There was limited support for this proposal during the negotiation. The majority of Member States felt that the cost of converting vehicles up to 10 years old was disproportionate to their remaining life and it was agreed that the measure should be limited to vehicles registered on or after 1 January 2000.

As I explained in my last letter to you, the Commission proposal allowed only 12 months for the full implementation of the requirements (transposition into national law and fleet conversion) whereas the Council recommended that two years should be allowed for legal implementation with a further 12 months for the fleet to comply. The first reading agreement that has been reached between the European Parliament and Council accepts that compliance with the Directive will be required by 31 March 2009—six months earlier than the Council recommendation. We intend that the reduction in time permitted by this agreement will be compensated for within the transposition timing and that the industry will be given a minimum of 12 months from that date for compliance.

Following agreement with the European Parliament it is not expected that there will be any further changes to this dossier and I will write to you again at the end of that comitology process and apprise you of the agreement reached if that would be helpful.

I hope that the above satisfactorily addresses the concerns raised by your Committee and that scrutiny can be lifted.

7 June 2007

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 7 June. Sub-Committee B considered it at its meeting on 11 June and subsequently asked the Road Haulage Association (RHA) to comment on it, in light of evidence which they gave to the Committee on 4 June.

We have received comments from the RHA and we are now content to clear the document from scrutiny.

19 June 2007

ROAD TRANSPORT (10092/07, 10102/07, 10114/07, 10117/07, 10119/07, 10125/07)

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

Thank you for the Explanatory Memorandum dated 25 June 2007 which Sub-Committee B considered at its meeting on 16 July 2007.

The Sub-Committee is content to lift scrutiny for the Proposal for a Regulation of the European Parliament and of the Council on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States and the Proposal for a Regulation of the European Parliament and of the Council on common rules for the international carriage of passengers by coach and bus (recast). We would like to be kept updated on the points on which you have expressed reservations:

(a) the extent to which cabotage might be contractually based rather than ad hoc
(b) the need to examine the Commission’s proposals to ensure that account is taken of road safety and enforcement considerations
(c) the possible economic impact on those currently providing international regular services and
(d) the exclusion of local bus services which cross international borders from the EC authorisation regime
We will hold under scrutiny the Proposal for a Regulation of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator until negotiations in the Council Working Group have dealt with those issues that are considered important, not least the effect the provisions of the proposed Regulation will have on small companies. We would like to be kept informed of the progress of negotiations in the Council Working Group.

18 July 2007

ROAD TRANSPORT FUEL (6145/07)

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

Thank you for your supplementary EM, including the partial Regulatory Impact Assessment. Sub-Committee B considered this at its meeting on 8 October.

We note that your detailed consideration of the proposal has not allayed the concerns expressed in your initial EM, submitted in February. We continue to share your concerns, and we await with interest the outcome of your stakeholder consultation.

Given the wide-ranging nature of your concerns, we would be grateful to know if you are able to gauge the level of support which your proposed negotiating stance is likely to find among other Member States.

We will maintain scrutiny at this stage.

9 October 2006

SERVICES IN THE INTERNAL MARKET (15482/06)

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

The Chairman of Sub-Committee B, Lord Freeman, wrote to my predecessor, the Rt Hon Ian McCartney MP, on 25 June 2007 following a meeting of Sub-Committee B of the Select Committee on the European Union, which took place on 11 June. His letter discussed the implementation of the Services Directive and asked for additional information on the following points:

1. The Department’s plans for the dissemination of information about the requirements for compliance with the Directive, in particular to small and medium-sized firms

We will be raising awareness of the Directive by:

— Publishing a consultation document setting out our proposals for implementation. This is planned for November this year.
— Updating information on the BERR website. Current information can be found at: http://www.berr.gov.uk/europeandtrade/europe/services-directive/page9583.html
— Continuing our regular e-bulletin alerting stakeholders to developments. There are currently over a thousand subscribers.
— Holding meetings and events for stakeholders. For example we held an event on 11 June attended by over 100 stakeholders. This particular event included presentations by officials from both BERR and the German Federal Government implementation teams, as well as from Panlogic Ltd, who undertook a survey for us on likely user requirements for the Points of Single Contact. We also undertake presentations and briefings for individual organisations when asked.
— Regular meetings with a core group of key stakeholders representing all sizes of business, consumer groups and the unions and including the CBI, BCC, IoD and FSB. These organisations in their turn disseminate information to their members.
— Writing articles to appear in stakeholders’ journals, magazines and newsletters where appropriate.

Our policy concerning the implementation of any obligations on service providers under the Directive (for example, the information obligations in Article 22) will be formulated through consultation with stakeholders. Information on any such obligations developed will be disseminated through the routes set out above.
2. **The tools available to the European Commission to police the Directive**

The European Commission is organising regular meetings with Member States in order to encourage effective and consistent implementation, for example through the sharing of best practice, and it will be issuing Member States with guidance on implementation later this summer. Immediately after the deadline for implementation, Member States will commence a six-month peer-review of other Member States’ compliance with the Directive based on their submitted implementation reports. BERR is working with the Commission and other Member States to ensure that this process is as robust and transparent as possible. Additionally, once the deadline has passed, the Commission will be able to commence infraction proceedings against any Member State that has not implemented the Directive properly.

3. **Services omitted from the Directive and which would benefit from inclusion in the future**

A broad summary of some of the sectors excluded from the Directive is set out below. The detail of these provisions is in Articles 1 to 3.

*Sectors and groupings excluded from the scope of the Directive*

- Non-economic services of general interest (SGIs)
- Financial services
- Electronic communications
- Transport services
- Temporary work agencies
- Healthcare
- Audio visual
- Gambling
- Exercise of official authority
- Certain social services
- Private security services
- Notaries and bailiffs
- Taxation

Article 17 also sets out a long list of sectors and groupings derogated from the provisions concerning the Freedom to Provide Services.

Some areas unaffected by the Directive are criminal law, labour law and private international law.

The Sub-Committee will recall the controversial history of this Directive and that negotiations were protracted. The final text represents a good outcome for the UK and our priority now is to ensure that the Directive is implemented effectively and on time across the EU. Some areas that are excluded from the scope of the Directive or derogated from the freedom to provide services provisions are covered by other EU internal market directives. However, the Government considers that further measures are needed in some of these key sectors such as energy, telecoms, financial services and postal services. Key barriers include continued existence of protected national monopolies, as well as legislative requirements and burdensome administrative practices.

I hope that you and the Chairman of Sub-Committee B will find this information useful. I am also enclosing a copy of the speaking note prepared by Pat Sellers, Director of the Services Directive Implementation team at BERR, in advance of her attendance at the briefing on 11 June.

*31 July 2007*
TEXT USED BY SERVICES TEAM DURING INFORMAL BRIEFING FOR HOUSE OF LORDS EU SUB-COMMITTEE 11 JUNE 2007

Implementation of the Services Directive

Thank you for inviting us here today to outline the progress we have made to date with implementing the Services Directive and our plans for the future.

The final text of the Directive was published in the *Official Journal* on 27 December 2006. At that point the three year countdown to implementation began.

As this Committee has already noted, implementation is a complex process. We will need the help and cooperation of all Whitehall Departments, local authorities and regulators, and must keep in close step with business, consumers and trade unions to ensure that we fully understand their requirements as consumers. Indeed we have established a regular meeting of key stakeholders from these groups to discuss implementation.

Essentially, there are four workstreams:

— Screening legislation and administrative practices to ensure that they comply with the Directive and amending and simplifying where necessary. We are carrying out an exercise with other Government Departments to determine which pieces of legislation fall within the scope of the Directive. Legislation within scope is being assessed against a check list to see whether it complies with the Directive. Any provisions which are non-compliant will need to be amended or abolished as the case may be.

— Setting up a Point of Single Contact, a website through which service providers will be able to find out what they need to know about operating in the UK and complete the necessary formalities to do so. We have commissioned a short study to find out what potential users of the site want and expect from it. Provisional findings suggest, amongst other things, that the site needs to be proactive and integrate with existing business services and provide basic information free of charge. Once the study is finalised Ministers will be able to consider the findings along with the costs and practicalities before narrowing down the options.

— Setting up administrative cooperation arrangements between our competent authorities (supervisory or regulatory bodies such as professional bodies or local authorities) and those in other Member States. Competent authorities will be obliged to offer each other Mutual Assistance to enable the effective supervision of service providers. Mutual assistance requests will either be routed to competent authorities via National Liaison Points, or directly through the IMI (Internal Market Information) system currently being developed by the Commission. The IMI system will help authorities identify the correct corresponding authority in other Member States and will provide automatic translation of queries. The system is currently being piloted with the Mutual Recognition of Professional Qualifications Directive and once properly up and running we will be training our competent authorities in its use.

— Implementing the provisions in the Directive on quality of services, so that, for example, service recipients have access to some basic information on providers and can easily discover what the means of redress are in different Member States.

This is a major project by any standards. We have adopted project planning disciplines with clear milestones and deadlines and have identified key risks to ensure that we can implement on time and anticipate possible issues. We also have a Project Steering Board to advise us on implementation, comprising representatives of large and small businesses, consumers, those who will be involved in delivering the Directive, the Treasury and the Better Regulation Executive.

We intend to run a full public consultation on our plans, which we hope to launch in November. Following analysis of the responses, Ministers will need to take decisions on the policy issues and subsequently any amending legislation will need to be drafted and introduced. If any primary legislation is necessary, then work contributing to that Bill will have to be completed to meet fourth session deadlines.

Effective implementation is not just an internal matter. We also need to keep a close eye on and influence the implementation process in other Member States to ensure that the full benefits accrue to UK businesses and consumers. This is a strong message that we have been receiving from our business stakeholders in particular.
To this end, we have been participating actively in a series of implementation working groups organised by the Commission, sharing our views and ideas. Three have been held to date with more planned for the future. We have had bilateral discussions with the Commission and informal meetings with a wide range of Member States, both to discuss common points of interest and also to provide advice to those several Member States who have asked for it. In this way we can indirectly influence the implementation process across the EU.

We are also keen to provide opportunities for UK business groups and others to find out about implementation elsewhere. Today, Christian Storost from the Ministry responsible for implementing the Directive in Germany, has come to talk to a large gathering of our stakeholders and subsequently held discussions over lunch with a smaller group of business representatives.

That is a very brief summary of the current position. We would be happy to amplify these points in discussion or to try to answer any questions which you may have.

STRENGTHENING THE INTERNAL MARKET FOR MOBILE TV (12028/07)

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

Thank you for your Explanatory Memorandum dated 5 September 2007, which Sub-Committee B considered at its meeting on 8 October 2007.

The Committee welcomes the efforts made by the Commission to assist European industry to make the most of the opportunities in the market for Mobile TV, especially with regards to the regulatory environment. We see the advantages of co-ordination and co-operation in an effort to ensure interoperability of networks and applications.

However, we feel uneasy about the Commission’s wish to promote one technical standard or a specific band of spectrum over others. We certainly think that going as far as mandating a certain standard is at this stage premature, and we would like to see the Commission reconsider the merits of such a move.

In the meantime, as the Communication does not contain legislative proposals, we are content to clear this document from scrutiny. We will be following closely the conclusions of the Communications Council in November and we would be grateful if you could keep us informed of any developments vis-à-vis the Commission’s proposals until then.

17 October 2007

THIRD RAIL PACKAGE (7147/04, 7148/04, 7149/04, 7150/04, 7170/04, 7172/04)

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

Further to my letter of 19 February, and your reply of 7 March 2007, I am writing to update you on the outcome of Conciliation between the Council and European Parliament on the Third Railway Package, which concluded on 26 June, following the rejection by the Council of the version which came out of the EP plenary debate and vote on 17 January.

The EP will now vote on whether the text agreed during the conciliation process should either be accepted or rejected at their third reading vote on the 24 September. The Council will also have to formally vote on whether to accept the package. We do not have a date when the Council will take a vote on this. However, the strong expectation is that both the EP and Council will vote to accept the package as agreed during conciliation: all three main political groups in the EP were involved in the conciliation negotiations and no Member State has, to date, expressed an intention to vote against the agreement.

Following the conciliation process, the position with regards to the three measures is:

- **Market Liberalisation**, the issue of concern was the wording for the levy on railway undertakings providing an international service. This was a drafting issue, which has been resolved by amending text, which is acceptable to the UK. We remain committed to eventual opening of domestic passenger rail markets. The requirement for a report by 2012 on the state of readiness for domestic opening was accepted by Council as part of the conciliation agreement, so this is now one step closer;

35 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 141.
— **Train Crew Licensing,** the text as it stands does not present difficulties for the UK. There is a derogation to exclude drivers on domestic services and provisions to limit application to a limited number of non-driving staff, rather than the original proposal to encompass all on-board safety related crew. Member States will be able to define which individuals are covered;

— **International Passenger Rights,** the sticking point was the extension of scope to domestic services, and the length of time allowed for implementation. The agreed text now identifies a set of core rights for all passengers and the extension of the Regulation to domestic services, other than urban, suburban and regional services. On the time allowed for implementation, there is a derogation from the extension to domestic services of five years followed by two further periods of five years each.

The only other sticking point had been the carriage of cycles on trains. However, a new Recital was suggested by the Presidency: “Railway undertakings shall enable passengers to bring bicycles on to the train, where appropriate for a fee, if they are easy to handle, if this does not adversely affect the specific rail service, and if the rolling-stock so permits” which is acceptable to the UK.

The UK (both the Department and industry) had been active in lobbying and helping the Presidency with drafting changes throughout the conciliation process, and support the outcome reached following the conciliation process. I know that your Committee shared our concerns on this package of dossiers, and hope that you are similarly content with the outcome and will be able to clear scrutiny of the package, prior to the EP third reading vote and final adoption.

11 July 2007

**Letter from the Chairman to Tom Harris MP**

Thank you for your letter of 11 July, which Sub-Committee B considered at its meeting on 16 July.

We are grateful to you for your report of the outcome of conciliation. One aspect of the compromise package led to questions during the Committee’s meeting, and we would be grateful if you could assist the Committee in this matter: with regard to the extension of scope of international passenger rights to domestic services, what is the definition of ‘regional services’? We look forward to your response.

Nonetheless, in light of the compromise position reached on the overall package, we are now content to lift scrutiny.

18 July 2007

**TRANS-EUROPEAN TRANSPORT AND ENERGY NETWORKS (10089/06)**

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

Further to my letter of 19 December 2006,36 I am writing to advise your Committee of the adoption of a Council common position relating to EM 10089/06 laying down general rules for the granting of Community financial aid in the field of trans-European transport and energy networks (TENs).

On 16 March 2007, the Council published document number 17032/06 which sets out the common position on a Regulation laying down general rules for the financing of TENs projects from 2007–13. This was accompanied by a draft statement of the Council’s reasons, document number 17032/06 ADD1.

The Council stated that the common position was agreed on the basis of informal tripartite negotiations, following a series of meetings between the Presidency, the rapporteur and the representatives of the Commission.

The common position received its Second Reading in the European Parliament on 21–24 May 2007. As no amendments were submitted, the President of the Parliament declared in document number 9750/07 that the common position would be adopted.

16 June 2007

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36 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 142.
TRANSPORT, TELECOMMUNICATIONS AND ENERGY COUNCIL, OCTOBER 2007

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

I am pleased to confirm the agenda items for which BERR is responsible, at the forthcoming Transport, Telecommunications and Energy Council (‘Telecoms Council’) in Luxembourg on 1 October 2007. This will be the first of two Telecoms Councils under the Portuguese Presidency of the EU.

The main item on the agenda will be the political agreement on the proposal for a Third Postal Services Directive. Following the endorsement by the European Parliament of a compromise agreement concerning the date for achieving a Single European Market in postal services, it is expected that this Council will also give political agreement to a text that will lead to full market opening by the end of 2010: with derogations permitted for the more recent Accession States.

I intend to express my acceptance of the outcome, on the grounds that it will enable the development of a real and competitive European market for the postal sector, and bring about significant economic and consumer benefits. I will also take the opportunity to stress the importance of continuing to exclude express courier operators from regulatory control, as to do otherwise would represent an unnecessary expansion of regulation.

The whole of the 1 October session of the Council will be given over to discussion on the postal dossier. It will conclude with a single item under ‘other business’ where the Presidency will provide an update on the Commission’s proposal for Mobile Satellite Services. We are not expecting any discussion at this time. The Council will return to this issue in more detail on 29 November, in advance of which an Explanatory Memorandum will be submitted to Parliament.

I will write to you again after the Telecoms Council to provide an update on discussions.

27 September 2007

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

I will attend the first Transport Council of the Portuguese Presidency which takes place in Luxembourg on 2 October.

The June Transport Council adopted a Resolution on the Galileo satellite navigation programme, concluding that the concession negotiations had failed and should be ended. The Resolution asked the Commission to prepare detailed alternative proposals for taking the project forward, based on a thorough assessment of costs, risks, revenues and timetable. It is expected that the Commission will present a document to the October Council. This will be followed by an exchange of views.

The Government welcomes the efforts made by the Commission and Presidency in progressing this programme, but takes the view that more clarity on the Commission’s projected costs, a more thorough assessment of the risks and further assurances on the governance and procurement proposals are necessary before a decision can be taken on the Commission proposals.

The Commission will also report on the state of play on EGNOS, the European Geostationary Navigation Overlay Service. This augments the two military satellite navigation systems already operating, the US GPS and the Russian GLONASS systems.

The Council will be asked to reach a General Approach on a Directive on road infrastructure safety management. The aim of the Directive is to ensure that the safety effects of road projects are assessed, and audited; and that on the existing road network high-risk sections are identified and managed, and that safety inspections are carried out. The provisions would be mandatory on roads forming part of the Trans European Network. In the UK current requirements for national roads already largely meet the requirements of the Directive. The UK recognises that this Directive will positively support action to improve road safety across the EU. Following discussion in Council Working Groups, and successful negotiation by the UK in concert with like-minded Member States, the Directive is now much less prescriptive on the details of the systems to be adopted. The UK welcomes this approach, which should ensure that the desired safety benefits are obtained, without requiring nugatory system changes and additional costs in Member States which already have well-functioning safety management systems. The proposal was initially rejected by the relevant European Parliament Committee but MEPs meeting in Plenary have requested a second examination. There is currently no timetable for this.
The Council will aim to reach General Approach on each of two proposals on rail interoperability and safety which have been negotiated together. These amendments primarily relate to the issue of cross acceptance of rolling stock which is seen by the rail industry as the most serious barrier to the creation of new railway undertakings in the freight sector and a major stumbling block affecting the interoperability and liberalisation of the European rail system. The two proposals are a Directive on interoperability of the Community rail system, combining three previous Directives and a directive amending the 2004 Directive on rail safety. The UK supports the objectives of the Commission’s proposals and welcomes any initiative that improves cross acceptance of rolling stock and simplifies and modernises the technical part of the regulatory framework for rail. The proposal has the potential to reduce costs for UK operators and Rolling Stock Companies. The current Council text is supported by the UK with no scrutiny reservations.

The Presidency and the Commission will report on the 36th Assembly of the International Civil Aviation Organisation (ICAO), which takes place on 18–28 September in Montreal. Issues for discussion in Montreal include aviation and the environment, air safety, security, and air traffic management.

The Council is expected to agree the terms of a mandate authorising the Commission to begin aviation negotiations with Canada on behalf of the EU and its Member States. The UK will support the mandate.

The Council will be asked to agree Conclusions on the recent Commission Communication entitled “An Action Plan for airports capacity, efficiency and safety in Europe”. The Communication sets out the Commission’s action plan to address what it sees as a potential capacity shortage at EU airports in the coming decades due to continued growth in demand. The UK is broadly content with the Communication, including its emphasis on making best use of existing airport capacity. But actions arising from it must be coherent with other EU level initiatives addressing similar issues such as the Single European Sky and a recent review of all EU aviation regulation carried out for the Commission. In some places, the Commission also favours new legislation where sharing good practice is more appropriate, given the differing circumstances in Member States. The UK’s concerns were shared by other Member States and are reflected in the Council Conclusions. Specific actions to implement the Communication will be submitted by the Commission to the European Parliament and Council where appropriate.

The Council will be asked to agree a Resolution on the setting up of an EU Regional Data Centre for the Long Range Identification and Tracking of ships (LRIT), to become available in late 2008 under an IMO regulation. The majority of EU Member States support the development of a Regional Data Centre for the EU. There was a substantial policy debate on this issue at the June Council. The Commission gave a commitment to provide information ahead of the formal Decision.

The Commission and the European Maritime Safety Agency (EMSA) have produced a paper in an attempt to address the technical and policy issues raised by Member States during the June Council meeting. The paper does not provide all the answers however, and there are outstanding issues still to be agreed within the IMO. Given the short implementation timescale the UK will support the establishment of a Regional Data Centre. Our support will be qualified and we will urge the Commission and EMSA to work collaboratively with Member States to ensure that optimum technical solutions are developed. The UK will, if necessary, submit a Minutes Statement, to ensure that our views are clearly understood by all stakeholders.

Under AOB, the Commission will present its Green Paper on Urban Transport.

27 September 2007

Letter from Rt Hon Rosie Winterton MP to the Chairman

I attended the transport session of the Transport, Telecommunications and Energy Council, held in Luxembourg on 2 October. The Portuguese Minister for Public Works, Transport, and Communications, Mr Mario Lino, was in the chair.

At the June Council, Transport Ministers agreed a Resolution calling on the Commission to submit proposals on ways to take forward the Galileo satellite navigation programme, following acknowledgement by that Council that the PPP process had failed. Accordingly, on 19 September the Commission issued a Communication dealing with costs, risks, procurement and governance, together with a proposal for amendment of the Galileo financing regulation and provision for funds to be transferred from the margin available under the Agriculture and Administration budget headings, to fund Galileo in the Competitiveness heading (1A).

With insufficient time for Member States to give detailed consideration to the Communication or to seek the views of national parliaments, discussion on Galileo was confined to an exchange of views. (I am writing separately to the Committee with an Explanatory Memorandum covering the Communication). In the exchange, there was wide support for the Galileo project and for reaching an integrated decision by the end
of this year. The Council Conclusions reflect these points. In the discussion I made clear the UK’s strongly held view that the project should offer value for money for the Community, our opposition to a revision of the financial perspectives, and our firm view that, if the Community decides to proceed with a public procurement of Galileo, any additional funding should be found by reprioritisation within heading 1A.

Following its agreement in principle in June, the Council adopted a Resolution to establish an EU Regional Data Centre for Long Range Identification and Tracking (LRIT) of ships. This will create a single EU system for ship tracking, in line with the requirements of the International Maritime Organisation (IMO). A decision was required prior to the participation of EU Member States in the IMO’s Maritime Safety Committee (MSC) meeting, starting on 3 October. I welcomed the establishment of the data centre, while noting some remaining concerns on system integration and cost-sharing. We also presented these concerns in writing. A UK proposal to set up an ad-hoc working group to address these issues was supported by the Presidency, the Commission, and a number of Member States.

The Council reached a general approach on the draft Directive on road infrastructure safety management. The text of the General Approach is acceptable to the UK.

The Council reached a General Approach on each of two proposals on rail interoperability and safety which have been negotiated together. They are a Directive on interoperability of the Community rail system, combining three previous Directives, and a directive amending the 2004 Directive on rail safety. The General Approach texts on these two proposals are acceptable to the UK and successfully deal with our original concerns on establishing a clearer approach as to how the extension to the whole of the Member States rail system will be taken forward.

The Presidency and the Commission reported on the outcome of the 36th Assembly of the International Civil Aviation Organisation (ICAO) in Montreal. The outcome on emissions trading had been disappointing. The Commission wished to examine possible further action, either within ICAO or at the forthcoming UN negotiations in December, and suggested that the Transport Council return to this issue at its November meeting.

The Council adopted a decision giving a mandate for the Commission to open negotiations on a comprehensive aviation agreement with Canada. The terms of the mandate are acceptable to the UK.

The Council adopted Conclusions on the Commission’s Communication on ‘An Action plan for airport capacity, efficiency and safety in Europe’. The Conclusions were acceptable to the UK.


5 October 2007

VEHICLE APPROVALS DIRECTIVE (11641/03, 14469/04)

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

I am writing to update you on progress with negotiations on the draft Vehicle Approvals Directive. This proposal was the subject of Explanatory Memoranda 11641/03 and 14469/04 that cleared scrutiny by your Committee on 12 December 2006 following my letters of 10 March 2006 and 8 December 2006.

The European Parliament had its Plenary Second Reading of the proposal on 9 May 2007. The Presidency has been liaising with them and has developed a revised package of measures which are broadly comparable with the Parliament’s amendments, and will therefore enable a second reading deal to be reached on this dossier.

Over 40 amendments were proposed. A number of these simply improve the clarity of drafting while others are more substantive. Of the latter group, UK interests have fared particularly well. The key issues that you may wish to note are:

— wheelchair accessible vehicles have been included in the proposal as a specific class of vehicle. This is a particular success for the UK, with industry and the Department joining together to develop the technical specifications to help British industry and consumers of these vehicles;

38 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 145.
— measures on the sale of replacement parts will now be set within a tighter framework, that requires the Commission to produce an evidence report setting out the risks to road safety or the environment, and the effects on consumers and manufacturers, before new measures are adopted;

— comitology provisions have been improved—both to ease the administrative burden and, where appropriate, to ensure scrutiny by the Council of Ministers and the European Parliament; and

— implementation dates have been amended in accordance with industry’s preferred approach for large passenger carrying vehicles. This change allows greater flexibility for manufacturers, provided such vehicles meet EC rules during the interim period.

Overall I believe the package is noticeably better than the Common Position text. We have maintained contact with key stakeholders throughout the most recent negotiations and they are broadly content. Accordingly, we are in favour of the resulting compromise and I expect the final package to be adopted before the end of June 2007.

As previously advised, my department has a comprehensive programme underway to implement the Directive, involving industry and other interested parties. This will 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.

24 May 2007
Foreign Affairs, Defence and Development Policy (Sub-Committee C)

9TH EUROPEAN DEVELOPMENT FUND: REASSIGNMENT OF RESERVE

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

Sub-Committee C considered the above document at its meeting on 10 May 2007 and decided to clear it from scrutiny.

We support the proposed decision, but believe that care should be taken to ensure that funding for EU long-term development objectives does not suffer due to a focus on short-term priorities. As set out in your EM, the key priority for the Government is to provide additional funding to the African Peace Facility (APF). This in effect shows the importance of putting the financing of peacekeeping by African regional organisations on a sustainable long-term footing. In particular, a better mechanism is needed for carrying funds over. This is crucial to ensuring that African countries can deal with their own security challenges in an effective manner.

We are aware that several proposals have been made on how this objective could be achieved, with one example being the Report of the UN Secretary-General “In Larger Freedom”, which recommended that:1

“The rules of the United Nations peacekeeping budget should be amended to give the United Nations the option, in very exceptional circumstances, to use assessed contributions to finance regional operations authorized by the Security Council, or the participation of regional organizations in multi-pillar peace operations under the overall United Nations umbrella”.

We would therefore be grateful if you could provide details of the proposals currently on the table to achieve the objective of the sustainable financing of African peacekeeping, as well as what action the EU is taking to make progress towards that objective.

11 May 2007

Letter from Gareth Thomas MP to the Chairman

Thank you for your letter dated 11 May confirming that the Committee had cleared this proposal from scrutiny but seeking further information on the current range of proposals to provide for the sustainable financing of African peacekeeping, including any actions the EU is taking in that regard.

The lack of predictable, flexible financing for African peace missions remains a serious constraint on their ability to fulfil their mandates, as we have seen with the African Union mission in Darfur. This has become widely recognised and discussions are underway in both the UN and EU on finding sustainable solutions.

Tony Blair raised this issue during his recent visit to Sierra Leone and South Africa and said the UK would work for a mechanism at the UN which secures UN funding for AU peacekeeping operations. We will be taking forward this initiative, building on:

— An open UN Security Council (UNSC) debate in March, chaired by South Africa, which discussed ways of enhancing co-operation between the UN and regional organisations in conflict management, with a particular emphasis on the AU. A subsequent Security Council Presidential Statement requested the Secretary-General to provide specific recommendations.

— A recent UN Security Council Mission to Africa (jointly led by the UK and South Africa) which specifically agreed with the AU’s Peace and Security Council that the UNSC would “examine the possibility of the financing of a peacekeeping operation undertaken by the AU or under its authority”.

The EU recognised the need to support African peace support missions in 2004 in establishing the Africa Peace Facility (APF). It has allocated up to €400 million (£269.6 million) to the APF for the period 2004–07 and a further €300 million (£202.2 million) for 2008–2010 from the European Development Fund. This will be reviewed in 2010. The EU has been the major contributor to the AU mission in Darfur, with significant

contributions from the APF and by several Member States bilaterally. The APF has also supported the AU mission in Somalia and the multinational force in the Central African Republic.

At the recent European Council, the German Presidency initiated a debate on identifying long-term and sustainable funding solutions for African peace operations. This will be taken forward over coming months. The UK intends to play an active role in these forthcoming discussions. We want an outcome that allows for the range of costs associated with such missions to be met. An important element where we believe the EU could provide additional support is for rapid deployment, a need again highlighted by Tony Blair in his recent speech. We hope it will be possible to reach agreement in time for the EU-Africa summit in December.

The UK welcomes the current debate on the financing of African peace support missions and is committed to working with partners at the UN and within the EU and G8 to find sustainable long-term funding solutions.

23 July 2007

AGRICULTURAL DEVELOPMENT IN AFRICA (12190/07)

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

Sub-Committee C considered this document at its meeting on the 11 October 2007 and decided to hold it under scrutiny.

The Sub-Committee felt that, while much of the content of the Commission Proposal was laudable, it failed to address a major issue facing African agriculture, that is, the protectionist policies of the European Union, amongst others.

The Sub-Committee also thought that the Department would have benefited from the input of other government departments, notably DEFRA and BERR, when considering this subject.

We look forward to hearing your views.

24 October 2007

ANNUAL REPORT ON THE FINANCIAL MANAGEMENT OF THE 6TH–9TH EUROPEAN DEVELOPMENT FUNDS (EDFS) IN 2006

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

At its meeting on 7 June, Sub-Committee C considered the above Annual Report which had been cleared on the sift.

The Sub-Committee were concerned that the Report of the European Court of Auditors (ECA), on which the Commission commented, was not attached to the Commission Report and was not discussed in the Explanatory Memorandum (EM). The Sub-Committee obtained the ECA Report, and found a number of places where critical comments of the Commission were made, in particular regarding the processes for expenditure. These did not appear in the Commission’s Report and were not referred to in the EM. The Sub-Committee hopes that, in the future, documents relating to Commission reports will be attached to those reports and that the EMs will discuss any allegations made, as well as the Commission’s response.

19 June 2007

ASSETS OF PERSONS INDICTED FOR WAR CRIMES (PIFWCs) IN FORMER YUGOSLAVIA

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

I would like to draw the Committee’s attention to an EU document that may need to be agreed during Parliament’s summer recess. Unfortunately we are not yet in a position to submit this for Parliamentary Scrutiny. As the Portuguese EU Presidency has not set out its legislative timetable, it is possible that there may be other issues of which we are not yet aware. The last Council before the summer break is the 23–24 July General Affairs and External Relations Council. There are then no Councils scheduled until the 17 September Justice and Home Affairs Council. The first Council after your Committee sessions restart should be the 15–16 October General Affairs and External Relations Council.
INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

Common Position 2004/694/CFSP imposed an assets freeze on all funds and economic resources belonging to all persons publicly indicted by the International Criminal Tribunal for the former Yugoslavia for war crimes who are not in custody of the Tribunal. Common Position 2006/671/CFSP extended the validity of the assets freeze until 10 October 2007. We expect that the measures will be rolled over unamended for another 12 months unless all indicted persons not currently in the custody of the Tribunal are apprehended before 10 October. The Government strongly supports the current measures.

18 July 2007

Letter from Jim Murphy MP to the Chairman

Further to my letter of 18 July I am writing to let your Committee know of plans to extend Common Position 2004/694/CFSP for 12 months. The current Common Position will expire on 10 October 2007.

Under Common Position 2004/694/CFSP the European Council adopted measures in October 2004 to freeze all funds and economic resources belonging to persons indicted by the ICTY. There are still indictees at large and it is crucial that the EU maintains the assets freeze on these individuals to ensure that financial pressure is maintained on their support networks. The assets freeze is an important part of the EU’s work in supporting the mandate of the ICTY.

It is hoped that the Common Position 2004/694/CFSP will be extended when the Economic and Financial Council meets on 9 October to prevent the measures expiring. Unfortunately this will mean that there is not enough time for your Committee to scrutinise the Common Position. In light of the importance of maintaining the measures in support of the ICTY I hope the Committee will understand if I decide to agree to the Common Position before scrutiny has been completed.

11 September 2007

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 11 September explaining that, for timing reasons, you would need to agree to the Common Position on the above subject before scrutiny had been completed. We understand your position and accept this override.

18 October 2007

ASSOCIATION AGREEMENTS WITH CENTRAL AMERICA AND COMMUNITY OF ANDEAN NATIONS

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

On 24 April the General Affairs and External Relations Council approved draft negotiating directives for Association Agreements with Central American countries (Panama, Costa Rica, El Salvador, Honduras, Nicaragua and Guatemala) and the Community of Andean Nations (Colombia, Peru, Ecuador and Bolivia). The Agreements allow for a political dialogue, establishment of a Free Trade area and bi-regional co-operation on other matters of mutual interest. The negotiations with the Community of Andean Nations are due to be launched at the end of May. There is no set date for the opening of negotiations with Central America -this is the subject of continuing discussion.

The negotiating mandates are restricted documents setting out the mandate granted to the Commission to undertake negotiations with Central America and the Community of Andean Nations on behalf of the Council. As these directives represent a negotiating position they are not in the public domain and it is not therefore possible for me to submit them for scrutiny. I will, however, submit a full Explanatory Memorandum when a draft Council Decision to conclude the Agreement is submitted to the Council on completion of the negotiations.

The aim of the forthcoming negotiations will be to conclude a comprehensive and balanced Free Trade Area, establish greater political co-operation and enhanced bi-regional co-operation on matters of common interest. The Commission will inform the Council on a regular basis on progress of the negotiations. The UK position throughout the discussions on the Free Trade aspect has been that an ambitious and pro-development outcome to the Doha Development Agenda should remain the top priority. We believe that the directives allow for this outcome. Overall we have impressed upon the Commission that the negotiating directives should reflect our interests on trade, sustainable development, environmental and political issues. We believe that the
Agreements can bring benefits for the stability and economy of the Central American and Community of Andean Nation regions.

23 May 2007

ATHENA MECHANISM FOR COMMON FUNDING OF ESDP MILITARY OPERATIONS

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

The ATHENA Mechanism has been subject to two reviews (December 2004 and December 2006). The amendments made to the original Council Decision as a result of both reviews were submitted for parliamentary scrutiny. These changes have now been consolidated into a single text and an updated Council Decision issued, which was endorsed by Coreper on 2 May and adopted by the General Affairs and External Relations Council (GAERC) on 14 May.

This was a technical exercise, limited to the consolidation of previously agreed changes that had been subject to parliamentary scrutiny at the time of both reviews. The updated document was processed as a procedural point by the Presidency, and was not raised or discussed in the relevant Council Working Group. Therefore, we did not immediately recognise the need for further scrutiny. I apologise for this and hope that the Committee understands that there was no intention to subvert the Scrutiny process.

23 May 2007

BLACK SEA SYNERGY: A NEW REGIONAL COOPERATION INITIATIVE

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

Sub-Committee C considered the above document at its meeting on 10 May 2007 and decided to clear it from scrutiny.

We support the development of a coherent EU approach to the wider Black Sea region. However, we note that the Commission Communication proposes that the EU should undertake activities to promote democracy, good governance and respect for human rights, in which the Council of Europe, OSCE and United Nations are already active. We believe that the EU should recognise the domain of specialisation and comparative advantages of these organisations. Could you explain how the proposed role for the EU will fit into this overall picture? In what way and at what levels are these organisations engaged, and what mechanisms are in place to ensure coordination between the activities on the ground and at political level? What action is the Government taking to avoid overlap?

11 May 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 11 May. I am grateful for your support for the EU’s proposals to foster a more coherent approach to the Black Sea region, and believe that the EU, UN, OSCE and Council of Europe can play complementary roles in supporting development in the region.

It is important that the EU plays a strong role, but without creating new bureaucracies or institutions. The framework for EU relations with the region is provided by these processes: the EU accession process in the case of Turkey; the European Neighbourhood Policy in the case of Ukraine, Moldova; Azerbajan, Armenia and Georgia; and the Partnership and Cooperation Agreement with Russia. Good governance, human rights and democracy are at the heart of all three processes.

The European Neighbourhood Policy is designed to help the EU develop relationships with its near neighbours based on a mutual commitment to common values, including the rule of law, good governance and the principles of market economy. Each country has developed an Action Plan with the EU, which sets out priorities for development. Action Plans are an important lever to encourage governments to take action on human rights and democracy and to improve market regularised administrations. The Government has successfully argued that the European Neighbourhood Policy needs to be the heart of the EU’s Black Sea Strategy. Action Plans also provide the mechanism for the EU to negotiate market access. Increasing trade can bring significant direct benefits to both the EU and partner countries and incentivise further reforms.
I can reassure you that the EU has mechanisms for coordination with all of the international bodies you mention in your letter. For example, the EU has agreed and will shortly sign a Memorandum of Understanding with the Council of Europe which provides a new framework for enhanced co-operation and political dialogue. Regular OSCE—EU Troika meetings are also held in order to strengthen complementarity of action, in addition to numerous other contacts between officials. External Relations Commissioner Ferrero-Waldner recently confirmed that the EU is “committed to reinforcing the OSCE’s work with all of its many foreign policy instruments and to supporting it financially”. The EU is fully, aware of the crucial role the UN has to play and coordinates its approach on all UN human rights negotiations.

An important part of the Commission Black Sea Communication is the proposal for the EU to strengthen contacts with regional organisations such as the Black Sea Economic Cooperation Organisation, in order to help ensure that the EU and regional organisations continue to play complementary roles.

24 May 2007

CODE OF CONDUCT ON DIVISION OF LABOUR IN DEVELOPMENT POLICY

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

Sub-Committee C considered the above document at its meeting on the 3 May 2007 and decided to clear it from scrutiny.

We strongly welcome this initiative by the European Commission. We felt, however, that the use of “Division of Labour” in the title of the Code of Conduct (COC) is ambiguous and could lead to misinterpretation. The COC aims to improve complementarity between the development aid programmes of the Member States, and within the EU as a whole. This is entirely distinct from the international division of labour in the field of international political economy—or even the division of labour between institutions in Brussels. To avoid confusion between these concepts, we would recommend that the name of the COC be changed to something which is clearer and avoids ambiguity.

4 May 2007

COMMON FOREIGN AND SECURITY POLICY (CFSP) ANNUAL REPORTS

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

I am writing to apologise to your Committee for the fact that CFSP Annual Reports have not been deposited since 2003. It appears that officials at the time mistakenly judged that the report was not subject to scrutiny. The oversight came to light during correspondence with the clerks to the House of Commons Committee. As demonstrated by my Explanatory Memorandum of 3 May, future reports will be deposited with Parliament.

6 June 2007

COMMON POSITION ON BURMA

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

I am writing to let your Committee know of efforts within the EU to strengthen sanctions against Burma. We believe that is important to send a strong signal to the Burmese regime that the recent brutal suppression of peaceful demonstrations led by monks and civilians is unacceptable; and to put pressure on the regime to engage in a genuine process of national reconciliation inclusive of all political parties and ethnic groups.

The UK is working with its EU partners to press for significant new economic sanctions in order to build a credible package which goes beyond the existing measures. These will be firmly targeted on the interests of the military regime and its supporters. The Portuguese Presidency has circulated a paper to EU Member States outlining possible options. Building on the investment sanctions already in place, these measures include banning Burmese imports of commodities, which are exploited by interests close to the regime.

The new sanctions package was discussed at working level in Brussels and at the Committee of Permanent Representatives on Wednesday 2 October. We are aiming for formal political endorsement of the measures at the 15 October General Affairs and External Relations Council (GAERC). If agreed, a Common Position would go forward for adoption. If this cannot be done by written procedure it would be submitted to either
the Agriculture and Fisheries Council on the 22 October, or the Environment Council on the 30 October for formal adoption.

There is a degree of uncertainty as to the final nature of the package and I am therefore not yet able to submit the proposal for parliamentary scrutiny. Given the fast moving, high profile nature of this issue and the desire of many Member States, including the UK, to take immediate action, I hope your Committee will understand if I decide to agree to the proposal before scrutiny has been completed. I will of course ensure that an Explanatory Memorandum is sent to you as soon as possible.

8 October 2007

COMPREHENSIVE NUCLEAR–TEST BAN–TREATY ORGANISATION (CTBTO) IN THE FRAMEWORK OF THE EU STRATEGY AGAINST PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

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

Sub-Committee C considered the above document at its meeting on 10 May 2007 and decided to clear it from scrutiny.

We fully support the objectives of the proposed Joint Action. The current activities of the CTBTO Preparatory Commission are crucial to ensuring that when the Comprehensive Nuclear-Test-Ban Treaty enters into force, the CTBTO will be fully equipped to carry out its functions.

However, the EM rightly states that the Treaty will not enter into force until the 44 states listed in annex 2 of the Treaty ratify it, including the United States, which has a very substantial nuclear arsenal. Could you please clarify what concrete steps the EU is taking to re-open the question of eventual ratification by the US? What action is the Government taking to persuade its EU partners of the importance of this issue?

11 May 2007

COOPERATION WITH THE AFRICAN UNION COUNTER-TERRORISM RESEARCH CENTRE (CAERT)

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

Sub-Committee C considered this document at its meeting on 12 July 2007 and cleared it from scrutiny.

The Sub-Committee expressed full support for the proposed Joint Action, which should serve to improve counter-terrorism capacity in African countries. However, we are concerned that a human rights and international humanitarian law perspective has not sufficiently been integrated into the Joint Action. The EU is committed to combat terrorism while respecting human rights, as set out in the EU’s counter-terrorism strategy (Council doc. 14469/4/05), adopted under the UK Presidency in 2005. In his report “In Larger Freedom” (2005), the UN Secretary-General set out five pillars of anti-terrorism strategy to which member states of the UN should commit themselves, the fifth of which is “defending human rights”. The report argues in paragraph 94 that the protection of human rights will strengthen counter-terrorism efforts. International humanitarian law should also be given due attention in the African context, given that many countries are beset by internal conflicts.

The Sub-Committee recommends that human rights and humanitarian law be given full consideration in all activities set out by the Joint Action, including in the choice of EU experts to participate in the African Union counter-terrorism seminar and in the evaluations of national capacity. Specifically, the annex of the Joint Action should be amended to provide for the invitation of representatives of the UN High Commissioner for Human Rights (OHCHR), the International Committee of the Red Cross (ICRC) and any other suitably qualified experts to the seminar to speak about respect for human rights and humanitarian law in the context of counter-terrorism strategies in Africa. We look forward to being informed of the action the Government has taken in this respect.

16 July 2007
Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 16 July. This is an important initiative, which should help to make Europe safer by strengthening the capacity of African States to counter terrorism.

I fully agree with you on the importance of respect for human rights and International Humanitarian Law (IHL). The promotion of human rights is fundamental to the UK’s counter-terrorism strategy. As you point out, our international partners have also endorsed this approach through the EU Counter-Terrorism Strategy and the United Nations General Assembly Counter-Terrorism Strategy.

The text of the Joint Action was approved by the Council of the European Union on 16 July, so it will not now be possible to amend the annex to reflect this concern. But I agree with your suggestion that representatives of the Office of the UN High Commissioner for Human Rights and the International Committee of the Red Cross, or other suitably qualified experts, should be invited to participate in the seminar. My officials have therefore begun discussions with representatives of the EU institutions and with selected EU partners to build support to put this proposal to CAERT. Reactions have so far been positive and I hope will be reflected in EU discussions with the African Union Counter-Terrorism Research Centre (CAERT), which will issue the invitations to and host the seminar in Addis Ababa.

In our preparations with EU and African Union partners for this project, we will continue to press for human rights and International Humanitarian Law concerns to be addressed at every stage of the initiative. We will propose that this be clearly reflected in the Action Plan that the EU will agree with African Union members at the seminar. I understand that Ambassador Diarra Boubacar Gao, the Director of CAERT, has agreed to address the EU’s foreign policy working group on counter-terrorism (COTER) in November. We will discuss the points made by the Select Committee on the European Union with him at this meeting.

9 August 2007

DEVELOPMENT AND CONSOLIDATION OF THE EXTERNAL SERVICE 2007–08

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

Sub-Committee C considered this document at its meeting on 28 June 2007 and cleared it from scrutiny.

There is one point on which we would be grateful for clarification, however. In our reports on “The EU and Africa” (34th Report of session 2005–06, HL paper 206) and “Europe in the World” (48th Report of session 2005–06 HL paper 268), we made recommendations concerning the double-hatting of the EU representation (Commission and Council) in Addis Ababa. To what extent is the Commission Communication—which proposes the opening of a delegation to the African Union—consistent with these recommendations and the possibility of establishing double-hatting arrangements?

6 July 2007

Letter from Jim Murphy MP, to the Chairman

In your letter of 6 July 2007, you sought clarification on the proposal to establish a delegation to the African Union (AU) in Addis Ababa as described in the Commission Communication COM (2007)206. You asked whether the proposal was consistent with your Committee’s recommendations on ‘double-hatting’ of EU representation.

Your reports recommended that the EU should ‘create a more unified structure for its presence in Addis Ababa’. Discussions between the Member States, the Commission and the Council Secretariat in Brussels are ongoing, but I can confirm that agreement has been reached for the anticipated EU representation to the AU to be ‘double-hatted’ in nature. That is to say, the EU Delegation will combine the responsibilities of a European Commission Delegation and an EU Special Representative (EUSR). The Head of the EU Delegation will work under the authority of the European Commission as far as his/her tasks as Head of the Commission Delegation are concerned, and under the authority of the High Representative for the Common Foreign and Security Policy/Secretary-General of the Council of the EU as far as his/her tasks as EUSR are concerned. It is hoped that a candidate will be in place before the end of 2007.

I will update you once more concrete details emerge. Once I receive the draft Council Decision appointing the EUSR, I will of course deposit it along with an Explanatory Memorandum.

19 July 2007
DUAL-USE ITEMS AND TECHNOLOGY (16989/06)

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

My officials have now had the opportunity to consult with other Government Departments on the issues raised by your letter of 29 March 2007.2

Does the Government support new Article 21 which requires the Member States to impose criminal penalties?

No. Although, in fact, we impose criminal penalties for breach of the provisions of the current Regulation and are likely to continue to do so, we are following the line on competence that the Government has taken in the Ship Pollution case. A scrutiny reserve is in place. Other Member States are taking the same line.

How does the obligation in Article 15 of the Regulation fit into the scheme of current Third Pillar initiatives for storing and exchanging criminal record information? Does the Government have any concerns regarding the use of Article 133 to make provisions of this nature?

These questions are more difficult. There are arguments both ways and no policy imperative, which causes us either to strongly favour the current wording or seek a change.

One argument is that it is the fact of conviction and not necessarily the identity of the offender that the new Article 15 requires Member States to communicate. The new Article is about assisting Member States to apply the main operative provisions of the Regulation in a uniform way and it is not necessary to share offenders’ names to achieve that objective. It may, of course, be necessary to identify sensitive end-users but they tend not to be the ones who are contravening Member States’ export control regimes (as, in most cases, they are outside the Community customs territory). By contrast, the documents to which you have drawn our attention in this context (Doc 5463/06 and Doc 11453/06) do relate to offenders and their criminal records.

However, it appears that the Commission may have intended Article 15(2) to allow exchange of information about offenders. This would be a cause for concern. We agree with other Member States that it would be helpful to clarify what is intended here.

There are good legal arguments that Article 133 EC provides a sufficient basis for adopting the new Article 15. The new provision is not concerned with police or judicial co-operation in criminal matters at a general level (which would clearly be matters for the third pillar) but rather co-operation between national licensing authorities for the specific purpose of providing consistent guidance to exporters.

Is the Government happy with the way Article 19 is drafted?

We have asked the Commission for clarification of the purpose behind Article 19. Some of the functions of the new Committee are set out in other Articles with greater or lesser degrees of clarity. The Committee may:

(a) take measures to harmonise the forms of licences used by Member States (Article 10(1));
(b) settle if and how information from licences is to be made available electronically to customs and other authorities (Article 10(4));
(c) update the list of dual-use items in Annex I (Article 11);
(d) settle terms for the establishment of a secure, encrypted system for exchange of information between Member States (Article 15(4));
(e) take measures necessary to facilitate other elements of the cooperation provided for by Article 15 (Article 15(5)), which naturally would include Article 15(2), making it even more important to ensure that the limits of that provision are clear;
(f) adopt its own rules of procedure (Article 19(4)).

However, these provisions refer variously to Article 19, Article 19(2) and Article 19(3) as establishing the Committee’s procedure and it would be better for them to be consistent. Article 19(2) is also, potentially, very wide and not limited in its scope by the Articles referred to above.

As to composition of the Committee, although the draft is not clear on its face, the reference to Decision 1999/468/EC seems to be shorthand for saying that the Committee will be composed of representatives of the Member States and chaired by a representative of the Commission. Voting will be weighted according to the

2 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 152.
normal qualified majority rules in cases where the Council is required to act on a proposal from the Commission—so there will be no need for a two thirds majority of the Member States (and, naturally, the chairman will not vote).

Does the Government consider that Article 2 covers the full range of dual-use items as set out in the substantive sections of the Regulation? Or is there a case for the definition being widened?

We consider that Article 2 is wide enough. The wording about nuclear weapons does not limit the generality of the definition which encompasses all items “which can be used for both civil and military purposes”. It is questionable whether it was even necessary to add specific text about nuclear weapons. However, because the text appears in the existing Regulation, it is difficult to change for two reasons. First, on a practical level, the Commission can point to there having been no legal problems to date; second, because this is a re-cast proposal, the Commission is taking the line that only the amended provisions or those closely related to them are open for negotiation.

What is the Government’s assessment of the effectiveness of the Regulation currently in force, including in relation to the full implementation of its provisions by other Member States?

We have no serious concerns about the effectiveness of the Regulation currently in force. Whilst Member States retain their own licensing systems (and we agree that they should) there is always scope for divergence both of licensing practice and of penalties. Ironically, the provisions of Articles 21 and 15 discussed above are aimed at attenuating differences of approach within the Union. However, there are other provisions that have the same objective and, at least in the case of Article 15, we are confident that a solution can be found to the existing difficulties.

In what ways will the amended regime for the export of dual-use items be more effective than the current one?

We would point particularly to the new controls on brokering and transit, included in consequence of UN Security Council Resolution 1540. Although we have some drafting problems with these (and particularly with the transit control in Article 3(4)), once these are resolved we are confident that the new controls will greatly strengthen the existing regime.

We will, of course, keep you informed of developments as the negotiations progress.

11 June 2007

ENERGY COOPERATION BETWEEN AFRICA AND EUROPE

Letter from the Chairman to Gareth Thomas MP, Parliamentary Under Secretary of State, Department for International Development/Department for Business, Enterprise and Regulatory Reform

Sub-Committee C considered this document at its meeting on the 3 May 2007 and decided to clear it from scrutiny.

We would, however, like clarification on one point of substance. The Joint Paper makes several references to economic growth rates in relation to the possibility of Africa achieving the Millennium Development Goals (MDGs). Specifically, the Joint Paper refers to African average annual economic growth rates of approx. 5% (p.1), as grounds for optimism. However, overall growth rates do not capture the rate in the growth of average per capita incomes. This is particularly important in the African context, where high population growth (approx. 2.5% per annum) means average per capita income growth is much lower than overall economic growth. In this light, does the Government agree that:

— While overall GDP/GNI growth rates in real terms are most relevant to some dimensions of energy and environment policy, the population growth component of these figures is of considerable significance; and that,
— Therefore, the relevant measure of growth rates in view of efforts to attain the MDGs is GNI per capita in real terms (ie at constant prices at purchasing power parity, PPP), assuming no favourable change in income distribution?

We would be most grateful for a clarification of this point.

19 June 2007
Letter from Gareth Thomas MP, to the Chairman


The Committee is correct to say that what matters for the achievement of the Millennium Development Goals (MDGs) is per capita growth. Unless per capita growth is positive, progress towards the achievement of the MDGs is likely to be reversed.

There are two possible reasons why the overall figure is used:

— the distinction is not well understood by everyone, so generally it is easier to report overall growth figures; and

— a lack of data on population figures makes per capita growth harder to calculate.

The OECD has stated that Africa’s economic growth was 5.5% in 2006. This is well above the long-term trend for the fourth consecutive year, with GNI per capita growing at about 3.5%. The OECD expects average real GNI growth to be 5.9% in 2007 and “to remain buoyant” in 2008.

There are concerns about the sustainability of growth in Africa and the extent to which recent trends are due to rising commodity prices, rather than to more broadly based productivity growth. For example, growth is forecast to accelerate for those countries that are net oil exporters and weaken slightly for oil importers.

On the links to energy, of crucial importance to Africa is the extent to which reliable and affordable energy supplies can be provided to the productive sectors of their economies, especially in urban and industrial areas. In many African countries, rising energy demand, driven partly by increasing urban populations, are running ahead of new energy production capacity, especially for electricity. This would be a significant issue for energy cooperation between Africa and Europe.

23 July 2007

Letter from the Chairman to Gareth Thomas MP

Thank you for your letter of 23 July about Energy Cooperation between Africa and Europe and for the explanation of why economic growth rates are generally used.

Sub-Committee C has discussed the matter further and would be grateful if you would confirm whether the Government agrees with the EU’s avoidance of GDP per capita growth as a method of measurement for progress towards meeting the MDGs for the reasons outlined in your paragraph 3. We would ask you to press the EU on these points as we do not believe they are an accurate representation of the situation.

24 October 2007

ESDP: ACTIVITY IN GUINEA-BISSAU

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

I am writing to inform you of the recent proposals to send a small ESDP mission to work on security sector reform in Guinea-Bissau.

Guinea-Bissau has become an increasing problem as a transit point for drugs from Latin America to Europe. It is still dealing with the aftermath of civil war, and its security sector is not yet capable of tackling this problem. The archipelago that runs along its coastline would be difficult to police with a functioning coastguard. With only an under-resourced navy at its disposal, the task is impossible. Corruption is becoming a serious problem at all levels, and the availability of cocaine is causing social problems that cannot be resolved without a functioning criminal justice sector. In the run-up to elections in March next year, the Guinea-Bissau government is keen to tackle the growing problem before it gets completely out of control. There is general support for this from all political parties, so the outcome of the elections should not affect the reform process.

Last year, the Ministry of Defence’s Security Sector Defence Advisory Team visited Guinea-Bissau to assess the extent of its problems. Its findings were reported to the EU, and taken up by Portugal, the former colonial power, in the run up to its EU Presidency. Along side development work undertaken by the European Commission, Portugal, with the backing of the UK, suggested that a security sector reform mission be set up under ESDP. Although Guinea-Bissau’s problems are large, the country is small, and enough political will exists to instigate reform.
Guinea-Bissau also offers an opportunity for the EU to take a more comprehensive and co-ordinated approach to security sector reform, with the ESDP mission looking at the military, the police, customs and borders controls, while the Commission concentrates its efforts on justice and prisons. The proposed ESDP mission would be small, with about ten experts covering the various sectors. Agreement was reached in the Political and Security Committee on 14 September that a fact-finding mission be dispatched to assess where the proposed ESDP mission could best contribute. A combined Commission/Council mission is due to go to Guinea-Bissau on 6 October. Once it reports on its findings, planning for the proposed mission will be taken forward in Brussels. We anticipate that the mission would launch in March 2008 at the earliest. We are unlikely to contribute more than one British secondee. I will, of course, keep you informed as planning progresses.

7 October 2007

ESDP: AFGHANISTAN MISSION

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

I enclose Explanatory Memoranda (not printed) covering amendments to the Joint Actions for the EU Police Mission in Afghanistan and the EU Special Representative in Afghanistan. These put into effect the civilian crisis management reforms, in line with my letter of 18 July 2007.3

My officials tried to secure these Joint Actions in time for your Sift on 10 September but were unsuccessful. The Presidency plans to seek agreement at the 2 October Transport, Telecommunications and Energy Council. Unfortunately this will mean that there is not enough time for your Committee to scrutinise the Decision. Given the challenging environment in Afghanistan and therefore the desirability of a clear command chain, I hope the Committee will understand if I decide to agree the Joint Actions before scrutiny has been completed.

13 September 2007

Letter from Jim Murphy MP to the Chairman

I have recently submitted an Explanatory Memorandum covering a Council Decision on New Zealand’s participation in the EU Police Mission in Afghanistan.

We welcome New Zealand’s participation, which complements its strong support to the International Security Assistance Force.

The New Zealand Prime Minister requested that the Agreement be signed in the margins of the EU/New Zealand Troika meeting in Brussels on 3 October. In order to meet that request, the Council Decision would have to be agreed at COREPER on 27 September and the Transport, Telecommunications and Energy Council on 1 October. As your Committee does not sit before these dates it means that there is not enough time for your Committee to scrutinise the Decision. Given the need to progress the New Zealand government’s contribution as quickly as possible and the New Zealand Prime Minister’s wish to sign the Agreement on the 3 October, I hope the Committee will therefore understand if I decide to agree the Council Decision before scrutiny has been completed.

27 September 2007

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 13 September in which you explain that, for reasons of timing, you would need to agree to the Joint Actions for the EU Police Mission in Afghanistan and the EU Special Representative in Afghanistan before scrutiny had been completed. We understand your position and accept this override.

18 October 2007

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 27 September which Sub Committee C has considered. You explain that, for reasons of timing, you would need to agree to a Council Decision on New Zealand’s participation in the EU Police Mission in Afghanistan before scrutiny had been completed. We understand your position and accept the case for this override.

24 October 2007

3 Refer to ESDP: Civilian Mission Reforms.
ESDP: CIVILIAN MISSION IN AFGHANISTAN

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

Sub-Committee C considered the above document at its meeting on 26 April 2007 and decided to clear it from scrutiny. We believe that the EU can play a useful role in Afghanistan in the field of police capacity-building, and we therefore fully support the principle and objectives of the planned ESDP mission. However, on two issues, counter-narcotics and staff safety, we would like some further information and clarification.

The Explanatory Memorandum provided very little information about the counter-narcotics strategy and activities of the mission. This is an area which we consider to be of fundamental importance to the future of Afghanistan, and the Committee would therefore appreciate the opportunity to spend some time with you on this question at our evidence session on the 17 May, which will primarily be devoted to the EU’s role in Kosovo. The Committee would be grateful if you could write in advance of that session with details of the strategy and tasks of the ESDP mission in the field of counter-narcotics, as well as how you see the mission contributing to the wider EU efforts to deal with the production and trafficking of drugs in Afghanistan (although we realise that DFID may have the lead on the development aspects). We would also be interested to know what thought the EU has given to the idea of licensing the growing of poppies for legitimate medical uses in the pharmaceutical industry, as an alternative to illegal drug production.

The Committee was not convinced that the draft Joint Action has sufficiently taken into account the safety and security of the ESDP mission and its staff. There are reasons to doubt that the mission will be welcomed and perceived as impartial by armed groups, especially those opposed to a foreign presence in the country or engaged in criminal activities (including the drug trade). Where the Provincial Reconstruction Teams (PRTs) and other military forces are operating in a non-consensual environment, a perceived association with EU personnel may increase the likelihood of them becoming a target, especially as they will be lightly armed.

The Government’s Explanatory Memorandum does not address the issue of the precautions that should be taken to minimise this security risk. Article 10 of the draft Joint Action refers to security arrangements but does not give any details as to the overall security strategy that will be adopted. Therefore, we would be interested to receive the Government’s assessment of the security arrangements for the mission, and specifically of the consequences of a perceived too close association with certain military forces in Afghanistan. Finally, we would like to know what action has been taken to ensure this issue is properly addressed as part of the mission preparations.

2 May 2007

ESDP: CIVILIAN MISSION REFORMS

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

At the informal Hampton Court meeting of EU Heads of State and Government in October 2005 under the UK Presidency, the Secretary General / High Representative was asked to take forward work on crisis management. At the upcoming European Council progress in two areas will be noted. The two areas are ensuring that the EU’s crisis management structures can meet new demands on them, and that the EU can finance civilian operations rapidly.

Ensuring the EU’s Crisis Management Structures can Meet New Demands on Them

New Guidelines for the Command and Control Structure for EU Civilian Operations in Crisis Management are due to be approved at the June General Affairs and External Relations Council. It is a Restricted document but I want to explain in detail the benefits this reform will bring. First and foremost, the reform means there will be a single and identifiable chain of command, which is imperative for the safe and efficient conduct of missions. Moreover by making the civilian command structure more comparable with the military levels of command, the reform will facilitate civil and military co-ordination, mutual support and coherence where required.

The reform introduces a Civilian Operations Commander, supported by a team known as the Civilian Planning and Conduct Capability that he will lead. Future Joint Actions will put the Civilian Operations
Commander in the command chain above the Head of Mission for a civilian mission, enabling him to support and advise the Head of Mission. The Civilian Operations Commander will also take overall responsibility for ensuring that the EU’s duty of care is properly discharged. He will report through the Secretary General / High Representative to the Council.

The reform clarifies the role of EU Special Representatives in relation to civilian ESDP missions. They will provide local political guidance to Heads of civilian ESDP missions. EU Special Representatives and the Civilian Operations Commander will consult each other as required. EU Special Representatives will not be in the chain of command of civilian ESDP missions. They will promote overall EU political co-ordination and help ensure that all EU instruments in theatre act coherently to attain the political objectives set out by the Council.

In accordance with its Terms of Reference, the EU Military Staff, through the Civilian Military Cell, will assist with planning support (including the planning for a possible use of military means) and conduct of ESDP missions. The Civilian Military Cell will provide a watch-keeping capability in order to ensure round-the-clock links with the various civilian ESDP operations and the Civilian Planning and Conduct Capability. The watch-keeping capability will be established within the Operations Centre. Activation of the watch-keeping capability using the facilities of the Operations Centre in relation to each civilian operation will be confirmed in the respective Joint Action.

Javier Solana is currently working on the implementation of this reform and has not yet found a suitable candidate to be Director of the Civilian Planning and Conduct Capability and hence Civilian Operations Commander. The initial appointment will be for one year. Subsequent appointments will be made by the Council at the level of Deputy Director-General or higher for a fixed term to ensure periodic rotation.

The Joint Actions for civilian ESDP missions and several EU Special Representatives that are currently in place will need to be amended. The changes will insert the Civilian Operations Commander into the chain of command, activate the watch-keeping capability and update the role of those EU Special Representatives who currently have a place in the command chain of a civilian ESDP mission. The Presidency plan to make the same amendment to each individual Joint Action, based on language drawn from the new Guidelines, but have not yet proposed a timetable. My officials will be in touch with the Clerks to agree how to handle this.

**ENSURING THE EU CAN FINANCE CIVILIAN MISSIONS RAPIDLY**

Lack of rapidly available financing has been identified as a problem for the operational capacity of civilian crisis management operations in the start-up phase. During the UK Presidency, it was a particular problem for the rapid launches of the Aceh and Rafah monitoring missions.

There have been several strands to this work:

(i) the Commission accelerating its internal procedures for launching and concluding Financing Decisions;
(ii) the Commission and Secretariat introducing Framework Contracts for procurement;
(iii) amendment of the EC Budget Financial Regulation to enable funding of the preparation of ESDP missions;
(iv) development of a procedure for funding the preparation of ESDP missions; and
(v) the Commission putting in place a Framework Financing Decision for funding the preparation of ESDP missions.

(i) The Commission has now given civilian ESDP missions the same priority as humanitarian aid decisions in their Inter Services Consultations, which now start as soon as the Political and Security Committee endorses the legal act.

(ii) The Commission and Secretariat drew on the experience of other international organisations to develop Framework Contracts, which will be used for the first time in order to speed up procurement for the Kosovo planning and Afghanistan missions.
(iii) The EC Budget Financial Regulation was revised last December and has now entered into force. Modifications were made to Article 49 to include explicit provisions for financing rapid deployment from within the Common Foreign and Security Budget:

“… the following may be implemented without a basic act provided the actions which they are intended to finance fall within the powers of the Communities or the European Union:

... (c) appropriations for preparatory measures in the field of Title V of the Treaty on European Union (concerning CFSP). These measures shall be limited to a short period of time and shall be designed to establish the conditions for European Union action in fulfilment of the objectives of the CFSP and for the adoption of the necessary legal instruments.

For the purpose of EU crisis management operations, preparatory measures are designed inter alia to assess the operational requirements, to provide for a rapid initial deployment of resources, or to establish the conditions on the ground for the launching of the operation.

Preparatory measures shall be agreed by the Council, in full association with the Commission. To this end, the Presidency, assisted by the Secretary-General of the Council/High Representative for the CFSP, shall inform the Commission as early as possible of the Council’s intention to launch a preparatory measure and in particular of the estimated resources required for this purpose. In conformity with the provisions of this Regulation, the Commission shall take all the necessary measures to ensure a rapid disbursement of the funds.”

(iv) The procedure for using the preparatory measures line of the Common Foreign and Security Policy Budget is set out in a recommendation from the Working Party of Foreign Relations Counsellors to the Political and Security Committee and so I am unable to forward it—but I want to explain the benefits it will bring. It will mean that in principle funding can be available within 5 days of a decision by the Political and Security Committee to launch a preparatory measure. This will mean that assessments of the operational requirements for a possible civilian ESDP mission can now be funded, as can rapid initial civilian deployments and teams to establish the conditions on the ground for launching a civilian ESDP mission. Funding for the mission itself will continue to be authorised by a Joint Action.

(v) Each year the Commission will adopt a Framework Financing Decision for funding the preparation of ESDP missions. For 2007, they have allocated a maximum of 4.9 million euro from the Common Foreign and Security Policy Budget. The maximum that can be spent on a preparatory measure without a Joint Action is 1.4 million euro.

Taken together these developments represent a step forward in the development of civilian ESDP missions. They should have a particular benefit for personnel serving in civilian ESDP missions in that the start-up of rapidly deployed missions will be better funded and the Civilian Operations Commander has a clear overall responsibility for ensuring that the EU’s duty of care is properly discharged. Moreover the reformed civilian command chain should make it easier for Member States to use the civilian and military instruments for crisis management and conflict prevention coherently.

I will continue to ensure that you are alerted to preparations for European Security and Defence Policy activity at an early opportunity.

11 June 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 11 June announcing the progress which has been made in two areas and which are to be noted at the June European Council. Sub-Committee C discussed the letter at its meeting on 14 June.

The Sub-Committee found the letter interesting, particularly as we very much support the work of the ESDP civilian missions. We look forward to seeing the finalised paper when it is ready, including details on the new budget set-up.

19 June 2007

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

My predecessor wrote on 11 June about reform to the command chain for civilian ESDP missions. He explained the benefits of the new Guidelines for the Command and Control Structure for EU Civilian Operations in Crisis Management but was not able to pass you the Guidelines because it is a Restricted document.
I now want to share with you standard language that will be inserted into the Joint Actions for civilian ESDP missions and EU Special Representatives. I expect this to be agreed in September but since the amending Joint Actions have not yet been drafted I am not yet able to deposit Explanatory Memoranda. This letter will enable you to consider the substance of the amendments before the Parliamentary recess.

CIVILIAN OPERATION COMMANDER

A new Article will be inserted into the amending Joint Actions for civilian ESDP missions to introduce the Civilian Operation Commander into the command chain. It will be based on the following standard text:

1. The Civilian Planning and Conduct Capability (CPCC) Director shall be the Civilian Operation Commander for [ESDP Mission].
2. The Civilian Operation Commander, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the SG/HR, shall exercise command and control of [ESDP Mission] at the strategic level.
3. The Civilian Operation Commander shall ensure proper and effective implementation of the Council’s decisions, including the PSC’s decisions, also by instructions addressed as required to the Head of Mission.
4. All seconded staff remain under full command of the national authorities of contributing states. National Authorities shall transfer [Operational Control (OPCON)] of personnel, teams and units to the Civilian Operation Commander.
5. The Civilian Operation Commander shall take overall responsibility for ensuring that the EU’s duty of care is properly discharged.
6. The Civilian Operation Commander and the EUSR will consult each other as required.

The insertion of the Civilian Operation Commander into the chain of command will mean that Heads of civilian ESDP mission will be better supported. As civilian ESDP missions deploy to more challenging environments, it is useful that the Civilian Operations Commander will take overall responsibility for ensuring that the EU’s duty of care is properly discharged.

HEAD OF MISSION

The insertion of the Civilian Operation Commander into the chain of command means that the Articles setting out the mandates of Heads of Mission need amending. The following standard text will be the basis of the amendments:

1. The Head of Mission shall assume responsibility and exercise command and control of the mission at theatre level.
2. The Head of Mission shall exercise command and control over personnel, teams and units from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility including over assets, resources and information put at the disposal of the mission.
3. The Head of Mission shall issue instructions for the effective conduct of [ESDP Mission] in theatre, assuming its co-ordination and day-to-day management, following the instructions of the Civilian Operation Commander.
4. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be taken by the national or EU authority concerned.
5. The Head of Mission shall represent [ESDP Mission] in the operations area.
6. The Head of Mission shall co-ordinate, as appropriate, with other EU actors on the ground. The Head of Mission shall, without prejudice to the chain of command, receive local political guidance from the EUSR.
These changes are expected to affect the following Articles:


Joint Action 2006/304/CFSP of 10 April 2006 on the establishment of an EU Planning Team regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo: Article 4.


CHAIN OF COMMAND

The following standard language has been drafted to replace the current Articles on the chain of command to reflect the creation of a Civilian Operation Commander:

1. The [ESDP mission] shall have a unified chain of command, as a crisis management operation.
2. Under the responsibility of the Council, the Political and Security Committee (PSC) shall exercise political control and strategic direction of the mission.
3. The Civilian Operation Commander, under the political control and strategic direction of the PSC and the overall authority of the SG/HR, is the commander of the civilian ESDP operation at strategic level and, as such, shall issue instructions to the Head of Mission and provide him with advice and technical support.
4. The Civilian Operation Commander shall report to the Council through the SG/HR.
5. The Head of Mission shall exercise command and control of [ESDP mission] at theatre level and shall be directly responsible to the Civilian Operation Commander.

These changes are expected to affect the following Articles:


Joint Action 2006/304/CFSP of 10 April 2006 on the establishment of an EU Planning Team regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo: Article 5.


**POLITICAL CONTROL AND STRATEGIC DIRECTION**

The Articles on political control and strategic direction also need amendment to reflect the reporting the PSC will receive from the Civilian Operation Commander as well as the Head of Mission on issues within their areas of responsibility. The standard language to reflect this is as follows:

1. The PSC shall exercise, under the responsibility of the Council, political control and strategic direction of the mission. The Council hereby authorises the PSC to take the relevant decisions for the purpose and duration of the mission, in accordance with third paragraph of Article 25 of the Treaty. This authorisation shall include the powers to amend the OPLAN. The powers of decision with respect to the objectives and termination of the mission shall remain vested in the Council.

2. The PSC shall report to the Council at regular intervals.

3. The PSC shall receive on a regular basis and as required reports by the Civilian Operation Commander and the Head of Mission on issues within their areas of responsibility.

These changes are expected to affect the following Articles:

- Joint Action 2006/304/CFSP of 10 April 2006 on the establishment of an EU Planning Team regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo: Article 6.

**SECURITY**

The Articles on security will be amended to reflect the Civilian Operation Commander’s overall responsibility for ensuring that the EU’s duty of care is properly discharged. The standard language clearly delineates the responsibilities of the Civilian Operation Commander and the Head of Mission:

1. The Civilian Operation Commander shall direct the Head of Mission’s planning of security measures and ensure their proper and effective implementation for [ESDP mission] in accordance with [Articles on Civilian Operation Commander (4) and Chain of Command] and in coordination with the Council Security Office.
FOREIGN AFFAIRS, DEFENCE AND DEVELOPMENT POLICY (SUB-COMMITTEE C)

2. The Head of Mission shall be responsible for the security of the operation and for ensuring compliance with minimum security requirements applicable to the operation in line with the policy of the European Union on the security of personnel deployed outside the EU in an operational capacity under Title V of the Treaty on European Union and its supporting documents.

3. [ESDP mission] personnel shall undergo mandatory security training before their entry into function.

These changes are expected to affect the following Articles:

- Joint Action 2006/304/CFSP of 10 April 2006 on the establishment of an EU Planning Team regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo: Article 8.

WATCH-KEEPING

In addition, the amended Joint Actions will activate the watch-keeping capability. The Civilian Military Cell will provide this to ensure round-the-clock links with the various civilian ESDP operations and the Civilian Planning and Conduct Capability. The standard language that has been drafted is:

The Watchkeeping Capability shall be activated for [ESDP mission].

COORDINATION BY EU SPECIAL REPRESENTATIVES

The reform to the command chain for civilian ESDP missions clarifies the role of EU Special Representatives (EUSR) in relation to civilian ESDP missions. They will provide local political guidance to Heads of civilian ESDP missions but will not be in the chain of command of civilian ESDP missions. They will promote overall EU political co-ordination and help ensure that all EU instruments in theatre act coherently to attain the political objectives set out by the Council. The Joint Actions for EU Special Representatives are likely to be amended to clarify their co-ordinating role, drawing on the following standard text:

The EUSR shall promote overall EU political co-ordination. He/she shall help ensure that all EU instruments in the field are engaged coherently to attain the EU’s policy objectives. The activities of the EUSR shall be coordinated with those of the Presidency and the Commission, as well as those of other EUSRs active in the region as appropriate. The EUSR shall provide regular briefings to Member States’ missions and Commission’s delegations. In the field, close liaison shall be maintained with Presidency, Commission and Member States’ Heads of Mission who shall make best efforts to assist the EUSR in the implementation of the mandate. [The EUSR shall provide local political guidance to the Head of Mission / Force Commander of [ESDP mission].] The EUSR shall also liaise with other international and regional actors in the field.

I shall submit Explanatory Memoranda when the draft amending Joint Actions are available.

18 July 2007
ESDP: IRAQ

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

The outgoing German Presidency has initiated discussion about extending the mandate of the European Security and Defence Policy (ESDP) Rule of Law Mission to Iraq, EUJUST LEX, which expires on 31 December 2007.

Following discussions with key Iraqi interlocutors, the Head of Mission has recommended that the Mission continues to provide training courses in specific skills, such as public order, whilst placing a greater emphasis on the penitentiary sector. Of the 1,044 officials trained to the end of April 2007, 595 have been police officers, 357 judges, and only 92 penitentiary staff. The Head of Mission also aims to draw more participants from the northern Kurdish region in Iraq, in order to achieve greater ethnic balance amongst participants. He also wants to explore the possibility of holding short workshops on relevant rule of law topics in Middle Eastern countries, such as Jordan, allowing Iraqi officials who cannot take two or three weeks off work to attend a course within the EU to participate.

A Joint Action has not yet been drafted but the German Presidency is keen to gain agreement in principle to extension. This would allow Member States to begin scheduling courses for early 2008, ensuring continuity of training provision. As the timetable for formal adoption is still uncertain, I thought it best to inform you of the proposals now in case the text of the Joint Action issues at short notice. I will of course provide an Explanatory Memorandum when it does.

25 June 2007

ESDP: MISSION IN EASTERN CHAD AND NORTH EAST CENTRAL AFRICAN REPUBLIC

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

I am writing to let your Committee know of EU plans to launch a European Security and Defence Policy (ESDP) mission in Chad and Central African Republic is part of the planned multidimensional international presence called for under UN Security Council (UNSC) Resolution 1769 and the UNSC Presidential Statement of 27 August. The EU military mission would operate in tandem with a UN police mission, with the aim to counter the prevailing insecurity along the borders between the Sudan, Chad and the Central African Republic and the threat which this poses to the civilian population and the conduct of humanitarian operations. Close liaison would be ensured with the international force in Darfur.

Although planning work continues in both the EU and UN, including through a joint assessment mission to the region in late August, it is likely that the UNSC will give a mandate for the joint operation in late September, to enable deployment after the end of the rainy season (mid-October). EU planning and decision-making will need to be completed ahead of this UNSC meeting, and a Joint Action to authorise the mission is therefore likely to be tabled in the coming days in Brussels, for Ministerial agreement in mid to late September.

A draft of the Joint Action is not yet available, but will be forwarded to your Committee as soon as possible. But the tight timelines envisaged for the preparation of this operation are unfortunately likely to mean that there is not enough time for your Committee to scrutinise the Decision. In light of the need to allow the operation to proceed, I hope the Committee will understand if I and my colleagues decide to agree the Joint Action before scrutiny has been completed.

11 September 2007

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

Sub-Committee C considered the above Joint Action on 11 October and cleared it from scrutiny, in view of the seriousness of the situation on the ground and the time constraints for action in Brussels.

However the Sub-Committee were unhappy about the inadequate nature of the information, in particular financial information, on which the decision will be taken and would have preferred the costing and other work to be done in advance of any decision. The Sub-Committee also noted that the Force Commander and Operational Commander are from the same nation.

We would welcome an early account of what is agreed at the GAERC, together with any further information, for example on the risks and challenges the mission faces and how it fits into the broader political strategy for achieving peace in the region.

18 October 2007
ESDP: RECENT DEVELOPMENTS

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

I want to update you on recent developments in various European Security and Defence Policy missions prior to the summer recess. Missions have now officially launched in Afghanistan and the Democratic Republic of Congo. Given recent events in the Occupied Palestinian Territories, I thought it might also be helpful for the Committee to be aware of the latest position on the two ESDP missions there before the House rises.

AFGHANISTAN

On 15 June the EU Police Mission in Afghanistan was launched in Kabul with a budget of €43,600,000. The UK contributes 17%, making the cost to the UK approximately £5,300,000. My predecessor sent an Explanatory Memorandum on the decision to launch the mission, which the Commons European Scrutiny Committee cleared as ‘politically important’ on 25 April and the Lords Select Committee on the European Union cleared on 26 April.

DEMOCRATIC REPUBLIC OF CONGO

The EU Police Mission in the Democratic Republic of Congo was launched on 1 July to replace the EU Police Mission in Kinshasa, which closed on 30 June. The EU Security Sector Reform Mission in the Democratic Republic of Congo has been extended to run until 30 June 2008. Their agreed budgets from 1 July are €5,500,000 for the EU Police Mission and €9,700,000 for the EU Security Sector Reform Mission, of which the UK will contribute approximately £630,000 and £1,140,000 respectively. My predecessor sent Explanatory Memoranda on these missions, which the Commons European Scrutiny Committee cleared as ‘politically important’ on 6 June and the Lords Select Committee on the European Union cleared on 7 June.

THE OCCUPIED PALESTINIAN TERRITORIES

On 18 June, the General Affairs and External Relations Council agreed to resume normal relations with the Palestinian Authority with a view to developing direct practical and financial support to Prime Minister Fayyad’s government. The EU Police Support Mission will now resume and develop its activities in the West Bank, which had been restricted while Hamas was in the Palestinian Civil Police chain of command. The EU Border Assistance Mission at the Rafah Crossing Point temporarily suspended its activities on 15 June. The EU will continuously monitor the situation in Gaza with a view to the mission resuming its activities as soon as the situation allows. In the meantime the number of personnel in the mission will be reduced, but it will retain its ability to re-deploy at the Rafah Crossing Point at short notice. The mission will also examine the possibilities for the remaining mission personnel to engage in training activities with the Palestinian Authority border and customs officers or to support the re-engagement of the EU Police Support Mission. None of the mission personnel are in Gaza. My predecessor sent an Explanatory Memorandum on the extension of the Rafah mission, which the Commons European Scrutiny Committee cleared as ‘politically important’ on 2 May and the Lords Select Committee on the European Union cleared at the Chairman’s sift on 1 May. I will keep you informed of developments.

SUDAN

The African Union Political and Security Committee agreed on 22 June to extend the mandate of the African Union Mission in Sudan until the end of December 2007. The EU Supporting Action has therefore also been extended without amendment to the Joint Action, which is open-ended. My predecessor sent an Explanatory Memorandum on the Council Decision extending financing for the Supporting Action, which the Commons European Scrutiny Committee cleared as ‘not legally or politically important’ on 18 April and the Lords Select Committee on the European Union cleared at the Chairman’s sift on 17 April. That Decision allocated enough funds to finance the Supporting Action for four months beyond the end of June. The next financial review will therefore be due in October, assuming that UN transition is not far enough along by then that EU support is no longer necessary. I will alert the Committees to future developments.
Iraq

In Michael Connarty’s letter of 27 June, responding to my predecessor’s letter regarding the probable extension of the EU Rule of Law Mission to Iraq, he asked for more information regarding complementary European Community rule of law activity in Iraq. The Commission has contributed over €720 million to aid and reconstruction since 2003. Almost all of this has been channelled through the International Reconstruction Fund Facility for Iraq or the newly launched International Compact, led by the Government of Iraq and the UN. Very little of this funding has been focussed on the rule of law.

During the first half of 2007, the Commission has liased with other donors—including the UK—and the Government of Iraq on possible areas of engagement in the rule of law sector. Initial suggestions are that it could build capacity in the judiciary and support NGOs working in the legal field but no formal proposals have yet been brought forward. We are pressing the Commission to focus on the delivery of a programme in this area in the second half of 2007 and beyond.

I will continue to ensure that you are alerted to preparations for European Security and Defence Policy activity at an early opportunity.

9 July 2007

EU-BRAZIL STRATEGIC PARTNERSHIP (10323/07)

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

Sub-Committee C considered this document at its meeting on 28 June 2007, and decided to clear it from scrutiny.

While there was support for the overall thrust of the Commission Communication, we felt that it did not give enough emphasis to some of the more difficult challenges which Brazil faces, including human rights, land reform and poverty reduction, as well as serious environmental problems including deforestation and loss of biodiversity.

We have noted reports by several reliable sources, including the Foreign and Commonwealth Office’s 2006 Annual Report on Human Rights, that human rights violations regularly take place in Brazil. Police corruption and rights abuses, including the killing of street children; prison conditions and deaths in prisons; and rural violence and land conflicts appear to be particular areas of concern. According to one report, many people continue to work in conditions equivalent to slave labour. Brazil also faces social challenges, such as the high level of inequality.

The Communication makes no proposals for addressing these human rights and social problems within the framework of the dialogue with the EU. It is not clear from section 2.9 (p. 12) whether human rights issues will also be addressed as part of EU-Brazil cooperation on promoting international standards, as the section refers only to combating organised crime and corruption. We therefore request that the Government bring these issues to the attention of the EU Presidency prior to the EU-Brazil summit on 4 July 2007, with a view to their full consideration. We look forward to being informed of the action the Government has taken in this respect.

We also note that an Action Plan may be adopted at the Summit and that this was discussed by Member States in Brussels on 19 June 2007. Could you please send us a copy of the Action Plan, and explain why you did not think it appropriate to notify the Committee of these discussions and the contents of the draft Action Plan in advance?

28 June 2007

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 28 June in which you set out your Committee’s concern that the Commission’s Communication does not address human rights or social problems and request that the Government brings these issues to the attention of the Presidency before the EU-Brazil Summit on 4 July.

We have recommended to the EU Presidency that the proposed EU-Brazil Action Plan, which we understand would be developed after the Summit, includes a human rights element that incorporates the Strategy on Human Rights Defenders in Brazil agreed at the last EU Heads of Mission meeting in Brasilia on 4 June. The Strategy would involve regular contact with the Brazilian Federal Government’s Special Secretariat for

4 Command Paper 6916, October 2006.
Human Rights, state governments and relevant human rights organisations and NGOs. Furthermore, the EU and Brazil will make a Joint Statement during the Summit where they are expected to agree on the need to identify and promote common strategies to tackle global challenges, including peace and security issues, democracy, human rights, climate change, biodiversity, energy security, sustainable development and the fight against poverty and exclusion.

You also express the Committee’s concern that it had not been informed of the proposed Action Plan referred to in the Explanatory Memorandum, and ask to see a copy of it, along with an explanation as to why the Committee was not notified in advance. The proposal for an Action Plan was first put forward and discussed by EU Member States in Brussels on 19 June and a draft Plan has not yet been drawn up. At the meeting, the UK said it was in favour of this proposal. Once a draft became available, we would be happy to submit it to the Committee, along with an accompanying explanatory letter.

3 July 2007

EU-RUSSIA SUMMIT, MAY 2007

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

The 19th EU-Russia Summit took place on 17–18 May in Samara, Russia. The EU side was led by the German Presidency represented by Chancellor Angela Merkel and European Commission President Jose Manuel Barroso. The Russian side was led by President Vladimir Putin.

The Summit was another useful opportunity for frank discussion on a broad agenda of areas important to the EU and the UK. HMG continues to believe that it is important to engage Russia in discussion on areas of both mutual interest and disagreement. The EU was clear that the EU was united on key issues, and that Russia’s difficulties with individual EU countries constituted problems with the entire EU.

The EU raised the human rights situation in Russia, stressing the need to allow freedom of assembly and expressing concern over the situation of non-governmental organisations in Russia. The EU repeated its concern over Russia’s reaction to the relocation of the Bronze Soldier memorial in Estonia.

There was also discussion of international issues. The EU used the opportunity to urge Russia to support the EU’s target to stabilise temperature increases due to CO2 emission to 2°C above 1990 levels. The EU reiterated that Kosovo represented a key issue in European security. Both sides underlined the importance of the Quartet in the Middle East Peace Process, and they exchanged views on a United Nations Security Council Resolution on a tribunial to investigate the murder of Rafik Hariri. The EU stressed the need to encourage Afghanistan and Pakistan to work together to improve regional stability.

It was not possible to agree to open negotiations on a successor to the current EU-Russia Partnership and Co-operation Agreement due to the continuing Russian ban on imports of Polish food produce. However, both sides stressed the need to continue high-level and intense co-operation.

We expect relations with Russia to continue to be an important topic for the EU, under both the incoming Portuguese and future presidencies.

5 June 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 5 June on the EU-Russia Summit which Sub-Committee C considered at its meeting on 14 June.

The Sub-Committee was interested to learn about the conversations between President Putin and the EU representatives in Samara. We would, however, welcome information about the Russian response to the points raised by the EU representatives. Did the Russians raise any points of their own?

19 June 2007
Letter from Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

You wrote to my predecessor, Geoff Hoon, on 19 June seeking more information on Russian points and reactions to EU points during the EU-Russia Summit in Samara on 17 and 18 May.

The aim of the Summit follow-up letter to the Committees is to give a flavour of issues discussed. But the Summit sessions themselves are, of course, private. It would not be appropriate to give full details of those discussions and indeed would be counter-productive. Participants value enormously the chance to speak frankly. They can only do so if discussions are not more widely disseminated. That is why the German Presidency expressed its strong disappointment to all Member States when internal Summit briefing papers were made public.

But I also understand the interest Summits generate. This time the Summit was particularly high-profile. It came at a difficult time in EU-Russia relations. The issues discussed were substantive. The EU took a strong unified line. So it is right to give you more information on Russia’s approach to the Summit, without compromising participants’ ability to speak freely.

At the Summit, President Putin stressed Russia’s willingness to engage frankly across the range of issues in the relationship, including on difficult topics. On trade, he set out the extent of the relationship. Russia is the EU’s third largest trade partner. Russian trade with the EU is growing faster than trade with any other country. This, he said, was what underpinned EU-Russia relations. He reiterated Russia’s desire to join the World Trade Organisation, but said it was important that no new conditions were attached. On energy, he set out in detail the degree of energy interdependence between the EU and Russia.

On human rights, President Putin said that the EU should devote as much time to events around the world as to the human rights situation in Russia, or to the murders of Anna Politkovskaya and Alexander Litvinenko. On Estonia, he criticised the EU for its lack of reaction to the death of a demonstrator during recent protests. In this context, he also distinguished between the EU approach to such issues which, he argued, affected EU-Russia relations as a whole, and the Russian approach, which, he argued, did not. The EU responded robustly on the importance of EU solidarity: it was a key EU value. On the successor to the EU-Russia Partnership and Cooperation Agreement, President Putin confirmed its importance to Russia.

International and security issues were also covered extensively.

I hope you find this helpful. I would like to emphasise again the value the UK places on these Summits, including when the EU and Russia disagree. They allow both sides to engage frankly on difficult issues. The UK played a very full part in preparations. We continue to consider deepening engagement with Russia as the best way to take relations forward.

12 July 2007

EU STRATEGY AGAINST PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (WMD)

Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office, to the Chairman

The European Council endorsed the following text on 18 June 2007:

Six Monthly Progress Report on the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction.

I am writing to submit these documents to your committee for information, in response to your request of 18 November 2005 to Douglas Alexander.5

The Six-Monthly Progress Report concentrates on the main developments and trends rather than containing an exhaustive repetition of all the items mentioned in the original Strategy.

Your committee has previously shown interest in the Weapons of Mass Destruction Monitoring Centre and requested we keep you updated of its progress. You will note from the progress report that the EU Weapons of Mass Destruction Monitoring Centre has become operational. The Centre is not a new EU structure but builds on the existing resources of the Council Secretariat, developed since the adoption of the Weapons of Mass Destruction Strategy in 2003. The paper reports that regular meetings have been called including a meeting with participation by member states allowing a first exchange of views on, for example, proposals from the World Health Organisation (WHO) for joint projects on bio-safety/security and information on export controls outreach activities.

The progress report highlights EU Biological and Toxins Weapons Convention (BTWC) work. The Council Joint Actions in this area aim to promote universalisation of the Convention and to ensure full national implementation of its provisions. There has been progress on the Implementation of the EU action plan on

Biological and Toxins Weapons Convention (BTWC). EU member states have also agreed to submit Confidence Building Measures (CBM) returns and to update expert and laboratory lists to which the UN Secretary General could resort to facilitate any investigation of alleged weapons production.

The progress report also highlights Council Joint Actions in support of the International Atomic Energy Agency (IAEA), including community activities in Russia and the Commonwealth of Independent States (CIS) and work on redirecting former weapons scientists to prevent proliferation of expertise. Other Joint Actions also cover EU support for the Non-Proliferation Treaty review cycle and EU Joint Actions in support of the Organisation for the Prohibition of Chemical Weapons (OPCW). The report highlights EU work to encourage Hague Code of Conduct (HCOC) compliance, EU support for UN Security Council Resolution 1540, reinforcing the efficiency of export controls and EU support for the Six-Party talks.

We feel that this is a good paper, showing useful progress and development from the initial EU strategy. It also reflects considerable UK input and in general supports our counter-proliferation policies.

19 July 2007

Letter from the Chairman to Kim Howells MP

Thank you for your letter of 19 July on the above subject attaching the Six-monthly Progress Report on the Strategy (Document 11024/07) which the Members of Sub-Committee C read with interest and discussed at their meeting on 11 October.

The Sub-Committee raised one point on which we would welcome information. Section 4 on page 13 of the Strategy Report states that efforts in support of an early membership of all new EU Member States of the MTCR had not so far met with success. Could you please let us know the reason for the lack of success and the Government’s views on the matter?

18 October 2007

EU STRATEGY FOR AFRICA (9678/07)

Letter from Gareth Thomas, Parliamentary Under Secretary of State,
Department for International Development and Lord Triesman of Tottenham,
Parliamentary Under Secretary of State, Foreign and Commonwealth Office, to the Chairman

We are writing to provide an update of progress on the EU-Africa dialogue and the development of the joint EU-Africa strategy, as undertaken in a letter to the Committee dated 27 March 2007. (Letter to House of Commons European Scrutiny Committee)

The 8th EU-Africa Ministerial troika meeting took place in Brussels on 15 May. Ministers welcomed and endorsed a draft outline of the joint EU-Africa strategy (attached), recognising it as an excellent basis for the elaboration into a full joint strategy. They stressed the need for the strategy to provide a solid foundation for an ambitious and long-term strategic partnership between the EU and Africa. The EU-Africa Summit, planned for 7–8 December this year was also discussed. Both parties agreed that the Summit must focus on substantive deliverables including the joint strategy and an initial action plan. The final Communique from the meeting is also attached (not printed).

A new ad-hoc working group has been set up in Brussels with the specific purpose of further developing the joint EU-Africa strategy and working on preparations for the December Summit. The first meeting will take place on 6 June, the UK will be represented.

We believe that the outline document provides a reasonable base from which to develop the new joint strategy. However, further work is required to produce a credible new framework to guide the EU/Africa partnership, and promote concrete actions over the short and long-term.

We would be particularly keen to see further detail under the points on climate change, aid volumes and effectiveness, migration and governance. We will continue to comment via the new Ad Hoc Working Group.

The UK continues to stress to partners the need for commitments to be action-oriented and for mention of how individual objectives will be achieved. In addition, we have commented that the current document remains focused on EU commitments. African commitments and initiatives such as the recently adopted African Charter for Democracy, Elections and Governance could be better reflected here. This would ensure this is a truly joint strategy and a new partnership between the EU and Africa.

The UK considers it vital that concrete agreements are reached on future cooperation at the Summit to give early substance to the EU-Africa partnership. For example, we will be pursuing with partners new EU funding arrangements for AU peace support missions perhaps focusing on rapid deployment, the launch of the EU Africa Energy Partnership reflecting Africa’s interests in greater infrastructure investments to improve energy security and expand access, and the announcement of the new EU/EC representation in Addis.

We will continue to work closely with partners on preparations for the joint strategy and the December Summit.

12 June 2007

Annex A

OUTLINE FOR THE JOINT EU-AFRICA STRATEGY

As endorsed by the Ministerial Troika Meeting of 15 May 2007

I. Context, Shared Vision and Principles

1. Context

Africa and Europe are bound together by history, culture and geography as well as by a community of values: the respect of human rights, freedom, equality, solidarity, justice, the rule of law and democracy as enshrined in the relevant international agreements and in the constitutive texts of our respective Unions.

Since the historic first EU-Africa Summit in Cairo in 2000, where our partnership was strengthened through the institutionalisation of our dialogue, considerable change has taken place on both continents. Democratisation and reform processes have been launched and are being deepened in both Africa and Europe and efforts have continued on both continents to address conflict and crisis situations. At the same time, integration processes on both continents have accelerated—the Organisation for African Unity (OAU) has been transformed into the African Union (AU) and has integrated the New Partnership for Africa’s Development (NEPAD) as its socio-economic programme, while the European Union (EU) has nearly doubled in size. The world has also changed: new international and global challenges have surfaced, globalization has moved forward rapidly and the world has become increasingly interdependent.

In response to these changes, cooperation between Africa and the EU has rapidly developed and diversified. Both sides have developed political strategies and policy documents to guide their cooperation, including the AU Constitutive Act and Strategic Framework 2004–07 and the EU Africa Strategy of 2005. However, it is now time for these two neighbours, with their rich and complex history, to forge a new and stronger partnership that builds on their new identities and renewed institutions, capitalizes on the lessons of the past and provides a solid framework for long-term, systematic and well integrated cooperation. There is now a need for a new phase in the EU-Africa relationship, a new strategic partnership and a Joint EU-Africa Strategy as a political vision and roadmap for the future cooperation between the two continents in existing and new areas and arenas.

2. Shared Vision

The purpose of this Joint Strategy is to take the EU-Africa partnership to a new, strategic level with a strengthened political partnership and enhanced cooperation at all levels. The partnership will be based on a Euro-African consensus on values, common interests and common strategic objectives and will mark the beginning of a new phase in EU-Africa relations. The partnership should strive to bridge the development, divide between Africa and Europe through the promotion of sustainable development in both continents, living side by side in peace, security, prosperity, solidarity and dignity.

This Joint Strategy, which will provide an overarching framework for EU-Africa relations, will be implemented through enhanced political dialogue at all levels, resulting in concrete and measurable outcomes in all areas of the partnership, including peace and security, governance and human rights, trade and regional integration, and key development issues.
3. Principles

This partnership and its further development will be guided by the fundamental principles of the unity of Africa, the interdependence between Africa and Europe, ownership and Joint responsibility, and respect for human rights, democratic principles and the rule of law, as well as the right to development. In the light of this new partnership, both sides commit themselves to enhance the coherence and effectiveness of existing agreements, policies and instruments.

The partnership will furthermore be governed by strengthened political dialogue, co-management and co-responsibility in our bilateral cooperation and towards global issues, burden-sharing and mutual accountability, solidarity and mutual confidence, equality and justice, common and human security, respect for international law and agreements, gender equality and non-discrimination and, not least, a long-term approach.

II. Objectives

The four main objectives of this long-term strategic partnership are:

1. To reinforce and elevate the EU-Africa political partnership to address issues of common concern. This includes issues of strengthening institutional ties and addresses common challenges such as peace and security, migration and a clean environment. To achieve this partnership we will treat Africa as one and upgrade the EU-Africa political dialogue to enable a strong and sustainable continent-to-continent partnership, with the AU and the EU at the centre.

2. To continue to promote peace, security, sustainable development, human rights and regional and continental integration in Africa, and to ensure that all the Millennium Development Goals (MDGs) are met in all African countries by the year of 2015.

3. To jointly promote and sustain a system of effective multilateralism and strong and legitimate multilateral institutions, and the reform of the United Nations (UN) system, and to address global challenges and common concerns such as human rights, trade, HIV/AIDS, malaria, tuberculosis, climate change, energy security and sustainability, ICT-issues, science and technology, terrorism and WMDs.

4. To facilitate and promote a broad-based and wide-ranging people-centred partnership, we will empower non-state actors to play an active role in development, conflict prevention and post-conflict reconstruction processes. We also will promote holistic approaches to development processes, including democracy building, involving all stakeholders, and make this Joint Strategy a permanent platform for information, participation and mobilisation of a broad spectrum of civil society actors. Ongoing dialogue with civil society, the private sector and local stakeholders on issues covered by this Joint Strategy will be a key component to ensure its implementation.

III. New Approaches

In order to meet these ambitious objectives, the EU and Africa will need to jointly address a number of key political challenges that are prerequisites for the new partnership, including:

— To work together towards gradually adapting relevant policies and legal and financial frameworks, as well as relevant cooperation instruments and mechanisms, to the needs and objectives of the partnership, and to set up a framework that better address each others’ concerns.

— To move away from a traditional relationship to a real partnership characterised by equality and the pursuit of common objectives.

— To build on positive experiences and lessons learned from our past relationship where successful mechanisms and instruments have been applied in specific policy areas and learn from shortcomings in other areas.

— To recognise and fully support African commitments and leadership to create conducive conditions for sustainable social and economic development and the effective implementation of partner-supported development programmes.

— To promote more accurate images of each other, which are regrettably dominated by inherited negative stereotypes and often ignore the overwhelmingly positive developments on the two continents, and to encourage mutual understanding between the peoples and cultures of the two continents.
— To make better and more systematic use of our shared cultural and social heritage, and the economic wealth and opportunities that exist in the two continents.
— To integrate in our agenda common responses to global challenges.
— To bear in mind that we can only achieve our objectives if this strategic partnership is owned by all relevant actors, including civil society, and if they are actively contributing to its implementation.

IV. Strategies, Actors, Implementation and Follow-up Mechanisms

1. Strategies

For the implementation of this new partnership and to meet our objectives we will need to take concrete action and to make significant progress in the following inter-related areas.

(a) Peace and Security

— Enhance the partnership and the political dialogue between the two continents to effectively respond to common challenges, particularly in the area of peace and security.
— Formulate and pursue common positions on conflict and crisis situations and other key international political issues.
— Promote peace and human security on the basis of a sustainable and holistic approach encompassing crisis management and long-term peace building linked to governance, conflict prevention and address as a priority the root causes of conflicts.
— Promote long-term capacity building, including military and civilian crisis management and coherent and coordinated support for the African Standby Force, including through the implementation policies outlined in the EU Concept for strengthening African capabilities for the prevention, management and resolution of conflicts.
— Ensure adequate, coherent and sustainable support for the establishment and functioning of the African Peace and Security Architecture, including PCRD policies, as well as predictable and flexible funding for African-led peace support operations.
— Combine efforts to promote and further international action, and cooperate on issues of mutual concerns relating to security, notably illicit Small Arms and Lights Weapons, landmines and other explosive remnants of war, and Weapons of Mass Destruction.
— Cooperate in the prevention and fight against international terrorism and organised crime, including through the exchange of information.
— Enhance sharing of information, experience and lessons learned through the exchange of personnel, particularly in the area of conflict prevention, management and resolution.
— Promote global and mutual awareness of the impact on security and stability of environmental issues such as climate change, environmental degradation, water management and toxic waste deposit.

(b) Governance and Human Rights

— Conduct a holistic dialogue on democracy, governance, the rule of law, and cooperate in the fight against corruption in accordance with the relevant instruments.
— Work together to protect and promote the human rights of all people in Africa and Europe, including through enhanced dialogue between relevant institutions in the EU and Africa.
— Work together for the promotion and protection of human rights and international humanitarian law in international fora, including the UN Human Rights Council, and for the effective implementation of international and regional human rights instruments.
— In the context of situations of conflict, crisis or instability, as well as institution-building, and building on discussions in various international fora, decide to start a dialogue on the concept of fragility of states aimed at reaching a common understanding and agreeing on steps that could be taken.
— Support the institutional development, knowledge sharing and capacity building of African public and private institutions at all levels—national, regional and pan-African—and the emerging African governance architecture.
— Support Africa-owned governance reform programs and democracy-building efforts on the basis of inter alia the African Peer Review Mechanism (APRM) and the African Charter on Democracy, Governance and Elections.
— Promote enhanced efforts to address the illicit trade in natural resources, including through global initiatives such as the Kimberley process, EITI and FLEGT, as well as issues relating to counterfeiting and money-laundering, and cooperate to facilitate the return of illegally acquired funds to their countries of origin.

— Cooperate to stop the illegal trade of cultural goods, and facilitate and support the return of illegally acquired cultural assets to their countries of origin.

(c) Trade and Regional Integration

— Improve economic governance and investment climate in order to move away from continuous donor support and to find a place in global markets.

— Build Africa’s technical infrastructure and productive capacities including through the development of a continental industrial strategic framework.

— Continue with the EPA processes to support regional integration and the delivery of their development outcomes, as well as to ensure coherence and consistency between existing and future agreements.

— Respect and support Africa’s integration processes on the basis of the Abuja Treaty.

— Support trade integration in Africa, aiming at a fully integrated continental market, through the harmonisation of trade, trade facilitation, customs, agricultural and industrial policies, laws, regulations and procedures as well as through simplification and rationalisation of institutional frameworks.

— Build technical and institutional capacity for negotiations in trade and related areas, such as quality and food safety, industrial goods, TBT/SPS and commodity management in order to promote African trade and safeguard the health and rights of consumers.

— Promote investment and business friendly environments, including through support for the Investment Climate Facility, in order to encourage the development of Africa’s private sector and continue to facilitate the dialogue with the private sector on both continents, including through the EU-Africa Business Forum.

— Continue to promote market access of goods and services to the EU and redouble efforts in the framework of the EU-Africa partnership as well as in multilateral trade negotiations to effectively reduce and progressively eliminate all the various trade obstacles for products with export interest to African countries.

— Enhanced joint consultations and develop common positions in multilateral trade negotiations within the WTO, particularly on the development dimension of the Doha round and work together towards an early and successful conclusion of the WTO trade negotiations that take fully into consideration the better interests of Africa and EU.

(d) Key Development Issues

Development cooperation

— To increase ODA significantly, to implement the Paris Declaration on aid effectiveness and to work towards debt cancellation in the appropriate fora.

— Promote Policy Coherence for Development in both EU and African policies having an impact on Africa’s sustainable development.

— Promote predictable and sustainable funding for African-led development efforts.

Human and social development

— Jointly address employment issues and work together to create more, and more productive, decent jobs in Africa, particularly for Africa’s women and youth.

— Promote job creation, vocational training and education (VET) and skills development.

— Provide long-term predictable funding for national education plans to help ensure that every child attends school, including through the Education for All Fast Track Initiative and the African Education for All Initiative.

— Build on the 2007 Addis Ababa Declaration to strengthen cooperation on science, technology and research for development.

— Strengthen national health systems to ensure sufficient health workers, infrastructure, management systems and supplies to achieve the health MDGs “HIV/AIDS, health and education”.
— Achieve universal access to reproductive health by 2015 as set out by the International Conference on Development and Population (ICDP).
— Ensure the mainstreaming of gender in all policies, especially regarding access to social services for women, vulnerable groups as well as those with special needs.
— Enhance cultural cooperation, exchange and dialogue between the two continents.
— Promote more accurate images of each other through enhanced exchanges and contacts of non-state actors, including trade unions, the private sector, media, schools, universities, research and cultural institutions, including through support for twinning arrangement between civil society organisations.

Environmental sustainability and climate change
— Work together in the global arena and international fora to effectively respond and adapt to climate change and other global environmental challenges, such as desertification, deforestation, biodiversity, and issues related to toxic waste.
— Assist Africa’s fight against desertification, deforestation, and the loss of biodiversity, and support efforts to eliminate problems relating to toxic waste in Africa.
— Promote environmental sustainability and the integration of environmental considerations in the elaboration and implementation of development policies.
— Strengthen cooperation and support capacity building in the management of natural resources.

Migration
— Ensure that migration can work for sustainable development in both the EU and Africa, on the basis of relevant international agreements and declarations, especially the Tripoli Declaration. Building on and implementing these commitments, commit to a partnership between countries of origin, transit and destination to better manage migration in a comprehensive, holistic and balanced manner, in a spirit of shared responsibility and cooperation. To this end, enhance dialogue on migration and development.
— Implement the EU-Africa Plan of Action on Trafficking of Human Beings, especially as regards women and children.

Agriculture and Food Security
— Support AU/NEPAD programmes and priorities and reaffirm commitments to cooperate on food security and promote sustainable agriculture in view of ensuring food security for all Africans and achieving the MDGs.

Infrastructure
— Promote interconnectivity of African infrastructure at all levels in line with AU/NEPAD priorities, including through implementation of the EU-Africa Infrastructure Partnership and Trust Fund.
— Strengthen cooperation and support to fight the digital divide in Africa and promote the development of an inclusive Knowledge Economy, including through the implementation of the outcome of the World Summit on Information Society and relevant AU/NEPAD programmes.
— Further develop ongoing energy dialogue with the overall objective of achieving access to secure, reliable, affordable, climate-friendly and sustainable energy services for both the EU and Africa including through the launch of a comprehensive Africa-EU Energy Partnership.

2. Actors

This strategic partnership will involve and be implemented by a large number of institutional and non-institutional actors in the EU and Africa at continental, regional, national and local level.

Partners should place greater value on the role of their continental organisations in facilitating this partnership and task them to work closely together, including through more regular dialogue between corresponding EU and AU institutions, to prepare and to ensure the follow up to decisions. It should be noted, however, that this strategic partnership, and the effective implementation of the policies and actions outlined in the Joint Strategy, also is the shared responsibility of EU and African States. The institutional dialogue should be complemented by contributions of various stakeholders.
In this context, partners recognise a need for a more defined division of roles and responsibilities between the pan-African, sub-regional, national and local levels and between the different actors on the EU side, as well, as for coherence and complementarity with other international actors.

Partners furthermore recognise that the Joint Strategy should be co-owned by European and Africa non-institutional actors and that these actors can play an important role in taking forward the objectives of the partnership.

3. Implementation and Follow-up Mechanisms

The Joint Strategy will be implemented through successive Action Plans which build on the operational part of this Strategy. Relevant programmes, projects and activities will be identified and implemented.

The implementation of this new Joint Strategy also calls for a broadened and intensified dialogue encompassing a larger number of actors, including experts, senior officials, parliamentarians, ministers and Heads of State and Government, meeting at the highest political level, as well as non-state actors, regional organisations and other stakeholders.

In view of the ambitions of the new partnership, as outlined in this Joint Strategy, the various dialogue levels should be articulated in an appropriate way, which will allow partners to address new issues of mutual concern and common interest for the EU and Africa. The frequency of these meetings at political level, namely, of senior officials, ministers and Heads of State and Government, will have to be enhanced in order to take forward the objectives of the Joint Strategy.

Building on the existing Joint Implementation Matrix as a platform, monitoring and evaluation mechanisms will be jointly established, with a view, *inter alia*, to assess the impact of the Strategy against intended targets and results.

The two sides will work closely together to secure appropriate funding, and to enhance the accessibility of financing sources, to give effect to this Strategy and its successive Action Plans.

The Joint Strategy is for the long term and shall be reviewed on a regular basis and as appropriate.

**Letter from the Chairman to Lord Malloch Brown, Minister of State, Foreign and Commonwealth Office**

Thank you for the letter sent on 12 June by Lord Triesman jointly with Mr Thomas at DFID.

Sub-Committee C considered the letter at its meeting on 28 June and expressed appreciation for the information contained in the update. The Sub-Committee expressed concern however about the statement in 1) b of the Final Communique of the EU Africa Ministerial Troika (not printed) meeting that “Both sides agreed that the Summit will need to secure broad and high level participation from the AU and all African countries...” which implies that President Mugabe of Zimbabwe will be invited to the Summit. How is this statement consistent with the travel ban which exists?

Under Chapter 2) b we were similarly concerned to see that Zimbabwe was not included in the “Discussion on crisis/country situations”. I would be grateful for your comments on this.

The Sub-Committee is giving more detailed consideration to the documents attached to your letter in the light of their own report, The EU and Africa, and will be in further correspondence at a later date.

6 July 2007

**Letter from Lord Malloch Brown to the Chairman**

Thank you for your letter of 6 July where you raised the concerns of Sub-Committee C about statements included in the Final Communique of the EU-Africa Ministerial Troika.

Discussions are ongoing about Zimbabwean representation at the EU-Africa Summit in December. We want a Summit that delivers real results for Africa. President Mugabe’s presence in Lisbon would detract from this important agenda. We do not believe he should be at the Summit, but we do think Zimbabwe should be represented. Under the Common Position, this would mean the EU agrees a visa exemption for a senior figure, in return for a summit discussion on human rights, democracy and governance in Zimbabwe. The summit is not until December 2007 and no invitations will be issued until the autumn, by which time the outcome of the Southern African Development Community (SADC) mediation initiative should be clearer.

You raised the absence of Zimbabwe under Chapter 2) b “Discussion on crisis/country situations”. Though Zimbabwe did not feature formally on the agenda or in the final communique, Zimbabwe was discussed at the meeting. Both sides expressed concern over the situation in Zimbabwe and reiterated support for the SADC/ Mbeki initiative. It was agreed that a solution for Zimbabwean representation at the summit should be found.

19 July 2007

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

Thank you for your Explanatory Memorandum of 25 July, sent jointly with Lord Malloch Brown, on the EU/Africa Strategy, covering documents 11326 (SEC 855 and 856) which Sub-Committee C considered on 18 October and held under scrutiny.

Members of the Sub-Committee expressed the wish that the Government should continue to be committed actively to the EU/Africa Strategy, even if no Minister was present at the EU/Africa Summit in December. They also expressed the strong wish that at the Summit the EU should stress to the African side the importance of the issues of human rights and democracy as they related in particular to Zimbabwe, as well as to other countries.

We look forward to further information as preparations for the Summit develop.

24 October 2007

**EUROPEAN DEFENCE AGENCY: STEERING BOARD MEETING, MAY 2007**

**Letter from Lord Drayson, Minister of State for Defence Equipment and Support, Ministry of Defence, to the Chairman**

The next European Defence Agency (EDA) Steering Board Meeting will be held on 14 May. As I will be attending this meeting on behalf of the Secretary of State for Defence, I would like to inform you of the main items I expect to discuss at this meeting. I enclose for your information the draft agenda and draft papers that have been circulated by the EDA (not printed). The final agenda and papers for this meeting will be issued by the Agency only during the week beginning 7 May, following an official level Preparatory Committee meeting, and it is therefore possible, as has happened previously, that the final agenda and papers may differ from these drafts.

Subject to further work in the Preparatory Committee, the Steering Board will be invited to note and/or agree a number of points contained within six main agenda items.

The first issue is the Agency’s Joint Investment Programme on Force Protection. As you will be aware from the letter the Secretary of State sent you on 27 September 2006, we have declined to participate in this project because it duplicates work we are doing nationally and would thus not represent value for money. Assuming the nineteen states that are participating agree at the preparatory committee that programme negotiations have been satisfactorily concluded, their Ministers will be invited to sign the programme agreement.

The second item concerns the progress of EDA initiatives on the European Equipment Market (EDEM). We have fully supported this initiative, not least by signing in June 2006, the Code of Conduct on Defence procurement with 22 other participating Member States. Whilst welcoming the progress in the ten months since we signed the Code of Conduct I think it is too soon to judge whether the initiatives have succeeded in increasing cross border trade within Europe.

The third item is a proposed “Charter” on the European Defence Technological and Industrial Base (EDTIB). The rationalisation of the EDTIB is important for the continued survival of the European Defence industry and is coherent with our own work on the UK Defence Industrial Strategy. This document sets out a series of non-binding high level principles and characteristics which I support. However, I do not think it would be right to call this a charter: I prefer the term “statement of principles” as being clearer that these principles do not involve a legal commitment. Subject to that change and clarification of a number of specific issues within the draft at the Preparatory Committee I expect that I will be able to endorse the draft at the Steering Board.

The fourth point concerns Unmanned Aerial Vehicles (UAVs). The steering board is being invited to support a proposal for a combined effort between the EU Commission, the EDA and industry to produce a study into the issues surrounding UAVs flying in regulated airspace alongside manned commercial aircraft. We are at an early stage of scoping this issue nationally, but it could be to our advantage to address these issues on a European level. I intend to support this initial study as it could potentially provide a more cost effective European solution.
The fifth agenda item is an EDA paper on the utility of strategic targets for defence investment. I regard this work as important in encouraging participating Member States to meet European ‘benchmarks’ on defence expenditure, enabling them to contribute more fully to ESDP and other operations. I will support their proposal that they continue their work to develop specific proposals for benchmarks for the Steering Board to consider later this year, but as this work goes forward we will need to be sure that it serves the purpose of improving performance across the board.

The sixth and final item is a report by the Head of the Agency Javier Solana, on the implementation of the EDA’s founding Joint Action. His formal report is due only in July, but I expect that at this stage he will share an initial assessment that the Joint Action—that establishes the Agency and defines its operation—does not require any amendments following three years of operation of the Agency. We share that view.

I will write again to you after the 14 May to report on the outcome of the Steering Board.

2 May 2007

Letter from the Chairman to Lord Drayson

Thank you for your letter of 2 May attaching the draft papers for the EDA Steering Board Meeting on 14 May which Sub-Committee C considered at its meeting on 10 May.

The Sub-Committee regretted that the papers had not been sent in time for their detailed consideration and noted that the papers do not cover funding. But, in the absence of the final papers, the Sub-Committee broadly supported the proposed course of action set out in your letter and look forward to your EM on the outcome of the meeting.

11 May 2007

Letter from Lord Drayson to the Chairman

I wrote to you on 2 May about the Ministerial Steering Board for the European Defence Agency (EDA), enclosing the agenda, draft papers and an outline of the likely points of discussion.

I was grateful of your reply of 11 May. I am sorry that you felt the papers had not been sent in sufficient time for detailed consideration. We will always try to write with information about EDA Steering Boards in good time, but are in the hands of the Agency itself. On this occasion we saw the papers for the first time only on 23 April, and officials needed to assess them before submitting advice to me on what our position should be. But we could, for example, submit the papers as soon as they arrive on the basis that Ministers would subsequently write setting out our likely positions. You also noted that the papers did not address funding—that is simply because no discussion on budgets was required at this meeting.

I enclose (not printed) with this the final versions of the papers that were considered at the 14 May Steering Board, following discussion at the official level Preparatory Committee meeting on 4 May. As I suggested might happen, some changes were made to the papers at that meeting, but nothing that significantly affected the position I took at the Steering Board itself. The following is a brief outline of the discussion.

The 19 EDA member states participating in this Agency’s Joint Investment Programme on Force Protection had all completed their internal processes and were able to sign the programme arrangement. As you know, we are not participating in this programme.

The Steering Board noted the progress report on the European Defence Equipment Market (EDEM) as requested.

The Steering Board welcomed and adopted the suggested European defence Technology and Industrial Base Strategy. You will recall that the draft version of the paper that I sent you on 2 May was described as a “Charter”—following the Preparatory Committee it was agreed to rename it “Strategy.” I noted the requirement to encourage European defence industry to realign to meet changing capability requirements. The Steering Board also supported the Agency’s proposed way forward on UAVs. I said that the Government shared the objective of allowing UAVs to fly in controlled airspace by 2012 and welcomed the EDA study as an important step forward. I suggested that the EDA could play a useful role with others in developing global standards, and noted that this was an area in which European industry had genuine capability.

Ministers agreed the Agency’s proposed way ahead on the development of benchmarks and targets for defence investment.

The Head of the Agency Javier Solana, reported his initial assessment (he is due to report formally to the Council by July) that the Joint Action founding the EDA remained substantially fit for purpose, and did not require significant revision.
Javier Solana also briefed Ministers on his intentions with respect to senior management positions within the EDA. He noted that the current Chief Executive, Mr Witney, and Deputy Chief Executive, Mr Linnenkamp, would come to the end of their contracted terms this autumn. He proposed that at that point he would appoint a new Chief Executive, and two new Deputies, one for strategy and one for operations, to strengthen the senior management of the EDA. He undertook to write to Ministers formally after the meeting to seek agreement to this suggestion and his nominations.

I also enclose an Explanatory Memorandum covering the May report by the Head of the European Defence Agency to the Council, which was noted by the General Affairs and External Relations Council on 14 May.

22 May 2007

EC DEVELOPMENT POLICY AND EXTERNAL ASSISTANCE IN 2006 (11141/07)

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

Thank you for your Explanatory Memorandum of 10 July which Sub-Committee C cleared from scrutiny on 18 October following the summer recess.

The Sub-Committee noted your view that this year’s Report is a considerable improvement on the one produced in 2006 following efforts to take into account comments made by Member States. We see also that the Government welcomes that both governance and donor coordination are treated more systematically and seriously than previously and that you highlight the Commission’s more effective role in fostering dialogue on aid effectiveness and donor coordination.

However we were also concerned at the weaknesses in the Report which were noted in your Explanatory Memorandum: the very brief analysis of the EC’s work in middle-income countries; that a greater portion of aid should be spent on low-income countries; that the analyses under some sub-heading sections relating to the MDGs are not uniformly strong; and that the baseline data on the Paris Declaration on Aid effectiveness have not been reported. Could you please keep us informed about the action you are taking to remedy these weaknesses?

29 October 2007

FOREIGN MINISTERS’ INFORMAL MEETING (GYMNICH), SEPTEMBER 2007

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

The EU Foreign Ministers’ Informal meeting (Gymnich) took place in Viana do Castelo on 7–8 September 2007. My Right Honourable Friend the Foreign Secretary represented the UK. As this was an informal meeting there were no conclusions or formal decisions.

The agenda items were as follows:

Kosovo

Wolfgang Ischinger, EU Troika representative, briefed Foreign Ministers on the US-EU-Russia talks with Belgrade and Pristina on the future of Kosovo.

INTERGOVERNMENTAL CONFERENCE

The Presidency briefed partners on the progress of the Intergovernmental Conference.

SUMMITS AND STRATEGIC PARTNERS

Foreign Ministers discussed ways the EU could take forward its relationship with Russia in preparation for the EU-Russia Summit on 26 October.

Foreign Ministers discussed EU engagement with Africa in advance of the EU-Africa Summit on 8 December.
MIDDLE EAST

Foreign Ministers discussed recent developments in preparation for a meeting of the Quartet (EU, US, UN and Russia) in New York at the end of September. Member States discussed ways in which the EU could support the continuing dialogue between President Abbas and Prime Minister Olmert, and provide financial and practical assistance for building the capacity of Palestinian institutions.

Foreign Ministers discussed the situation in Lebanon and ways the EU could support a resolution to the political impasse.

Foreign Ministers discussed the humanitarian situation in Iraq and ways in which the EU could provide support, following the adoption of UN Security Council Resolution 1770, which extended the mandate of the United Nations Assistance Mission for Iraq (UNAM) for a further 12 months and set out a number of areas where UNAMI might provide assistance to the Government of Iraq, where requested, including in humanitarian and political assistance and capacity building.

CHAD

Foreign Ministers discussed a possible military mission to Chad under the European Security and Defence Policy.

BURMA

My Right Honourable Friend the Foreign Secretary raised recent developments in Burma. Member States discussed ways the EU could support action in the UN and use its influence with Burma’s neighbours.

13 September 2007

GENDER EQUALITY AND WOMEN’S EMPOWERMENT IN DEVELOPMENT COOPERATION

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

At its meeting on 10 May Sub-Committee C cleared the above Communication from scrutiny.

While welcoming the Commission’s efforts to develop a general strategy on this issue, the Sub-Committee noted that there was in fact very little in the document to show how the Commission intends in practice to strengthen the impact of its policy and to make it operational. We therefore also echo your concern about the lack of clarity in the Communication about who within DG Dev and other parts of the Commission will be responsible and accountable for delivery of particular aspects of the Communication, and we support your desire for clear leadership from the top of the Commission. The Sub-Committee also endorses your efforts to have the points you mention included in the Council Conclusions of the discussions.

The members expressed surprise that there had been no external consultation by DfID on this Communication, since the Departments for Education and Health, the Home Office and FCO have all done related work in this field, as have a number of women’s organisations.

11 May 2007

LATIN AMERICA: PARTNERSHIP WITH THE EU

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

Former Europe Minister Douglas Alexander submitted an Explanatory Memorandum on 19 January 2006 and wrote to you on 13 February 2006 setting out Foreign & Commonwealth Office’s views on the Commission’s Communication on relations between the European Union and Latin America. This is a good moment, roughly halfway between the EU-Latin America & Caribbean (EU-LAC) Summit of Vienna in May 2006 and the next Summit, due to be held in Lima in May 2008, to give you an update.

Last year’s Vienna Summit, at which Tony Blair, Geoff Hoon and Lord Triesman represented the UK, was an important opportunity to underscore that Latin America matters to Europe and to hold focused meetings with leaders from the region. The Summit also made useful progress towards enabling the start of negotiations on Association Agreements between the EU and the Community of Andean Nations, and between the EU and Central America.

8 Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, pp 204
Since the Summit, there was been some encouraging progress:

— Negotiations on an Association Agreement with the Community of Andean Nations were launched in June 2007; the first round of formal negotiations will take place in September. The Commission hopes to open negotiations on an Association Agreement with Central America in October.

— The EU held its first Summit with Brazil in Lisbon on 4 July: I am writing separately on the specific points you raised about the Summit.

— With UK encouragement the Commission, and the Finnish and German Presidencies, have focused on the important issue of investment security in the region. A special meeting was organised by the German Presidency in Hamburg in May to discuss investment security. This issue is now firmly on the EU-Latin America & Caribbean agenda.

We believe the EU has taken a robust approach when necessary. The Commission has raised the importance of investment security on several occasions with high-level visitors from Latin America. It has also raised with Argentine interlocutors discriminatory draft legislation being considered by Argentina’s Congress, aimed at penalising companies doing business with the Falkland Islands. The EU has issued clear statements on issues of concern, such as the recent murder of 11 Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia) (FARC) hostages in Colombia and the Venezuelan Government’s non-renewal of Radio Caracas Television’s (RCTV) licence.

We continue to encourage the EU to focus its assistance on poverty alleviation, in line with the Millennium Development Goals.

We support the Commission’s plan, as proposed in its Communication, to organise a meeting of EU-Latin America & Caribbean Environment Ministers before the next Summit in Lima. We believe this should be a valuable opportunity to intensify EU dialogue with the region on climate change and other environmental issues of key concern.

In our judgement, however, the agenda for the last Summit was too long and unfocused. The UK is working with other EU partners towards a shorter and more outcomes-focused agenda for next year’s Lima Summit. Our wish is to see the Summit focus on one or two themes of real importance to both regions. We understand that this is also the wish of the Peruvian hosts, although it is always challenging to achieve consensus on the agenda in a process that brings together so many countries, each with its own priorities.

12 July 2007

LIBERIA: RESTRICTIVE MEASURES WITH REGARD TO THE EXPORT OF DIAMONDS

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 about a misunderstanding that has occurred concerning the Common Position and the Council Regulation on the lifting of sanctions on rough diamonds from Liberia. As you may know the EU implements sanctions stemming from UN Security Council Resolutions through Common Positions followed by Regulations. In correspondence to you of 18 May9 we referred to the Regulation when in fact we meant the Common Position. I apologise for the misunderstanding that has arisen through our error. It may help if I set out the background:

— We submitted an Explanatory Memorandum covering the Common Position terminating the diamond ban on Liberia on 18 May. Sub-Committee C of your Committee cleared the document in its meeting of 24 May.

— We also submitted a letter alongside the EM warning of the possibility of a scrutiny override. Unfortunately, in the letter we mistakenly referred to the document as a Regulation rather than a Common Position. In the event the Common Position was not agreed until 11 June at the Agriculture and Fisheries Council. This was therefore not an override.

— The House of Commons European Scrutiny Committee replied to our letter on 6 June. Their letter also referred to the Regulation rather than the Common Position.

— The Council Regulation is due to be adopted at the Competitiveness Council on 25 June. An EM explaining the Council Regulation accompanies this letter.

14 June 2007

9 Refer to letter addressed to Michael Connarty MP, Chairman European Scrutiny Committee, House of Commons.
RESTRICTIVE MEASURES AGAINST DEMOCRATIC REPUBLIC OF CONGO (12256/06)

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

I would like to draw the Committee’s attention to an EU document that may need to be agreed during Parliament’s summer recess. Unfortunately we are not yet in a position to submit this for Parliamentary Scrutiny. As the Portuguese EU Presidency has not set out its legislative timetable, it is possible that there may be other issues of which we are not yet aware. The last Council before the summer break is the 23–24 July General Affairs and External Relations Council. There are then no Councils scheduled until the 17 September Justice and Home Affairs Council. The first Council after your Committee sessions restart should be the 15–16 October General Affairs and External Relations Council.

Democratic Republic of Congo
UN Security Council Resolution 1698 (2006) imposed sanctions on arms and a travel and assets freeze for listed individuals in the Democratic Republic of Congo. The EU agreed Common Position 2006/624/CFSP on 16 September 2006. The Security Council Resolution is due for renewal on 31 July 2007. If changes are proposed during the negotiation phase, we may need to amend the Common Position accordingly. However, we currently envisage a straightforward rollover of the measure.

18 July 2007

RESTRICTIVE MEASURES AGAINST UZBEKISTAN: REVIEW OF VISA BAN

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

Thank you for your letter of 27 April 2007 on the above subject which Sub-Committee C discussed at its meeting on 10 May.

The Sub-Committee was grateful to you for sending the information about Presidency plans for the future of the visa ban in Uzbekistan. We support your proposed course of action and understand the exceptional nature of your request. We will not consider your agreement in these circumstances to be an override of scrutiny. We look forward to seeing your EM and the document when the latter is available.

11 May 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 11 May regarding the renewed EU visa ban imposed on individuals in Uzbekistan, who were responsible for the indiscriminate and disproportionate use of force in Andizhan. I am pleased to note that you do not consider this an override of parliamentary scrutiny but nonetheless thought you may appreciate an explanation for the delay in submitting the Explanatory Memorandum.

As anticipated, the Common Position was adopted at the 14 May General Affairs and External Relations Council. It renewed the visa ban for a further six months and removed four individuals from its target list. Unfortunately, the Presidency did not produce the draft text until after 2 May. Without agreement the travel restrictions would have lapsed and, also considering other issues as laid out in the Explanatory Memorandum, we agreed to adopt the Common Position without further delay.

4 June 2007

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

I am writing to let your Committee know of plans to renew the EU visa ban and arms embargo on Uzbekistan. The visa ban on eight individuals in Uzbekistan, who were responsible for the indiscriminate and disproportionate use of force in Andizhan, was renewed on 14 May 2007 for six months. The arms embargo was renewed on 13 November 2006 for 12 months. The Common Position which imposes the sanctions is due for renewal on 13 November 2007.

The General Affairs and External Relations Council on 15 October agreed to renew both the arms embargo and visa ban for a further 12 months. However, with a view to encouraging the Uzbek authorities to take positive steps to improve the human rights situation, and taking into account their commitments, the Council decided that the visa restrictions would be suspended for a period of six months. After that period the Council

10 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, pp 195.
will review whether the Uzbek authorities have made progress towards meeting a broad range of human rights concerns and international obligations. If the Uzbek government has made insufficient progress the visa restrictions will automatically be re-enforced.

Unfortunately, due to the discussion surrounding the review of sanctions, the Common Position text was not agreed until late on 19 October. Please find the draft Common Position and an Explanatory Memorandum enclosed (not printed). It is likely that the Common Position will be submitted to the ECOFIN Council on 13 November 2007 for formal adoption.

The possibility exists that there may not be enough time for your Committee to scrutinise the document before its adoption. The Government feels strongly that these measures should not lapse. We feel this would show that the EU has no coherent policy on Uzbekistan and would leave wider CFSP and EU sanctions policy open to a great deal of criticism. Therefore I hope the Committee will understand if I decide to approve the renewal of the Common Position before scrutiny has been completed.

22 October 2007

UNIVERSALISATION OF THE UN CONVENTION ON CERTAIN CONVENTIONAL WEAPONS

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

Sub-Committee C considered the above Joint Action at its meeting on 7 June and cleared it from scrutiny.

Whilst affirming support for the Convention, the Sub-Committee would like to ask why the Government think it is a good idea for the EU to move into the field of promoting the Convention’s implementation? Is this not a question of the EU seeking to increase its competence in an area where national governments should be acting? We also note that there are budget implications, with the largest regional cost to be allocated to the Pacific Islands which is more than for Central Asia or the Middle East and the Mediterranean.

19 June 2007

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

Thank you for your letter of 19 June to Geoff Hoon about the Joint Action in Support of the universalisation of the UN Convention on Certain Conventional Weapons in which you asked for further information on the role of the EU in this field and the budgetary implications of the Joint Action.

This Joint Action is consistent with the existing use of the Common Foreign Security Policy budget to fund activities to further support for international treaties designed to counter proliferation. Currently, work to support the following treaties is being funded: Biological and Toxic Weapons Convention; International Atomic Energy Agency; Comprehensive Nuclear Test Ban Treaty Organisation; UN Security Council Resolution 1540 (aimed at preventing and deterring non-state actors from accessing weapons of mass destruction and weapon related material). This collective action at EU-level leverages the resources of other Member States to achieve the UK’s policy aim of countering proliferation and improving International Security.

The plan of action to promote universality of the Convention on Certain Conventional Weapons adopted at the 3rd Review Conference in November 2006 called upon States Parties to actively pursue this objective in their contacts with States not parties, and through cooperation with international and regional organisations. Through the EU Joint Action the UK is supporting regional workshops and other activities being organised by the UN Office for Disarmament Affairs (UN ODA) with the support of the UN Regional Centres for Peace and Disarmament, and as appropriate cooperation with local missions of Member States and the Commission.

The estimated expenditure of this Joint Action is still undergoing scrutiny within the Working Group of External Relations Counsellors (RELEX) and the costs are down from the initial estimates. A revised budget will be presented to the Working Group of External Relations Counsellors. The estimated cost of the Pacific Islands workshop is now lower than for the Central Asia workshop. The cost of the regional workshops will vary depending on local costs for staff, interpretation, conference room rental, local transportation and other expenditure.

12 July 2007
WORKING TOGETHER: STRENGTHENING THE NEIGHBOURHOOD

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

Your Committee recently requested more information on the Ministerial Conference entitled ‘Working Together—Strengthening the Neighbourhood’, hosted by the Commission in Brussels on 3 September. I led the UK delegation at the Conference.

The Conference represented the first major opportunity for EU Member States, partner countries from east and south, and civil society, to meet and discuss European Neighbourhood Policy (ENP). Many delegations were led by Ministers or Deputy Ministers. President Barroso gave the opening address, emphasising the importance of differentiation within the policy, stating that the EU crafted a specific and unique relationship with each neighbour within the common ENP framework. He highlighted the need to use the ENP framework to tackle common challenges faced by Member States and neighbours, such as globalisation, climate change, energy security, countering extremism and terrorism. Commissioner Ferrero-Waldner chaired the morning debates and focussed on proposals, as trailed in the Commission’s Communication on Strengthening ENP of December 2006, to strengthen ENP in the areas of trade liberalisation, mobility, climate change and energy security. Generally there was good support for ENP from Member States and partner countries, and support for further strengthening of the policy. Most partner countries spoke positively of ENP, with delegations recognising that even if ENP did not meet all their individual concerns, it was a useful vehicle for bringing them closer to the EU.

In my speech, I stressed the importance we attach to ENP as a strategy of partnership to promote modernisation and reform, based on democracy, human rights and the rule of law. I reiterated our desire to work with all our partners to develop ENP and maximise its potential to achieve stronger and closer cooperation. I reinforced the point that participation in ENP does not prejudice the question of EU membership for Eastern partners and that the door to the EU must remain open. I also said the UK saw deeper economic integration as an essential building block of a strengthened ENP, and welcomed the focus on climate change and energy. We viewed tackling climate change as a key challenge for the EU in the 21st century and it was right to work in partnership with our ENP partners as we did so.

In sum the conference provided a useful stock-take of Member States’ and partners’ views. We have stated our wish for such conferences to continue regularly, to increase partners’ ownership of the policy. We want the Commission to involve partners and civil society closely on an ongoing basis as the policy develops. We will continue to press for follow up and implementation of the proposals contained in the Commission’s Communication of December 2006.

22 October 2007
Environment and Agriculture
(Sub-Committee D)

2006 ENVIRONMENT POLICY REVIEW (9167/07)

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

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 18 July 2007.

We note that the Government does not offer a policy stance on the Review but we assume that its position would be in line with that outlined in EM 9245/07 relating to the Mid Term Review of the 6th Community Environment Action Programme.

Broadly speaking, we support the Review and its suggestions for action. We would wish to see Climate Change and Better Regulation as key priorities in the field of EU environmental policy over the next year.

We are not content to release the Communication from scrutiny.

18 July 2007

ADAPTING TO CLIMATE CHANGE IN EUROPE: OPTIONS FOR ACTION (11490/07)

Letter from the Chairman to Joan Ruddock MP, Parliamentary Under Secretary, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above dossier was considered by Sub-Committee D at its meeting of 25 July 2007.

We consider the development of policy responses on adapting to climate change to be an urgent matter. It is an issue that we are currently addressing within the context of our inquiry into the Future of the Common Agricultural Policy.

We were interested to see the Commission’s proposal to establish a European Advisory Group for Adaptation to Climate Change. We would be grateful for further information on this initiative and for the Government’s view on it.

We are content at this point to release the Green Paper from scrutiny but we would be grateful if you would pass on to us a copy of your own response to the Green Paper.

Finally, we look forward with interest to learning of the outcome of the Commission’s consultation process.

25 July 2007

AGRICULTURE AND FISHERIES COUNCIL, JULY 2007

Letter from Rt Hon Hilary Benn MP, Secretary of State, Department for Environment, Food and Rural Affairs

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 16 July 2007.

I represented the United Kingdom at the July Agriculture and Fisheries Council meeting in Brussels.

The Chairman began by setting out the Portuguese Presidency work programme for the next six months. It includes progressing work on wine; sugar; milk and dairy products; cotton; CAP healthcheck; CAP simplification; forestry and food safety and plant and animal protection.

The Agriculture Commissioner presented a proposal for a fundamental reform of the EU wine regime to improve the sustainability of the sector. The Council held its first exchange of views on the proposal which included the immediate abolition of market measures; establishment of national aid envelopes; transfer of funds to the Rural Development budget; voluntary grubbing up; extension of the ban of new vine planting
until 2013; funding to promote EU wines in third countries and labelling simplification. The UK intervened to welcome the abolition of market management measures; stress the importance of budget neutrality; support the transfer of funds to Rural Development measures; press for an early end to the ban of new plantings, and to call for a review of the minimum threshold for coverage by the regime to exclude the UK’s small but growing wine sector.

The Council held a policy debate, based upon a Presidency questionnaire, on the Commission’s proposals to amend the sugar restructuring scheme. The Commission proposed amendments to the scheme to encourage inefficient producers to leave the sector, including: introduction of a grower’s initiative; a two stage application process for those who had already given up sugar quota and clarity on the final cut scheduled for 2010. The UK intervened to stress that only significant restructuring should be taken into account and to support the efficiency objectives of the 2005 reforms.

The Council failed to reach a qualified majority for or against the proposed Council Decision to authorise the marketing or a potato product (*Solanum tuberosum* L. line EH92-527-1) genetically modified for cultivation and non-food use in the EU.

Under any other business, the Agriculture Commissioner updated Council on the state of play in the WTO negotiations. She informed Council that the focus of negotiations had not moved to Geneva and new texts from the negotiating group Chairs were expected shortly. The Presidency concluded that the October 2005 mandate remained valid and noted the importance of a balanced result.

The Health and Consumer Protection Commissioner updated the Council on recent developments with regard to Avian Influenza H5N1 outbreaks in the Czech Republic, Germany and France.

Sweden reported on a recent conference of the Council of the Baltic Sea States on pollution and eutrophication.

Sweden, with support from seven other Member States, proposed that compulsory set-aside be set at zero for the 2008 harvest. The Agriculture Commissioner noted that with the reduction of intervention stocks and low global stock levels EU production would benefit from the proposal to reduce the requirement to zero and she would come forward with such a proposal, while reiterating that the long term future of set-aside would be addressed in the CAP healthcheck.

The Netherlands (with support from the UK and others) pressed the Commission to introduce legal measures against illegal logging above those included in the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT). The Commission has launched a public consultation and expects the process to be completed by the end of the year.

Spain, supported by other Mediterranean Member States, informed the Council that it was applying to register the Mediterranean diet on the UNESCO List of the Intangible Cultural Heritage of Humanity.

Romania and Bulgaria drew attention to the serious drought conditions in their countries and their intention to offer state aid to farmers affected. The Agriculture Commission requested that they provide the necessary information to enable the Commission to assess their situation.

Cyprus, supported by France, Italy, Spain and Greece, called for an EU strategy on forest fires. The Agriculture Commissioner listed the existing policy tools and funding available.

Poland, supported by nine other Member States, proposed that cross compliance requirements be phased in for new Member States in line with increases in levels of direct payments. The Agriculture Commissioner indicated that it was already considering a three year phasing-in period similar to that which had applied for the EU15.

Denmark called on the Commission to reopen the Norway pout fishery by setting a catch limit for 2007. The Commission said that the latest scientific evidence showed that it was not safe to do so.

Italy circulated a paper highlighting the problems facing the veal sector due to high feed costs and requested the Commission take appropriate measures. The Commission thought the changes to set-aside should help alleviate the problem but said they would monitor the situation.

30 July 2007
AGRICULTURE AND FISHERIES COUNCIL, SEPTEMBER 2007

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs to the Chairman

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 26 September 2007.

I represented the United Kingdom at this month’s Agriculture and Fisheries Council in Brussels. The Council failed to reach a qualified majority for or against on three proposals to authorise the placing on the market of products containing, consisting of or produced from genetically modified maize varieties: 59122, 1507xNK603 and NK603xMON810. The proposals will be referred back to the Commission who can approve the varieties under Commission competence.

The Council reached political agreement on proposals establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending a regulation on the common organisation of the markets in the sugar sector.

The Council also reached unanimous political agreement on a proposal reducing the compulsory set-aside rate from 10% to 0% for autumn 2007 and spring 2008 in response Germany and Finland provided information on the HELCOM Baltic Sea Action Plan. The Baltic Sea Action Plan aims to tackle pollution in the Baltic, including measures to tackle eutrophication caused by nutrient inputs from agriculture.

France set out their concerns on the Commission’s proposal to denounce the sugar protocol governing sugar imports from African Caribbean and Pacific countries.

9 October 2007

AGRICULTURAL GUIDANCE AND GUARANTEE FUND (5433/07)

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

Thank you for your letter of 19 March 2007,1 which was considered by Sub-Committee D on 6 June 2007.

We are still of the view that compensatory measures such as this should not be encouraged and we would be interested to know whether the Government has been able to clarify the issue of budget neutrality that I raised in my letter of 2 March 2007.

We do agree with your view that the system of public intervention for maize should be ended and we acknowledge that it would not be appropriate to block this Proposal on financing if it were to jeopardise the other Proposal on ending the public intervention system.

We are therefore supportive of your proposed approach involving an abstention if the two Proposals are linked and opposition if the two Proposals are dealt with separately.

As we support your approach but do not support the Proposal itself, we shall maintain the Proposal under scrutiny.

6 June 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter of 6 June, setting out the latest position of Sub-Committee D as regards this proposal.

In your letter you reiterated your request for information on whether the Proposal was budget neutral. I can now confirm that the proposal is not budget neutral and will result in additional expenditure for the Community budget, currently estimated at €7.4 million (£5.03 million) for 2007, and €5.2 million (£3.5 million) for 2008.

The Government opposes this additional cost, but as previously stated, has decided to abstain rather than oppose the proposal, in order to offer its fullest support to the linked Proposal which will abolish the system of public intervention purchases for maize (EM 16922/06 refers).

16 June 2007

1 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 201.
AGRICULTURAL SET ASIDE 2008 (12898/07)

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

I am writing to confirm that, as forewarned in the above Explanatory Memorandum, submitted on 25 September, the Agriculture and Fisheries Council adopted this proposal at its meeting on 26 September. This followed the delivery of the European Parliament’s opinion, under its urgency procedures, earlier that day. In something of a record for the Council the proposal was, therefore, adopted within two weeks of publication.

You may wish to note that one small, but important, amendment was first made to the proposal, adding a recital referring to the need to grant an exception to the six-week period referred to in paragraph 1(3) of the Protocol on the role of national Parliaments in the European Union, annexed to the Treaty on European Union and to the Treaties establishing the European Communities.

The Government recognised why, as set out in the Explanatory Memorandum, the Commission proposed this emergency measure and was prepared to support it on that basis. In the circumstances, we did not consider it appropriate to seek to delay this item at Council and, therefore, voted in favour of the proposal on 26 September.

I very much regret that the proposal was adopted without prior scrutiny clearance. I am well aware that Parliamentary scrutiny is an essential part of our legislative process, and that overriding this process is a serious matter which I do not do lightly. But as you will note, all parties recognised that it was necessary to act quickly as farmers needed certainty so that they could make urgent plans for the 2008 harvest year.

9 October 2007

Letter from the Chairman to Lord Rooker

Your Explanatory Memorandum on the above Proposal and your letter of 9 October were considered by Sub-Committee D at its meeting of 17 October 2007.

We note the urgency with which this Proposal was treated by the European institutions and we therefore understand why scrutiny has in this instance been over-ridden.

We acknowledge the amendment that was made to grant an exception to the six-week period for consultation of national parliaments.

We support the Proposal and hope that set-aside can be permanently abolished as part of the CAP “Health Check”. Set-aside is one of the issues that we are addressing during our ongoing Inquiry into the Future of the Common Agricultural Policy.

We note in the EM that the Government is considering with statutory environment bodies and stakeholders whether any mitigating environmental requirements might need to be introduced in the short term. We would be grateful for information on the outcome of this consideration.

We are content to release the Proposal from scrutiny.

17 October 2007

AGRICULTURAL STATISTICS: AERIAL SURVEY AND REMOTE SENSING TECHNIQUES (11670/07)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for South East, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 10 October 2007.

We share your view that further information is required from the Commission on its work programme and on the likely benefits of that plan.

You express some scepticism in your EM as to whether the application will be effective in achieving the objectives stated by the Commission but you do note that there are much wider potential benefits. We would appreciate your view as to whether the European Agricultural Guarantee Fund would remain the most appropriate source of funding were the expected benefits to be broader. If the EAGF were indeed to remain the source of funding, we wonder if Article 5(a) might better reflect the potentially broad benefits of the measures that Article 3(2)(e), which is the proposed basis at present.
In the meantime, we shall maintain the Proposal under scrutiny.

10 October 2007

AUTONOMOUS COMMUNITY TARIFF QUOTAS (ATQS) FOR CERTAIN FISHERY PRODUCTS
2007–09 (10564/07)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 20 June 2007.

We believe that the Proposal raises two particular issues. The first is the consistency of ATQs with the general principle of free trade. We consider it crucial that fisheries products be included in any world trade deal that is reached, and we urge the Government to push for their inclusion.

The second refers to your statement that the UK has argued that steps should be taken to ensure that all fish imported under ATQs should originate from legal and sustainable fisheries. We consider this essential and we would therefore appreciate information on your level of success in advocating the need for such steps.

Notwithstanding these two issues and though we are less than wholly convinced of the need for quotas, we are prepared to release the Proposal from scrutiny. We would however welcome your comments on the need for quotas.

20 June 2007

Letter from Jonathan Shaw MP, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your letter of 20 June 2007 to Ben Bradshaw in which you asked a number of questions about the above proposal.

I would agree that the current system of autonomous tariff quotas (ATQs) for fishery products is not consistent with the UK’s general policy of free trade. Negotiations are still ongoing at the World Trade Organisation and the UK is in favour of ending a number of barriers to trade including ATQs.

Whilst we support measures that would seek an end to ATQs we consider that, while such a system exists, it is essential we seek the best possible deal for our fish processing industry. In negotiating this proposal we worked very closely with the UK industry to ensure that their needs were met. The agreement reached will enable processors to import, at favourable rates of duty, raw materials where there is currently a shortage within the EU thus helping it to meet the demands of UK consumers for fishery based products.

Turning to illegal fishing, the Government is actively supporting the fight against such activity. As part of this we have explored the possibility of introducing legislation which would act against those involved in any aspect of illegal fishing including those who import illegal fish to the UK. This would enable prosecutions not just against fishing boat landings but also against those who import fish (for instance by container) obtained in contravention of local laws applying where it was fished. However, we are awaiting draft legislation on illegal, unreported and unregulated (IUU) fishing, which we expect to be published in October this year. This will set out the overarching structure under which relevant legislation could be framed.

We are also working closely with UK fish processors and retailers who have been putting in place strict voluntary measures to ensure the raw materials they use are not obtained from illegal methods or operations. There is not a formal legislative framework addressing the issue of sustainability. However, fish obtained in contravention of national and regional fisheries management agreements naturally fall within the IUU definition. More detailed sustainability assessments are carried out by organisations such as the Marine Stewardship Council. The Government is working with UK industry and retailers and NGOs with regard to initiatives for sustainability of fisheries. This activity takes place under DEFRA’s sustainable consumption and production agenda and DfID’s programme to support developing country fisheries management.

6 July 2007
BLUEFIN TUNA: RECOVERY PLAN (8308/07, 6890/07)

Letter from the Chairman to Ben Bradshaw MP, Minister of State for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Proposal (8308/07) was considered by the Sub-Committee D at its meeting of 6 June 2007.

We welcome ICCAT’s adoption for a 15-year recovery plan for bluefin tuna in the Eastern Atlantic and the Mediterranean. We share your concerns, however, that the plan is not as sustainable as would have been preferable.

By way of my letter of 29 March 2007, the Committee expressed its concern over the decision not to penalise over-catches in 2005 and 2006. Your response of 24 April 2007 indicated that you are working with the European Commission to resolve this worrying matter. We would be grateful for information from you on the progress of your discussions with the Commission.

A crucial factor determining the success or otherwise of the recovery plan will be the control and enforcement arrangements. We are aware that in the past the enforcement of regulations relating to bluefin tuna has been poor. We would therefore appreciate your view on the likely efficacy of the relevant provisions contained in the draft Regulation, including on how the Commission’s role in implementing the ICCAT Scheme of Joint International Inspection is likely to work in practice (Article 24 of the draft Regulation).

In the meantime, we shall maintain the Proposal under scrutiny.

6 June 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 6 June regarding bluefin tuna.

Regarding the amnesty on overfishing of bluefin tuna I pushed the European Commission strongly for the rules on payback to be enforced in contrast to what was agreed in the recovery plan. However the Commission made it clear that they intended to respect the plan as fully as possible as the amnesty on payback was part of an overall package of measures agreed in the plan. As the enforcement of payback is a Commission competence, the Member States concerned by the proposed approach had to seek alternative solutions. In this regard I proposed and secured a declaration, issued jointly by the European Council and the Commission. This declaration will be entered into the minutes of the Council which recently adopted the bluefin regulation. The declaration states that the circumstances on payback do not constitute a precedent, and sets out how cases of overfishing should be handled in future. I attach this declaration (not printed) for the Sub-Committee’s review.

I accept that this is not an ideal situation but the declaration does give some assurances for the future.

I am aware that you are interested in how I voted on the proposal 6890/07. In the end the Commission gave a further concession to fishing Member States by agreeing to further delay the implementation of the minimum landing size. I felt I could not offer the UK’s support for the proposal, partly because of the delays in implementing the ICCAT agreement which meant few of the measures have been in place this year, and partly because of the handling of the overfishing.

I agree that enforcement of the Control elements will be a key factor to the success of the plan. From contacts with the Commission we know that they are taking implementation of the control elements within the EU very seriously. The Commission have taken a lead in the coordination of efforts, holding seminars with the inspection and control agencies of the Member States concerned to ensure full understanding of what is required. The Member States are drawing up implementation plans in consultation with the Commission. New efforts appear to be fairly comprehensive and include: cooperation: between Member States to prevent the potential for black fish going into farms and generally favour exchange of data; sea patrols with new vessels to monitor activity; and the development of a fleet of aircraft which will in particular monitor any IUU fleet activity.

It is difficult to estimate how well Countries outside the EU are implementing the plan. However relevant ICCAT members will have to produce a report to ICCAT on the status of their implementation of the recovery plan. In this regard the ICCAT chairman has written to ICCAT parties and it is clear there is an intention to discuss this when ICCAT meets in November this year. It will be for ICCAT to decide the appropriate course of action if any Countries are deemed to be implementing the plan inappropriately.

\(^2\) Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 206.
Regarding the Joint Inspection Scheme, the Commission’s role, beyond initial coordination, will be fairly limited. The inspection scheme will be populated largely by Member States’ inspectors. This is because inspection is essentially a Member State competence. The joint nature of the scheme however allows a much better use of the resources of each Member State, as well as inspection of vessels outside the EU. The Commission will have five inspectors, with potential for more, working on the scheme. I am aware that the recently established Community Fisheries Control Agency regards establishing effective coordination of enforcement in the bluefin tuna fishery as one of its top priorities.

It is also worth noting that Japan, by far the biggest market place for the bluefin tuna, has written to all ICCAT members, announcing that they will only accept bluefin tuna caught in compliance with the recovery plan, and accompanied with the correct documentation. This is a change in position for Japan who have previously suggested that it is the responsibility of the catching states to ensure activity is legal. This change will put new pressure on the industry to make sure they are acting legally.

So whilst it is clear new efforts are being made by Commission and Member States, as well as other changes in an international context, it is too early to give a firm estimation of the likely efficacy of the recovery plan. This is an important issue to the UK Government and my officials will be following developments as closely as possible.

26 June 2007

COMMON AGRICULTURAL POLICY: INFORMATION MEASURES (10792/07)

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

Your Explanatory Memorandum (EM) was considered by Sub-Committee D at its meeting of 11 July 2007. We note, and share, your scepticism about the cost-effectiveness of this programme. As you know, Sub Committee D has just begun taking evidence in its inquiry into the future of the CAP and we will bear in mind this aspect as our work proceeds.

In the meantime, we are content to release the Report from scrutiny.

16 July 2007

COMMON FISHERIES POLICY: COLLECTION, MANAGEMENT AND USE OF DATA AND SUPPORT FOR SCIENTIFIC ADVICE (8650/07)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 20 June 2007. We share your view that providing accurate, detailed information is crucial as an effective input into fisheries decision making, and we therefore agree that the Regulation should provide for greater detail than it currently does.

The Commission’s view that an impact assessment is not required is disappointing and we would therefore request that you emphasise to the Commission the importance of such an assessment. Such an assessment would usefully include information on the probable level of the Community financial contribution, including the method of allocation between Member States. Indeed, we would be grateful for any information that the Government may already have on the Community financial contribution.

We are unclear as to why you express concern about some of the provisions. By way of example, it seems logical to us that comprehensive, verifiable data are required on aquaculture, recreational fisheries and the impact of fisheries on the environment, and that this should be widely available. In this light, we would appreciate clarification from you on the concerns expressed in your EM.

Finally, we note that social data concerning the fisheries sector are required to be collected. There seems to be little indication in the Proposal as to what the nature of these data should be and we would therefore be grateful for guidance on this. Secondly, we understand that some EU-funded work is being undertaken at the moment into the socio-economic impact of fisheries management measures. It seems important to us, therefore, that the proposed Regulation does not lead to duplication of existing efforts to collect data.
In the light of the above comments, we shall hold the Proposal under scrutiny and look forward to your response with interest.

20 June 2007

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs to the Chairman

Thank you for the helpful comments on the above mentioned Explanatory Memorandum made in your letter dated 20 June to my predecessor, Ben Bradshaw. On the first point you raised with regards to the need for an impact assessment for this new proposal, I will continue to press for such an assessment to be made, or at least if not a full impact assessment then for the Commission to, at the least, estimate and recognise the increased level of resources that the proposal is likely to require from Member States.

You asked about the level of current financial contribution from the Community towards the costs of the work carried out under the existing legislation. The current system classifies work into either a minimum programme of compulsory elements of work, for which Member States receive 50% funding of their eligible costs from Commission funds, or an extended programme of voluntary elements, for which 35% of Member States eligible costs are funded. There is an overall limit to the level of funding available to Member States across the whole of the multi-annual programme of funding, with annual limits of funding being set. If the call on funds from Member States in any one year exceeds that available, the available funding will be distributed amongst Member States in proportion to the bids for funds each year. However, in most years under the current regulations this has not proved to be a problem, and Member States have received the full amount of funding that they have been regarded as eligible for.

To give you some idea of the extent of costs involved and funding received, I attach a copy (not printed) of the final decision made related to funding levels agreed for 2006 across the EU. You will see that total eligible expenditure was agreed at some €27.4 million to come from EU funds. Of this total, the UK accounted for a significant proportion of the costs, reflecting our high level of interest in fishing activity in a wide range of areas—total eligible UK expenditure was some €8.4 million, with €3.9 million to be received by the UK from EU funds.

You asked for more details on the concerns expressed in the Explanatory Memorandum. As you say, the key focus of the proposals of providing comprehensive and verifiable data to inform decision making is one that is agreed and supported by the Government. There are three main concerns that I believe the proposal does not fully recognise and deal with in its current form.

Firstly, it is important to recognise that under the current Regulations in this area, there are still occasions where the information required by the scientific and advisory groups established by the Commission to analyse situations and produce the advice on which decisions can be made do not receive the information they need as inputs. In many cases the level of information required for these groups is not covered by the requirements to provide data under the current Regulations. While many Member States do provide the information needed, there are occasions where the contributions from some key countries are not available, leading to inaccurate and meaningful assessments not being possible. It is important that this key principle of the supply of relevant data to groups is fully incorporated in the current proposal to ensure that these groups receive the information they require in order to produce comprehensive advice.

The second key concern relates to the impact of the financial matters mentioned above, which primarily arises due to the fact that the funding from the Commission relates to funding of eligible expenditure only, and that not all expenditure incurred by a Member State in collecting this information is eligible for funding. For example, although it is necessary to have certain items like office and laboratory space, carry out necessary training and provide essential items such as safety equipment in order to carry out the work involved, the Commission does not regard such items as eligible for funding. These additional costs, which can be significant, have to be met by the Member States alone, and thus the eligible costs listed against the UK in the Decision do not reflect the total costs incurred in the UK when carrying out the work required to meet these obligations. In addition to these extra ineligible costs, there are also the costs involved in carrying out specific areas of work of interest to the UK but not covered by the scope of the current Regulations. This includes certain work such as that funded from UK sources alone that is carried out in conjunction with the scientists at the CEFAS laboratory in Lowestoft and the fishing industry under the Fisheries Science Partnership, to investigate issues specific to the UK rather than of wider interest to other Member States or in areas of investigation not covered by the Regulations at the moment.

The obligations that would come into force under the proposal are, as mentioned in the Explanatory Memorandum, likely to place compulsory obligations on the UK to carry out the collection of data in wider areas of work than at the moment. Whilst allowing for increased funding from the Commission towards costs,
this does not guarantee the availability of funds from within Member States to match these EU funds, and also does not guarantee the availability of funds to cover the associated non-eligible costs that Member States would incur. To meet the costs of involvement in the collection of these mandatory items would thus require either additional funding being made available, a diversion of funds from work that is carried out at our own discretion, or a combination of these two sources. In any of these cases, it is likely that the need to meet the compulsory legal obligations would result in an increased call for funds from a limited overall pot of funding within the UK. This has already happened to some extent under the current Regulations, where the UK has had to draw back from some areas of work in order to divert resources into those compulsory areas within the current Regulation.

The concern is thus that this proposal could result in a further loss of flexibility in the use of UK resources, as we face a need to direct limited resources to ensure that legal obligations on the UK are met. The full detail of these obligations will be established in the discussions within the Management Committee for Fisheries and Aquaculture. The UK could face becoming obliged to be involved in areas of work of little importance to us, at the expense of carrying out work in other areas of particular interest to the UK. It is thus important to consider this result when discussing the new framework for data collection as set out in this proposal, and to ensure that the framework includes a mechanism that allows Member States some flexibility in the allocation of their resources to allow national priorities to be met without penalising them.

The third main area of concern relates to the very wide definition of end-users given within the proposal and the related provisions that require Member States to respond to all requests for data from end-users. The proposal contains no measures to allow for the prioritisation of requests received from end-users, and this has led to a concern that the need to ensure all requests are answered may result in the diversion of staff and other resources away from the key task of supply of data and involvement in the expert groups tasked with providing the advice to the Commission and Member States. The proposal does not recognise the fact that such requests are likely to fall to the same relatively small group of experts in each Member State, and thus some method of prioritisation of requests needs to be included in the proposal. The Commission have stated that their intent is to widen the degree of access to information and to help improve the public knowledge and debate on fisheries issues. It could be argued that this objective would be best achieved through ensuring that those groups assessing the information from across Members States receive complete information, so that their advice is that much more complete and accurate, rather than through increasing the level of access to the detailed information held within each Member State.

Finally, you also mentioned specifically the concerns over the nature of work planned into the collection of social data related to the fisheries sector. The exact nature of the socio-economic data to be collected by Member States has yet to be defined by the Commission, but I would echo your concern over possible overlap in this and also in other areas covered by the proposal. It will be important to ensure that the expansion in the scope of areas of work covered by the Regulation does not result in any overlap with the work being carried out in other areas, particularly those related to environmental matters. I know that those involved in the Commission have been working to ensure that any overlap is avoided and that available resources are spent efficiently and effectively. I will ensure that when the detailed provisions related to these proposals are discussed, officials in the UK make a point of investigating the degree of overlap between the proposed new areas of work and existing data sources with a view to avoiding such duplication of effort.

27 July 2007

COMMON ORGANISATION OF THE MARKET IN WINE (11361/07)

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

Sub-Committee D considered your Explanatory Memorandum on this subject at its meeting on 10 October 2007. We have, as you know, presented an interim report on this subject to the House and we are planning to present our final report later this month.

We agree with your assessment of the Commission’s Proposal and with the reservations which you have expressed in regard to specific measures in the reform package, especially the proposed extension of planting rights and the proposed ban on the use of sucrose in wine-making. We support also the arguments which you propose to deploy to counter these proposals.

As regards the proposed extension of planting rights, while we recognise the problems which this would cause for the UK wine industry and while we agree that it should be resisted for this reason alone, we hope that you will also seek to show that the ban on new vineyard plantings, if extended as proposed, would be detrimental
to the competitiveness of the EU wine industry as a whole by preventing entrepreneurial new producers entering the industry.

Given the support which exists among many wine-producing Member States for an extension of planting rights, it seems to us possible that the Commission may seek to negotiate a compromise whereby the proposed ban on sucrose, which we understand does not command such widespread support, is abandoned in return for an extension of planting rights to 2013. In that event you will, no doubt, wish to consider whether the impact of an extension of planting rights could be mitigated by a substantial increase in the 25,000-hectolitre threshold above which Member States fall within the terms of the Wine CMO and by assurances that any such extension will not be prolonged beyond 2013.

In view of these uncertainties we propose to hold the Proposal under scrutiny and we would be grateful to be kept informed of developments.

10 October 2007

Letter from the Chairman to Lord Rooker

Sub-Committee D considered the SEM attached to your Explanatory Memorandum of 21 September 2007. We concur with your analysis of the impact of the Commission’s proposals both on the European wine sector as a whole and on the English and Welsh wine industries. While the Commission’s Proposal for reform of the wine sector contains many laudable features, in particular the ending of subsidised distillation, it also includes two elements which would be detrimental to healthy reform—namely, an extension of the current system of planting rights and a prohibition on the use of sucrose in wine-making. As we have made clear in our interim report published in July, and as we will repeat in our final report to be published later this month, we cannot accept these two proposals. We are pleased therefore to see that the Government shares our view and proposes to seek removal or modification of the proposals in question. We are also, incidentally, pleased to see that the Government shares our view of the proposal to allow Member States to fund “Green Harvest” measures from within national envelopes. We had acquired the impression, when we heard evidence from you on 25 July, that your Department was more relaxed on this issue.

As you know, we have retained the Commission’s Proposal under review. We are grateful to you for setting out your initial assessment of its regulatory impact and we would be grateful if you would keep us up to date with developments as these occur.

17 October 2007

CROSS-COMPLIANCE (7991/07)

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

Your Explanatory Memorandum on the above Report was considered by Sub-Committee D at its meeting of 2 May 2007.

We welcome the Commission’s intention to simplify the system of cross-compliance and we agree with the Government that it will be important to ensure that subsequent proposals do meet the stated objective of simplification.

We note that you expect the European Commission to work up more detailed, formal proposals for discussion later in the Spring in advance of Council Conclusions at the end of June. We would be grateful if you could send us more details on these proposals, and the Government’s approach to them, once they are available.

Finally, we look forward to examining the issue of cross-compliance closely during our new inquiry into the Future of the Common Agricultural Policy.

In the light of the above comments, we are content to release the Report from scrutiny.

2 May 2007
ECO-LABELLING SCHEMES FOR FISHERIES PRODUCTS (10822/05)

**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 with the latest developments on EU plans for eco-labelling schemes for fishery products, following your letter of 13 October 2005. Although a significant amount of time has passed since your letter, there has been very little substantive progress made in the interim.

You will recall that the European Union Commission, at the behest of the European Parliament produced a paper which suggested three different options for the operation of eco-labelling schemes within the Community. These were that 1) eco-labelling schemes be left to develop freely, 2) compulsory eco-labelling schemes be introduced and 3) voluntary eco-labelling schemes would continue but would be required to meet minimum criteria set by the EU.

In parallel with the consultation, the Commission convened an experts group to consider what minimum criteria could be set in the event that the general consensus was for option 3. Following a number of meetings, the group presented its findings to the Commission. Discussions at the April Agriculture and Fisheries Council demonstrated that the majority of Member States (including the UK) favoured option 3. The Commission has now undertaken to produce a report, outlining progress to date and then come forward with legislative proposals for minimum requirements for such voluntary eco-labelling schemes. It is anticipated that the report will be published by the end of July 2007 with the proposals being available before the end of 2007.

In your letter you asked for copies of the conclusions of the Commission’s consultation and the UK’s response. We received little by way of direct response to our own consultation—most simply supporting option 3. The UK did not therefore provide a formal written response, although I understand that some industry bodies and environmental groups responded directly to the Commission. It is also worth noting that the UK was represented on the experts group. When the Commission brings forward its proposals for minimum requirements, we will conduct a more detailed and extensive consultation exercise.

8 June 2007

ENVIRONMENTAL QUALITY STANDARDS IN WATER (11816/06)

**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 progress of the above proposal, which was put forward in July 2006 by the European Commission under Article 16 of the Water Framework Directive 2000/60/EC and in relation to which I appeared before your Committee on 24 January 2007.

The German Presidency plans to seek political agreement on an amended text at the June Environment Council. I am afraid that we do not yet have a published document from the Presidency, but the latest draft addresses the majority of our concerns, as described below.

During my appearance on 24 January the Committee expressed particular interest in:

- The levels at which the environmental quality standards (EQS) were set.
- Cost-effectiveness, in particular the application of Article 4 of the Water Framework Directive (WFD), which allows for extended deadlines and alternative objectives in response to disproportionate cost and technical infeasibility, to the EQS set out in this proposal.

These issues were taken forward in our negotiating priorities as follows.

In negotiating the proposal we have aimed to:

- ensure that cost-benefit issues were kept to the fore;
- ensure that WFD Article 4 exemptions would apply to the EQSs;
- revisit problematic EQSs;
- seek non-mandatory status for Maximum Allowable Concentrations and explore the same approach for biota standards; and
- seek reporting and monitoring requirements consistent with the WFD.

On the basis of the current text, progress on these issues is as follows:

- cost effectiveness is now reflected in terms of realistic reporting and monitoring requirements;

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— the text now provides for the application of WFD Article 4, with its cost effectiveness exemptions, to the environmental quality standards and thereby restricts their impact to surface water bodies as intended by the Water Framework Directive. In addition we also hope to secure text which clarifies that these exemptions also apply to the WFD objective of phasing out emissions discharges and losses of Priority Hazardous Substances (previously open to interpretation in the WFD, and important for controlling the costs of dredging of ports and inland waterways);

— it has not been possible to revisit certain of the proposed EQSs. Other Member States are unmoved by arguments of cost-effectiveness or the impact of additional carbon emissions resulting from the energy intensive treatment required to meet the standards: we are totally isolated in this respect;

— on maximum admissible concentrations, the text now envisages assessment using a technique (the percentile approach) which reflects UK practice. On sediment and biota the text recognises that monitoring is best used to identify long term pollution trends, although the three biota EQS remain. It remains to clarify that the obligation to prevent any increase in concentrations, however small or insignificant, is unrealistic;

— reporting and monitoring requirements are now consistent with the WFD.

There has also been progress on mixing zones and background concentrations which, along with the issues highlighted above, were issues of concern for those responding to the public consultation.

We have secured a more balanced approach to the use of mixing zones (or “transitional areas of exceedance” as the proposal refers to them). The proposal to progressively reduce mixing zones, which would have limited Member States’ discretion over how best to achieve the WFD objective of reducing emissions of priority substances, and would also have been unnecessarily burdensome, has been abandoned. It is replaced by a requirement for the zones to be proportionate. It has also been made clear that the zone should be in the proximity of a consented discharge, which will prevent them being used by Member States indiscriminately and thereby ending appropriate control over discharges.

The current text allows all background concentrations of metals will be taken into account when determining compliance with an EQS.

The public consultation on the proposal has now ended. A summary of the responses is attached as Annex A. Overall the concerns expressed were in were well aligned with our negotiating objectives. The initial estimates of costs in the partial RIA did not take account of the effect of the application of the WFD Article 4 exemptions to the EQS, and will be correspondingly reduced in the updated RIA which is being produced but will not be finalised until after the Environment Council.

The European Parliament’s First Reading vote was held on 22 May. The European Parliament have taken a significantly different approach to the Council on some issues and the amendments are rather mixed bag. The more problematic amendments include the addition of a large number of new priority substances (at least 22, with the Commission requested to consider six further additions), the addition of new conditions on the use of mixing zones and a requirement for them to be phased out entirely by 2018. However there are a number of more welcome amendments including a clear reference to the application of the WFD Article 4 exemptions to the EQS and a recognition that the cessation of emissions of naturally occurring substances is impossible.

The significant number of EP amendments and the short time available before Environment Council indicate that First Reading agreement will not be possible and that a Second Reading will be necessary. At that time it will be appropriate to update you on relevant EP amendments. The timetable for further European Parliament consideration is not yet known.

On the basis of progress outlined above I intend that we should support the Council text which we anticipate.

27 May 2007

Annex A

RESPONSES TO PARTIAL RIA ON WFD PRIORITY SUBSTANCE PROPOSAL

Responses

Defra received 23 responses to the consultation. These include responses from the water industry, chemical industry, metals sector, agricultural sector, ports and marine sector, petroleum sector, power producers, OfWat, Natural England and the Environment Agency.

In general, respondents agreed with the aims of the proposed directive of reducing and/or eliminating adverse environmental impacts resulting from both diffuse and point source discharges of priority substances and
priority hazardous substances to the water environment. However, they had some reservations about its
detailed content and expressed the general opinion that more research and evidence is needed before robust
decisions on the means and approach to implementing the proposal requirements can be made.

Key Concerns and Suggestions

Respondents stated that Environmental Quality Standards (EQS) should not be unduly stringent or
precautionary. Some respondents suggested monitoring dissolved concentration of metals and polyaromatic
hydrocarbons (PAHs) instead of total concentration. It was pointed out that some EQS are set at levels below
existing limits of detection.

Some respondents thought that all background concentrations should be taken into account when
determining compliance with an EQS, not just background concentrations greater than the EQS.

Some respondents felt that maximum allowable concentrations should be reference values that trigger
investigation, not compliance standards.

Respondents expect the costs of complying with the proposal would be very high. In order to limit these costs
they thought it essential that the provisions of WFD Article 4 apply both to the EQS and cessation obligations.

Respondents saw a need for recognition that it may be difficult/impossible to achieve the objectives of the
WFD and the proposal where there is historic pollution or priority substances occur naturally. Others saw a
need for provision for natural events or disasters that affect water quality.

There was a general welcome for transitional areas of exceedance (TAEs) and a desire that a flexible approach
should be applied to their use. However there were concerns that the requirement to progressively reduce TAEs
could require industry to go beyond the best available techniques for minimising emissions, as required by the
IPPC directive, even if the EQSs are being achieved and there is no risk to the environment.

Some respondents believe that monitoring in water is sufficient and that there should be no sediment or biota
standards. Others argued that biota monitoring should be taken forward as a more cost effective and reliable
indication of chemical/ecological risk.

Respondents felt that the obligation for no increases in the concentration of priority substances in sediment
and biota is unjustified and unworkable since it is not based on any consideration of risk to the environment.

Some respondents were in favour of an inventory of emissions, as long as it is compatible with existing systems
so that additional burdens are minimised.

There were a number of concerns about how the directive will be implemented. These included:

- The need to reduce pollution at source.
- The unavailability of effective end of pipe controls for some substances.
- Uncertainty over whether existing controls will be sufficient to achieve the objectives of the proposal.
- The need to tackle diffuse pollution in order to achieve the objectives of the proposal.

Letter from the Chairman to Ian Pearson MP

Your letter of 27 May 2007 on the above Proposal was considered by Sub-Committee D at its meeting of 13
June 2007.

We are pleased to note that you have been successful in ensuring that Article 4 of the Water Framework
Directive can be applied to this new proposed Directive. We note also the changes to the provisions on
Transitional Areas of Exceedance. While we welcome the flexibility enshrined in these Areas, we do consider
it essential that Member States’ use of them is very carefully monitored in order that they are not abused.

While we recognise fully the need to keep the costs of compliance with the proposed Directive under control,
we are concerned also that the aim of improving and maintaining water quality should be achieved. In this
context we note that some concerns have been raised in the form of amendments proposed by the European
Parliament. We hope that the Government will address these concerns seriously.

We are content to release the Proposal from scrutiny and look forward to examining the legislation further at
Second Reading.

13 June 2007
Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

My predecessor wrote to you on 27 May to update you on the progress of the above proposal, which was put forward in July 2006 by the European Commission under Article 16 of the Water Framework Directive 2000/60/EC.

Following my predecessor’s appearance before your Committee on this subject on 24 January, and further to his letter of 27 May, I am writing to inform you that the Environment Council, held in Luxembourg on 28 June, reached Political Agreement by unanimity on the above proposal. The Council text will be available shortly but meanwhile I attach the text (not printed) which the Environment Council considered, and which was agreed unamended.

My predecessor’s letter of 27 May recalled our negotiating aims, and I can now confirm the outcome anticipated as follows:

— the text provides for the application of Article 4 of the Water Framework Directive (WFD), which allows for less stringent objectives to be set and for deadlines to be extended where measures are technically infeasible or would entail disproportionate cost. This provision applies both to the use of environmental quality standards as criteria for good chemical status in bodies of water and to the WFD objective of phasing out emissions discharges and losses of Priority Hazardous Substances. This is a very positive outcome which should do much to reduce costs and, in this respect, is particularly important for ports and inland waterways;

— in the absence of support from other Member States, it was not possible to review the proposed EQSs, some of which we consider to be over-precautionary. However the application of WFD Article 4 provisions means that it will be possible to deal with issues of disproportionate costs and technical infeasibility by setting less stringent objectives than good chemical status, or extending deadlines;

— on monitoring, the text allows for assessment of maximum admissible concentrations by the “percentile” approach which reflects UK practice and will avoid distortion as a result of unrepresentative samples. In addition Member States have the option of monitoring prescribed biota standards for three substances (and, at their discretion, other substances using their own standards), or alternatively they can use their own equivalent water standards. On sediment and biota the text recognises that monitoring should identify long term pollution trends. The original, unsustainable obligation to prevent any increase in concentrations, however small or insignificant, is now effectively qualified by requiring Member States to take measures “aimed at” this objective. All of this will enable a more risk-based and cost-effective approach;

— on “areas of transitional exceedance” (now called “mixing zones”), the obligation for “progressive reduction” of their area (which would have limited Member States’ discretion over how best to achieve the WFD objective of reducing or ceasing emissions of priority substances) has been abandoned along with the requirement to report a detailed description of every zone. Member States will now simply report their method of calculation for mixing zones which are required to be proportionate and in proximity to relevant consented discharges. The effect of these amendments will be to avoid duplication in reporting and reduce unnecessary and costly administrative burdens;

— background concentrations of metals will be taken into account when determining compliance with an EQS, and this will avoid penalising those discharging into receiving waters with high natural background concentrations;

— the proposal now makes clear that the EQSs apply only to bodies of water and therefore do not apply to territorial waters which would otherwise have had a serious impact on monitoring costs;

— reporting and monitoring requirements are properly aligned with WFD obligations in order to avoid duplication of effort and keep costs down.

In achieving this outcome the Government has addressed the concerns of stakeholders expressed during the consultation period.

With regard to costs and benefits, the initial estimates of costs in the partial RIA did not take account of the effect of the availability of the WFD Article 4 exemptions and cost reductions may be expected to result. It was not possible to update the RIA prior to Environment Council, but it is our intention to produce an updated RIA to reflect the reductions in costs which we anticipate as a result of the amendments incorporated
in the Council text. This is a complex exercise involving assessment of where and how much additional investment (for example at many STWs) would be needed to achieve the EQSs (in many bodies of water) which will take time to complete. Meanwhile I attach (at B) (not printed) a summary of a preliminary assessment of how costs have been reduced in relation to the partial RIA. As you will see we anticipate significant reductions in the original estimates, but I must emphasise that these are not final figures and are subject to change. Overall the draft RIA has been valuable in alerting us to potentially high costs and to benchmark our progress in negotiations, and has brought positive results.

We continue to investigate costs and benefits and to improve our assessments of the proposal’s implications. We will be considering the figures soon to be produced as a result of the WFD preliminary Cost Effectiveness Analysis as well as assessing the changes to costs and benefits arising from the flexibilities achieved in the Council text. It will also be necessary to assess the impact of any European Parliament amendments adopted at the EP Second Reading. Overall it is important to appreciate that implementation of the WFD is an ongoing, planning process during which assessments of costs have to be updated regularly.

In terms of the Council text it is of crucial importance that it now provides the means for Member States to take into account disproportionate costs and technical infeasibility when setting objectives and complying with the objectives of reduction or cessation of discharges of Priority Hazardous substances. This should ensure that costs can be significantly reduced and effectively controlled.

The European Parliament’s First Reading in May resulted in some 70 amendments which in some cases take a different approach to the Council. Whilst some of the amendments share Environment Council aspirations, others are inconsistent with the WFD. Amongst the more welcome amendments is a reference to the application of the WFD Article 4 exemptions to the EQSs, and recognition that the cessation of emissions of naturally occurring substances is impossible.

The timing of the EP amendments meant that they could not be fully considered in advance of Environment Council. The Council text will therefore be considered by the EP in a Second Reading (for which there is as yet no timetable) during which we shall wish the main elements of the Council text to be sustained.

The Government considers that the Council text is the best package available, and will seek to defend its essential elements. Overall the fact that certain EQSs could not be reviewed is outweighed by the amendments in the Council text which secure application of the flexibilities of WFD Article 4 to the objectives for priority substances. Thus the measure provides for a high level of environmental protection whilst protecting Member States from the need to take measures which would be either disproportionately costly or technically infeasible.

11 July 2007

EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENTS (EAFRD) (12585/07)

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

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 24 October 2007.

We welcome the proposal to simplify the cross-compliance scheme although we agree that some clarification is required to ensure that the full benefits of simplification are delivered. We trust that you will pursue the outstanding issues during your ongoing negotiations in Council.

We are now content to release the Proposal from scrutiny.

24 October 2007

EUROPEAN EEL: RECOVERY OF STOCK (13139/05)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your second Supplementary Explanatory Memorandum on the above Proposal and your letters of 12 April 2007, and 20 April 20074 were considered by Sub-Committee D at its meeting of 2 May 2007.

We have some significant concerns as to how the re-stocking provision in particular will function. It is not clear to us how, for example, the prices will be set, nor how much flexibility it will leave to individual Member States to manage their own stocks in a manner most appropriate to them.

4 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 214.
Whilst we are aware that the item may be adopted at the Agriculture & Fisheries Council of 7–8 May, we will maintain the Proposal under scrutiny pending information from you on the above points.

2 May 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 2 May on the above subject. You stated that you had significant concerns over the restocking provisions laid out in the proposal and I write to explain how the system would work in practice.

Firstly, I should explain that I believe restocking is essential if we are to see a recovery of the European eel stock. Without it we will continue to see this precious resource sold to aquaculture businesses in Asia, which is of no use to the conservation of the European eel.

The restocking provision aims to ensure that there is sufficient supply of glass eel so that restocking measures can be undertaken in those river basins that cannot meet the target simply by reducing mortality, or where eels are totally absent but productive habitat is available. The Commission is aware that a balance needs to be struck to ensure that there is still supply for aquaculture facilities, however the priority is to restore the stock, and restocking is seen as being potentially one of the most effective means to that end in many river basins.

It is not the purpose of the proposal to introduce a pricing structure and set the prices for glass eels for restocking. The system is designed to ensure that a percentage of glass eel, in the current proposal 35% in the first year rising to 60% over a five year period, is set aside to be purchased for restocking programmes in European waters. The price that will be paid for this restocking material will be determined, as it is in the current restocking industry, by supply and demand.

There are rivers in Europe, particularly in Southern European countries such as France and Spain, where recruitment of glass eel remains reasonably high. However, there is not the available habitat for all these glass eel to survive to maturity. Conversely, in other parts of Europe there is adequate habitat, but not glass eel recruitment. By stocking some of these glass eel into other river systems we could, potentially, increase the spawning stock and therefore, due to the fact that it is one European spawning stock, increase the number of eel returning to the whole of Europe.

Where restocking is currently undertaken, the price is largely determined by the going rate for international export to Asia. Due to the insatiable demand for eel in Asian aquaculture prices have reached as much as one thousand pounds per kilogram, effectively pricing restocking out of being a realistic proposition. By retaining glass eels in Europe, and designating a percentage of them for restocking programmes, it is hoped that prices will return to a level where restocking is a viable conservation measure, particularly where public funding is used through the European Fisheries Fund.

The decision to follow this course of action has not been taken lightly. However, juvenile recruitment has been reduced to 1% of its historic level. If we do not protect the juvenile stock, allow it to grow to maturity and escape to the sea to spawn, then we are looking at a future with no eel at all. Therefore, whilst it will have an impact on glass eel fisheries, it is necessary to protect the future of eel fisheries at all life stages throughout Europe.

You also ask how this will affect Member States’ abilities to manage their own stocks in a manner appropriate to them. The UK has been a strong voice in ensuring that this proposal is not an extension of the Common Fisheries Policy into Member States’ waters. With this principle in mind I believe we have negotiated a flexible instrument, and that Eel Management Plans enables Member States to address river basin specific problems at a local level. Whilst the restocking provision is a Europe wide provision, this is because it needs to address a Europe wide shortage of eel that cannot be done unilaterally, and the European eel is one spawning stock.

Finally, I wanted to update you on discussions of this dossier during May Council. I am disappointed to say that again we failed to reach agreement. This was a consequence of further intransigence by some Member States and I am disappointed and surprised that the Presidency did not push harder to reach agreement. No vote was taken on the dossier due to a lack of quorum. It is now essential that agreement on recovery measures is reached during the June Agriculture and Fisheries Council if we are to have any hope of saving the European eel from further decline.

22 May 2007

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter of 22 May 2007, which was considered by Sub-Committee D at its meeting of 6 June 2007.
We are grateful for your information on the functioning of the re-stocking provision. Whilst we remain far from convinced that the provision will function as envisaged, we agree that the recovery of the eel stock is of high importance. We consider that monitoring of the Regulation is crucial to its success and we therefore trust that you will work with the Environment Agency, the European Commission and the other Member States to monitor the application of the Regulation, ensuring that changes are made as appropriate.

We are now content to release the Proposal from the scrutiny.

6 June 2007

EUROPEAN FISHERIES: REDUCTION OF UNWANTED BY-CATCHES AND ELIMINATION OF DISCARDS (8179/07, 10822/07)

Letter from the Chairman to Ben Bradshaw MP, Minister of State for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication (8179/07) was considered by Sub-Committee D at its meeting of 2 May 2007.

We share your view that bycatch and discards must be reduced, but that there are challenges to be addressed in order to develop an appropriate management model. We are strongly of the view that a revised management system will not work without the support of the fishing industry, working in partnership with scientists. For this reason, we are pleased that both the Government and the Commission is consulting widely on the Proposal. We look forward to receiving information from you on the outcome of the consultation process.

In the meantime we are content to release the Communication from scrutiny.

2 May 2007

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs to the Chairman

I am grateful to your Committee for clearing both these dossiers, but as requested, I intend to keep you updated on subsequent developments as they occur.

Taking the Commission’s discard communication (8179/07) first, my Department organised a consultation on the document amongst our stakeholders with a deadline of 15 July. The intention was that this would feed into a UK response within the Commission’s own deadline of 31 July. In fact, although we received a number of comments, both from the fishing industry and other interested parties, including environmental NGOs, these tended to be very general. Most simply underlined the importance of dealing with the problem of discards and unwanted bycatch and ensuring that any solutions reflected the particular circumstances of the fisheries concerned ie a “one size fits all” approach was not appropriate. The majority also emphasised the need to ensure full stakeholder participation in the policy development process—with particular focus on the role of the Regional Advisory Councils (RACs)—in line with the Commission’s intentions. The general expectation however, was that the dossier required full and detailed consideration and was not therefore something that could be concluded rapidly.

In the circumstances therefore, we did not respond formally to the Commission, but simply emphasised these points at the various Community fora at which the issue has been discussed in the interim, culminating in the agreement to a series of general conclusions along these lines at the June Fisheries Council (a copy of which I attach for your information) (11063/07, Annex A).

The Commission, although accepting that any new regime will take time to develop, have indicated that they are considering some interim measures to apply from next year. It is not however yet clear what those will be.

From a UK perspective, we have already signalled to the Commission that we have some concerns about the practicality of the discard bans which form a key element of their draft plan. In the meantime, we are pursuing a number of alternatives. Scientists from Cefas and their Scottish counterparts are continuing to look at improving gear selectivity—particularly in the Nephrops fisheries. The UK and Ireland have recently launched a joint initiative in the Irish Sea to build up a clearer picture of the extent of discarding in the various fisheries and in turn, explore possible solutions. In addition, colleagues in Scotland are piloting a voluntary real-time closure mechanism in collaboration with their industry, which requires vessels to move fishing grounds if the percentage of juveniles in their catch exceeds a pre-determined limit. The intention is that in each case, these initiatives, if successful, be applied Community-wide.
Turning to the Commission’s policy statement, I can confirm that I will do my utmost to ensure you have a genuine opportunity to consider their proposals for TACs and quotas for 2008 when they appear. However, as you are aware, this year is part of a transitional phase and although some of the ICES ACFM scientific advice was available earlier—that for the North Sea demersal stocks arriving in June rather than October—the second instalment of the advice is still not expected until later in the autumn and therefore we do not anticipate seeing formal proposals until November. Nonetheless, when and if we get any further guidance as to what the Commission have in mind for next year, I will endeavour to keep you informed. From 2008, when it is intended that all the scientific advice be available in June, the process should be much more open and transparent. In the meantime, I agree that the active participation of the relevant stakeholders, in particular the RACs and the Devolved Administrations, is crucial to the successful conclusion of the negotiations.

17 September 2007

Annex A

COUNCIL CONCLUSIONS ON THE COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

A POLICY TO REDUCE UNWANTED BY-CATCHES AND ELIMINATE DISCARDS IN EUROPEAN FISHERIES

The Council has started its examination of the Communication on a policy to reduce unwanted by-catches and eliminate discards in European fisheries. By way of initial reactions,

The Council:

1. Welcomes the Communication by the Commission.
2. Shares the concerns expressed by the Commission but also by many stakeholders that the unwanted by-catch of living aquatic resources and their discarding is a waste of resources.
3. Endorses the need to urgently examine ways of progressively reducing unwanted by-catches and eliminating discards.
4. Notes that such an approach could have many implications such as a “discard ban”, regulating what is caught rather than what is landed, and a move to results-based management.
5. Recalls the importance of effective data collection for providing a sound basis for such a new approach.
6. Agrees that measures should be adopted only on the basis of a thorough analysis, based on best available advice and of environmental, economic and social impacts.
7. Reiterates that one of the main avenues for action in this respect is to motivate the industry to improve the selectivity of the fishing gear and to develop more targeted fishing practices.
8. Calls upon the Commission, Member States and stakeholders to enhance research efforts in gear design, fishing methods and fishing practices in this respect.
9. Calls upon the Commission, Member States and stakeholders to take an active part in the search for the best solutions and to select fisheries for the first implementation of this approach with the aim of reducing unwanted by-catches and eliminating discards.
10. Recalls that there are many open questions, such as the implications for relative stability, the use of TACs and cost benefits, to which satisfactory answers will have to be found in close cooperation with all concerned before adoption of appropriate measures.
11. Underlines the importance of taking account of the impact on control and enforcement policy and practice when developing measures to reduce unwanted by-catches and to eliminate discards and in this context stresses the importance of simple and controllable regulations which are economically viable in order to reach long-term compliance by the industry.
12. Invites all interested parties, in particular the European Parliament, the Economic and Social Committee, ACFA and RACs, to contribute their views to this important discussion.

EXPORTS AND SAFE STORAGE OF MERCURY (14629/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

My predecessor set out the substance of the original proposal in Explanatory Memorandum 14629/06 on 15 November 2006. I am writing to update your Committee on the current position on this dossier, since it has recently been the subject of both a First Reading in the European Parliament and the adoption of a common position by the Environment Council in Luxembourg.

The EU is a main global supplier of mercury and the Commission propose to prohibit the export of metallic mercury from the Community from 1st July 2011. After that date, metallic mercury no longer used by the chlor-alkali industry, or gained from the cleaning of natural gas, or as a by-product of non-ferrous mining and smelting operations, would be considered waste and temporarily stored or disposed of in a way that is safe for human health and the environment, under derogation from the Landfill Directive.

The proposals are in line with the Community Strategy on mercury, which was formally adopted by the Commission on 28 January 2005 and by the Council on 24 June 2005. The proposals also broadly fit with agreed UK Government policy and we generally welcome and support them. The key issues are:

— *Storage solutions for surplus mercury*: There is no consensus over whether decommissioned mercury should be stored as the liquid metal, or in a chemically altered, solidified form. Further research is needed on technological feasibility, costs and health and environmental safety. Although the UK would prefer a comprehensive, “one-off” solution, we support the retention of a flexible range of storage/disposal options.

— *Legal base*: The UK supports a single legal base of article 175 of the Treaty (environmental protection), as this is in line with previous ECJ rulings stating that it is the predominant purpose of the legislation that defines the choice of legal base. The Commission has insisted on a dual legal base of 175 and 133 (common commercial policy).

— *Scope of the ban*: We agree with the Commission’s view that metallic mercury is by far the most relevant substance in terms of quantity and that extending the scope of the export ban, to include mercury compounds and mercury-containing products plus an import restriction, would be premature at this stage.

— *Date of Entry into Force*: We have always supported 1 July 2011, which was agreed in Environment Council Conclusions in June 2005, as an earlier date would cause severe technical and financial disruption to the industry.

— *Standards for Temporary Storage*: Finally, there is an issue of acceptable environmental and health standards for the temporary storage of waste mercury. The former German Presidency proposed that standards be set by comitology under Article 16 of the Landfill Directive, which is acceptable to us.

The Environment Council, held in Luxembourg on 28 June, reached Political Agreement by unanimity on the proposal (at A). The main outcomes were fully in line with UK requirements.

— Compromise on dual legal base (the preamble stipulates that Article 133 TEC applies only to Article 1 of the Regulation, which sets out that export of metallic mercury will be prohibited from the Community from a certain date);

— No change to the date of the export ban (1 July 2011);

— No change to the scope;

— Permanent storage retained, subject to the adoption of technical standards;

— Commission to report on solidification techniques by 1 July 2010;

— Clarification that inspections will be required for permanent and temporary storage;

— Importers and dealers required to provide information to the Commission and competent authorities.

At the request of Sweden, Ministers agreed that metallic mercury should only be eligible for underground storage after the development of specific environmental criteria through the EU’s comitology process.

The outcome of the Environment Council is entirely acceptable to the UK. However, the proposals were also debated at first reading by the European Parliament and the EP adopted 39 amendments on 20 June, as set out in Council document 10932/07.
Whilst some of the adopted amendments are in accord fully, in part or in principle with the Political Agreement, there are others which are not, particularly with regard to storage options and the scope and start date of the ban.

The timing of the EP amendments meant that they could not be fully considered in advance of Environment Council. The Council text will therefore be considered by the EP in a Second Reading (for which there is as yet no timetable). The Government considers that the Council text is the best package available and will seek to defend its essential elements. I will keep you informed of developments on this dossier.

Only one UK Company will be affected by the Regulation and we have consulted them fully throughout the negotiations. They have been working towards an export ban in 2011 anyway and no additional costs are expected. The company have confirmed they are content with the Political Agreement reached at Environment Council.

28 July 2007

FARM STRUCTURE SURVEYS AND SURVEY ON AGRICULTURAL PRODUCTION METHODS (9531/07)

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

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 18 July.

We agree that the changes proposed are substantial, and potentially burdensome, and that a Commission Impact Assessment would be welcome. We share your particular concern that the proposed thresholds are too high.

We wonder if there is any scope for easing the administrative burden on farmers through the use of information technology and would appreciate your comments on this.

We note your reference to the higher costs that are likely to be faced by the Devolved Administrations and we would welcome further information on this in your next impact assessment. As part of this consideration, we would be grateful for an indication of whether the beneficiaries of the €3.6 million Community contribution will be public authorities or industry. In either case we would appreciate clarification on the method of allocation either within the industry or between the Administrations.

In the same context, we would appreciate clarification on the extent to which the Devolved Administrations are involved in formulating the UK position.

A particular aspect of the Proposal that we question is the collection of environmental statistics at NUTS 2 level. We would appreciate your comments on whether it makes more sense to collect such statistics on a geographical basis, such as the River Basin Districts on which the Water Framework Directive is based.

Finally, we note your comment that virtually all Member States have concerns with the Proposal, particularly in respect of the increased workload and response burden implied. We therefore look forward with interest to hearing from you as negotiations progress.

In the meantime we shall maintain the Proposal under scrutiny.

18 July 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter of 18 July and the consideration of this Explanatory Memorandum by Sub-Committee D. You shared our concerns about the substantial and burdensome impact the Commission’s proposed Regulation will have.

Negotiations are continuing. We are seeking to get the best balance between having the essential information that is needed and the costs of collection on both farmers and Government. The Presidency is presenting a revised proposal at the Council Working Group meeting on 12 September which we expect will address some of the UK’s concerns. We are working with other Member States to exert as much influence as we can. I can reassure you that my officials are working fully with colleagues in the Devolved Administrations on the UK line.

I am grateful for the suggestion and points you made.
On easing administrative burdens through the use of information technology, we are keen to see this extended to help reduce burdens. Farmers in England can already submit June and December survey returns through Defra’s Whole Farm Approach (WFA) web portal.

We intend to extend the WFA to allow the collection of more of the data required by the Regulation in 2010 and beyond. Using the WFA to submit surveys will help reduce the burdens on farmers by validating the return before submission (thus reducing the need for us to contact them again) and storing previous survey returns so the farmer can update his information more easily. In Scotland, an online version of the labour component of the Structure survey was piloted this year while Northern Ireland has provided farmers with the option to complete surveys electronically for a number of years. There are presently no plans to allow Welsh farmers to submit surveys online.

Better and fuller use of administrative data will also help in reducing burdens on farmers. From this year we have been able to use information from the cattle tracing systems in England, Wales and Northern Ireland in place of survey information, whilst in Scotland this approach is also being considered. We are actively looking at using other data sources including the Single Payment Scheme (SPS), GB Poultry Register, and Sheep and Goats Annual Inventory. Northern Ireland has already had success in integrating their survey returns with both their sheep and goats, and poultry registers. Scotland is in the process of commissioning a project to consider whether the data collections from the Integrated Administrative and Control System (IACS) and the June Census of Agriculture can be combined.

With regards to the greater relative costs faced by Devolved Administrations, we anticipate that these will mainly be in respect of meeting the requirements for information on agricultural production methods. In England there is an established annual Farm Practices Survey which will largely meet these requirements. In other parts of the UK such a survey will need to be established. The Commission’s financial contribution is to help government departments meet the costs of collecting the information. Within the UK the funds are split in proportion to the number of holdings surveyed.

We agree that we need to provide a flexible way for analysing the data, such as by river catchment areas. We already undertake analyses on alternate geographies, and the full census in 2010 should allow this to continue. For example, Defra’s Agricultural Change and Environment Observatory has analysed changes in dairy farming broken down by Joint Character Areas (JCA). JCAs are defined by a number of factors such as soil type, geology and landscape features to provide geographic units which have more relevance to the environment.

We believe that most data needs in 2013 and 2016 can be met from smaller samples than the Commission propose. This will then allow more scope for targeted surveys should they be required.

4 September 2007

FINANCING OF THE COMMON AGRICULTURAL POLICY (7641/07)

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

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 16 May 2007.

We are of the view that the Proposal is a sound one in terms of transparency and financial management and we are therefore content to release it from scrutiny.

16 May 2007

FISHERIES PARTNERSHIP AGREEMENT BETWEEN THE EC AND THE REPUBLIC OF MADAGASCAR (5736/07, 5737/07)

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 24 April 2007 which was considered by Sub-Committee D at its meeting of 2 May 2007.

We found the information provided in your letter useful. Your offer of a general briefing with your officials on how Fisheries Partnership Agreements work is also most welcome and, Sub-Committee D, would very much appreciate such an opportunity.

6 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 222.
I shall therefore ask our own officials to make contact with yours in order to arrange what I am sure will be an extremely useful briefing session.

2 May 2007

FISHING IN THIRD-COUNTRY WATERS AND THIRD-COUNTRY VESSELS (11182/07)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for South East, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 25 July 2007.

We support the principle of simplifying the existing body of Community legislation in this area. Furthermore, we note your fundamental difficulties and those of other Member States, in particular the proposals to fine fishermen more than once for the same offence.

We shall maintain the Proposal under scrutiny pending information on the progress of negotiations.

10 October 2007

FISHING OPPORTUNITIES FOR 2008 (10822/07, 16050/06)

Letter from the Chairman to Jonathan Shaw MP, Parliamentary Under Secretary of State and Minister for the South East, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was discussed by Sub-Committee D at its meeting of 25 July 2007.

Consultation over the annual TACs and Quotas is a matter that we take most seriously, including parliamentary scrutiny. In this context I wrote to your predecessor, Mr Ben Bradshaw MP, on 31 January 20077 expressing concerns about the procedure. Mr Bradshaw confirmed by letter of 23 February 2007 that the Commission’s plans to publish this Communication in more timely fashion should assist the consultation process. We would be grateful for your comments on the views expressed by Mr Bradshaw and, furthermore, for your commitment to ensuring that Parliament has a genuine opportunity to scrutinise the final proposals for 2008 fishing opportunities prior to their adoption in Council.

As regards broader consultation, we do hope that the new timetable will give the Commission and Member States ample time to work with the Regional Advisory Councils, as also mentioned by Mr Bradshaw in his letter.

We trust too that Defra will consult closely with the Devolved Administrations.

We are content to release the Communication from scrutiny and we look forward to hearing from you on the above points and as further information on the 2008 TACs becomes available.

25 July 2007

FUTURE OF THE ENVIRONMENT FOR EUROPE PROCESS (9800/07)

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

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 18 July 2007.

We too support the approach outlined by the Commission, most notably the proposal that the Environment for Europe process should focus on the implementation of existing instruments rather than discussion of ideas for new ones.

We are content to release the Communication from scrutiny.

18 July 2007

7 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 255.
GENETICALLY MODIFIED MAIZE: AUTHORISATION OF THE MARKETING OF PRODUCTS
(11744/07, 11786/07, 11860/07)

Letter from Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health to the Chairman

I refer to the Explanatory Memoranda being submitted to the European Union Committee for its consideration. I look forward to hearing the Committee’s reaction to these proposals, but I regret that this cannot take place before the issues have been presented to the Council of Ministers.

The EU procedures for this type of decision require the Council to act on the proposal within three months of it being referred by the Commission. The decisions regarding authorisation of these three types of genetically modified maize are due to be taken at the Agriculture Council on 26–27 September.

It is unfortunate that it has not been possible to complete the scrutiny procedures before the Council meeting, but I wish to inform the Committee of the Government’s decision to proceed.

Vote on the authorisation of these three types of GM maize were taken at the Standing Committee on Animal Health and the Food Chain in June. The UK voted in favour of the authorisations in line with the Government’s agreed policy on supporting safety and consumer choice in relation to genetically modified organisms. The Government should therefore proceed on this basis.

20 September 2007

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Your Explanatory Memorandum on the above Proposals were considered by Sub-Committee D at its meeting of 10 October 2007.

We agree with the Government that the EFSA opinions on all three of the Proposals can be supported.

We note that there was No Opinion at the Agriculture Council of 26 September. We understand that Parliamentary scrutiny has been over-ridden on this occasion but we appreciate the circumstances under which this took place.

In this light, we will release the Proposals from scrutiny.

10 October 2007

GENETICALLY MODIFIED MAIZE: PROHIBITION OF USE AND SALE IN AUSTRIA
(13701/07, 13702/07)

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

Your Explanatory Memorandum on the above Proposals was considered by Sub-Committee D at its meeting of 24 October 2007.

We regret the exclusion of cultivation from this Proposal but, while this question is still being examined by Austria and the Commission, we accept the importance of lifting the safeguard measures relating to the import and processing into food and feed products. We would be grateful if you could inform us of the outcome of the ongoing assessment relating to the different agricultural structures and regional ecological characteristics in Austria.

In this light, we will release the Proposals from scrutiny.

24 October 2007

GENETICALLY MODIFIED SUGAR BEET (11255/07)

Letter from the Chairman to Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health

Your Explanatory Memorandum was considered by Sub-Committee D at its meeting of 25 July 2007.

We too accept that there are no food safety grounds for not supporting the authorisation.

We are therefore content to release the Proposal from scrutiny.

25 July 2007
GLOBAL CLIMATE CHANGE ALLIANCE (13107/07)

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

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 24 October 2007.

The Committee support the idea of a Global Climate Change Alliance in principle. Like you, however, we look forward to seeing the Commission’s Working Paper fleshing out the practical details of the initiative. We would hope that this Paper, the ensuing stakeholder dialogue and the forthcoming Council Conclusions will help to clarify the added value that such an Alliance might bring.

We note that the Commission envisages “a joint GCCA financing mechanism managed by the Commission and governed in such a way as to reflect the participation of the Commission and the Member States”. We are of the view that arrangements for management and governance need to be clarified and would appreciate your views on this.

We are content to release the Communication from scrutiny.

24 October 2007

INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

Letter from the Chairman to Barry Gardiner MP, Minister for Biodiversity, Landscape and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was examined by Sub-Committee D at its meeting of 2 May 2007.

We share the concerns reflected in the proposed European Community line in regard to the negotiations and we concur with your support for the proposal. We are therefore content to release the proposal from scrutiny.

2 May 2007

MANAGEMENT OF PLANTING RIGHTS (11398/07)

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

Sub-Committee D considered your Explanatory Memorandum on this subject at its meeting on 25 July.

We are content to release the report from scrutiny. We hope however that the Government will press for the ending of the current ban on new plantings in 2010 and oppose the Commission’s recent proposal to extend the ban to 2013. We have noted that there has been a fall in the area of EU land under vines over the last six years and that this has happened while there has been a regime of subsidised distillation in place. If, as the Commission is now proposing, subsidies for distillation are removed, there should be no need of an extended planting ban to bring production capacity into line with market demand.

25 July 2007

MANAGEMENT PLAN FOR 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 letter of 26 March 2007;8 which was considered by Sub-Committee D at its meeting of 2 May 2007.

We are pleased to note that the Commission has recognised the concerns of Member States regarding a potential lack of coherence between this plan and other related plans and that the Commission has accepted that other measures could be proposed in order to ensure the coherence of the plan.

We regret that you did not respond to our question regarding the role and influence of Regional Advisory Councils (RACs) but we were nevertheless pleased to note the wording of the revised Recital 6 which does in fact recognise the input of the relevant RACs into the development of this policy.

8 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 235.
We were interested to see the introduction into the text of exemptions from the effort management regime for Member States whose quotas are less than 5% of the European Community’s share of the Total Allowable Catches of both plaice and sole. This may well be a simplification measure but we would appreciate your assurance that this exemption is fully in line with the Common Fisheries Policy’s principle of sustainability.

Finally, it is evident that the revised text changes the plan from a “Management Plan” to a two-stage “Multi-Annual Plan”. Council Regulation (EC) 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy allows for Recovery Plans and Management Plans, both of a multi-annual nature, but it does not allow for “Multi-Annual Plans” as such. We would appreciate the Government’s confirmation that it is content with this rather flexible interpretation of the basic Regulation.

We look forward to your comments on the above points. In the meantime, we are content to release the Proposal from scrutiny.

2 May 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 2 May responding to mine of 26 March. I was grateful for your confirmation that the Commission’s proposal could be released from scrutiny. As yet the dossier has not been formally agreed by the Council of Ministers, but we are expecting this to happen in the near future and will let you know as soon as the position is finalised.

In view of our own concerns about the need both to ensure consistency of approach across the various management and recovery plans and to make those plans fully effective in delivering their stated objectives, the UK took particular care to avoid this being undermined in the drafting of the measure. Whilst we were therefore prepared to allow for an exemption for any Member States who were not in practice targeting plaice and sole, this was on the clear understanding that the activities of the countries concerned would still be constrained by the days at sea arrangements that apply in respect of the recovery of cod stocks in the same area. Indeed, in the main, these will tend to apply more restrictive conditions to all Member States fishing in the North Sea. This position was subsequently confirmed in the related Council statement.

As to the true status of these plans, in the context of the basic CFP Regulation (EC) 2371/2002, there has been a significant amount of debate over exactly which of the two categories, particular species should be placed in. This often reflects a substantive difference of opinion over the real state of the stock and how the situation compares with that of the “benchmark” cod recovery stocks. However, focusing on definitions inevitably serves as a distraction from the key issue of establishing suitable sustainable management measures for the longer-term. The Commission has therefore recently moved to referring to them simply as multi-annual plans. Nonetheless, because of the structural funding implications of any such categorisation, they have at least chosen to make explicit how the plan is to be treated in each case. We are content to proceed on this basis, particularly since our commitment to achieve maximum sustainable yield (MSY) under the Johannesburg WSSD is likely to require a further general reduction in effort across most EU fisheries.

I must also apologise for failing to respond to your earlier question about the involvement of the North Sea RAC in the process. In fact the Commission arranged a specific meeting with the RAC in May of last year to discuss the issue. The RAC’s concerns included the potential socio-economic impacts of any restrictions and the importance of setting realistic stock targets in the context of the EU’s MSY commitments. At their request, the Commission subsequently sought the advice of STECF and the RAC’s concerns were reflected in later revisions to the text—particularly the introduction of a two-stage management process. We understand the RAC are content with these adjustments.

16 May 2007

MARINE STRATEGY DIRECTIVE (13759/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

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

Under the German Presidency the recitals to the Marine Strategy Directive have now been agreed. This brings the recitals into line with what was agreed in the main text of the Directive at the December Environment Council at which political agreement was reached. I am pleased to attach a copy of the finalised recitals, subject to any amendments that might be made by jurist-linguists to finalise the Common Position.
The only issue of substance was competence, which the December Council agreed would be considered in the recitals. The UK view, which is shared by a number of Member States, is that the Directive should be without prejudice to the competence of Member States in existing international structures. However, it was not possible to agree a form of words that was acceptable to all parties. Consequently no language was included on competence in the recitals. We propose to revisit this during Second Reading as the European Parliament proposed an amendment on safeguarding competence which we, and other Member States, support.

The Presidency also completed a read-through of the first reading amendments proposed by the European Parliament. Member State views were divided on whether the Directive should be to “achieve” or “aim to achieve” good environmental status (GES); on the proposed timetable; and the actual definition of GES. However, Member States were generally optimistic that a Second Reading agreement can be reached. This optimism is also shared by Portugal, who take on the Presidency in July, and will be responsible for brokering a possible Second Reading deal.

My officials are currently discussing options with the incoming Presidency, Member States, the European Commission and other stakeholders for a possible Second Reading deal between the Council and the European Parliament. I would like to see a deal based on an agreement to “achieve” GES provided that the European Parliament accepts a realistic definition of GES that is ultimately achievable. It also needs to be conditional on the Parliament agreeing to the safeguards proposed by the Council on applying a risk-based approach and not being required to incur disproportionate cost.

I shall continue to keep you informed of progress.

8 June 2007

MARKETING OF METHOMYL (10783/07)

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

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 11 July 2007.

We note your concerns about the scientific assessment that has led to the Commission’s non-inclusion Proposal, though you will appreciate that we are not able to take up a position on this. We would however certainly support your view that decisions such as this should be taken on the basis of the best available scientific evidence and no doubt you will be making this point at the forthcoming Council.

We note also that methomyl, though apparently widely used in other countries, is not used in UK agriculture and we understand that to date no application has been made to market this pesticide here.

In these circumstances we are content to release the Proposal from scrutiny but we urge you to work with your colleagues in the EU to emphasise the need for technical decisions of this nature to be based on agreed and robust scientific data.

16 July 2007

MONITORING OF AGRICULTURAL EXPORTS (12587/07)

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

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 17 October 2007.

We support the proposed simplification and would urge the Government to ensure that it is implemented as quickly as possible in the United Kingdom.

We are content to release the Proposal from scrutiny.

17 October 2007
PHARMACOLOGICALLY ACTIVE SUBSTANCES IN FOODSTUFFS OF ANIMAL ORIGIN (8653/07)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 27 June 2007.

We agree that the Proposal to apply without further examination Codex Alimentarius standards (where the EU has supported them) is a sensible one.

In principle, greater extrapolation is also a welcome contribution to simplification of the existing rules. Its success, however, is predicated on clarity and we would therefore be grateful for your view on whether Article 5 might be re-drafted in a clearer fashion.

We have serious concerns about the introduction of “reference points for action” for banned substances. Both you and the Commission emphasise that a problem exists but it would be useful if you could articulate for us the scale of the problem. We consider that, if such reference points are necessary, it is absolutely vital that they are fully justified and that they are set at the right level.

In the light of the above we shall hold the Proposal under scrutiny and we look forward to your initial Regulatory Impact Assessment in due course.

27 June 2007

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

Thank you for your letter of 27 June following your Committee’s consideration of the Explanatory Memorandum submitted by Ben Bradshaw.

I am grateful to the Committee for its support for adopting Codex Alimentarius standards where the EU supports the science. I also note that the Committee supports greater use of extrapolation in principle, but seeks Defra’s views on whether Article 5 might be re-drafted in a clearer fashion.

This was one of the aspects of the proposal discussed at the first Council Working Group of officials last month. Several Member States signalled their support for the adoption of Codex MRLs and greater use of extrapolation, where robust scientific data exists, to increase the availability of authorised veterinary medicinal products (VMPs) without compromising consumer protection. It was noted that guidelines produced by the Committee on Veterinary Medicinal Products (CVMP), which advises the European Commission on the setting of MRLs, were available and in use, but this had not resulted in any extra products being authorised through the extrapolation process. It remains to be seen whether there is scope to relax the system to make more products available without reducing the integrity of the process.

I agree that Article 5 could be re-drafted in a clearer fashion to establish the scope of the process and ensure that guidelines for the process are adhered to rigorously. This has been suggested to the Portuguese Presidency, and the UK is prepared to offer assistance in this area if it is requested.

I note the Committee’s serious concerns about the introduction of “reference points for action” (RPAs). Unfortunately, the Council Working Group meeting did not move this area any further forward except in giving several Member States the opportunity to express their concern at the current situation. The Government agrees with your Committee that, if such reference points are necessary, they should be fully justified and set at the right level.

The Government is encouraged by the suggestion in Article 18 that the Commission may forward a request to the European Food Safety Authority (EFSA) for a risk assessment as to whether the RPAs are adequate to protect human health. The Government feels that this would offer the assurances sought by the Select Committee, provided the opinion of EFSA is sought before an RPA formally comes into force. (The Food Standards Agency in particular has suggested interim RPAs may be needed in the meantime to assist enforcement procedures.) However, it appeared from the Commission’s comments at the Council Working Group meeting that this provision in the proposal has not yet been discussed with EFSA officials.

In this, and other areas of the proposal, the Commission has put its thoughts together without, it would appear, too much digging to see what will work. It has, probably correctly, preferred to collect the views of Member States first to see what is acceptable, rather than approach bodies such as EFSA to discuss arrangements, which might be seen by Member States as a fait accompli.
This approach, together with the relative lack of detail on adopting Codex MRLs and greater use of extrapolation, makes it extremely difficult to compile a meaningful Impact Assessment. Officials have submitted a number of comments to the Council Secretariat and Portuguese Presidency for consideration prior to the next Council Working Group, including those on Article 5 and the role of EFSA in assessing RPAs. The UK objective for that meeting is to clarify key issues to the extent that stakeholders can be consulted with more certainty about how the aim of the proposals will be achieved. As the proposal stands at present, it is in danger of causing elements of confusion and misunderstanding, which must be avoided. This information will then be used to complete the Impact Assessment which will be submitted with a Supplementary Explanatory Memorandum after summer Recess.

26 July 2007

Letter from Lord Rooker to the Chairman

I wrote to you on 26 July in response to your letter of 27 June following your Committee’s consideration of the Explanatory Memorandum submitted by Ben Bradshaw.

In my letter I explained that the first Council Working Group attended by officials in June did little to clarify key issues in the proposal. The UK objective for the second meeting, therefore, was to achieve clarification to the extent that stakeholders could be consulted with more certainty about how the proposal would affect them, and not run the risk of causing confusion and misunderstanding. The intention, in keeping with common practice, was to use their information to complete the Impact Assessment (IA) and submit it to Parliament with a Supplementary Explanatory Memorandum after summer Recess.

Unfortunately the second meeting also did little to clarify matters. However, mindful of our commitment, officials carried out an initial consultation over four weeks to seek views from over 630 interested organisations. In spite of a request to supply information where possible to help produce an informed IA none of the 12 responses addressed this issue.

In that respect I am sorry to say that we are no further forward. There were two further meetings of the Council Working Group in the second half of September, but progress on this dossier was further slowed by the Portuguese Presidency deciding to include discussions on another proposal (10585/07). Whilst the outcome of this was satisfactory for the UK it has impeded progress on this issue.

There were signs at the last meeting that serious attempts will be made in the first half of October to clarify key issues before the next meetings on 19 and 31 October. I would hope that officials will then be in a position to carry out a full 12 week consultation with a redrafted text and clearer information on the implications for stakeholders.

Your comments about the clarity of Article 5, with which I agreed in July, have been raised again by officials. They are also seeking more information about the process for setting Reference Points for Action which was of great concern to your Committee.

8 October 2007

POTATO CYST NEMATODES (8399/05)

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

Further to my letter of 9 February 2007, I am writing to update you on the most recent developments on the above proposal.

On 17–18 April the German Presidency held what they indicated to be the final Working Party meeting on the proposal and at the end of that meeting a draft compromise text was presented. I am pleased to say that the text incorporates all substantive UK points and therefore I would now ask that your Committee considers lifting their scrutiny reserve on the basis of the achievements made.

My previous letter outlined our intention to meet with the German Presidency and the Netherlands (the major seed potato producer in the EU), to explore possible options in relation to the proposed soil sampling measures, which are the most fundamental aspect of the proposal in terms of burdens on Government and growers. Our view was that the scientific and statistical evidence indicated that larger fields (such as those in the UK) would be discriminated against. A meeting took place on 22 March with the Dutch and Germans, which provided a useful opportunity to present our evidence in an informal setting prior to the Council
Working Party. Following that meeting a paper was circulated to all Member States, which formed the basis of proposed new requirements to accommodate the different sizes of field being sampled.

I am pleased to say that the UK’s presentation of alternative soil sampling procedures at the meeting on 17–18 April was well received by many Member States and, following some adjustment to bring on board those Member States with outstanding concerns, there was support for their inclusion. It was also clear that the Presidency and Commission were keen to achieve a consensus on the text as a whole, with a view to completing the round of technical discussions, so expressed greater willingness and openness than previously to improve the proposal. A number of significant amendments were eventually agreed, which has helped to ensure that the final draft text prepared by the Presidency includes all major UK objectives, either fully or to a large extent. The position for each of the objectives described in my letter of 9 February is summarised in the Annex.

While a new Directive was not the preferred UK approach (but was supported by the Commission and all other Member States), if the text supported by the Working Party completes its Council process without significant amendment, this will have been a major achievement for the UK in pursuing an outcome that is justified and proportionate. Throughout the process the UK aim has been to take an evidence-based approach, outlining the social, economic and environmental consequences of the proposal in an Impact Assessment during the UK Presidency, and presenting detailed scientific and statistical evidence in support of revised soil sampling measures more recently. There has been strong opposition for much of the time, in the face of a general view that measures against PCN should be enhanced, almost irrespective of the cost: benefit or scientific rationale. While this overall view is largely the same, there has been a gradual move towards the UK position, helped by a number of bilaterals with Member States.

Despite this progress, I should remind the Committee that adoption of a new Directive will inevitably involve additional resource implications for Government and the industry. As previously pointed out, an important aim has been to ensure a better benefit: cost ratio and to avoid the introduction of unnecessary burdens, but any enhanced measures will inevitably come at a cost. This remains the case with the new draft compromise text, but the scale of resource increase is now manageable, and must be balanced against the corresponding benefits which will come from slowing down the rate of PCN spread, avoiding unnecessary yield loss and trade opportunities. In relation to Defra resources, it is likely that the additional input will require approximately 0.5 staff years of input from the Plant Health and Seeds Inspectorate and around £50k for additional laboratory sampling. At present, such costs are not charged to industry, but this policy is under review as part of a general review of charging for plant health work. There will be a new requirement for growers to implement a control programme on potato land found to be infested with PCN, but in the UK such programmes will be in line with existing commercial practice.

I believe that the balance between costs and benefits is now a reasonable one and this is backed up by evidence from Defra’s economists. This is largely due to the much reduced soil sampling requirements, as well as a significant reduction of burdens in relation to plants for planting and ware potatoes.

The proposal is now expected to go forward for adoption at a Council in June.

2 May 2007

Annex A

<table>
<thead>
<tr>
<th>Issue</th>
<th>Objective</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex II: soil sampling/testing— additional burden</td>
<td>Reduced overall burden, or revised measures for larger fields.</td>
<td>UK objective achieved: reduced sampling rate for larger fields incorporated.</td>
</tr>
<tr>
<td>Art 6: official survey—new burden</td>
<td>Permit other sources of information to be included.</td>
<td>UK objective achieved: officially authorised data may be included and the requirement is less prescriptive than previously.</td>
</tr>
<tr>
<td>Annex I: list of plants—inclusion of bulbs</td>
<td>Exclusion of bulbs, or reduced impact on bulk growers.</td>
<td>UK objective achieved: bulbs marketed free of soil are excluded—which is how bulbs are generally marketed.</td>
</tr>
</tbody>
</table>
### Environment and Agriculture (Sub-Committee D)

#### Table: LOEANY PPSysB Unit: PAG1

<table>
<thead>
<tr>
<th>Issue</th>
<th>Objective</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art 9: official control programme—compulsory use of resistant varieties</td>
<td>Flexibility to decide control measures on a case by case basis.</td>
<td>UK objective achieved: case by case assessments now possible.</td>
</tr>
<tr>
<td>Art 9: official control programme—no scope for authorising other programmes</td>
<td>Provision to authorise programmes undertaken by growers or other organisations.</td>
<td>UK objective achieved: officially authorised programmes are permitted.</td>
</tr>
<tr>
<td>Art 18: implementation date—time to adapt</td>
<td>Minimum of two years.</td>
<td>UK objective exceeded: Directive to come into force in July 2010.</td>
</tr>
<tr>
<td>Annex 111.1: verification options—restricted options</td>
<td>Extended options.</td>
<td>UK objective partly achieved: no additional options included, but in practice these requirements will be largely redundant in the UK, as a result of a UK inspired amendment to exempt from official investigation those plants that are marketed free of soil.</td>
</tr>
<tr>
<td>Art 11: notification of resistance breakdown—practicality</td>
<td>Removal of compulsory requirement.</td>
<td>UK objective partly achieved: reduced emphasis on enforcing such a requirement.</td>
</tr>
<tr>
<td>Annex 111.11: waste disposal—practicality</td>
<td>Amended requirements to ensure practicality.</td>
<td>UK objective achieved: text revised in line with UK suggestion.</td>
</tr>
</tbody>
</table>

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**Letter from the Chairman to Lord Rooker**

Thank you for your letters of 9 February 2007 and 2 May 2007, which were considered by Sub-Committee D at its meeting of 16 May 2007.

While we are clear as regards the need to secure agreement on the draft Directive as soon as possible in order to reduce the rate of further PCN spread, we continue to have some reservations about the Proposal as it stands.

First, we note that farm saved seed has been brought within ambit of the draft Regulation. We would be grateful for information on what the impact of this may be.

Second, you note that the UK has been successful in amending Annex 2 concerning the new sampling rules. We would find it useful, if at all possible, to receive the revised version the text.

Third, in my letter of 10 July 2006 I requested more information on the cost:benefit aspects of the Proposal. You stated that you were unable to provide any additional information, particularly due to the fact that the Commission and the other Member States did not consider these aspects to be a priority. While this may well be the case, and while we ourselves are in no doubt about the importance of halting the spread of the disease we also consider a rigorous cost:benefit assessment to be essential when adopting legislation such as this.

Finally, we would be grateful for an indication on the extent to which you have worked with industry as discussions have progressed.

We shall retain the Proposal under scrutiny pending your response on the points raised above.

16 May 2007

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**Letter from Lord Rooker to the Chairman**

Thank you for your letter of 16 May, in response to mine of 2 May.

As requested, I attach a copy of the amended Proposal (not printed) which includes the revised Annex II you mention.

You have asked about farm saved seed. All potatoes intended for planting (including for farm saved seed) are currently required, by virtue of the Plant Health Directive (2000/29), to be grown in fields which are known to be free of PCN. In theory this includes testing of fields used for ware potato crops from which a proportion of harvested tubers are retained for further planting by the owner, which is a very onerous requirement. In practice, however, this requirement has never been enforced for farm saved seed, because of the scale of
resources required and because there is minimal risk of spreading PCN when potatoes are planted on the same or nearby premises.

The Proposal includes a much improved requirement, targeted according to risk. Farm saved seed remains within the scope of the Proposal, but Article 4.4 (b) permits Member States to exempt them from the official investigation requirement, where it is established there is no risk of spreading PCN. This provides flexibility for Member States to decide, according to the situation within their territory, whether to require an official investigation for farm saved seed. This is a much more balanced approach, which addresses the different situations regarding PCN distribution and different practices relating to farm saved seed across the EU, but retains the key element of avoiding PCN spread. A consequential change to the Plant Health Directive will be needed to reflect this improvement. In other respects, such as the prohibitions on planting on contaminated land (Article 9.1) and on planting contaminated products (Article 10.1), farm saved seed are treated in the same way as all other seed potatoes, which is entirely appropriate.

In relation to the cost:benefit situation, there appears to have been a misunderstanding. There is actually a great deal of information available on the cost:benefit situation and the UK has been instrumental in driving this aspect within the Council Working Group. At the EU level, the Council Impact Assessment prepared by the UK Presidency in 2005 helped to concentrate the minds of other Member States on this area, whereas previously Member States had expressed apathy or even opposition to this concept. For the UK specifically, a Cost Benefit Analysis (CBA) prepared by Defra economists contributed to the consultation exercise on the Proposal. My letter of 9 February referred the Committee back to previous information on this aspect, as at that time there had been no change in the previously reported position. My predecessor’s letters of 21 October 2005 and 20 December 2005 included comprehensive details and provided a copy of the EU wide Impact Assessment prepared by the UK Presidency and the UK CBA referred to above.

You may recall that our concern had been about the negative CBA ratio associated with the original Commission Proposal, which produced net present values over a 20 year period ranging from −£7 million to −£7 million when assessed against three different scenarios. Defra’s economists have reworked the CBA to illustrate the impact of the revised Proposal now under consideration. The range of net present values is now between −£7 million and +£7 million, which is a substantial improvement. I should reiterate the proviso that the CBA is only a cursory analysis, but the same scenarios have been used on both occasions, which helps to demonstrate clearly that the revised Proposal is much improved as far as the UK position is concerned.

In relation to discussions with the industry, there have been two formal consultation exercises, which helped to develop the UK negotiating line. We have also liaised closely with industry representatives throughout the process to update them of developments and to seek their views. This has included holding consultation meetings, meeting individual growers, attending quarterly meetings with the British Potato Council, briefing NFU members who attend the EU Copa-Cogeca meetings, as well as using other relevant opportunities, such as the annual review of the Seed Potato Classification Scheme. The revised Proposal accommodates all substantive UK negotiating points, which could not have been foreseen at the start of the process, and these reflect to a large extent the views of different parts of the industry from different parts of the UK expressed during the consultation process.

I hope this helps to put the situation into context. I would stress that the outcome is far better than could first have been envisaged. We were faced with widespread opposition to our approach, but have managed to turn this around thanks to a strong scientific case and a great deal of work to influence others. The result is a more balanced and proportionate Proposal and a cost:benefit situation which is now likely to be largely neutral, rather than the significant negative position we were originally faced with. There was significant movement from the Presidency, Commission and several Member States in the latter stages of negotiations and clearly we now wish to be able to express support for the revised Proposal when it is discussed at COREPER on 1 June and at the subsequent June Agriculture Council (11 June), not least because of the reputational implications of doing otherwise, having been so proactive in negotiating improvements to the text.

24 May 2007

Letter from the Chairman to Lord Rooker

Thank you for your letter of 24 May, which was considered by Sub-Committee D at its meeting of 6 June 2007.

We are grateful for your clarification of the various points raised in my letter of 16 May 2007. It is clear to us that the control of potato cyst nematodes is crucial and that this must be undertaken in a proportionate manner. We trust that you will work with the European Commission to monitor the implementation of this Regulation with a view to ensuring that it achieves its fundamental plant health objective.
We note from Paragraph 3 of your letter that Defra has yet to decide on whether the costs of sampling should continue to be borne by Defra or whether they should be passed on to growers. We would appreciate confirmation from you that industry is being consulted on this prior to the final decision being taken.

In the light of the above comments and the information contained in your letter, we are now content to release the Proposal from scrutiny.

6 June 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter of 6 June, in response to mine of 24 May.

I am grateful for the Committee’s clearance of this Proposal. You will be interested to know that the new Directive was adopted by Agriculture Council on 11–12 June.

We now need to turn our minds towards the implementation process and you have asked specifically about the arrangements for determining charging policy. You will be aware from our correspondence that, despite the substantial changes made to the Commission’s original Proposal, the new Directive will nevertheless impose some increased obligations on both growers and the Government.

Although the scale of resource increase is much less than originally feared, we will need to decide whether the existing policy (where the costs of PCN testing, other than for export purposes, is paid by Defra) should be maintained, or whether an alternative approach is needed in future. Such consideration is linked to wider initiatives, particularly a cost and responsibility sharing project where the respective roles of Government and industry in ensuring plant health protection are under review. This jointly funded project being undertaken by Imperial Consulting limited is due to report at the end of June. Following this we will be considering in consultation with industry representatives the scope for developing partnership working across the range of plant health control activities. With regard to the specific arrangements for PCN, we will be looking to ensure that any final decisions are taken well in advance of the Directive’s implementation date of July 2010.

You also mention about the need to work closely with the European Commission to monitor implementation of the Directive, with a view to ensuring that it achieves its fundamental plant health objective. I agree that this is an important aspect and the Directive includes certain official recording and reporting obligations which will assist with this process. Progress will be monitored through the Standing Committee on Plant Health, which meets on a monthly basis.

19 June 2007

PROTECTION OF CHICKENS KEPT FOR MEAT PRODUCTION (9606/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

Further to my letter of 22 January I am writing to provide you with an update of developments in negotiations of a new meat chicken welfare Directive.

As you know, agreement on the meat chicken welfare Directive was not achieved under the Finnish Presidency due to lack of support from a number of Member States. The German Presidency have now produced a compromise proposal for transposition in 2010. Key parts of the Directive remain: a lower maximum stocking density limit of 32kg/m²; two years earlier than originally proposed an upper maximum stocking density limit of 38kg/m² (with a reward system of another 2kg/m² subject to criteria regarding monitoring, use of guides to good management practice and the mortality threshold); the requirement to send data on certain welfare indicators to the Commission; the requirement to send mortality levels and post mortem results from the slaughterhouse to the Competent Authority and owner/keeper with the need for appropriate action if results reveal poor welfare; and training and guidance for those people dealing with chickens. Thus, a level playing field is established across the EU for the first time. There are still also commitments for the Commission to produce reports on genetics, labelling and the application of the Directive.

However, in line with the German Presidency theme of Better Regulation and a reduction in administrative burdens, parts of the Directive concerning the detailed monitoring of footpad, dermatitis at slaughterhouses, the welfare grading of flocks and specific follow up of deficiencies recorded in slaughterhouse, have been deleted. Since the Directive sets minimum standards, Member States though are able to carry out some form of additional monitoring if they wish.

10 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 240.
Although the loss of these aspects is disappointing, the Directive still provides for the first time harmonised rules for the keeping of chickens in respect of stocking density, building conditions and training of stockmen. The idea of outcome based welfare principles has been retained although the actual welfare indicators have been left to The Standing Committee on Food Chain and Animal Health to decide. This is an important platform on which to build.

The German Presidency hope to gain political agreement to the compromise proposal at the Agriculture and Fisheries Council on 7 May. The UK Government feels able to support the proposal in its current form. I will write again to let you know the outcome of the Council’s discussions.

1 May 2007

REFORM OF FRUIT AND VEGETABLE REGIME (5572/07)

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

Thank you for your letter of 19 March 2007. I apologise for the delay in getting back to you on the points you raised in relation to our Explanatory Memorandum on the above proposal.

Over recent weeks the Commission’s Reform proposals have been subject to detailed consideration at a series of technical Council Working Groups, at meetings of the Special Committee on Agriculture (SCA), and at the meeting of the Council of Ministers on 16 April. As you recognise, in this process, we are seeking to clarify and influence the intentions, scope and cost of the new measures, including those designed to address crisis management and promotion of consumption. You ask in particular about our view on whether it is appropriate for Council to adopt a provision that obliges Producer Organisations (POs) to undertake promotion activities. We have some reservations about this, recognising that there are arguments both for and against. This issue is one on which we are seeking comment from industry and others in our current public consultation. The consultation and our Partial Regulatory Impact Assessment (PRIA) on the proposals issued on 30 April: http://defraweb/corporate/consult/fruitvegreform/index.htm. I will be submitting a Supplementary Explanatory Memorandum shortly to accompany the PRIA. The question of promotion of consumption is specifically addressed at the bottom of page 11 of the Assessment. As indicated there, we suspect the devil may be in the detail of subsequent implementing rules on this provision, in terms of what would constitute promotion of consumption to schoolchildren (which, conceptually at least, might range from for example a full media campaign by the PO to a far more modest hosting of a school party visit).

You will see that our consultation exercise is also seeking reactions—on the basis of the assessments in our PRIA—to the wide-ranging and detailed changes envisaged to arrangements for financial assistance to POs and the inclusion of land growing fruit and vegetables within the scope of the Single Payment Scheme (SPS). On the former, as indicated in the PRIA, we know from early and informal consultation with grower representatives that the increased flexibility on PO recognition criteria and the scope for growers to join different POs for different products should be warmly welcomed. Indeed, it is something for which the UK has long lobbied in our official contacts with the Commission and other Member States. Our initial assessment of the other elements relating to POs are also set out in the PRIA. On the latter issue, the SPS, as pointed out in the PRIA it is too early to be specific about the implications of the proposals for the UK industry. This is partly because it is very difficult to determine how growers might react if, as proposed, existing restrictions are lifted and partly because the powers which it is proposed to give to Member States to address any concerns about potential disadvantage that existing growers might subsequently face (ie allowing the allocation of additional SPS entitlements or increasing the value of existing ones) would be enabling in nature and the outcome for growers would depend on decisions subsequently taken by the Department and the devolved administrations, possibly following further consultation, in exercising any discretion we are allowed. Informal contacts with growers’ representatives has shown a fair degree of support for the principle of removing the restrictions and attendant bureaucracy currently associated with the current SPS rules on growing fruit and vegetables. The focus of our attention in the negotiations has been in ensuring that there is adequate flexibility in allowing different parts of the UK to make their own decisions, reflecting the different models of the SPS we operate, on whether and how any additional SPS allocations would be made.

Finally, I would confirm that it is still the Presidency’s ambition to reach an agreement on the overall reform package at the 11 June Agriculture and Fisheries Council, with weekly discussion at SCA in the interim. Good

11 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 241.
progress is being made to this end, albeit with some significant differences of view, notably over crisis management provisions, and with pressure from Southern Member States for transitional arrangements leading to full decoupling of the aids for products grown for processing.

8 May 2007

Letter from the Chairman to Lord Rooker

Your Supplementary Explanatory Memorandum and letter of 8 May were considered by Sub-Committee D at its meeting of 6 June 2007.

We consider it unfortunate that your Public Consultation closes just two working days before the Proposal is due to go to Council. The consequent lack of information regarding views on some of the issues makes it difficult for us to draw firm conclusions at this time although we accept your view that clarity in relation to some of the matters will in any case need to await the implementing regulations.

We are of the view that the Producer Organisations must enjoy a degree of flexibility in determining how they spend funds on promotion for consumption and on crisis management measures.

With specific regard to crisis management, we note that there are still some significant differences in Council on this matter. We would hope that the menu of possible measures does not include any market distorting measures, such as withdrawal, “green harvesting” and non-harvesting.

It is pleasing to note that you are seeking to ensure that there is adequate flexibility built in to allow different parts of the UK to make their own decisions on whether and how any additional SPS allocations would be made.

We are content to release the Proposal from scrutiny on the understanding that your support for the Proposal is conditional upon: securing flexibility for Producer Organisations in determining exactly how to spend funds on promotion for consumption and on crisis management measures; ensuring that crisis management measures are not of a market-distorting nature; and ensuring that different parts of the UK are able to make their own decisions on whether and how any additional Single Payment Scheme allocations would be made.

6 June 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter of 6 June regarding our Supplementary Explanatory Memorandum and letter on the above Proposal. I was grateful that the Proposal was released from scrutiny and for the promptness of your reply following the meeting of Sub-Committee D on 6 June.

We took careful note of the conditions raised in your letter and—following the agreement reached on a Reform package at the Agriculture Council on 12 June—I am pleased to be able to update you on each.

— Securing flexibility for Producer Organisations (POs) to determine exactly how to spend funds on promotion for consumption and on crisis management.

In the event, the obligation on Producer Organisations to promote consumption was replaced with the option to include such measures in their operational programmes and so benefit from a higher rate of EU aid (60% rather than 50%). We welcomed this development and believe it is right that the provision is now permissive rather than prescriptive. Similarly, the crisis management measures remain an optional tool for POs to consider including within their operational programmes: there is no obligation for their uptake.

— Ensuring that crisis management measures do not include any market distorting measures, such as withdrawal, green harvesting and non harvesting.

Limiting the scope and cost of these measures was an important consideration for the UK and was always likely to prove difficult with most other Member States pulling on the other end of the rope. We were not able to reverse the original proposal but the outcome was, in our view, a satisfactory compromise when taken as part of the overall reform outcome, which importantly will realise the full decoupling of all aids for products grown for processing. The agreement will limit the eligibility for obtaining EU funding for crisis prevention and management measures to members of recognised POs or for a lesser amount (state funded) to those non-members contracted to POs. Importantly, all measures remain optional, subject to a maximum of one third of the cost of the PO’s overall operational programme, and must be co-financed by industry.
Ensuring that different parts of the UK are able to make their own decisions on whether and how any SPS allocations would be made.

This was one of our key demands and we were successful in securing a deal which provides member states and regions with a considerable degree of flexibility in respect of the allocation of new SPS (Special Payments Scheme) entitlements for fruit and vegetable and potato growers. England, Scotland, Wales, and Northern Ireland can now take their own decisions and implement them in a manner and to a timescale that best suits their needs.

25 June 2007

RESTRICTIONS ON CAT AND DOG FUR AND PRODUCTS CONTAINING SUCH FUR (15674/06)

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 letter of 12 February 2007 regarding the above Proposal, which was considered by Sub-Committee D at its meeting of 2 May 2007. I apologise for the late response which was the result of some administrative confusion.

We note that you are content with the position on the legal basis. We remain sceptical that the Proposal is connected with internal market rather than with ethical concerns. We are particularly concerned that this Proposal should not be relied upon as a precedent for legislation in future and we trust that the Government is fully alive to this danger.

It is pleasing to note that you favour a simple approach to implementation and we would be grateful for details of the chosen method once the Government has agreed this in partnership with your colleagues at the EU level.

Finally, we look forward to receipt of information from you as discussions continue both in Council and in the European Parliament.

On the basis of the above comments, we are content to release the Proposal from scrutiny.

2 May 2007

RESTRICTIONS ON MARKETING OF MERCURY DEVICES (6693/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

My predecessor wrote to you on 4 February 2007 to update you on the progress of the above proposal, which was put forward in 2006 by the European Commission. I am writing to inform your Committee of the current position on this dossier.

The Presidency considered the political agreement reached in October 2006 by the Working Party on Technical Harmonisation (Dangerous Substances) suitable for adoption as a Common Position and its text was finalised at a meeting of the Jurists/Linguists Group on 19 March.

The European Parliament’s Committee on the Environment, Public Health and Food Safety proposed amendments to the Common Position, which would allow a complete derogation for domestic barometers, under a licensing scheme; after discussions between the Rapporteur, the Commission and the Presidency, the Environment Committee voted on 5 June to reject these amendments.

Although the amendments were once again tabled for the EP Plenary Session on 9–12 July, they were once more rejected and the European Parliament voted in favour of the Common Position. The dossier is now finalised and the text has recently been published in the EU Official Journal; I attach a copy for ease of reference.

The new restrictions will prohibit the placing on the market of mercury in all clinical thermometers and other, new, measuring devices containing mercury (eg barometers and thermometers) to the general public. There is a derogation for barometers until 3 October 2009, to allow industry time to adjust, with an outright derogation for all mercury-containing instruments over 50 years old on the 3 October 2007. Specialist medical, scientific and industrial applications are also excluded, but subject to review by 3 October 2009.

12 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 244.
13 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 245.
We are currently considering how most effectively to incorporate the provisions into UK law. However, restrictions under the Marketing and Use Directive will become part of Title VIII and Annex XVII of the REACH Regulation on 1 June 2009 when the Directive is repealed.

19 October 2007

SIXTH COMMUNITY ENVIRONMENT ACTION PLAN (9245/07)

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

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 18 July 2007.

We welcome the Government’s stance in relation to the Mid-term review of the Sixth Community Environment Action Programme. In the course of our own scrutiny of environmental legislation recently, it has been evident at times that there is a need to improve policy making in this field.

We are now content to release the Communication from scrutiny.

18 July 2007

STATISTICS ON PLANT PRODUCTION PRODUCTS (16738/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

Thank you for your letter of 26 March 2007 to Lord Rooker about this proposed Regulation. As requested, I enclose details of the outcome of the public consultation on this document.

The consultation identified key elements of the proposals, outlined the Government’s initial views and sought comments on stakeholder views. It ran from April to July and we have now completed our analysis of the responses.

We received eight responses. The information provided has confirmed our initial analysis of the proposal and will not lead to any substantial alteration of the original Explanatory Memorandum and RIA.

A paper presenting an analysis of the consultation responses we received is attached (not printed). This is also being made available on the website of the Pesticides Safety Directorate at www.pesticides.gov.uk.

2 October 2007

SUGAR INDUSTRY: RESTRUCTURING (9147/07)

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

The Government’s Explanatory Memorandum on the above document was considered by Sub-Committee D at its meeting of 11 July 2007.

We are content to release the Communication and Proposals from scrutiny on the basis that their underlying principles are in line with the Committee’s December 2005 Report “Too much or too little? Changes to the EU Sugar Regime” (HL 80, 13 December 2005). It remains our view that the Restructuring Scheme is an important mechanism in bringing production into line with marketing opportunities.

Should negotiations prove difficult in Council, we trust that you will maintain a robust line in favour of these Proposals and we look forward to information from you on the progress of those negotiations.

16 July 2007

THEMATIC STRATEGY ON SOIL PROTECTION (13388/06, 13401/06)

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

Your Supplementary Explanatory Memorandum (SEM) and partial Regulatory Impact Assessment (RIA) on the above Proposal were considered by Sub-Committee D at its meeting of 27 June 2007.

14 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 247.
Further to your partial RIA, we continue to hold the concerns expressed in our letter of 22 November 2006\textsuperscript{15} with regard to the costs of the Proposals and we look forward to the next iteration of the RIA for further details on these costs.

It is clear too that the case for the Directive has still to be made. In this context, we are interested in the point highlighted by the RIA that UK land managers could benefit from the creation of a level playing field. We would be grateful if you would expand on this point.

Another point made by the RIA is that the Strategy and Directive may have environmental benefits, although few details about these are given. We would appreciate further information on the question of environmental benefits, including the extent to which similar benefits might be achieved through amendments to UK legislation rather than through the introduction of an EU Directive.

In view of our serious concerns about the Proposal and Strategy we would like to invite you to come and give evidence to us on both the Thematic Strategy and the proposed Directive when the House returns in October. The Committee’s officials will be in touch with you to make the necessary arrangements.

In the meantime we shall be retaining the Proposal and Strategy under scrutiny and we look forward to receiving further information as it becomes available.

27 June 2007

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs to the Chairman

Thank you for your letter of 27 June to Lord Rooker in response to the Supplementary Explanatory Memorandum (SEM) and initial Regulatory Impact Assessment (RIA) which we submitted to you on the Thematic Strategy for Soil Protection and the proposed Directive establishing a framework for the protection of soil. Following recent ministerial changes, responsibility for this issue in Defra now falls to me.

I understand and share the Committee’s concerns in relation to the need for better information on the costs and benefits of the Commission’s proposals. As the RIA explains, the Commission’s own Impact Assessment is particularly weak in this respect and officials are working hard with stakeholders and others to try to present a clear picture in the next iteration of the RIA.

We also now expect there to be a revised compromise text of the proposals from the Portuguese Presidency in the early autumn, which could clearly have a bearing on the issues, though this in itself is likely to require further analytical work, depending on the nature of changes envisaged.

My further comments, at this stage, are therefore necessarily provisional, though I hope I may be able to give you some greater clarity in October, when I would be happy to take up your invitation to come and give evidence in person.

In the meantime you have asked for an expansion of two particular points in the present version of the RIA. Your first point about the creation of a level playing field for land managers relates particularly to Article 8 of the Directive, which covers various risks such as soil erosion, compaction and soil organic matter decline. At the moment such risks are largely addressed through cross-compliance measures under the Common Agricultural Policy. England has fully implemented those requirements by introducing measures to prevent soil erosion and maintain soil organic matter and good soil structure. However, we believe that other Member States, with similar threats, may have less comprehensive measures. A clearer framework, under the proposed Soil Framework Directive, may raise standards and require a wider ranging approach—thus moving towards a more level playing field.

On the Committee’s second point, concerning the wider environmental benefits that the proposals might deliver, this expectation is based on the more systematic and comprehensive nature of the Directive (for example in Articles 4, 6 and 9) rather than the identification of specific gaps in existing legislation. Some of these benefits could be delivered via amendments to existing legislation, and would not require an entirely new Directive. For example, there is scope to target agricultural related provisions under CAP cross-compliance, as well as under existing agri-environment schemes. However, other changes, for example in relation to soil protection, may require new primary legislation if gaps in provision were to be found.

In conclusion I should emphasise that we have not yet reached a formal position on the merits of the proposed Directive as currently drafted. Our negotiating objective at this stage of discussion is to ensure that any new

\textsuperscript{15} Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 250.
EU obligations which may be adopted in respect of the protection of soils and their functions are evidence-based, proportionate and cost effective and take full account of the principles of subsidiarity and better regulation, particularly in respect of Member States’ existing national legislation.

23 July 2007

THEMATIC STRATEGY ON THE PREVENTION AND RECYCLING OF WASTE
(5047/06, 5050/06)

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 letter of 14 March 2007 on the above dossiers. Since then we have also received some information as to the content of the Presidency’s Compromise text.

As you are aware from the evidence session that we held with you, we had substantial concerns about this Proposal. It seems from the information provided that the negotiations are moving towards an improved text.

Our discussions have raised a number of more general issues regarding waste disposal within the UK, including the fragmented approach adopted by local authorities across the country and the current lack of energy generation from waste. We would appreciate information from you on how the Government will take these issues into account when implementing the UK’s Waste Strategy, the EU’s Thematic Strategy on Waste and the Directive on Waste once it has been adopted.

In the light of these comments, we are content to release the Strategy and the Proposal from scrutiny on the understanding that you will supply us with a copy of the agreed text on the Proposal, accompanied by an analysis of its impact upon the UK. We trust too that you will keep us fully informed of developments in advance of the Second Reading discussions in both the European Parliament and the Council.

20 June 2007

Letter from Joan Ruddock MP, Parliamentary Under Secretary for Climate Change, Biodiversity and Waste, Department for Environment, Food and Rural Affairs to the Chairman

Thank you for your letter of 20 June 2007 to Ben Bradshaw on the above dossier. I have now assumed responsibility for waste.

The Environment Council reached Political Agreement on this dossier at its meeting in Luxembourg on 28 June 2007 on the basis of a compromise text tabled by the German Presidency. As you requested, I enclose a copy of the agreed text of the Proposal.

Our understanding is that the Portuguese Presidency will now take the steps necessary to produce the Council’s Common Position which is likely to be communicated to the European Parliament in the latter part of 2007. I will of course keep you informed of developments in advance of the Second Reading discussions in both the Council and the European Parliament, the dates for which are yet to be determined.

You requested an analysis of the impact on the UK of the text agreed by the Environment Council. We provided, with the Supplementary Explanatory Memorandum which we submitted on 5 April 2006, an initial Regulatory Impact Assessment (RIA) which analysed the impact on the UK of the proposal for revision of the WFD published by the European Commission in December 2005. On 12 October 2006, the then Minister at Defra, Ben Bradshaw made a Written Ministerial Statement in which he announced a three month UK-wide consultation on the Commission’s proposal. The consultation paper, copies of which were placed in the libraries of the House, included a Partial RIA which further developed our analysis of the impact on the UK of the Commission’s proposal.

In response to your request, I attach as an Annex an initial assessment of the impact on the UK of the Presidency’s text and the changes made to the proposal originally published by the European Commission. The Presidency’s compromise text incorporates a number of changes from the European Commission’s text which we have assessed to be beneficial to the UK. These are addressed in detail in the Annex.

We propose to develop the RIA further when we have a clearer view of the terms of the revised WFD that is likely to be adopted. In practice, this is likely to be after both the European Parliament and the Environment Council have held their Second Reading discussions on the proposal.

16 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 250.
You also asked for information on the Government’s approach on how the Government will take certain “issues into account when implementing the UK’s Waste Strategy, the EU’s Thematic Strategy on Waste and the Directive once it has been adopted”.

The Waste Strategy for England 2007 (WS2007) was published on 24 May and I have enclosed a copy for reference (not printed). WS2007 has similar objectives to the EU Thematic Strategy on Waste Prevention and Recycling and is directly connected to the implementation of the current Waste Framework Directive (WFD). WS2007 and its Annexes, together with Planning Policy Statement 10 Planning for Sustainable Waste Management (PPS10) is part of the implementation of requirements within the WFD to produce waste management plans. WS2007 and PPS10 are the national level documents of a tiered system of waste planning in England, which together satisfy the requirements of the WFD and other Directives. They are supplemented by Regional Spatial Strategies (RSSs) and, at local level, development plan documents.

Your letter refers to specific concerns “including the fragmented approach adopted by local authorities across the country and the current lack of energy generation from waste”.

On the former point, the Waste Strategy for England provides guidance for local authorities but allows them flexibility to tailor their own waste policies to the needs of their area. The Government-funded Waste and Resources Action Programme (WRAP) also provides practical support and advice for local authorities, including work on trials for more sustainable waste management.

On the latter point, the Government has provided additional incentives for new energy-from-waste infrastructure. The Waste Strategy sets out that this will be increased by use of “PFI, and, where appropriate, Enhanced Capital Allowances, and/or Renewable Obligation Certificates (ROCs) to encourage a variety of energy recovery technologies (including anaerobic digestion) so that unavoidable residual waste is treated in the way which provides the greatest benefits to energy policy. Recovering energy from waste which cannot sensibly be recycled is an essential component of a well-balanced energy policy”.

14 July 2007

Annex A


1. Summary

The Presidency’s compromise text incorporates a number of changes from the European Commission’s text which we have assessed to be beneficial to the UK. These are addressed in detail below but include the following:

- A provision that the Commission may adopt technical minimum standards by comitology for waste treatment operations only where there is evidence that their introduction would be beneficial in terms of protecting the environment and human health;
- A commitment by the Commission that they will produce an impact assessment before using their powers to introduce minimum standards by comitology;
- The exclusion of ‘uncontaminated excavated soil and other naturally occurring material’ from the scope of the Directive;
- The exclusion of unexcavated contaminated soil from the scope of the Directive;
- A definition of ‘collection’ allowing for low risk collection to be promoted;
- A distinction between ‘re-use’ of substances or objects as non-waste and ‘preparing for re-use’ those substances or objects that have been discarded as waste;
- A wide definition of recovery based on the substitution of resources and referring to the ‘principal result’ of the operation—either in the plant or in the wider economy;
- Improvement of the provision which would allow the Commission to establish by comitology the point at which the recovery of specified waste streams is complete, so that they cease to be waste;
- A provision to clarify the distinction between ‘by-products’ and waste;
- Removal of the Commission’s original proposal that all waste must undergo recovery operations, a proposal which was neither practicable nor environmentally sound;
- A five-step waste hierarchy which will apply as a guiding principle, allowing for reasonable flexibility;
— Continued discretion for Member States to grant exemptions from the requirement for a permit for waste treatment operations, used by the UK mainly to encourage the recovery and recycling of waste;
— Confirmation that energy efficient municipal waste incinerators can qualify as recovery operations. While the self-sufficiency principle will apply to such installations, the UK helped ensure continuation of the Single Market in waste materials for recovery;

2. Article 1

Subject matter and scope

Article 1 effectively sets out the objectives of the revised Waste Framework Directive (WFD). These objectives are to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste; and to do so by reducing the overall impacts of resource use and by improving the efficiency of such use.

3. Article 2

Exclusions from the scope

Article 2 excludes specified types of waste from the scope of the revised WFD. The European Commission’s proposal sought to reverse the European Court of Justice’s (ECJ’s) judgment in the AvestaPolarit case (C-114/01) in which the UK successfully established that the term “covered by other legislation” in the existing WFD\(^\text{17}\) included not only Community legislation but also national legislation. The Presidency’s compromise text proposes the provision of exclusions which are either (a) unqualified in the sense that they are not dependent on the waste’s being covered by either Community or national legislation or (b) qualified by being dependent on the waste’s being covered by other Community legislation:

Unqualified Exclusions

(a) Article 2(1)(b) addresses the unintended consequences of the ECJ’s judgment in the Van de Walle case (C-1/03) and provides a new unqualified exclusion for land, including unexcavated contaminated soil, and permanent buildings.

(b) Article 2(1)(ba) provides a new unqualified exclusion for uncontaminated excavated soil and other naturally occurring material excavated in the course of construction activities and arises from a proposed amendment tabled by the UK. The Presidency’s text is an improvement on the existing WFD and will be of particular benefit to the UK house building industry by providing greater regulatory certainty and reducing regulatory burdens on development sites.

(c) Article 2(1)(bc) revises an existing provision and provides an unqualified exclusion for decommissioned explosives. The UK currently relies on national legislation to control the disposal of decommissioned explosives and the Commission’s proposal would have precluded our continuing to do so.

(d) Article 2(1)(c) revises an existing provision and provides an unqualified exclusion for faecal matter, straw and other natural non-hazardous agricultural or forestry wastes which are either used in those sectors or for the production of energy from these kinds of biomass waste. The equivalent exclusion in the existing WFD is limited to non-hazardous agricultural waste used in that sector.

Qualified Exclusions

(e) Article 2(2)(a) provides an exclusion for waste waters covered by other Community legislation—in much the same way as the existing WFD. The UK’s main concern has been to ensure the continuing exclusion from the WFD of sewage sludge used in agriculture in accordance with Directive 1986/278/EEC. The Presidency’s text does not contain an explicit reference to that Directive but will enable us to continue to rely on our present interpretation of the provision.

(f) Article 2(2)(b) revises an existing provision which lacks clarity and provides an exclusion for animal by-products and processed products other than those destined for incineration, landfilling or use in biogas or composting plant.

\(^{17}\) Codified (consolidated) as Directive 2006/12/EC.
Article 2(3) provides a new exclusion for sediments (i.e. dredgings) deposited in surface waters for the purpose of managing waters and waterways or for preventing floods or mitigating the effects of floods and droughts—without prejudice to compliance with other relevant Community legislation.

4. Article 3

Definitions

The UK’s overall objective has been to ensure that where new definitions are introduced into the revised WFD, or existing definitions are revised, they provide the necessary certainty for both businesses and regulators:

(a) Article 3(g)—“Collection”: The UK has argued that it is necessary and desirable to clarify the definition of “collection” to ensure that effective and low risk collection arrangements are promoted and are not discouraged (e.g. by being made subject to the permit or registration requirements of the WFD). This concern is addressed in the recitals associated with Article 3(g). For example, the recital refers to waste collection schemes which are not conducted on a professional basis and should not be subject to registration. Examples of such schemes referred to in the recital are waste medicines collected by pharmacies, take-back schemes in shops for consumer goods and community schemes in schools.

(b) Articles 3(ha) and (k)—“Re-use” and “Preparing for re-use”: The UK has successfully argued that it is necessary for the revised WFD to distinguish between the “re-use” of substances or objects as non-waste, which is not subject to control under the Directive, and the type of activity which is subject to control under Directive (i.e. the preparation for re-use of those substances or objects which have been discarded as waste). The distinction is not only important in relation to the implementation of the revised WFD’s controls but also in relation to giving effect to the waste hierarchy (see paragraph 10 below).

(c) Articles 3(jj) and (mm)—“Recovery” and “Disposal”: At present, the distinction between recovery and disposal is made on the basis of ECJ case law which provides that an operation is classified as recovery if its principal objective is the substitution of natural resources. We believe that Member States, under the revised WFD, should be able to classify operations as recovery operations provided that the principal objective or result is the substitution of resources in the plant or the wider economy. The Presidency’s text reflects this view by referring to the “principal result”.

5. Article 3a

By-Products

The Commission’s proposal did not contain any explicit provision on by-products. Instead, the Commission proposed the publication of non-binding guidance, based on ECJ case law, on the distinction between production residues as waste and by-products as non-waste. The Commission published its guidance on 21 February 2007.

6. The Commission’s proposal for a revised WFD did not include a revision of the Directive’s definition of “waste”. However, the UK and a significant number of other Member States considered that, if the existing definition of waste is to continue, then it is important that the revised WFD should address the issue of by-products. The Presidency’s text includes an explicit provision on by-products.

7. Article 3c

End of waste status

The UK has consistently supported the introduction of a provision to establish through comitology the point at which the recovery of specified waste streams is complete and they cease to be waste. The Presidency’s text includes an amendment proposed by the UK that, where end-of-waste criteria are adopted by comitology, the specified waste streams should also cease to be waste for the purposes of the recovery and recycling targets in the producer responsibility Directives.
8. Article 4a

Extended producer responsibility

The Presidency’s text includes the introduction of discretionary provisions on producer responsibility to strengthen the prevention and recovery of waste.

9. Articles 5 and 6

Recovery and Disposal

The Commission’s proposal required that all waste undergoes recovery and provided that disposal was something that happened only where recovery was not possible. In the UK’s view, the Commission’s proposals were neither practicable nor environmentally sound. The revised provisions included in the Presidency’s text includes amendments proposed by the UK.

10. Article 7a

Waste hierarchy

The Commission’s proposal included a three-step waste hierarchy. The Presidency’s text reflects the Conclusions on the Waste Thematic Strategy adopted by the Environment Council in June 2006 and the five-step hierarchy then agreed—although the UK has successfully argued that the hierarchy should refer to “preparing for re-use” instead of “re-use” (see paragraph 4(b) above). The waste hierarchy will apply as a guiding principle.

11. Article 10

Principles of self-sufficiency and proximity

See paragraphs 22–26 below on municipal waste incineration.

12. Article 17a

Hazardous waste produced by households

The Presidency has revised this provision in the light of proposals tabled by the UK to ensure that unnecessary or impracticable obligations are not placed on householders.

13. Article 18

Waste oils

The revised WFD will repeal the obligation in the Waste Oils Directive for Member States to give priority to the regeneration of waste oils. The main element of the Presidency’s text is a provision that would enable Member States to restrict exports of waste oils for incineration or co-incineration where (a) the Member State of export has adopted national legislation requiring that waste oils must be regenerated if technically feasible; and (b) Articles 11 or 12 of the Waste Shipments Regulation apply (Regulation (EC) 1013/2006).

14. Article 18a

Biowaste

Several Member States expressed concern that the Commission had dropped its earlier proposal to introduce a Biowaste Directive. This led to the Presidency’s proposing (a) the introduction of a requirement for Member States to take measures to encourage the separate collection of biowaste, the treatment of biowaste in a way that fulfils a high level of environmental protection and the use of high quality products produced from biowaste; and (b) the imposition of a requirement for the Commission to carry out an assessment on the management of biowaste with a view to submitting a proposal if appropriate.
15. **Article 19**

**Issuing of permit**

These provisions generally replicate those in the existing WFD. However, Article 19(4) of the Presidency’s text will require it to be a condition of any permit covering incineration or co-incineration with energy recovery that “the recovery of energy is to take place with a high level of energy efficiency”. The Commission confirmed in the Council Working Group that Article 19(4) is “a safety net provision, which would have to be adjusted according to the type of operation to be permitted. It was aspirational and mirrored the provisions of the Waste Incineration Directive and the IPPC Directives”.

16. **Articles 22 and 23**

**Exemptions from permit requirements and Conditions for exemptions**

The UK is one of only a few Member States which has made significant use of the discretion available under Article 11 of the existing WFD and Article 3 of the Hazardous Waste Directive to provide exemptions from the requirement for a permit. We have done so mainly to encourage the recovery and recycling of waste.

17. The Commission’s proposals would have limited our discretion to continue providing such exemptions; and would have required the general rules providing exemptions to be based on best available techniques (BAT). As a result of amendments tabled by the UK, the Presidency’s text now re-enacts the discretion available to Member States under the existing WFD and the Hazardous Waste Directive; and requires only that the general rules “should consider” BAT and need do so only for disposal operations and not for recovery operations.

18. **Article 25a**

**Minimum standards**

The proposals on minimum standards concern (i) operations for the recovery or disposal of waste which require a permit and (ii) activities which are subject to registration:

(i) **Recovery And Disposal Operations Subject To Permitting**;

(a) The effect of the European Commission’s proposal was to enable the Commission to adopt by comitology, for all types of waste disposal and recovery operations, EU-wide minimum standards similar to those currently adopted by Directives (eg the End-Of-Life Vehicles Directive, the Waste Electrical and Electronic Equipment Directive, the Landfill Directive and the Waste Incineration Directive). However, the Commission’s Waste Thematic Strategy made it clear that their objective was the adoption of “common standards”. The UK has consistently opposed the Commission’s proposal on the grounds that the Commission had not justified the introduction of comitology-based standards for waste recovery and disposal operations; and had not assessed either the environmental costs (e.g. the potentially adverse impact on waste recovery and recycling) or the economic costs of such standards in its Impact Assessment.

(b) In response to our concerns, the Presidency’s text now provides that:

(i) The Commission may adopt comitology-based technical minimum standards “where there is evidence that a benefit in terms of protection of human health and the environment would be gained from such minimum standards”; and

(ii) Such minimum standards would “cover only those waste treatment activities that are not covered by or appropriate for coverage by [the IPPC Directive]”.

(c) Also in response to our concerns, the Commission confirmed the inclusion of a statement in the Council minutes that “an appropriate impact assessment would be necessary before the use of any of these powers.”

(ii) **Activities Subject To Registration**

(d) The effect of the European Commission’s proposal was to require establishments or undertakings which collect or transport waste on a professional basis, or which act as dealers or brokers, to “comply with certain minimum standards”. Unlike permits for disposal and recovery operations, there are no examples of such standards in existing EU waste legislation.
(e) The Presidency’s text provides that:

(i) The Commission may adopt comitology-based minimum standards only for registered establishments or undertakings which collect or transport waste on a professional basis, or which act as dealers or brokers—and not for registered permit exemptions;

(ii) The Commission may adopt such standards only “where there is evidence that a benefit in terms of protection of human health and the environment or in avoiding disruption to the internal market would be gained from such minimum standards”; and

(iii) Such minimum standards may include “elements regarding the technical qualification” of collectors, transporters, dealers or brokers.

(f) Our understanding is that the Commission Statement on impact assessments would also apply to this type of minimum standards.

19. Article 26

Waste management plans

The Commission’s proposals revised the provisions on waste management plans in the existing WFD and prescribed that Member States’ plans must include at least eight types of information—with subdivision of information within most of the requirements. Our main objective has been to avoid over-prescription and bureaucracy in waste management planning. The Presidency’s text is an improvement on the Commission’s in that it now distinguishes between:

(a) Information that the plans must contain “as appropriate and taking into account the geographical level and coverage of the planning area” (Article 26(3)); and

(b) Information that the plans may contain “taking into account the geographical level and coverage of the planning area” (Article 26(3a)).

20. Article 26a

Waste prevention programmes

Whilst fully endorsing the revised WFD’s focus on waste prevention as an objective, our view was that the Commission’s proposals on waste prevention programmes would result in the imposition of administrative burdens and costs without either a commensurate benefit in terms of waste prevention or a meaningful measurement of progress in waste prevention.

21. Our view is that the Presidency’s text represents an improvement on the Commission’s proposals. For example, the Commission’s proposal required Member States to assess the opportunities for taking a list of 16 waste prevention measures set out in Annex IV but the Presidency’s text requires that Member States “evaluate the usefulness of the examples of measures indicated in Annex IV”.

22. Annex II R1

Municipal waste incineration

The Commission’s proposal contained a provision which would result in the reclassification from disposal operations to recovery operations of “incineration facilities dedicated to the processing of municipal solid waste only” where a specified energy efficiency threshold is met. The formula proposed by the Commission effectively set the efficiency threshold at 60% for existing municipal waste incinerators and 65% for new municipal waste incinerators. The Commission argued that its impact assessment showed that application of an energy efficiency threshold for municipal incinerators could generate both economic and environmental benefits; and that by setting the threshold by reference to the performance of a BAT plant would facilitate achievement of the targets for diversion from landfill.

23. The Commission’s proposal has proved to be one of the most contentious aspects of the revised WFD. Member States with existing, energy efficient municipal waste incinerators expressed concern that reclassification would result in the importation of municipal waste from other Member States and that this would lead to their national waste being displaced and diverted from energy efficient municipal waste incinerators to landfill—notwithstanding the fact that they have the right to object to imports of mixed municipal waste when the new Waste Shipments Regulation (Regulation (EC) 1013/2006) applies from 12 July 2007.
24. Under the existing WFD, the principles of self-sufficiency and proximity apply only in relation to waste disposal and disposal installations. In line with the provisions of the new Waste Shipments Regulation, Article 10 of the revised WFD will extend these principles to “installations for the recovery of mixed municipal waste collected from private households . . .”

25. The Presidency’s text retains the formula proposed by the Commission and the provisions which will enable energy efficient municipal waste incinerators which meet the thresholds for existing or new plant to be re-classified as waste recovery operations. However, to meet the concern of the Member States referred to in paragraph 23 above, Article 10 the Presidency’s text provides that:

“In derogation from Regulation (EC) 1013/2006 on shipment of waste, Member States may, in order to protect their network, limit incoming shipments of waste destined to incinerators that are classified as recovery, where it has been established that such shipments would have the consequence that national waste would have to be disposed of or that waste would have been treated in a way that is not in coherence with their national waste management plan. The Member States shall notify such a decision to the Commission. Member States may also limit outgoing shipments of waste on environmental grounds as set out in Regulation (EC) 1013/2006 on shipment of waste.”

26. However, Article 10(4) of the Presidency’s text provides that, “The principles of proximity and self-sufficiency do not mean that each Member State must possess the full range of final recovery facilities within that Member State.”

WATER FRAMEWORK DIRECTIVE: IMPLEMENTATION (7768/07)

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

Your Explanatory Memorandum on the above Communication was discussed by Sub-Committee D at its meeting of 6 June 2007.

As you are aware, we take a strong interest in the progress of the Water Framework Directive and related Directives.

From a UK point of view, the Commission raises a number of points.

First, in relation to the Urban Waste Water Directive, we note that the Report recognises the situation as at the beginning of 2003, and that you make reference to the level of progress made since that time. We would be grateful for information on this progress. Second, on the matter of the removal of nitrogen, it seems that an impasse is being caused by the fact that the Commission is going beyond the letter of the Directive. Could you explain, therefore, what action the Government is taking to make progress on this matter, including whether it has allies amongst other Member States?

With regard to the Water Framework Directive itself, the Commission’s conclusion that 75% of the UK’s surface water bodies, and 60% of groundwater bodies, are considered to be at risk of failing the Water Framework Directive objectives is of some considerable concern. We would be grateful for an explanation of the basis on which this assessment has been made for groundwater bodies and surface water bodies respectively, where exactly the UK could be considered to be failing and how the Government intends to address this apparent weakness.

In the meantime, we shall hold the Communication under scrutiny.

6 June 2007

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 6 June 2007 with regard to the implementation of the Urban Waste Water Treatment Directive (UWWTD) and Water Framework Directive (WFD).

On your first point on the progress on the implementation of UWWTD, since the beginning of 2003 the sewage treatment schemes which missed the 31 December 2000 deadline of the Directive for secondary treatment have continued to be delivered. By 31 December 2007 we expect only one (Brighton) scheme, of almost 640 schemes across the UK, to be outstanding because of ongoing planning issues. A Government decision letter concerning the appeal by the water company (Southern Water) against the refusal of their planning application is to be sent soon.

With regard to trying to resolve the difference of opinion with the Commission on the more stringent treatment requirements for the removal of nitrogen, which was also an issue for the previous report on UWWTD Implementation by the Commission, we have had bilateral meetings with the Commission and sent further
Regarding your question on the Water Framework Directive (WFD), as part of their role as competent authorities for the implementation of the WFD, the UK Environment Agencies carried out an assessment of the pressures that water bodies in the UK face, and their risk of failing to achieve the default objective of “good status” under the Water Framework Directive by 2015 if no further action was taken. The Agencies looked at five different categories of potential pressures: alien species; diffuse sources of pollution; point sources of pollution; water abstraction and flow regulation; and physical or morphological alteration to the water body. The results of the risk assessments were combined to give an overall view on the risk of failing to achieve the objective of good status.

The results were formally reported to the European Commission in March 2005 as part of the so called “Article 5 Reports”. Feedback from the European Commission in their initial assessment of the risk assessments across member states shows that the results for the UK are broadly comparable with the results for similar parts of the EU. Diffuse pollution from agriculture and the risk from hydromorphological pressures have been highlighted in the recent Commission Communication as the most widespread and significant pressures on EU waters. The results for the UK are in line with these findings, with some assessments also showing risks from point source pollution, non-agricultural diffuse pollution, abstraction and alien species.

I attach a copy (not printed) of a briefing from the Environment Agency which sets out in more detail the nature of the pressures identified in England and Wales. The UK environment agencies are currently refining these initial risk assessments using additional data and any updates will inform ongoing WFD implementation. The UK Administrations issued a note in 2005 explaining the process for the refining of the characterisation of river basin districts—this note (not printed) is also attached to this letter for reference.

Being “at risk” does not necessarily mean that a water body has failed, or will fail, its objectives, only that it may fail to reach the default objective of “good status” by 2015 if before then appropriate measures are not applied to that water body. As such, risk assessments look forward to the potential future risks on waters (e.g. future development, changes in agricultural practice) and do not necessarily reflect the actual quality or status of a water body which is normally assessed through monitoring and given a status through a process termed “classification”.

Another point to recognise is that the many elements that make up the risk assessments and classification under the WFD cover a broader range of pressures and impacts (for example hydromorphology and diffuse water pollution) than existing water quality classification schemes such as the General Quality Assessment scheme (GQA) used in England. This reflects the focus of the WFD in achieving ecological outcomes. Common UK tools are being developed and consulted on to enable the classification of waters under the WFD by 2008–09.

So whilst it should be recognised that there have been significant improvements in water quality over the past 20 years, it is not surprising that the wider scope of the WFD risk assessments and forthcoming classification has led to a relatively high proportion of water bodies being considered to be at risk of failing the WFD default objective of “good status”.

The risk assessments have been used to target the WFD monitoring programmes (established at the end of 2006) that will provide the information for the new WFD classification scheme and provide the evidence to help develop measures needed to achieve and maintain WFD environmental objectives. This will help to manage threats to the water environment before problems occur or to restore water bodies if they are already impacted.

To address these risks and impacts the WFD introduces a new, strategic river basin planning process through which, as well as setting WFD objectives for each water body, Member States must also put in place “programmes of measures” to achieve those objectives. The first round of river basin management plans will be drafted by the environment agencies in 2008, revised after consultation and signed off by Ministers in 2009. Each Plan runs for a six year period after which it is reviewed and consulted on. The measures in the first Plan must be made operational by 2012 with a view to achieving WFD objectives by 2015.
The Directive importantly also takes into account socio-economic considerations by making provision for the extension of deadlines to subsequent six yearly planning cycles (2021 or 2027) and for setting less stringent objectives under certain circumstances, for example where disproportionate cost may be incurred or the necessary measures are technically infeasible. This is an important aspect of the Directive which allows for a proportionate and targeted response when addressing the risks and impacts identified in UK waters.

27 June 2007

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

The Committee has noted your letter of 27 June 2007 regarding the above matter. We are now content to release the Communication from scrutiny.

16 July 2007

WATER SCARCITY AND DROUGHT (12052/07)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

On 31 August–2 September, I met with the Environment Ministers from the EU Member States, candidate countries as well as Algeria, Morocco, Tunisia and the European Commission, at an Informal Ministerial meeting in Lisbon, Portugal, on the theme of Water Scarcity and Droughts. The discussions were productive and I attach the chair’s conclusions for your information.

I emphasised that climate change was already making the impacts of water scarcity and drought (and flooding) worse. We have suffered both in the UK in recent times. I therefore welcomed the Presidency’s focus on this issue in the wider context of adaptation to climate change. I highlighted the need for a coherent approach to tackle the problems of water scarcity and drought and welcomed both the European Commission’s Communication of 18 July 2007 and its Green Paper on adaptation.

I pointed out that water scarcity was a problem in the UK region as well as other member states. I stressed that existing instruments, notably the Water Framework Directive (WFD), are broad enough to provide us with an integrated approach to tackling the problem, the right framework for action and that I did not support any further directives explicitly addressing water scarcity and/or drought as some proposed. Member States should all therefore focus on full implementation of the WFD. I noted that other mechanisms were already available to support Member States during major drought events, such as the EU Solidarity fund. The UK, therefore, did not see the need for an additional legal instrument to cover water scarcity and drought. Several other Member States shared this view.

20 September 2007

Annex A

INFORMAL COUNCIL OF ENVIRONMENT MINISTERS WATER SCARCITY AND DROUGHT (WS&D)

Presidency Conclusions

1. Water scarcity and droughts are problems with relevant socio-economic and environmental impacts. These phenomena are not new but their occurrence have been increasing both in intensity and frequency at European level and neighbouring regions in recent years, and consequently countries have been affected at different levels. Therefore, at the Environmental Council of June 2006, some Member States requested European action on Water Scarcity and Droughts.

2. These problems are recognised as a global concern hence the United Nations have highlighted “Coping with Water Scarcity” as the theme of the World Water Day 2007 and consider these as strategic issues and priorities requiring joint action. Droughts and water scarcity are most acute in the driest areas of the world and in developing countries, but developed countries also face this threat at a different level.

3. On July 18th 2007, the European Commission adopted a Communication addressing the challenge of water scarcity and droughts in the European Union. The Communication provides a fundamental and well-developed first set of policy options for future action, within the framework of EU water management
principles, policies and objectives. It also states a clear commitment from the EU, as a whole, to jointly establish the adequate conditions to implement the foreseen actions and to develop further knowledge.

4. The full implementation of the Water Framework Directive (hereafter WFD), the EU’s flagship Directive on Water Policy, is a major priority. The WFD establishes a framework of great value, innovation and scope for water management in Europe, establishing the tools for achieving the “good” status in all European waters, while encompassing a flexible approach in addressing environmental objectives.

5. In the context of integrated water resources management and sustainable development, some concerns were identified in relation to quantitative aspects with possible implications for the achievement of the environmental objectives set under the WFD. Issues such as floods, water scarcity and droughts have become increasingly important on the technical and political agenda. In recognition of this, the formal adoption of the proposed directive on the assessment and management of floods will occur later this year, and the issues related to water scarcity and droughts are currently under discussion at a political level.

6. Water Scarcity and Droughts have a direct impact on people and economic sectors, such as agriculture, tourism, industry, energy and transport. WS&D have a significant effect on the natural resources available and on the environment as a whole. There is also a close connection between droughts and desertification, particularly in semi-arid regions, with direct impacts upon the performance of soil functions, as well as the influence upon the level of forest fires risk.

7. Water scarcity, on one hand, and drought, on the other, should be considered different matters. Water scarcity should refer to average water imbalances between supply and demand, while droughts, as a natural phenomenon, should refer to important deviations from the average levels of natural water availability. Although it is a natural hazard, drought can be aggravated by Climate Change. It is not possible to control the occurrence of droughts although the resulting impacts may be mitigated to a certain degree, namely through appropriate surveillance and management strategies.

8. Water mismanagement is a fundamental problem, which influences water scarcity and may induce additional impacts when a drought occurs, even if it cannot generate a drought in itself, which is a natural phenomenon. The implementation of the demand side approach must be a clear priority, even though in many circumstances the WS&D impacts might not be solved through that approach alone. The River Basin Management Plans, as established under the WFD, will need to take into account both demand and supply side measures, including seasonal and interannual analysis, and to consider the need for new water supply sources, only when other measures do not suffice. These sources may consist on traditional or alternative options, namely waste water re-use and desalination.

9. A comprehensive approach to address water issues, including, *inter alia*, the effective implementation of integrated water resources management, the strengthening of water demand management and water saving policies, the integration of sustainable water use concerns by other sectoral policies (eg energy production), the valorisation of the aquatic ecosystems and its services, is a fundamental requirement to allow the achievement of the water policy objectives and to move towards sustainable development.

10. The need to pay special attention on adapting agriculture policies to contribute to sustainable water management was emphasized by the Ministers. They welcomed the intention of the Commission to include management of water scarcity in the forthcoming CAP Health Check.

11. Water scarcity issues should be dealt with, as much as possible, through the identification of the appropriate set of measures within the River Basin Management Plans, including the necessary adaptation strategies for climate change. Due to the linkages to the WFD, water resources management in the international river basin districts should be done in a coordinated way.

12. A common approach for drought risk assessment and drought management plans should be adopted by the Commission and the Member States, considering that droughts, with their specific regional characteristics, are a common concern for the Member States and are natural hazards in the same way floods are. Drought management plans should include cross-border coordination, public participation and warning systems, and should be developed at European Union, Member States, River Basin District and local level.

13. Additional work is needed and is currently underway in order to contribute to a more transparent application of the relevant exemptions set under the WFD, in particular the definition of “prolonged droughts” and its impact upon the achievement of the environmental objectives during and after drought periods.

14. The arrangements to set up a European Drought Observatory is considered an important measure, setting the conditions to increase knowledge and improve the preparedness to tackle drought events. This observatory should provide a platform for data collection and research activities, and contribute to a wide exchange of experiences on this issue.
15. Climate change (CC) is expected to influence the baseline of present WS&D issues, with potential impacts on water quantity and quality. A link between WS&D and CC and their associated adaptation strategies should be integrated into the implementation of the WFD as much as possible, including the aspects already dealt with in the EC Green Paper on adaptation to climate change in Europe.

16. The development of a concerted follow-up program to implement the measures identified in the Communication is of crucial importance. The process should bring together Member States and the Commission to exchange information and best practice. Highlighting the political dimension of Drought management, political measures should be considered, taking into account the present Presidency Conclusions, including legislative action, if needed, considering that research and work on WS&D is still progressing and that further results should be available by 2008.

17. Beyond the direct impacts of drought, there are many indirect effects and correlated phenomena that deserve serious attention. Forest fires are among those issues, as the recent events in Southern Europe clearly prove. Solidarity with those Member States who have been affected by the recent forest fires and with the relatives and families of those who have lost their lives was expressed by the Ministers.

The assistance provided by Member States and the important role played by the Community’s Civil Protection Mechanism in co-ordinating this assistance was recognised by Ministers, who called on the Commission to urgently review the scope for supporting Greece in the context of all relevant Community instruments and to strengthen the Community’s capacity in the future to prevent and to increase preparedness and the ability to respond and support recovery after such disasters. The Commission was requested to present the results of this review to the Council and to propose if needed additional measures.

Letter from the Chairman to Philip Woolas MP

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 17 October 2007.

The Committee believes that drought and water scarcity have become issues of serious concern to the European Union as a whole and to Southern Europe in particular. We consider therefore that the Commission’s Communication addresses an issue of importance and contains a number of helpful proposals. We note your own misgivings in regard to the establishment of a European Drought Observatory and we agree that you should press the Commission to provide further information on the case for this, including its relation to the work which is already being carried out by the Commission’s own Joint Research Centre. In particular, we hope you will be able to ascertain the contribution which an Observatory would make to resolving the problems of drought and water scarcity over and above that made by the Water Framework Directive.

Your EM indicates that Council Conclusions should be adopted at the October Council. We would be grateful for a copy of those Conclusions once they have been agreed.

We are content to release the Communication from scrutiny and look forward to hearing from you on the matter of the European Drought Observatory.

17 October 2007
Law and Institutions
(Sub-Committee E)

8TH COMPANY LAW DIRECTIVE (5220/07)

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

I am writing to update you on developments during the summer recess in the proposed amendments to the Audit Directive. These relate to EM 5220/07.

The relevant committee of the European Parliament has now approved the Commission proposal, subject to a number of amendments. A vote by the Parliament on this proposal and 25 others will follow. Assuming it is approved, I have indicated that the UK will support these amendments when the Council meets to adopt the proposal, as have the other Member States. I now expect the Audit Directive to be amended by April 2008.

As with the proposal covered by the Explanatory Memorandum in February, this amendment will remove the “sunset” clause, which would otherwise cause the comitology powers in the Audit Directive to expire on 1 April 2008.

Following the amendments, certain comitology decisions will be taken under the regulatory procedure with scrutiny, which involves a process of consultation with the European Parliament.

The amendments make clear that these comitology decisions can be used to define criteria for assessing the equivalence of third country regimes for audit regulation, when compared with the EU regime.

11 October 2007

ANTITRUST RULES (5127/06)

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

Your Committee asked to be kept informed of any developments in relation to the Government’s thinking with regard to facilitating private actions in breach of EC Antitrust rules.

In 2006 the European Commission produced its Green Paper consultation on private damages actions, to which the UK responded. The European Parliament’s report on the Green Paper supported further work by the Commission and called on the Commission to prepare a White Paper with detailed proposals. Although discussions in the European Parliament were difficult, reflecting perhaps perceived concerns about creating an overtly litigious culture, a positive report was produced.

The Commission have said that they will produce a White Paper in early 2008. The basis of the White Paper will be that individuals and undertakings who are victims of anti-competitive behaviour should be able to bring private actions to restore their loss. Although the situation across the EU is uneven, the UK has a very positive story to tell with much of the structural and legal elements for effective private actions already in place.

That said, relatively few private actions in this area occur. We are strongly of the view that an effective private enforcement regime will complement public enforcement and respect rights to compensation where there has been a breach of anti-trust rules. This does not mean creating a litigious environment, but rather that against a background of a strong legal framework, consumers (including business) know their rights and understand how to bring an action. As in the rest of the civil procedures regime, settlement is still the key component of a private redress regime.
We intend to respond positively and constructively, on the basis of our experience so far, to the White Paper process. As such, the UK policy departments (Department of Business, Enterprise and Regulatory Reform, Ministry of Justice, the devolved administrations and HM Treasury, in co-operation with Office of Fair Trading (OFT) have produced the attached initial thinking paper (Annex A) which sets out the issues which we feel are appropriate to explore at the UK level and avenues that are appropriate at the EU level. The paper was circulated to the European Policy Committee on 13 June 2007.

We intend to use the paper to encourage further discussion in the UK and in the EU to develop thinking further. As part of this, the UK and the Netherlands jointly organised an informal discussion on 25 May with Member States to help prepare for the White Paper. This was greatly appreciated by Member States, as it was the first real opportunity for Member States to consider the scope to facilitate further private actions and draw the links to consumer redress. Building on this and with UK support, the Portuguese are considering follow-up discussions as part of their Presidency of the EC.

In addition, the OFT have concluded a consultation on private actions and will report their findings at a seminar on 24 September 2007. If appropriate, based on their findings and the European Commission White Paper, along with any possible wider changes to the UK competition regime, my department will undertake a public consultation.

My officials are also considering the role of consumer redress and are working to ensure that the two areas of work do not conflict.

23 July 2007

Annex A

UK POLICY DEPARTMENTS’ INITIAL THINKING ON PRIVATE ACTIONS FOR DAMAGES

Introduction

1. Together with public enforcement, private actions are a key component to ensure the application and observation of competition rules.

2. The UK has therefore enacted legislation (the Competition Act 1998, which entered into force on 1 March 2000 and the Enterprise Act 2002, which entered into force on 1 April 2003 and 20 June 2003) to encourage and facilitate private damages actions for those who have suffered loss due to an infringement of the competition rules.

3. Empowered consumers, who know their rights and can use them effectively whether shopping and trading nationally or internationally, are crucial. Where a consumer suffers loss, the expectation is that they and the responsible company should seek to settle. If this is not possible the consumer should be able to use an effective and accessible process in the courts to obtain redress. An effective court process will encourage and inform settlements.

4. The UK has a positive story to tell, but this is a developing issue and it is recognised that there is more that can be done. We therefore welcome the opportunity presented by the Commission’s Green Paper consultation to consider the current framework, practice in other Member States and scope for action at both Member State and EU level.

5. The purpose of this paper is to inform interested parties what the UK policy departments (Department of Trade and Industry, Department for Constitutional Affairs, the devolved administrations and HM Treasury in co-operation with Office of Fair Trading (OFT) who are producing a separate paper) are considering and to offer ideas to the European Commission which it may wish to consider.

6. The Office of Fair Trading (OFT) is producing a separate, detailed paper due to be published in April. The Budget 2007 explicitly referred to the OFT paper, stating that the Government welcomes the progress the OFT has made on this issue and will continue to work with the OFT to identify the key barriers to private actions. Over the coming year the Government intends to identify and consult on measures needed to overcome the barriers to redress without encouraging ill-founded claims, in particular examining the arrangements for representative actions.
7. **Issues for the UK to Consider:**

The UK is exploring a number of issues with regard to private actions for damages, as follows:

(a) **Representative actions**

Representative actions could be brought by representative bodies which would enable more cases to be brought and redress obtained for those who have suffered loss as a result of anti-competitive practices. A number of issues arise that need to be considered:

(i) the basis criteria for designation;

(ii) the possibility of also designating bodies which represent business in addition to those representing consumers;

(iii) possibly designating non UK representative bodies;

(iv) in addition to an opt-in approach, to consider whether to adopt an opt-out approach. An opt-out regime could increase the potential access to redress for consumers but it does raise further issues eg how to quantify the loss suffered by customers at large, how to make customers aware of litigation brought on their behalf (this is important otherwise individuals may find themselves precluded from bringing their own claim), how to decide on the allocation of damages recovered, who manages funds of damages recovered pending claims on them by customers, what happens to any surplus funds and conversely what happens if the money runs out before all claims are made;

(v) the possibility of allowing representative actions to cover stand-alone cases as well as follow-on cases;

(vi) possible options for funding of representative actions.

(b) **Guidance**

The possibility of producing guidance on private actions for breach of the UK and EC competition rules, including guidance on the steps that prospective claimants and their advisers may wish to consider with a view to bringing an action or settling a claim. Such guidance could include:

(i) Template letters for use by consumers; and

(ii) Raising awareness that infringement decisions of the OFT, a concurrent regulator, the CAT or the European Commission are binding on the ordinary courts, including those dealing with small claims.

(c) **Loss and causation**

Investigating what role, if any, competition authorities can reasonably play in facilitating the assessment of loss and causation.

(d) **Procedure**

Investigating whether the small claims track would be suitable for some follow-on claims.

(e) **Evidence**

Investigating certain disclosure rules whereby the parties to a competition case may obtain information from each other and/or from third parties, including from competition authorities. The extent of access to information held by competition authorities would require very careful consideration in the light of its possible impact on public enforcement and the general rules governing the confidentiality of information which is supplied to the Government.

(f) **Competition Appeal Tribunal**

The possibility of activating Section 16(1) of the Enterprise Act so that “infringement issues” can be transferred from the High Court to the Competition Appeal Tribunal. This has potentially significant implications for the UK system of competition law enforcement and needs to be carefully considered.
8. **Avenues for European Commission to Explore**

The following are initial thoughts on areas that the European Commission may wish to consider exploring further in order to facilitate private actions. We would be grateful for comments from other Member States and the Commission on practicalities of the suggestions and also further ideas:

(a) **Producing a review**, at a fairly “micro” level, of the desirable features and practices in the legal systems of different Member States, so as to present a number of possible models for adoption in individual Member States.

(b) **Passing on defence.** A complex issue that needs to be considered further on the basis that it should be for the cartelist to show that loss has been passed on by a purchaser.

(c) **Ensuring, by legislation, that decisions of a national competition authority (NCA), in one Member State, on the application of Articles 81 and 82, carry sufficient weight in the national courts of other Member States.** One option could be to make decisions of NCAs, on whether Article 81 or 82 has been breached, binding on courts in other Member States. However, it is proposed that this should at first be limited to those Member States who have made decisions by their own NCAs binding on their own courts. This could in turn help encourage all Member States to make decisions by their NCAs binding on their own courts.

(d) **An enhanced role for EU level representative bodies** such as The European Consumers Association (BEUC).

**BACKGROUND PAPER—ON HOW THE UK DEALS WITH PRIVATE ACTIONS**

**Introduction**

Public enforcement is the primary means of enforcing competition law in the UK. Private action acts as a complement to this.

In recent years the UK has enacted legislation (the Competition Act 1998, which entered into force on 1 March 2000 and the Enterprise Act 2002, which entered into force on 1 April 2003 and 20 June 2003) to encourage and facilitate private damages actions for those who have suffered loss due to an infringement of the competition rules.

(a) **Competition Act**—Competition Act 1998 is designed to make sure that businesses compete on a level footing. It does so by prohibiting certain types of anti-competitive behaviour.

(b) **Enterprise Act**

(i) Super-complaints can be made to the OFT by a designated consumer body when it thinks that a feature, or combination of features, of a market is, or appears to be, significantly harming the interests of consumers. The OFT will consider the evidence submitted and undertake whatever work is necessary to establish the extent, if any, of the alleged problems. The OFT must then publish a response within 90 days from the day after which the super-complaint was received stating what action, if any, it proposes to take in response to the complaint and giving the reasons behind its decision.

(ii) A “specified body” may bring proceedings before the Competition Appeal Tribunal (CAT) on behalf of two or more consumers for damages. Before they can commence proceedings before the CAT for damages, the OFT or other sectoral regulators, the European Commission or CAT need to have ruled that an infringement of UK or EU competition law took place and appeal concluded. The evidentiary burden of proof on claims has been reduced as litigants can rely on infringement decisions of the OFT and European Commission as determinations of fact.

The following sections outline the civil law and procedures applicable in the UK. Some aspects are specific to competition law while others apply more generally.

As a matter of general principle, it is expected that a claimant will attempt to settle with the defendant before proceeding with litigation.
UK System for Private Actions

1. Alternative Dispute Resolution (ADR)

As the ADR scheme is comparatively new it is not yet clear what role it will have in competition cases.

(a) In the 1996 report "Access to Justice", it was identified that fair, speedy and proportionate resolution of disputes was needed. Those principles lay at the heart of the Civil Procedure Rules, which came into force in April 1999. The Civil Procedure Rules included references to ADR in rules of court and introduced pre-action protocols, with their emphasis on settlement, even before court proceedings are issued the objective being that parties should be encouraged to consider alternative dispute resolutions to try to settle before the case comes to court. As a result the following initiatives are in the process of being implemented:

(i) The introduction of the National Mediation Helpline, providing disputing parties with access to a quality, low-cost, time-limited mediation anywhere in England and Wales.

(ii) The introduction of a best practice toolkit to encourage courts proactively to refer court users to engage in mediation using the National Mediation Helpline.

(iii) The provision of a trained in-house mediator to provide a free service for court users to settle small claims giving parties the option of a mediation session. Mediations normally last up to one hour. This was initially piloted at Manchester County Court but is now being expanded to all areas by April 2008.

(b) While the Civil Justice Reform Group made a recommendation in its report of 2000 that an ADR pilot scheme be established in Northern Ireland, it has not been established as an alternative forum for the resolution of disputes to the same extent that it has in England and Wales.

(c) In Scotland, the Scottish Executive supports the use of ADR options, including mediation, where it is appropriate to do so.

(i) The aim is that the Scottish public have a range of options to resolve disputes and the Executive recognise that mediation has an important role in helping resolution of disputes. If it is entered into voluntarily, outside the formal court system, it can be more cost effective and less stressful than going to Court. For this reason funding is currently being provided for a number of mediation projects across a range of policy areas including health, justice, housing and education.

(ii) At present the use of mediation is not included in any court rules or procedures. The Sheriff Court Rules Council Mediation Committee completed a consultation exercise recently looking at ADR and in particular, whether a new rule on ADR could be incorporated into the Sheriff Court rules. A detailed analysis of the responses is taking place now and the Sheriff Court Rules Council will consider once this has been completed.

2. Procedure

(a) Private actions for breach of the EC competition rules in the UK are heard by both the ordinary courts and by the Competition Appeal Tribunal (CAT). In England and Wales, the ordinary court cases are assigned to one of three tracks: the Multi Track, the Fast Track or the Small Claims Track. While the small claims procedure outlined below is not currently used in competition cases, we are proposing to look at whether it may be used in appropriate cases in the future.

(i) The small claims track provides a simple and informal way of resolving disputes. The amount in dispute should not be more than £5,000 and the process aims to take a maximum of 15 weeks after allocation to the track. The claim should require only straightforward preparation for the final hearing as a solicitor is not usually required, for example, cases in the small claims track will not normally involve many witnesses or difficult points of law. The winning party would only be able to recover limited costs from the losing side, and cannot recover legal costs except the costs of an injunction. This means that if a claimant loses then they only have limited exposure to costs, making it more likely that a claimant will bring a claim in these circumstances.

(ii) For fast track claims the amount in dispute would normally be between £5,000 and £15,000; cases allocated to the fast track will generally require only limited “disclosure”, a period of no more than around 30 weeks from allocation to the fast track to the trial, written expert evidence only, if it is needed at all, and a trial lasting no more than one day.

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(iii) If the judge feels the claim could not be dealt with justly in the fast track, for example, because the amount in dispute is more than £15,000, it requires more disclosure than the fast track allows or requires oral expert evidence at trial, and then the claim will be allocated to the multi-track. The process aims to take on average 50 weeks from allocation to the track until trial.

(b) In Northern Ireland, there are also three distinct venues in which an action may be pursued.

(i) The small claims court is part of the county court and its procedural rules are to be found in the County Court Rules (Northern Ireland) 1981. It has jurisdiction to deal with claims which are for less than £2,000 and provides a relatively inexpensive, fast and informal means by which litigants can bring an action before the court. Many actions are actually settled outside of court but, if they are not, they will be heard by a district judge on the day specified for the hearing, which will usually take place within three months of the application being submitted. The hearing is informal and the normal rules of evidence do not apply. Neither of the parties can recover costs, so any expenses incurred such as travel expenses or legal fees will generally have to be borne by the party that called the witness or instructed the lawyer.

(ii) Where the amount in dispute is less than £15,000, the action will be heard in the county court, which is generally initiated by the plaintiff issuing a document called a “civil bill”. The matter will be heard by a judge sitting without a jury. If the defendant wishes to dispute the civil bill, he has three weeks to notify the plaintiff and the court by lodging and serving a notice of intention to defend and the plaintiff thereafter has six months in which to deliver a Certificate of Readiness to indicate that the matter is ready for hearing. If he does not do so, the matter is referred to the judge who can either, set a date for the hearing, stay the proceedings or dismiss the case.

(iii) If an action cannot be dealt with in either the small claims court or the county court, it will be dealt with by the High Court, which is restricted neither geographically or by the value of the claim.

(c) In Scotland, an action for damages could be brought in either the Court of Session (if it is for a sum of at least £1,500) or in the sheriff court. The procedure in the sheriff court would depend on the amount claimed. Up to £750 it would be a small claim, between £750 and £1,500 a summary cause, and above £1,500 an ordinary cause. These three different procedures are very roughly comparable with the three tracks in England and Wales.

The CAT has four main functions. It hears appeals from decisions of the OFT and sectoral regulators under the Competition Act 1998. The CAT hears monetary claims arising from infringement decisions made under the Competition Act or the EC Treaty. The CAT deals with applications for the review of decisions of the OFT, the Secretary of State or the Competition Commission in relation to mergers and market investigations. The CAT hears appeals from penalties imposed by the Competition Commission.

3. Disclosure of evidence

(a) The normal procedure for disclosing documentary evidence in the ordinary courts is “standard disclosure” as governed by the Civil Procedure Rules, “discovery” in Northern Ireland, as governed by the Rules of the Supreme Court (Northern Ireland) 1980 and the County Court Rules (Northern Ireland) 1981, or “recovery” in Scotland. Each party is required to disclose documents on which it relies and which adversely affect or support either party’s case, subject to rules of privilege.

(i) Disclosure of evidence between the claimant and defendant is automatic in England and Wales and in the High Court in Northern Ireland but not in the Northern Ireland county courts.

(ii) Disclosure against third parties is also possible provided certain conditions are satisfied. These are where an application is made to the court under any Act which provides for disclosure by a person who is not a party to the proceedings. The application must be supported by evidence. The court may make an order under this rule only where the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and disclosure is necessary in order to dispose fairly of the claim or to save costs. Such an order may require the respondent to indicate what has happened to any documents which are no longer in his control; and specify the time and place for disclosure.

(iii) The court has, in addition, a broad discretion to order additional disclosure since it may, at any time, at 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”. No analogous discretion exists in Northern Ireland, although the overriding objective in both the Rules of the Supreme Court (Northern Ireland) 1980 and the County Court Rules (Northern Ireland) 1981
provides that, in the exercise of their powers under the respective Rules, the courts must give effect to the need to ensure that a case is dealt with fairly, justly and expeditiously.

(iv) If a party is dissatisfied with the extent of his opponent’s disclosure they can obtain a court order requiring the opponent to give further specific disclosure or conduct a further search. 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.

(v) An order can also be made (referred to as a “search order”) under section 7 of the Civil Procedure Act 1997 requiring a party to admit another party to premises for the purpose of preserving evidence etc. Similarly, in Northern Ireland, the courts may, on the application of a party to an action, make an order preserving property and/or making it available for inspection.

(vi) There are rules of court in Scotland regarding the production of documents and evidence which are broadly similar in effect to the above.

(b) In the CAT disclosure is not automatic. The Tribunal will decide which of the documents requested are relevant and therefore need to be disclosed. The disclosure rules are flexible in order for the CAT to decide the right approach in each case.

4. Confidential information

(a) Any person may ask the court that a witness statement or other document should not be open to inspection. The court will not make a direction unless it is satisfied that a witness statement/document should not be open to inspection because of, among other things, the interests of justice; the public interest; or the nature of any confidential information (including information relating to business secrets) in the statement/document. The court may direct that the witness statement/document be dealt with as it considers appropriate, such as excluding from inspection words or passages in the statement.

(b) A witness statement may be used only for the purpose of the proceedings in which it is served except where the witness gives consent in writing to some other use of it; the court gives permission for some other use; or the witness statement has been put in evidence at a hearing held in public.

(c) The general rule in Scotland is that material which a party uses in preparing his own case is confidential. Witness statements (known as precognitions) obtained by a party as part of the preparation of the case would not be admissible as evidence and the court would not order them to be disclosed to the opposing party.

(d) When a case is before the CAT, parties wishing to claim confidential treatment of documents or part of documents, including business secrets, may apply to the CAT to have these 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 with specific reasons. Whether particular information is to be regarded as confidential is a matter for the Tribunal to decide in the individual case. Before the CAT confidential matters are not disclosed unless they are essential for the decision.

5. Expert evidence

(a) 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.

(b) Courts also have the discretion to appoint assessors to advise the judge.

6. Role of the Office of Fair Trading

(a) The OFT has the power to intervene in private competition law actions and submit observations to a national court on issues relating to the application of Article 81 and 82 EC Treaty. The OFT may, acting on its own initiative, submit observations to a national court and it may submit oral observations. The OFT also has the power to intervene before the court where issues of the Chapter I and Chapter II prohibitions of the Competition Act 1998 are at stake.

(b) Information held by the OFT, which come to it in connection with the exercise of its functions under the Enterprise Act 2002 or legal provisions which are referred to in that Act, are not, as a general rule, available to claimants in a damages claim due to the confidentiality restrictions on disclosure.
contained in Part 9 of the Enterprise Act 2002. This stipulates that information which relates to the affairs of an individual or any business 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 provides the information consents. However, a competition authority must comply with any court order requiring disclosure.

(c) OFT and EU Commission decisions on whether competition rules have been breached are binding on the ordinary courts and the CAT in follow-on cases. Decisions on damages are decided by the courts and the CAT. Decisions by national competition authorities from other Member States are not binding on UK courts and the CAT.

7. Fault requirement

Actions under Articles 81 and 82 of the Treaty and Chapters I and II of the Competition Act 1998, which mirror Articles 81 and 82, do not require proof of an intention to prevent, restrict or distort competition or abuse a dominant position.

8. Limitation periods

(a) In England and Wales and Northern Ireland the time limit to institute proceedings is six years and starts on the date the wrongful act caused the damage in issue, subject to fraudulent concealment. Suspension of the limitation period is appropriate in certain narrowly defined cases. The equivalent time limit in Scotland is determined by the prescriptive period of five years. 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.

(b) In general, appeals must be made to the CAT within two months of the date of the publication of the decision which is being appealed. Follow on actions must be brought within two years of the OFT/EU Commission decision.

9. Loss and causation

The principle of causation requires a casual 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.

10. Passing on Defence and Indirect Purchaser Standing

(a) Neither the “passing on defence” nor indirect purchaser standing is the subject of settled case law in the UK. However in the two judgments set out below, the European Court of Justice suggest that the indirect purchaser may have standing and in addition in the second case that Member States are free to exclude the passing on defence or not at their option.

(i) The broad language of the European Court of Justice in Case C-453/99 Courage and Crehan [2001] ECR I-6297 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.

(ii) The European Court of Justice held that in Joined Cases C-295/04 to C-298/04 Vincenzo Manfredi and Others v Lloyd Adriatico Assicurazioni SpA and Others 2006 that “any individual can rely on the invalidity of an agreement or practice prohibited under [Article 81 EC] and, where there is a causal relationship between the latter and the harm suffered, claim compensation for that harm”. It also held that “it is settled case-law that Community law does not prevent national courts from taking steps to ensure that the protection of the rights guaranteed by Community law does not entail the unjust enrichment of those who enjoy them”. 
11. Representative Actions and Group Litigation Orders

(a) There are three types of collective action that are possible in the UK. The first of these is applicable on a UK basis. The other two are applicable for England and Wales only. There is no group litigation or representative action procedure in the Scottish courts.

(i) Representative Actions

The UK has 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 (opt-in only). Which? is a consumer organisation, currently the only body in the UK to be designated. It was awarded this designation in Oct 2005. Which? is currently preparing its first action for damages, following on from the OFT’s decision of 1 August 2003 concerning price-fixing of replica football kit. The action was filed at the CAT on 8 March 2007. The Department of Trade and Industry has recently consulted on a proposal to introduce representative actions for breach of consumer protection legislation. The Department is in the process of analysing responses.

(ii) Representative Party Actions

Where a number of people have an interest in a dispute, one of that number can act as a representative for the others to bring, continue or defend a claim.

(iii) Group Litigation Orders

Under the Civil Procedure Rules in England and Wales there are provisions for the case management of a group of individual claims which give rise to common issues of fact or law. Group litigation orders can be complex and may involve a large number of individual claims. These procedures have ensured that a balance can be achieved between the rights of claimants and defendants to pursue and defend cases individually, and the interests of a group of parties to litigate the action as a whole in an effective manner. They are seen to work well and to encourage settlement before litigation. However, there is no such provision in Northern Ireland. In 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.

(b) Assignment of claims. The District Court in Düsseldorf, Germany, has ruled as admissible the cement cartel “class action” lawsuit filed by Brussels-based company, Cartel Damage Claims. The case is one of the first tests of civil claims for damages from cartels under the new German law. Limitations in the UK on the way in which damages claims can be brought include the following:

(i) Champerty is contrary to public policy in England and Wales and Northern Ireland. Champerty is defined as “a bargain between a party to legal proceedings and another who finances or assists these proceedings, that the latter will take as his rewards for the assistance a portion of anything which may be gained as a result of the proceedings”. However, recent developments suggest that access to justice is becoming an increasingly important consideration in determining what is contrary to public policy.

(ii) In Scotland it is legally possible for someone who has a claim to damages for some kind of loss or injury (ie a right of action) to assign it to someone else who can then pursue the claim in their own name. This would be one possible mechanism to allow representative actions in Scotland.

12. Injunctions

(a) Interlocutory Injunctions

(i) In England, Wales and Northern Ireland the essential principles governing the grant or refusal of an interlocutory injunction were authoritatively expounded by the House of Lords in American Cyanamid Co. v Ethicon Ltd [1975] AC 396.

(ii) In this case it was stated that the governing principles in determining whether to grant an interim injunction are (1) whether there is a serious issue to be tried, (2) where the balance of convenience lies, and (3) if the interlocutory injunction is not granted, whether it will cause irreparable injury to the applicant.

(iii) In defining the “balance of convenience”, the House of Lords held that the objective of the injunction was to protect the plaintiff against injury resulting from the violation of his legal rights for which he could not be adequately compensated in damages recoverable from the
defendant if he were successful at trial. The plaintiffs need for protection had to be balanced against the defendant’s need to be adequately compensated by the plaintiff’s cross-undertaking in damages if the defendant were prevented from exercising his legal rights and the matters were resolved in the defendant’s favour at trial.

(b) Final Injunctions
(i) In England, Wales and Northern Ireland a final injunction will only be made after a full hearing on the merits of the case and after a full trial.

(c) Interdicts
(i) In Scotland the equivalent are interim interdict and full interdict, and Scotland has its own line of legal authority on the circumstances in which these orders may be granted. To obtain an interim interdict a prima facie case must be established and the balance of convenience must favour the granting of the order. To obtain full interdict there must be a full hearing on the merits of the case.

13. Damages
(a) Civil damages 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), restitutory 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.
(b) 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.
(c) Damages are assessed at the date of the loss. In the case of agreements under Article 81, a party claiming to have been affected in the market by the existence of the agreement will generally claim the “overcharge” and may also wish to claim the value of lost sales, unless it is an end user. 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%). In Scotland the court can award interest on damages from the date the right of action arose.
(d) These provisions mean that the UK courts take a flexible approach, which ensures that appropriate damages can be awarded to suit the individual circumstances of each case. The availability of these measures obviates any need for multiple damages.

14. Costs
(a) In the ordinary courts, the unsuccessful party is normally expected to pay the costs of the successful party, but the court has discretion to order otherwise. The position is the same in Scotland. The CAT also has complete discretion in relation to costs. In BCL Old Co Ltd v Aventis [2005] 1028/5/7/04 the CAT questioned whether it was appropriate to order security for costs against a claimant who even if successful was unlikely to be awarded costs due to the possibility that the effects of the actions of the defendant were passed on by the claimant. In this situation the CAT considered that the possible risk as to costs should be borne by the defendants, who were before the Tribunal as subjects of an infringement decision of the Commission. In Deans Foods Ltd v Aventis (2004) (1029/5/7/04) the CAT questioned whether it would be appropriate to award costs in favour of a defendant which is successful in defending follow-on action.
(b) It is possible for competition cases to be funded by a Conditional Fee Agreement (CFA). CFAs take the form of an agreement between clients and solicitors and provide for an alternative to contingency fees. Introduced by the Courts and Legal Services Act 1990, they allow for part or all of the solicitor’s fees to only be payable in the event of success. They can be used for all civil proceedings, other than family, and allow a solicitor to take a case on the understanding that if the case is lost he will not charge his clients for the work he has done (or charge at a lower rate). 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. The success fee is recoverable from the losing side. It is open to a party to take out insurance against the possibility of being ordered to pay the other party’s costs. In Scotland conditional fees (termed “speculative fees”) and success fees are now permitted, but the success fee is paid by the client, not the other side. The availability of CFAs outside of personal injury cases is relatively limited, mainly due to the difficulties in obtaining after the event insurance cover to protect the
litigant against the risks of losing and having to pay the other side’s costs. Within the Access to Justice (Northern Ireland) Order 2003, there is provision for CFAs in Northern Ireland. However, the relevant provision has yet to be commenced. The Northern Ireland Legal Services Commission is currently considering the options for CFA-type arrangements in Northern Ireland and has consulted with interested parties although it is unlikely that any firm decisions will be made for some time.

(c) Generally speaking, contingency fees as understood in the USA (where fees are a percentage of the damages awarded) are not available in the UK, for contentious proceedings before a court, but can be used in non-contentious cases such as probate, tribunals and claims up to issue of proceedings where settlement is the ultimate objective.

(d) The Competition Pro Bono Scheme has recently been set up by the Solicitors Pro Bono Group (also known as Lawworks) to provide an independent source of expert advice to individuals and businesses who believe that their rights under competition law have been infringed or who are concerned that they may be infringing. This will entail some advice or representation by lawyers to individuals, businesses and other community groups who cannot afford to pay for that advice or representation and where public funding is not available. The work is provided without payment to the lawyer or law firm and provided voluntarily by the lawyer or his/her firm.

There is no similar scheme in Northern Ireland as yet although a culture of “pro bono” assistance is well-established within the jurisdiction.

15. Legal Aid

Competition cases brought by corporate bodies (e.g., businesses) will not qualify for legal aid, as legal aid is only granted to individuals. In relation to claims by individuals, legal aid is not normally available for matters which arise in relation to the carrying on of a business (including company and partnership law), as these cases are excluded from the scope of the Community Legal Service by Schedule 2 to the Access to Justice Act 1999. This is because these cases do not have sufficient priority to justify funding, or because there are viable alternatives (e.g., conditional fee agreements). In certain exceptional circumstances, individual applicants who pass the means and merits tests may be granted legal aid for a business case by the Lord Chancellor, subject to very strict criteria.

(a) Unlike England and Wales, there is currently no statutory bar under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to legal aid being granted in relation to “business cases” although it is very unlikely that any case would meet the statutory means and merits test. However, Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 does provide for such a statutory bar, which will bring Northern Ireland into line with England and Wales once it has been commenced. Finally, like England and Wales, there is existing provision in the 1981 Order and in the 2003 Order (albeit not yet commenced) for exceptional funding and, as each case is treated on its merits, there may be business cases that will be funded under those provisions.

(b) In Scotland legal aid can only be made available in respect of an individual not a partnership or company etc. Civil Advice and Assistance or civil legal aid might be available for issues arising in respect of an action for damages as there is no blanket exclusion. Advice and Assistance is available for any matter of Scots law. Civil legal aid would be available for an action once it was being raised. A solicitor is entitled to admit a client to advice and assistance subject to a financial eligibility test. An application for civil legal aid needs to be made to the Scottish Legal Aid Board who will assess the application on three statutory tests—financial eligibility, probable cause and reasonable to the Board that it is reasonable in the particular circumstances of the case that legal aid should be received. It is unlikely, where issues relate to aspects of a business, that such cases might meet the reasonable test as it would be assessed on the individual’s interests. There is no exceptional case status in Scotland.

16. Joint and several liability

Joint and several liability can arise under UK law, for example, where there is a breach of duty imposed jointly on two or more persons, where persons take “concerted action to a common end” and in the course of executing that joint purpose any one of them commits a tort, or where persons’ tortious acts combine to produce the same damage. Joint and several liability does not arise where two or more persons not acting in concert cause different damage to the same claimant.
Letter from the Chairman to Gareth Thomas MP

Thank you for your letter of 23 July. I have forwarded a copy to Sub-Committee E, who you may recall examined the Green Paper last year.

It is helpful for us to learn what work your Department and the OFT have been undertaking since then and we are particularly grateful for your providing a copy of the Department’s “initial thinking” on the issues raised by the Green Paper and to learn of the consultant exercise now being undertaken. The Committee has a continuing interest in this subject and will no doubt wish to return to it in detail when the Commission produces its White Paper in 2008. In the meantime it would be most helpful if you could keep us informed of developments.

26 July 2007

COMBATING RACISM AND XENOPHOBIA (5118/07)

Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office to the Chairman

Thank you for your letter of 19 April 2007 outlining the consideration of Sub-Committee E which met on 18 April. May I reiterate how much I appreciate the Committee making time in its already full schedule for considering this Dossier. I assure you that, like the committee, my primary aim is to secure the UK’s already strong position on tackling racism.

I thought it would be helpful to update you on the outcome of the Justice and Home Affairs (JHA) Council in Luxembourg on 19 April 2007 and then address the issues you raised in your letter. As you will be aware from the statement made by Baroness Ashton, a general approach was reached on this proposal subject to a number of Parliamentary scrutiny reservations by Member States, including the UK. The Government is, however, still able to re-open negotiations on issues of substance should we deem it necessary.

Article 1

You are correct that Article 1(1)(a) is intended to enable Member States to limit the “intentional conduct” which has otherwise to be made punishable under Article 1(1). They are intended to be optional additional criteria, with Member States being able to choose to impose either one or the other, or no additional criteria at all.

The Government agrees that the occasions on which the test of “threatening, abusive or insulting” will impose a greater limitation than “incitement to violence or hatred” are likely to be limited. However, this was a point the UK and some others supported, in order to ensure that the Framework Decision did not require us to lower our threshold for what constituted a criminal offence. Other Member States required the alternative restriction of “likely to disturb public order” for the same reason.

Under UK law we balance on the one hand the right to free speech and on the other hand the need to protect the public from racist behaviour. Broadly speaking, we draw the line of criminality at the point at which speech becomes threatening, abusive or insulting or at which public order (a term which is not defined in England and Wales) is disrupted.

Article 1(1)(a) enables Member States to limit the “intentional conduct” which has to be made punishable under Article 1(1) to that conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting. Without Article 1(1)(a), Article 1(1) could be interpreted as requiring Member States to punish “intentional conduct” regardless of whether it would have such an effect. We are satisfied that the criminal threshold as drafted in Article 1 of the Framework Decision can be met by the UK criminal threshold in relation to public order and related offences.

Article 10

Given our interpretation of Article 1(1), you will appreciate that the Government does not share your concerns about Article 10(2)(b). The deletion of the mutual legal assistance rule provides an additional safeguard here. If a person in the UK used an IT system hosted in France to conduct activities that were criminal offences under Article 1(1), then France must ensure it has jurisdiction to prosecute the offender and it would be open to the French authorities to seek their surrender via a European Arrest Warrant, which would be executed subject to the usual rules, including whether the conduct was sufficiently serious as defined by that instrument.

4 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 257.
The provision ensures that loopholes do not exist to allow perpetrators to escape prosecution by exploiting information technology and that the person may be prosecuted in either state.

Such arrangements are already reflected under Directive 2000/31/EC “on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market” 8 June 2000. Under Article 3(1) of that Directive, Member States must regulate internet service providers established in their territory, even where they commit offences in other EEA States. Under Article 3(4) they may also derogate from the principle in Article 3(2) with a view to also regulating internet service providers established in other EEA States that commit offences in their territory where it is necessary for public policy, in particular the prosecution of criminal offences including the fight against incitement to hatred on the grounds of race, religion or nationality.

**TOTALITARIAN CRIMES**

The latest draft of the Framework Decision includes an updated declaration on crimes of totalitarian regimes which will be inserted in the minutes of the Council meeting when the Framework Decision is adopted. The text reads as follows:

*Statement by the Council*

On (date) the Council of Ministers of the European Union, adopted a Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. The aim of the Framework Decision is to approximate criminal law provisions and to combat racist and xenophobic offences more effectively by promoting full and effective judicial cooperation between Member States.

The Framework Decision deals with such crimes as incitement to hatred and violence and publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes. The Framework Decision is limited to crimes committed on the grounds of race, color, religion, descent and national or ethnic origin. It does not cover crimes committed on other grounds for example by totalitarian regimes. However, the Council deplores all of these crimes.

The Council invites the Commission to examine and to report to the Council within two years after the entry into force of the Framework Decision, whether an additional instrument is needed, to cover publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, color, religion, descent or national or ethnic origin, such as social status or political convictions;

The Berlin declaration adopted on 25 March 2007, stated that “European integration shows that we have learnt the painful lessons of a history marked by bloody conflicts.” In that light, the Commission will organize a public European hearing on crimes of genocide, crimes against humanity and war crimes committed by totalitarian regimes as well as those who publicly condone, deny, grossly trivialize them, and emphasizes the need for appropriate redress of injustice and-if appropriate-submits a proposal for a framework decision on these crimes.

Recital 5e clarifies that the Framework Decision does not prevent Member States including provisions in their national laws which extend Article 1(1)(c) and/or (d) to crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin.

**ARTICLE 7(2)**

The Commission made a statement, welcoming the Council’s efforts to reach agreement, but noting that Article 7(2) could be interpreted as giving national law priority over EU law, and recording the primacy of EU law. I note the committee’s comments about greater clarification of such issues earlier in the process.

I can finally respond to your query on the impact of this legislation on Northern Ireland and Gibraltar. Please accept my apologies for the delay however, we were clarifying the nuances to its jurisdiction to answer your query as fully as possible.

**IMPACT OF LEGISLATION ON NORTHERN IRELAND**

The legislation in Northern Ireland (the Criminal Justice (NI) No 2 Order 2004) provides its courts with powers to impose heavier sentences when an offence is aggravated by hostility based on the victim’s actual or presumed religion, race, disability or sexual orientation. When there has been such aggravation, those sentencing will be required to state this in court and to treat this as an aggravating factor in sentencing. The maximum penalties which can be imposed in what are, by and large, crimes of violence are also increased
across the board. For example: “grievous bodily harm”, “actual bodily harm” and “putting someone in fear of violence” will increase from 5 to 7 years; common assault from one year to two years imprisonment; harassment from 6 months to two years imprisonment; and criminal damage will increase from 10 to 14 years imprisonment. Therefore, as with the rest of the UK, the Framework Decision will not require Northern Ireland to amend its laws to comply.

IMPACT OF LEGISLATION ON GIBRALTAR

We have consulted with the Government of Gibraltar about whether it is able to participate in this Framework Decision. I confirm it is content to do so and can provide a direct quote.

“The Government of Gibraltar can confirm that Gibraltar wishes to participate in this measure on the strict understanding that the language, in Article 13, that this measure applies to Gibraltar remains and that, should the measure call for contact points, that Gibraltar has its own separate operational contact point”.

I would again seek to reassure you on our position regarding the Framework Decision. We believe that the current Dossier is one which provides the best opportunity for agreement and we have been successful in negotiating so that provisions in previous versions which were not compliant with the UK position on Racism have been dropped and that we have been able to retain our criminal threshold on certain behaviour. I hope that this letter fully addresses the Committee’s concerns.

8 May 2007

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 17 April 2007 which was considered by Sub-Committee E at its meeting of 23 May 2007. The Committee also had copies of the Conclusions of the JHA of 18 April and the Commons EU Scrutiny Committee’s Nineteenth Report which, as you are aware, addresses the issue of the status of general approaches in the Council of Ministers.

Although you do not say so explicitly, you appear to suggest that the recent agreement of a general approach on this dossier at the April JHA should not be considered a scrutiny override by this Committee. While we note your undertaking to make clear that a parliamentary scrutiny reserve remains and to reserve the right to re-open negotiations if necessary, we nonetheless consider your agreement of a general approach without the prior approval of the Committee to constitute a scrutiny override. In our view, the political reality is that once a general approach has been agreed in Council, matters of substance are highly unlikely to be re-opened as the version agreed constitutes the compromise on which Member States have been able to reach consensus. There would be little point in agreeing a general approach which could be re-opened and significantly amended at the request of individual Member States.

That we take this view will come as no surprise to you or your officials as the Cabinet Office Guidance on Parliamentary Scrutiny of European Union Documents (para 6.2.1) makes clear that this Committee does not accept the Government’s construction of the Scrutiny Reserve Resolution. We therefore welcome the conclusion reached by the Commons EU Scrutiny Committee in its Nineteenth Report regarding the effect of a general approach. No doubt the Government are reconsidering the position regarding general approaches in the light of the clarification contained in the Commons’ Report. We will watch developments with interest.

Finally, as mentioned above, your officials are, and have been, well aware of our position on general approaches and I would like to take this opportunity to record the fact that they have consistently worked on this and other dossiers to ensure that the Committee has the information needed to take a decision on clearing proposals in advance of JHA Councils where general approaches are sought. For this co-operation we are most grateful.

24 May 2007

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 8 May 2007 which was considered by Sub-Committee E at its meeting of 23 May 2007.

We note the agreement of a general approach on the Framework Decision at the April JHA Council. We trust that the general approach was agreed on the basis of the text which we considered at our meeting of 18 April which included the threshold in Articles 1(1)(c) and (d) of incitement to violence or hatred; the Council Conclusions do not record this threshold.

5 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 257.
The potential impact of this Framework Decision on the right to freedom of expression remains problematic. The proposal covers incitement to violence or hatred directed against a group of persons defined by reference to religion. Article 1(1)(b) clarifies that this should at least include conduct “which is a pretext” for directing acts against a group defined by race. Racism and xenophobia is one of the offences to which the condition of dual criminality does not apply for the purposes of the European Arrest Warrant and any instrument which appears to define racism and xenophobia in the broad manner outlined in the present proposal is a cause for concern. We note, however, that in your letter of 22 March 2007 to our sister Committee in the Commons you confirmed that the Framework Decision does not seek to define racism and xenophobia for the purposes of the list of offences in the EAW and the EEW.

We have decided to clear the proposal from scrutiny.

24 May 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 24 May 2007. I am grateful for your acknowledgement of the efforts made by my officials to secure the clearance of dossiers in advance of their submission to the JHA Council. I am also conscious that there have been a number of dossiers in the last few months where negotiations in the Council have proceeded rapidly and I would like to extend my thanks to your Committee for its co-operation in looking at these expeditiously. I hope that the outcome on the Prum Council Decision, where I have written separately setting out the reasons why I believe it was necessary to override the Scrutiny Reserve Resolution in that case, will not prevent continued close working in the future. What has happened in relation to Prum reinforces the importance of early engagement by both the Government and the Committees on proposals emerging from the JHA Council.

As regards the specific issue of the use of a general approach in relation to the Framework Decision on combating racism and xenophobia, you will be aware that the Home Office operates under the Cabinet Office guidelines for scrutiny. Cabinet Office is looking at the issues raised by the European Scrutiny Committee’s report on Prisoner Transfer in relation to use of general approaches at Council meetings. We will be feeding into that review and await its conclusions.

12 June 2007

COMMUNITY STATISTICAL PROGRAMME 2008–2012 (15536/06)

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


The Community Statistical Programme has been under discussion at the Council Working Party on Statistics. UK officials, in alliance with other Member States, have secured amendments to the Programme in line with UK policy on better regulation, including a greater emphasis on the need to balance costs and burdens of new statistical requirements, and the enshrinement at both strategic and sector level within the Programme of the sentiments expressed in the Commission Communication to the European Parliament on the reduction of the response burden, simplification and priority-setting in the field of Community Statistics.

With regard to the Programme’s legal base, you enquire whether it is the view of the Government that Article 285 TEC enables the collection of statistics relating to the 3rd Pillar. The Government is of the view that Article 285 TEC only provides for the collection of statistics where necessary for the performance of the activities of the Community under TEC. This could cover crime related statistics insofar as such statistics were required by the Community for the performance of its tasks but would not cover the collection of crime statistics more generally for the purpose of the Union’s activities under the 3rd pillar.

UK officials have ensured that the extent of crime statistical production is both explicit and appropriate, through securing the additional text “in so far as necessary for the performance of the activities of the Community” where reference is made to statistics on crime and criminal justice in the opening paragraph of the text of Title IV of the Programme. I am now satisfied that the references to collection and production of Community statistics on crime within the Statistical Work Programme 2008–2012 are in accordance with the Treaties.

7 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 263.
5 July 2007

Letter from the Chairman to Angela Eagle MP

Thank you for your letter of 5 July which was considered by Sub-Committee E at its meeting of 25 July 2007. We support the Government’s position on the legal base and welcome the insertion of a phrase linking crime statistics collection under the Community Statistical Programme to Community activities.

The Committee decided to clear the proposal from scrutiny.

26 July 2007

CONFLICT OF LAWS IN MATTERS CONCERNING MATRIMONIAL PROPERTY REGIMES (11817/06)

Letter from the Chairman to Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice

At its meeting on 24 October, Sub-Committee E took the opportunity to consider the progress of its scrutiny of the Green Paper. You will recall that Baroness Ashton wrote to the Committee on 27 March9 sending a copy of the Government’s preliminary Response to the Commission. What progress has there been since then? In particular have the two academic experts now completed their work and, if so, can a copy of their paper be provided to the Committee?

The Committee decided to retain the proposal under scrutiny.

25 October 2007

CONTROL OF THE ACQUISITION AND POSSESSION OF WEAPONS (7258/06)

Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I am writing to update the Committee on recent developments on the Directive.

The Multi Disciplinary Group on Organised Crime (MDG) referred this dossier, via the Permanent Representatives Committee (Part 1), to the Working Party on Technical Harmonization (Working Party) for it to give an opinion on the dossier from an internal market perspective.

Having discussed the dossier, the Working Party reported its findings to the MDG and in May the German Presidency proposed a number of amendments on which they are seeking the views of Member States. Most notably, there has been support among some Member States for the removal of criminal measures under the new Article 16 which, if agreed, should enable us to withdraw our reservation. We expect a further discussion of amendments to take place under the new Presidency.

The European Parliament has also suggested a number of amendments to the Council’s text although no agreement with the Council position has yet been reached. The European Parliament’s Internal Market Committee makes a valid point on widening the scope to include “convertible weapons” within the definition of firearm in this Directive. There is a strong focus on achieving a compromise text.

We will update the Committee on future progress.

7 August 2007

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 7 August which was considered by Sub-Committee E at its meeting on 10 October. We are grateful for the information you have provided and note that the UK has support from a number of other Member States for the removal of new Article 16 (criminal measures). What progress is being or is likely to be made under the current Portuguese Presidency?

The Committee decided to retain the proposal under scrutiny.

16 October 2007

9 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 266.
COOPERATION BETWEEN THE EU FUNDAMENTAL RIGHTS AGENCY AND THE COUNCIL OF EUROPE (12668/07)

Letter from the Chairman to Michael Wills MP, Minister of State, Ministry of Justice

This proposal was considered by Sub-Committee E at its meeting of 24 October 2007.

As we indicated in our Report Human Rights Protection in Europe: the Fundamental Rights Agency (29th Report of 2005–06, HL Paper 155) we strongly support the conclusion of a cooperation agreement regarding the activities of the Council of Europe and the Fundamental Rights Agency. We are therefore pleased to see that the agreement will be adopted shortly.

We welcome the proposed mechanisms for cooperation and particularly support staff exchanges and exchanges of information to ensure that both bodies are aware of relevant activities in the human rights field. We would be interested in hearing from you in due course as regards the practical steps which are being taken by the Council of Europe and the Fundamental Rights Agency to implement the principles outlined.

We have decided to clear the proposal from scrutiny.

25 October 2007

EU STRATEGY TO MEASURE CRIME AND CRIMINAL JUSTICE (12345/06)

Letter from Rt Hon Baroness Scotland of Asthal, Minister of State, Home Office to the Chairman

Thank you for your letter of 18 January 200710 which followed my earlier reply dated 29 December 2006. I apologise that this response has not reached you earlier.

In relation to the further points raised:

(a) The UK position is very clear that we must work within our own legal framework and that our aim is on improving comparability of statistics rather than their harmonisation. Two initial approaches are being investigated by Eurostat which work within this framework and I hope their approach explains why the Government can support this work.

— The use of victimisation surveys similar to our own British Crime Survey. The EC have already part funded the European Union International Crime Survey and EC/Eurostat have funded a study into how such surveys can be developed in the future.

— Eurostat will shortly be publishing a report in their Statistics in Focus series which updates a Statistical Bulletin previously published by the Home Office (Home Office Statistical Bulletin 12/03). Except for homicides where absolute comparisons are possible the report is based on comparisons in the trends in recorded crimes for selected offences. Such trend comparisons require similar but not identical definitions.

(b) I realise it may be confusing to see how the different groups coordinated and we have tried to set out in the attached Annex the structure of these committees. This note tries to illustrate the overlap on membership between the various committees. Such overlap ensures there is no duplication in data collection and that expertise between the groups is shared. Home Office officials have been actively involved in these projects since 1992.

16 May 2007

Annex A

STRUCTURE OF EUROPEAN COMMITTEES ON CRIME AND CRIMINAL JUSTICE STATISTICS

EUROPEAN SOURCEBOOK GROUP

Membership: Set up in 1993 under chairmanship of Professor Martin Killias of Lausanne University. Committee members are invited experts from academic and Government Institutes who organise the survey. Members also act as regional coordinators with each Council of Europe Member State having a National expert to act as data providers.

10 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 288.
Countries with experts on the committee are Switzerland, France, Netherlands, Iceland, Albania, Ukraine, Poland, UK (Gordon Barclay Home Office Statistician) and Germany. UNODC and Eurostat representative attend most meetings as observers. Gordon Barclay represents all parts of the UK, Ireland, Malta and Cyprus.

**Funding:** Initially from Council of Europe but now funded by main committee member countries. Funders include the Home Office, Swiss Ministry of Foreign Affairs/ Lausanne University, Dutch Ministry of Justice, French Department of Justice, German Ministry of Justice and most member countries also help with their own expenses. EC (under Aegis Program) are providing funding for three future meetings.

**Frequency of meetings:** Two or three times a year often during academic conferences and usually at weekends.

**Reports:** The latest was in 2006 covering data up to 2003. The report is jointly written by Group Members and edited by the UK and the Dutch.

**Council of Europe Penal Statistics**

**Object:** To provide an annual report on the prison population for each Council of Europe Member States and less regular reports on the use of non-custodial sanctions. The results are published on the Council of Europe website.

**Funding:** Up to recently the Council of Europe funded an expert to collect this data. They no longer fund this work and the expert (Prof Marcelo Aebi) funds the work through his university (Lausanne).

**Links with other committees:** Marcelo Aebi is a long term member of the Sourcebook group and is responsible for data processing of the Sourcebook survey data. The sourcebook uses the penal statistics he collects to prevent duplicate requests.

**European Commission for the Efficiency of Justice**

**Object:** Funded by the Council of Europe the group has produced two reports covering the collection of data on the criminal and civil justice system. The Polish Sourcebook Member has been a major organiser of the survey.

**Errors in report:** The first report contained many errors eg assuming criminal cases were also dealt with at County Courts and that DCA figures on court costs at that time included magistrates’ courts. Following comments from Gordon Barclay substantial changes were made in the second report although there are still some misleading comparisons.

**EU Project on Developing EU Strategy to Measure Crime and Criminal Justice**

**Formulation of plans:** Initial discussions were through a Working Group consisting of EU members of Sourcebook group plus a few other invitees (eg Europol). UK provided secretarial support.

**EU Action Plan:** Plans agreed at a meeting of nominated representatives of Member States plus UNODC and EU monitoring agencies on drugs and racism.

**Eurostat:** EC gave Eurostat funding to recruit an expert to support the Statistician responsible for this area. As a result they recruited Cynthia Tavares who was Gordon Barclay’s former deputy, secretary of the Sourcebook group and author of Home Office International Statistics Bulletin. This work is steered by a small Task Force formed from statisticians from National Statistics Institutes which meets twice a year. This group includes two members of the Sourcebook Group (UK, Dutch) plus Italian, Irish, Polish, French statisticians and observers from UNODC, EU monitoring agency on drugs and racism. Three projects have been initiated:

- Project has been set up to produce a common victimisation survey for EU countries.
- Consideration of the availability of information on serious/organised crime in EU Member States. Report has been produced by Transcrime (Italian based criminal justice research organisation). Transcrime are observers at Sourcebook meeting.

Future work is now to be coordinated by a Working Group with representatives from the 29 Member States and Observers. The current Task Force Members will be their country representatives on this group which will also formally include a representative of the Sourcebook Group. The first meeting is planned for 1–2 March.
EU Action Plan: An Expert group is being set up to coordinate the policy aspects of this work with representatives from all Member States plus other organisations referred to above. The group is expected to have its first meeting on 2–3 April. The chair of the Sourcebook Group (Martin Killias) will attend this group and UK will be represented by Gordon Barclay.

Letter from the Chairman to Rt Hon Baroness Scotland of Asthal

Thank you for your letter of 16 May 2007 which was considered by Sub-Committee E at its meeting of 6 June 2007.

We are grateful for your explanation of the current approaches being investigated by Eurostat to enable collection of comparable statistics. We support such efforts and trust that they will continue to be supported by the Government.

Your outline of the various bodies involved in the collection of crime-related statistics is most helpful. While it seems that there is little formal coordination, we note the overlap in membership and the effect of this overlap in preventing duplication. We welcome this practice and encourage the Government to ensure that it continues.

We have decided to clear the Communication from scrutiny.

7 June 2007

EU TERRORIST ASSET FREEZING REGIME

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

I am writing to inform you of a number of procedural improvements made recently to the European Union’s autonomous regime for terrorist asset freezing. The EU list of terrorist groups and individuals is drawn up and kept under review by the Council of the European Union on an autonomous basis pursuant to UN Security Council Resolution 1373 (2001), which requires that the funds of persons and groups involved in terrorism be frozen. Asset freezing is a preventive measure, with the aim of obstructing and disrupting the financing of terrorism. This is an essential part of our work to make Europe and the UK safer from international terrorism.

On 29 June, the Council of the European Union announced that it had agreed a series of new measures to bring its procedures into line with requirements set out in the EC Court of First Instance’s ruling of 12 December 2006 in the case of the Mojahedin-e-Khalq (MeK). The Court again set out these requirements on 11 July, in its ruling in the case of Jose Maria Sison and Stichtung Al-Aqsa.

Specifically, a statement of reasons will now be provided to each individual or group subject to an EU-wide asset freeze, setting out the grounds for the listing. Each statement will identify the national “Competent Authority” decision on which the listing was based. Each individual or group will be offered an opportunity to provide information relevant to their case to the Council of the EU, and to petition the Council for delisting. New procedures have been adopted for handling proposals for listings, requests for delisting, and the full review of the list, which takes places every six months.

A formal Council working party has been established to implement the improved procedures (“The Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism”, also known as the “CP 931 Working Party”). In order to increase transparency, and deepen the public understanding of the process, the Council has published the mandate and working methods of the group and I enclose these now (not printed) for the Committee’s information.

The Council of the EU also announced on 29 June that it had conducted a complete review of the list of terrorist groups and individuals under the improved procedures. Three groups (the Italian groups “Nuclei Territoriali Antimperialisti”, “Nuclei di Iniziativa Proletaria Rivoluzionaria” and “Nuclei de Iniziativa Proletaria”) were removed from the list, and another (a Greek group, “Epanastatikos Agonas” or Revolutionary Struggle”) added. The Council adopted a Decision maintaining all other current listings.

The overhauling of the EU’s terrorist asset freezing procedures to address the Court of First Instance’s concerns, is a significant achievement, in which the UK has played a substantial role. The EU’s capacity to prevent and disrupt the financing of terrorism should be strengthened as a result.

19 July 2007
Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 19 July 2007 which was considered by Sub-Committee E at its meeting of 10 October 2007.

We are pleased to see that a working party has been set up to ensure effective implementation of changes to the EU’s terrorist asset freezing regime following the recent rulings of the Court of First Instance and are grateful to you for keeping us informed of developments.

16 October 2007

EUROPEAN ARREST WARRANT: FRAMEWORK DECISION (11788/07)

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office

This Report was considered by Sub-Committee E at its meeting of 24 October 2007.

We welcome the Commission’s general conclusion that despite some problems in certain Member States the EAW procedure is, on the whole, effective. A number of the criticisms addressed to the UK are conceded by the Government and in your Explanatory Memorandum you helpfully set out the reasons for the divergence from the text of the Framework Decision.

In at least one case, you make reference to the need to protect the rights of the requested person. While we are pleased to see that in transposing the Framework Decision the UK has had regard to the rights of individuals, you will undoubtedly agree that it would have been preferable to deal with such issues at EU level. We trust that in future criminal justice measures the Government will take all possible steps to encourage the Council to give full consideration to human rights concerns during negotiations.

The report’s conclusion that “time limits are far from being respected by the UK” (page 28) is a matter of concern. While we accept that there will be cases where time limits unfortunately cannot be met, we nevertheless consider that given the successful experiences of other Member States in this regard, if there is a serious problem in the UK, that must be speedily addressed. We would be grateful for a fuller explanation from the Government as to the reasons for delays. Are there statistics to show how many cases are delayed because of appeals? We would also be interested to learn more about the work of the “Time limits working group”. What targets, if any, have been set?

The Committee has decided to retain the Report under scrutiny.

25 October 2007

EUROPEAN PATENT SYSTEM (8302/07)

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

The Communication was considered by Sub-Committee E at its meeting on 9 May. We are grateful for the full and helpful Explanatory Memorandum you have provided.

As you will be aware, the Community patent and its related judicial arrangements has a long scrutiny history and the Committee welcomes this latest initiative from Commissioner McCreevy aimed at reviving the debate and exploring new ideas. It is disappointing that obstacles appear to have been placed in the way of the European Patent Litigation Agreement but we note that the Government can support the approach of the Commission’s Option C. However, as you say, the Commission’s proposal is notably lacking in detail, particularly on those aspects, such as the language regime, which experience shows to be highly controversial. We look forward to seeing whether Commissioner McCreevy will be able to make real progress in the coming months. There are obvious gains to be had if firms can obtain a single Community patent at reasonable expense.

The Committee decided to retain the proposal under scrutiny. Please let us know the outcome of the preliminary discussions of the Communication in the Council Working Parties this month and next and the state of play at the beginning of the Portuguese Presidency.

10 May 2007
Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 10 May, in which you asked to be kept updated on the outcome of discussions on the Patents Communication at the Council Working Parties held in May and June. The last of these Working Parties took place on 1 June, and I am pleased to be able to update you on the current state of play.

The German Presidency took a slow and detailed approach to its working groups. They presented a questionnaire for discussion among experts, which covered the operation of existing national patent jurisdictions and the practical and legal issues related to setting up a European jurisdiction. Despite predictable arguments about the legality of each of the options on the table, discussions were positive, and a majority of states, including the UK, were able to support the Commission’s compromise option (option C).

The Community patent was discussed, but we and the majority of states agreed with the Commission that substantive discussion on the Community patent should be left until after agreement on the patent jurisdiction. A high-quality, efficient and affordable European patent jurisdiction would make it easier for companies to enforce or challenge patents, giving security to all innovative companies, in particular SMEs, and encouraging more innovation, competition and entrepreneurship across Europe. We are keen to ensure that the Council remains focused on this objective, and is not distracted by legal arguments or narrow national interests. For this reason, we advocated a pragmatic and outcome-based approach during Working Party discussions.

The Portuguese Presidency has advocated a “step-by-step” approach to future negotiations, leading to high-level agreement. Officials from the UK Intellectual Property Office intend to work closely with Portuguese officials to ensure that this approach is focused to deliver the best outcome for users of the European patent system.

15 June 2007

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

Thank you for your letter of 15 June which was considered by Sub-Committee E at its meeting on 11 July. The Committee were interested to note that some progress has been made on this important proposal and that the matter will be taken forward, by a “step-by-step” approach, under the Portuguese Presidency. We would be grateful if you would keep us informed of developments and let us know well in advance if the subject is likely to be placed on the agenda for a meeting of the Council of Ministers.

The Committee decided to retain the proposal under scrutiny.

12 July 2007

EUROPEAN REGULATORY AGENCIES (7032/05)

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

I am writing in response to your letter of 12 October 2006 and Susannah Street’s letter of 26 July 2007 concerning the Interinstitutional Agreement (IIA) on the operating framework for the European Regulatory Agencies.

Since Geoff Hoon’s letter of 25 July 2006, little progress has been made on this issue. Under the German Presidency, discussions took place in the General Affairs Group on what form a revised operating framework may take. The Presidency concluded that the necessary consensus had not been achieved in order to proceed to negotiations with other institutions on a horizontal framework for regulatory agencies. The Portuguese Presidency have indicated that they will not take this issue forward.

We will keep the Committee informed of any future developments.

31 August 2007

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 31 August which was considered by Sub-Committee E at its meeting on 10 October. We note that little progress has been made on this proposal and that the current Portuguese Presidency have indicated that they will not take this issue forward. What do you think are their reasons for this?
We are grateful for your undertaking to keep the Committee informed of any future developments. In the meantime could you let us know how the proposal would be affected by the changes being proposed in the Reform Treaty? We would be grateful for this information as soon as possible.

The Committee decided to retain the draft Agreement under scrutiny

16 October 2007

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

I am writing in response to your letter of 16 October 2007 concerning the Inter-Institutional Agreement (IIA) on the operating framework for the European Regulatory Agencies.

In June 2007, the German Presidency produced a non-paper and concluded that there was no consensus to take forward the dossier at this time. Since then, there has been no movement in the Council. The Portuguese indicated that they do not want to take this issue forward.

The proposed IIA is aimed at establishing a coherent approach to the establishment and administration of regulatory agencies. This issue is not addressed in the Reform Treaty.

We will keep the Committee informed of any future developments.

31 October 2007

**FIGHT AGAINST CYBER CRIME (10089/07)**

**Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office**

This proposal was considered by Sub-Committee E at its meeting of 4 July 2007.

We strongly support action at EU level to combat cyber crime and therefore welcome the Commission’s Communication.

**LEGAL BASE**

In your EM, under “legal base”, you simply say “not applicable”. But it is clear that there is a substantial amount of Commission activity and expenditure here. As the Court of Justice has said, this requires a legal base to be established. We would therefore be grateful to have your views on the question of legal base.

**ILLEGAL OBSCENE CONTENT**

We note the Government’s support for action against illegal obscene content and for work focused on child abuse websites. Are you content with the action proposed by the Commission in paragraph 4.3 of the Communication? If not, what additions/alterations do you propose?

**DEFINITION OF CYBER CRIME**

We too would welcome a full discussion about the definition of cyber crime. In our view this is an important precursor to an effective cyber crime policy. What efforts have been made to agree a definition of cyber crime across the EU? The Commission does not suggest in its Communication renewed efforts to arrive at a definition of cyber crime: does the UK intend to pursue this point in the Council?

**TARGETED LEGISLATION AGAINST CYBER CRIME**

We welcome the Commission’s intention to consult prior to introducing any legislative proposal against cyber crime. We are pleased to hear that the Government intend to participate actively in these consultations and look forward to further information as to the nature of these consultations and the Government’s response in due course.
COUNCIL OF EUROPE CONVENTION

We note that the UK has signed the Council of Europe Convention on Cyber Crime and would be interested to hear why it has not yet been ratified.

The Commission suggests the accession of the European Community to the Council of Europe Convention. It is premature to speculate on how this would be achieved given the pending changes to the Community/Union’s institutional framework. However, we note that at present there would appear to be no competence for the Community to accede to a Convention which relates to Third Pillar matters.

More generally we are concerned about the external competence implications of the Commission’s proposals. See, for example, paragraph 4.1: “actively participate in and promote global international cooperation in the fight against cyber crime”. To what extent do the Government consider that external competence exists?

We have decided to retain the proposal under scrutiny.

5 July 2007

Letter from Vernon Coaker MP to the Chairman

Thank you for your letter of 5 July about the European Commission’s Communication towards a general policy on the fight against cybercrime, and particularly for sharing the consideration of Sub-Committee E.

I am pleased to note that the Committee shares the Government’s support of EU level action to combat cybercrime and please allow me to address your questions as they fall.

LEGAL BASE

You have rightly noted that we have not established in our Explanatory Memorandum the Communication’s legal bases. This is because we believe it is really impossible to advise on this issue in the abstract as the area of activity potentially touches on a number of different areas of competence. However, insofar as the proposals lead to legislative activity we would need to look at the terms and scope of any measures to determine the legal base.

ILLEGAL OBSCENE CONTENT

Although we are broadly content with the proposals made by the Commission as set out in paragraph 4.3 of the Communication, we believe that there need to be in-depth discussion about the practicalities of some of these. For example, the Commission put forward the “development of statistical data” as an intervention mechanism in the fight against cybercrime. Whilst this is useful we would also like to see consideration given to the usefulness of forward-looking mechanisms (eg data collection and research) to identify new forms of cybercrime for which legal or technological interventions do not yet exist.

DEFINITION OF CYBERCRIME

We believe that as most cybercrime is actually traditional crime committed using a newer tool and many investigations into more traditional crimes rely on electronic evidence, there are dangers in defining cybercrime and therefore separating it from other crimes.

As technology becomes ever more entwined in our daily lives, all crimes and investigations are likely to have an electronic component. Anything that tempts mainstream policing into regarding these crimes as somehow different from the rest of crime risks undermining the policing response to all crime in the future. By treating cybercrime like all other crime, much of which requires some expert assistance to investigate, we allow the police and law enforcement agencies to prioritise and manage their resources across all crime and to react to future opportunities and threats quickly and effectively.

COUNCIL OF EUROPE CONVENTION ON CYBERCRIME

(a) UK Ratification of the Council of Europe Convention on Cybercrime

We remain committed to ratifying the Council of Europe Convention on Cybercrime and have recently legislated, in the Police and Justice Act 2006, to reform the criminal law to ensure that the Computer Misuse Act 1990 is fully compliant with the Convention. However, we will not implement the Computer Misuse Act changes before April 2008. This is because we are currently making further unrelated changes to the Act in the Serious Crime Bill.
(b) *Accession to the Council of Europe Convention on Cyber Crime*

We agree that the Community cannot accede to conventions which relate to third pillar matters only and that there is no general competence for the community to act in an area falling within the third pillar.

(c) *External competence*

Again we agree that the community cannot generally exercise external competence in relation to third pillar matters, but would note that it is not clear that all of the relevant matters fall under the third pillar.

26 July 2007

**Letter from the Chairman to Vernon Coaker MP**

Thank you for your letter of 26 July which was considered by Sub-Committee E at its meeting of 10 October 2007.

**LEGAL BASE**

We note that you do not consider it possible to advise on the question of legal base in the abstract. However, it seems to us that there is sufficient clarity in what is being proposed by the Commission for the Government to give an initial view on possible legal bases; this is a matter which the Government will have considered when assessing the extent of external competence in relation to the Commission proposals.

**DEFINITION OF CYBER CRIME**

While we agree that separating cyber crimes from related traditional crimes is unhelpful we nonetheless consider that some discussion of what constitutes cyber crime would be useful. Are there any plans for such a discussion? If not, how is the scope of any EU policy on cyber crime to be identified?

**COUNCIL OF EUROPE CONVENTION**

We would be interested to hear what aspects of the Commission’s proposals you consider might fall under the First Pillar.

Does the UK intend to ratify the Council of Europe Convention on Cyber Crime once the Police and Justice Act 2006 has come into force?

We have decided to retain the Communication under scrutiny.

16 October 2007

**FUNDAMENTAL RIGHTS AND CITIZENSHIP PROGRAMME (10755/06)**

**Letter from Michael Wills MP, Minister of State, Ministry of Justice to the Chairman**

I am writing to update you on the progress made in the establishment of the EU Fundamental Rights Agency (FRA), and the negotiations leading to the conclusion of a co-operation agreement between the European Community and the Council of Europe on the FRA.

The Commission proposal establishing the FRA, as amended by the Presidency (relevant EU document No. 10755/06), was cleared by the House of Commons European Standing Committee on 28 November 2006, and by your Committee on 29 November 2006. Regulation EC 168/2007 establishing the Agency was formally adopted on 15 February 2007, and the Agency became operational on 1 March 2007.

Since then, the Agency’s Management Board has been established, including the independent members appointed by the UK: Marie Staunton (as member), and Sarah Cooke OBE (as alternate member). Marie Staunton is Chief Executive of Plan UK, a worldwide organisation working with communities in 50 developing countries. A solicitor with wide experience in cases of gender and race discrimination and human rights litigation, she is a former Director of Amnesty UK. Sarah Cooke was Director of the British Institute of Human Rights from 1998 to 2005. A solicitor specialising in asylum appeals, she has also worked as a field
researcher in Burma and Thailand for Human Rights Watch. The Council of Europe has also appointed its independent members: Guy de Vel (former Council of Europe Director General of Legal Affairs and Local and Regional Democracy), as member, and Rudolf Bindig (former Member of the Parliamentary Assembly of the Council of Europe) as alternate member. The Government has also appointed a National Liaison Officer as the main link between the UK Government and the Agency; this will form part of the responsibilities of Rob Linham, Head of Human Rights Policy at the Ministry of Justice.

The Council has mandated the Commission to negotiate a co-operation agreement between the European Community and the Council of Europe setting out the fundamental principles of collaboration between the Council of Europe and the FRA, to prevent any overlap in their activities. I had intended to deposit with Parliament the final unclassified version of the co-operation agreement as soon as it was made available, and accompany it with an Explanatory Memorandum. However, I understand that, because of delays in the translation of the final text, the document will not now be available until September. The Presidency may submit it to the Council for formal adoption very shortly after the document becomes available. While we will of course make every effort to ensure that the scrutiny process is completed before adoption, this combination of delays and very short deadlines may place the government in the position of having to override the scrutiny process in order to agree to the proposal. I am sorry that we find ourselves in this position and I have asked officials to take action to ensure that such a situation does not recur.

Therefore, I would like to use this opportunity to explain the substance of the co-operation agreement to ensure your Committee is fully informed about the negotiations. The legal basis for the agreement is Article 300 of the Treaty establishing the European Community (TEC). Article 300 empowers the Council to conclude agreements between the Community and an international organisation, acting unanimously on a proposal for the Commission. Under Article 300(1) TEC, the Council authorised the European Commission to open negotiations with the Council of Europe. Apart from consulting the European Parliament (under Article 300(3) TEC), no further consultation is planned. Because of the tight deadlines envisaged by the Presidency, I expect the European Parliament will also be given a very limited amount of time to comment.

The agreement sets out the fundamental principles of co-operation between the Agency and the Council of Europe; its key provisions are:

1. Establishment of regular contacts and consultations between the Agency’s Director and the Council of Europe’s Secretariat, particularly during the preparation of the Agency’s Annual Work Programme and reports.
2. Mutual participation in relevant meetings.
3. Exchange of non-confidential data between the two bodies.
4. Due account to be taken, on the part of the Agency, of the judgments of the European Court of Human Rights and of the reports and activities of the Council of Europe in the field of human rights.
5. Possibility of joint human rights initiative and temporary exchanges of staff subject to specific agreements on a case by case basis.
6. Appointment of a Council of Europe independent person (and an alternate person) to sit in the Agency’s Management Board and Executive Board, with voting rights on the adoption of the Agency’s Annual Work Programme, the adoption of the annual reports, and the appointment of the Scientific Committee.

I do not expect the co-operation agreement to have any significant financial implications for the UK and the other Member States of the European Union. The agreement does provide for the possibility of financial co-operation between the Agency and the Council of Europe but I understand this is subject to specific agreement between the two bodies on a case by case basis.

I shall of course send you a copy of the final text of the agreement as soon as it is available.

31 July 2007

Letter from Michael Wills MP to the Chairman

Thank you for your letter of 18 January 200714 to Baroness Ashton. I am very sorry for the unacceptable delay in replying. I understand a response was prepared back in January but, inadvertently, never sent.

As I stated in my letter to you of 31 July, I am pleased to confirm that, on 15 February, the Council formally adopted Regulation EC 168/2007 (attached) (not printed) establishing the Fundamental Rights Agency. The Agency became operational on 1 March. The legal base of the Regulation is Article 308 of the Treaty

14 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 297.
establishing the European Community and the Regulation clearly defines the Agency’s activities within the first pillar (Community law). This reflects the consensus achieved during the Council negotiations. As you know, the Government has consistently taken the view that it is not possible to give the Agency a formal third pillar remit within the framework established by the current EU treaties. However, the Council will review the possibility of extending the Agency’s remit to the third pillar before 31 December 2009. At the moment, EU institutions may seek the advice of the Agency on third pillar matters but only on a voluntary basis and only within the framework of the legislative process. Member States may also use the Agency’s expertise in third pillar matters but, again, only on a voluntary basis and within their own implementation of third pillar measures.

6 August 2007

Letter from the Chairman to Michael Wills MP

Thank you for your letters of 31 July and 6 August 2007 which were considered by Sub-Committee E at its meeting of 10 October 2007.

We reiterate our support for a Third Pillar mandate for the Agency and take this opportunity to request that this Committee be kept fully informed of any review of the Regulation.

As regards the proposed co-operation agreement, it is unfortunate that this Committee is unlikely to be given the opportunity to examine this document before its adoption. We are, however, grateful to you for setting out its key provisions in your letter. We are pleased to see that a number of positive actions are proposed to ensure close cooperation and contact between the Agency and the relevant organs of the Council of Europe.

16 October 2007

FUNDING OF POLITICAL PARTIES AT EUROPEAN LEVEL (11559/07)

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

The proposed amendments to Regulation 2004/2003 were considered by Sub-Committee E at its meeting on 10 October. The Committee noted that the Government welcome and support the proposed changes. However, we also note that the House of Commons European Scrutiny Committee has raised important questions relating to the proposal to allow the funding of political foundations. The Committee therefore decided to retain the proposal under scrutiny and to reconsider it in the light of the Government’s response to the questions issued by the European Scrutiny Committee.

16 October 2007

HUMAN RIGHTS PROOFING EU LEGISLATION

Letter from Michael Wills MP, Minister of State, Ministry of Justice to the Chairman

Thank you for your letter of 25 April 200715 to Baroness Ashton, in which you support the Government’s proposal to provide fundamental rights analysis, in respect of Article 6(2) of the Treaty on the European Union, in the explanatory memoranda of EU legislative proposals. I am replying to your letter as I now have ministerial responsibility for policy on human rights in the Ministry of Justice.

I am pleased to inform you that, in close cooperation with the Parliamentary EU Scrutiny Committees, we have completed the revision of the existing Parliamentary scrutiny guidance of EU legislation to include the provision of a fundamental rights analysis in explanatory memoranda submitted to Parliament. The new guidance will be circulated to Government departments’ scrutiny co-ordinators by the Cabinet Office European Secretariat and will be effective for all explanatory memoranda submitted to Parliament during the summer recess and thereafter.

26 July 2007

15 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 298.
INDEX OF THIRD COUNTRY NATIONALS CONVICTED IN THE EUROPEAN UNION (11453/06)

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office
Thank you for your letter of 16 April 2007 which was considered by Sub-Committee E at its meeting of 9 May 2007.
We are grateful for the update you provide and look forward to seeing the Commission’s findings, together with the Government’s views on the proposed Index, in due course.
In the meantime, the working paper is retained under scrutiny.
10 May 2007

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office to the Chairman
You wrote to my predecessor, Joan Ryan on 10 May to advise her that Sub Committee E had considered her letter of 16 April at its meeting on 9 May.
I thought you would like to know that the position remains as set out by Joan, namely that no date had been set for the Commission to release its findings from questionnaires submitted by Member States, and that it is still receiving questionnaires from Member States. This will remain so whilst the first priority for the European Commission is work on the follow up to the Framework Decision on the organisation and content of the exchange of information extracted from criminal records between the Member States.
I will, of course, update the Committee when the situation changes.
13 August 2007

Letter from the Chairman to Meg Hillier MP
Thank you for your letter of 13 August 2007 which was considered by Sub-Committee E at its meeting of 24 October 207.
We are grateful for the update you provide and look forward to seeing the Commission’s findings, together with the Government’s views on the proposed Index, in due course.
In the meantime, the working paper is retained under scrutiny.
25 October 2007

INFORMATION EXTRACTED FROM CRIMINAL RECORDS (5463/06, 7594/07)

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman
Thank you for your letter of 26 April 2007. I am writing to provide you with further information on the specific issues raised by the Committee and to update you on progress in negotiations.
The Government is largely content with the current draft, and welcomes the latest Presidency proposal on implementing measures. The German Presidency is keen to reach a general approach on this dossier at the June JHA Council.

UPDATING CRIMINAL RECORD INFORMATION
On the specific issues the Committee raises; I am pleased that the Committee is content with my explanation of the Government’s position on the updating of information. The Government agrees with the Committee that an effective and comprehensive data protection instrument will safeguard data exchanged at EU level.

DUAL NATIONALITY
In its recent letter, the Committee raised again the issue of dual nationality. I note the Committee’s concern that a convicted person may not disclose all nationalities. The Overseas Crime Task Force has examined this issue and has concluded that in establishing an obligation that goes considerably further than the obligations established by existing instruments, the provisions of the Framework Decision vis-à-vis dual nationals is satisfactory.

16 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 299.
17 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 300.
RECORDING OFFENCES

As I stated in my previous letter, we can record on the PNC convictions for overseas offences that are not offences in the UK. However, we will have to consider how best to implement the obligations to store information transmitted under the Framework Decision and may consider the use of a linked data-base. Several Member States have indicated at official level that they will establish a new data-base, linked to the existing criminal record, to store information from other Member States.

GENERAL OBLIGATION TO CONSULT

On the subject of the general obligation to consult, I refer the Committee to my letter of 19 April. As I outlined in that letter, the provisions of the current draft of the present Framework Decision establish an obligation on the central authority of the Member State where an individual makes a request for information on their own criminal record, the Member State where the request is made must always make a request to the Member State of nationality for the person’s criminal record, and the Member States of nationality must respond. This obligation will only come into force when the electronic transfer of information is implemented.

Finally I enclose the most recent version of the Framework Decision 9237/07 COPEN 55 for the Committee’s information (not printed).

11 May 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 11 May 2007 which was considered by Sub-Committee E at its meeting of 23 May 2007.

We note that the Presidency is hoping to agree a general approach at the June JHA. We do, however, have two outstanding concerns regarding the proposal.

RECORDING OFFENCES

You have previously agreed that a central premise of the Framework Decision is to guarantee the completeness of the information held by the Member State of nationality. We would be grateful if you would confirm that all Member States are willing and able to store, where they are the Member State of nationality, all criminal record information transmitted to them under this Framework Decision, regardless of whether the conviction relates to an offence which is an offence under their national law.

In addition to dual criminality concerns, problems may arise as a result of disparities in the age of criminal responsibility across the EU. Are Member States prepared to store details of convictions where the offence was committed prior to the individual attaining the age of criminal responsibility under the law of the Member States of nationality?

GENERAL OBLIGATION TO CONSULT

Further to your previous letter where you advised that the new obligation would “impose obligations on the central authorities of Member States to always consult with the Member State of nationality where a request for a criminal record extract is made”, we note that this would only apply in the case of an individual making a request for information on its own criminal record.

Is it the case in each of the UK jurisdictions that criminal record checks carried out on an individual prior to working with children are always requested by the individual concerned and would thus fall within the scope of Article 6(2a) of this Framework Decision? Is this also the case in relation to other Member States? If not, we fail to see how the main objective of the Sex Offences proposal has been met by this amendment.

Provided that you can provide promptly the assurance we seek regarding (i) the completeness of the criminal record held by the Member State of nationality; and (ii) the practical effect of Article 6(2a), we would hope to be in a position to reconsider the matter before the June JHA Council. In the meantime, the proposal is retained under scrutiny.

24 May 2007
Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 24 May. I am writing to address the issues raised by the Committee in this letter.

RECORDING OFFENCES

The Committee asks for confirmation that all Member States are willing and able to store, where they are the Member State of nationality, all criminal record information transmitted to them under this Framework Decision. I would like to reiterate that the operation of the Framework Decision depends on the recording of this information by the state of nationality, even where, for example, there is no dual criminality for the offence which has attracted a given conviction. As such, under Article 5, an obligation is established on the Member State of nationality to record all information transmitted under the Framework Decision. This obligation is not qualified by any reference to national law. Therefore all Member States, in agreeing to this Framework Decision, are accepting the obligation to store information on their nationals transmitted to them by other Member States. The issue of age of criminal responsibility has not been raised in the course of negotiations, but there is no provision in the Framework Decision that would allow Member States not to fulfil their obligation to record information on the basis of differing national laws on age of criminal responsibility.

GENERAL OBLIGATION TO CONSULT

On the subject of the general obligation to consult, it is the person to whom the criminal record certificate relates who applies for this certificate under Part V of the Police Act 1997. The employers (the registered bodies) are not the applicants for criminal record certificates or enhanced criminal record certificates. As such, a criminal records check against an EU national in the UK would lead to a request under Article 6(2a). The amendment is therefore helpful, although I would agree that it does not fully meet the objectives of the Sex Offences proposal. In other Member States, Article 6(2a) will apply where there is no provision under national law for an individual to make a request to the relevant authority.

The Framework Decision also provides for the exchange of those disqualifications that are entered on the criminal record and this will enhance the current exchange of information on sex offenders. As I outlined in my letter of 19 April, the future of the work on the Sex Offences proposal is not clear. However, it will be taken forward separately and should not impact on our support of the current Framework Decision on the exchange of criminal records information.

I hope the Committee will accept these assurances and will be able to reconsider the matter before the JHA Council in June.

4 June 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 4 June 2007 which was considered by Sub-Committee E at its meeting of 6 June 2007.

RECORDING OFFENCES

We note what you say as regards the Article 5 obligation on Member States to record all information transmitted to them by other Member States, regardless of whether it satisfies dual criminality and irrespective of whether the offence was committed by a person below the age of criminal responsibility in the Member State of nationality.

GENERAL OBLIGATION TO CONSULT

As regards the general obligation to consult, it seems to us that this should be effective within the UK to ensure that the criminal record of the Member State of nationality is consulted in cases where a vetting application is made by an EU citizen who is not a UK national. However, Article 6(2a) may not be adequate in other EU Member States where the system of vetting differs from that in the UK. We note that you do not consider that the provision fully meets the objectives of the Sex Offences proposal; it appears that no study has been undertaken to ascertain what the practical effect of this provision would be in each of the Member States. We trust that the Government will take every opportunity to encourage the continuation of negotiations on the Sex Offences proposal so as to ensure that the criminal record of the Member State of nationality is consulted as a matter of course in the context of domestic vetting procedures across the EU.
The Committee has decided to clear the proposal from scrutiny.

7 June 2007

INTELLECTUAL PROPERTY RIGHTS (8866/06)

Letter from Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

In his letter of 9 November 200618 Gerry Sutcliffe said that he would keep you up to date with developments in the above dossier. Progress has been slow, while the Council awaits the outcome of case C-440/05 on the question of Community competence in adopting criminal law measures.

However, on 25 April the European Parliament (EP) completed its first reading and adopted an amending resolution drafted by Nicola Zingaretti (PES, IT) by 374 votes in favour to 278 against with 17 abstentions. You may be interested in its amendments.

The full detail of the amendments is set out in the attached document (not printed). In summary they:

— define the scope of the instrument so as to exclude patents and other similar IP rights, national law not implementing community law and parallel imports;

— introduce definitions for terms such as “intentional infringements of an intellectual property right” and “infringements on a commercial scale.

— introduced the concept of a “serious” offence as an aggravating factor as regards penalties and provided for repeat offences to be taken into account.

— introduced obligations to ensure that abuse of the threat of criminal proceedings attracts a criminal sanction, that evidence or infringing items held by competent authorities are made available to right holders for the purposes of civil proceedings, to respect data protection as provided by the EU and to protect the rights of defendants.

On 4 June 2007 these amendments were discussed in the Substantive Criminal Law (SCL) Working Group. This was the first time in several months that the working group considered the draft Directive. In a short discussion, Member States gave first impressions of the amendments. Generally most Member States welcomed the exclusion of patent rights and the restriction of the scope to Community law only. The Government supported this position. However most Member States expressed some doubts about other amendments such as the suggested approach to defining the range of rights covered, commercial scale and intentional infringement and about the additional provision on joint investigation teams. The Government shares these concerns but it is still considering the detail of the amendments. Accordingly it is difficult to assess the prospects for a Council common position at this stage, although the nature of concerns suggests that a first reading agreement is unlikely.

We will continue to keep you informed of any further significant developments.

30 July 2007

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 30 July 2007 which was considered by Sub-Committee E at its meeting of 10 October 2007.

We are grateful to you for updating us as to progress on this dossier. We note your support of the European Parliament’s proposed amendment to limit the scope of the Directive. As regards the other European Parliament amendments, we look forward to hearing your final views in due course. As you know, we have in the past stressed the need for definitions of ambiguous terms such as “on a commercial scale”.

Aside from the matters you raise in your letter, there are a number of other outstanding issues regarding this proposal which we have raised in previous correspondence. The broader question of the adequacy of a First Pillar legal base aside, we await your final views on whether Article 95 TEC is appropriate, ie whether the present proposal is an internal market measure. We also look forward to hearing from you on the matter of the need for this Directive; what discussions have there been on this?

The proposal is retained under scrutiny.

16 October 2007

18 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184 p 305.
JUDICIAL TRAINING IN THE EU (11243/06)

Letter from Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

Thank you for your letter of 11 January 2007 to Baroness Ashton. I have now assumed responsibility for the Ministry of Justice’s EU work. May I first apologise for replying so belatedly to your letter. This is a result of a failure in my Department’s administrative processes but is of course completely unacceptable.

Your letter was in reply to Cathy Ashton’s letter of 30 November and raised further questions about the European Judicial Training Network (EJTN). You are disappointed that judges in England and Wales do not participate in language training or exchanges organised by the EJTN. Judges at High Court level and above have been offered the opportunity to participate in judicial exchanges but have not applied to do so to date. EJTN visits overseas require a commitment of two weeks and there would be serious practical problems if judges were released for this length of time during sitting times, particularly given the limit on the number of High Court Judges, and the increase in judicial workload. The Lord Chief Justice therefore took the decision to ask judges to complete such exchanges in their own time, during the summer vacation. This decision is likely to partially explain why no judges have chosen to take part in the programme to date. I know that the Lord Chief Justice would very much like the judiciary to participate in exchanges and active consideration is being given as to how best they can be encouraged to do so and resource implications can be handled. Language training would equally require a considerable time commitment if it were to be effective.

I am pleased to say that England and Wales play a full part in hosting inward visits of judges from the other Member States. The Supreme Court level exchanges are organised through the Network of Presidents of the Supreme Courts of the EU (of which the Lord Chief Justice is President). This year England and Wales will host four exchanges and following the three exchanges we hosted last year. Each placement is for two weeks, during which time every effort is made to enable the visiting judge to meet and participate in cases with Law Lords, Court of Appeal Judges and High Court Judges. Officials ensure that visiting judges’ individual interests are also catered for and will arrange additional meetings with, for example, members of the Law Commission, specialist tribunals and academics.

I understand that the situation is similar in Scotland and in Northern Ireland. Scotland received three European judges in both 2005 and 2006 as part of the EJTN exchange programme and will probably continue to do so each year. They are unlikely to send judges to other Member States. They did send two judges to France in 2005 but this was only because a visit arranged previously under another programme had had to be cancelled and so the judges went as part of the EJTN programme instead. Northern Ireland has the same time constraints and no judges have replied to expressions of interest to take part in exchanges. They have also not received any visiting judges on the EJTN programme.

The EJTN was set up independently of the EU institutions because of the principle of “pillar purity”. You ask for clarification of the Government’s understanding of this principle and ask why it was not referred to in discussions about the remit of the Fundamental Rights Agency. The Government is of the view that, within the framework established by the current EU treaties, matters concerning civil co-operation (first pillar) and criminal co-operation (third pillar) cannot be dealt with in the same document. There was much discussion of this in connection with the setting up of the Fundamental Rights Agency. The Agency has only a first pillar remit, in accordance with our view that it was not possible to give it a formal third pillar remit. The legal base of the Regulation that established the Agency is Article 308 of the Treaty establishing the European Community and therefore the Regulation clearly defines the Agency’s activities within the first pillar only.

31 October 2007

JURISDICTION OF THE COURT OF JUSTICE (11356/06)

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I am writing to update the Committee on the progress of negotiations on this proposal from the European Commission to amend the jurisdiction of the European Court of Justice (ECJ) in relation to Title IV (TEC).

This proposal was briefly discussed at Working Groups in March and May, although the debate was inconclusive and discussions did not move forward significantly. Discussions have focussed on the scope of the proposal, as some Member States have expressed concerns about the adaptation of the remit of the ECJ in all of Title IV.

19 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 306.
However, a number of Member States have reiterated that they will not discuss the proposal further until the emergency preliminary ruling procedure, envisaged in the Discussion Paper on the treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice (documents 13272/06 and 17013/06), has been agreed. We expect there to be further discussion on both proposals under the Portuguese Presidency.

In your letter dated 22 February you asked about progress on the preparation of an Impact Assessment on the Commission’s proposal. As discussions in the Working Groups so far have been brief and have focussed on the nature of the proposal we have not yet raised this issue but will seek to do so when discussions resume.

27 June 2007

Letter from the Chairman to Rt Hon Jacqui Smith MP, Secretary of State, Home Office

Thank you for your letter of 27 June which was considered by Sub-Committee E at its meeting on 11 July. The Committee notes that little progress appears to have been made on this dossier. We wait to see what priority the Portuguese Presidency gives to it.

You will recall that in my letter of 22 February we invited the Government to take an early opportunity to request the Commission to produce an Impact Assessment on its proposal. You say that discussions have been “brief and have focussed on the nature of the proposal”. However, it is a matter of concern that four months have elapsed since we last considered this matter and the Government have not requested the Commission to provide an Impact Assessment. Our concern is that if the discussions were to pick up speed then the Commission might not have time to do this important work. Even if there were no scheduled meeting of the Working Group, is it not possible for the Government to request the Commission to prepare an Impact Assessment?

Finally, you will recall that we also asked for an explanation as to how the Government, in addition to restricting references to the ECJ to the Court of Appeal, intended to secure the objective of “securing improvement to the working of the ECJ”. We await the Government’s reply.

The Committee decided to retain the Communication under scrutiny.

12 July 2007

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I am writing in response to your letter of 12 July (received on 16 July) on this proposal from the European Commission to amend the jurisdiction of the European Court of Justice (ECJ) in relation to Title IV (TEC).

In your letter you ask whether it is possible for the Government to request outside of Working Group discussions that the Commission prepares an Impact Assessment. The Government notes the Committee’s point that negotiations may pick up speed and not allow time for an Impact Assessment to be carried out and we will raise this issue with the Commission outside of the Working Group.

Joan Ryan noted in her letter to you of the 12 December the potential difficulties in accurately estimating the potential numbers of cases which could be involved, especially as new Community laws under Title IV will only come into effect over the next year.

Your letter also requests clarification of how the Government intends to secure “improvement to the working of the ECJ”. We will seek agreement on the emergency preliminary ruling procedure, envisaged in the Discussion Paper on the treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice (documents 13272/06 and 17013/06), before any adaptation to the remit of the ECJ in Title IV.

13 August 2007

Letter from the Chairman to Meg Hillier MP

Thank you for your letter of 13 August which was considered by Sub-Committee E at its meeting on 24 October. We are pleased to see that the Government are now prepared to take up the Committee’s point that an Impact Assessment should be carried out in the near future. You say that you will raise this with the Commission outside the Working Group. Why cannot it be raised within the Working Group so as to alert the Presidency and other Member States of the concerns raised by this Parliament? We doubt whether the question of the production of an Impact Assessment is solely a concern of the UK. We look forward to hearing from you as to what action you have taken.
Finally, we are grateful for your explanation of the Government’s ideas for securing the “improvement to the working of the ECJ” but are concerned to see how limited they are in scope. This is a matter to which we may return. In the meantime, does it seem likely that there will be agreement soon on the proposed emergency preliminary ruling procedure as envisaged in the Court’s Discussion Paper? How will these proposals be affected by the draft Reform Treaty?

The Committee decided to retain the proposal under scrutiny.

25 October 2007

MEDIATION IN CIVIL AND COMMERCIAL MATTERS (13852/04)

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Thank you for providing a copy of the text of the European Parliament’s Opinion and for setting out the reactions of the Government of other Member States to it. Your letter was considered by Sub-Committee E (Law and Institutions) at its meeting on 9 May.

The Committee was interested to see the new Article 1(A) (Scope) proposed by the Parliament and to learn the reactions of the Commission and other Member States. Limiting the proposal to genuine cross-border cases is a matter of mutual interest and concern for the Committee and the Government. We have been content to agree the approach of the Government so far and we would hope that any attempt by the Commission or other party to widen the scope of the Directive will be strenuously resisted.

As regards the other amendments proposed we are generally content with the position being taken by the Government. We agree that any attempts to extend the substantive scope of the proposal (for example, on such matters as certification on national mediation bodies and on confidentiality) should be resisted. As to confidentiality, the European Parliament’s proposal imposes an obligation of confidentiality even on the parties, and the qualification in clause (b) of “disclosure . . . necessary in order to implement or enforce the agreement resulting from the mediation” means on its face implementation or enforcement of the agreement between the parties. The proposal would thus preclude one party A (unless the other party B agreed otherwise) from giving evidence or information about a mediation, when such evidence might be important in proceedings between A and a third party C, to explain the mediation and its outcome—for example if C was A’s subcontractor from whom A was claiming damages in the amount payable under the mediation to B, or if C was A’s insurer, co-surety or partner from whom A was claiming an indemnity or for some other reason. Compare the numerous cases on confidentiality in the parallel arbitral context, an area so difficult that the Arbitration Act 1996 deliberately did not address it: see the Report of the Departmental Advisory Committee on Arbitration, chaired by Lord Justice Saville, dated February 1996, para 11. We also agree that any decision on the need and desirability of future Community legislation on prescription and limitation periods should be firmly resisted.

The Committee decided to retain the proposal under scrutiny.

10 May 2007

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 10 May. I thought you would find it helpful if I explained recent developments on the restriction of this proposal to cross-border cases and the issue of confidentiality which you raised in your letter.

As I explained in my letter of 25 April the majority of Member States either supported the European Parliament’s definition of cross-border or thought it was a good basis for further discussion. However, although there was no consensus as to how it might be done, a significant number were prepared to look at whether other issues could be included in the definition. As a result the Presidency has decided to offer the following alternative to the European Parliament’s option. Article 1a would be redrafted as:

1. This Directive shall apply to mediation processes having cross-border implications. A mediation process having cross-border implications shall be deemed to be one in which, on the date on which the parties themselves agree to use mediation or a mediation process between the parties is initiated otherwise as referred to in Article 2(a), first subparagraph, at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party.

2. For the purposes of paragraph 1, domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.
A new paragraph would be added to Article 5 as follows:

Notwithstanding Article 1a, this Article shall also apply to an agreement resulting from mediation between parties domiciled or habitually resident in the same Member State if there is an effective need to have such an agreement enforced in another Member State.

The following paragraph would also be added to Article 6:

Notwithstanding Article 1a, this Article shall also apply to judicial proceedings following a mediation between the parties which are brought before a court in a Member State other than that in which both or at least one of the parties is domiciled or habitually resident.

The Government believes the change to Article 1a(1) is sensible as it will include not only mediations where the parties have voluntarily agreed to participate but also those where the mediation has been ordered by a court or prescribed by the law of a Member State.

The Government is also able to accept the principle of the addition to Article 5. This will bring added value to parties who are domiciled or habitually resident in the same Member State by allowing them to have an agreement resulting from mediation rendered enforceable in a different Member State if any enforcement action would need to be taken there without the need to first go through the authorities in their Member State. In effect this will allow mutual recognition of national mediations with the added safeguard that the agreement will need to be compatible with the law where the request is made. There will need to be some drafting changes such as clarification of “an effective need” and it will be useful to have consistency in the way reference is made to the cross-border connecting factor (ie where at least one of the parties is in a different Member State etc) but the Government can accept this amendment in principle. It believes the amendment respects the cross-border restriction of Article 65 TEC.

The suggested new paragraph to Article 6 follows the concept of the second paragraph of the European Parliament’s definition and therefore is acceptable to us subject to the fact that a reference to “both” parties is unnecessary and potentially inaccurate if there are more than two parties to a mediation. It is unfortunate that there is not a similar provision in Article 7 as this would provide added value to the parties in terms of knowing that limitation periods would not expire in other Member States in any subsequent court proceedings. We will suggest such an addition but we are aware that some Member States oppose this. I shall keep you informed of developments.

I understand the concerns you have raised about the effects of imposing an obligation of confidentiality on the parties and we have opposed that. It appears that the Presidency has decided not to pursue this point. Of course in practice agreements to mediate already include confidentiality clauses which have a wider scope than just subsequent court proceedings. If the reference to the parties is reinstated later I believe your concerns could be resolved if it could be made clear that the obligation on the parties extended only to subsequent court proceedings in the same dispute as the mediation. Related disputes of the type you raised would not then fall within the scope. If necessary we shall pursue this line.

19 June 2007

Letter from the Chairman to Rt Hon Jack Straw MP, Justice Secretary, Ministry of Justice

Baroness Ashton’s letter of 19 June was considered by Sub-Committee E at its meeting on 4 July. We are grateful for being kept informed of developments and were most interested to see that progress is being made in restricting the scope of the proposal to mediations which truly have cross-border implications and also to make sure that the proposal does not trespass on the law relating to confidentiality or pre-empt any decisions on the need and desirability of future Community legislation on prescription and limitation periods.

We note the proposed changes to Article 1a relating to the scope of application of the Directive. We understand the purpose of this clause to be one to define the mediation process having cross-border implications not to deem something else to be such a mediation process. Removing the words “deemed to be” from the third line might suffice.

We agree that the new paragraph proposed to be added to Article 5 could bring some benefits. You suggest that the Directive might make clear what amounted to “an effective need”. We question whether the adjective “effective” is helpful. Indeed its inclusion may simply provoke an argument over “effectiveness” before the court where enforcement is being sought. If it is necessary to take enforcement action in another Member State should this suffice? If it is not necessary the parties will not bother to do it. We also agree with the Government that, subject to the restriction referring to “both” parties being removed, this could have some value. We are interested to see that you are proposing that a similar provision be added to Article 7 and thank you for your assurance to keep us informed of developments in this regard.
Finally, as regards our concerns relating to confidentiality, we agree that if the Presidency were to revive the idea of imposing an obligation of confidentiality on the parties our concerns could be resolved if it was made clear that the obligation on the parties extended only to subsequent court proceedings in the same dispute as the mediation. We are grateful that you have agreed to take the point forward in the negotiations and will be most interested to hear the outcome of discussions in the Council on this.

The Committee decided to retain the proposal under scrutiny.

5 June 2007

Letter from Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

Thank you for your letter of 5 July regarding the latest developments in the negotiations on this proposed Directive. For your information I enclose the latest version of the text from the Portuguese Presidency (not printed). This was discussed by the Civil Law Committee on 21 September.

You will see that the new text follows the Civil Law Committee’s views on the amendments of the European Parliament as outlined to you in Cathy Ashton’s letter of 25 April. I comment below on the main changes of substance.

**ARTICLE 1**

The phrase “except when certain such matters are excluded from mediation by the relevant applicable law” has been replaced by “except for such rights and obligations which are not at the parties’ disposal under the relevant applicable law”. The effect of this exclusion remains that parties will not be able to use mediation in disputes where, under the law of the Member State concerned, mediation is not available for that type of dispute.

In addition, when discussing the Presidency’s text on 21 September, the Civil Law Committee agreed to change the title of this Article to “Objective and scope” and amended the first sentence of paragraph 2 to say: “This Directive shall apply, in cross border disputes, to civil and commercial matters . . .”.

**ARTICLE 1a**

Cathy Ashton explained in her letter of 19 June that the German Presidency had suggested having separate cross-border provisions in Articles 5 and 6. She explained that we wanted a similar provision in Article 7. The Presidency’s proposal did not gain majority support. You will see that the Portuguese Presidency has reverted to a provision which is more like the European Parliament’s suggestion.

Paragraph 1 specifies more clearly the date on which the cross-border nature of the dispute should be determined. As before the test is that at least one of the parties should be domiciled or habitually resident in a Member State other than that of any other party on the relevant date. You will see that the Presidency agreed to delete the term “deemed to be” following the concerns you expressed in your letter of 5 July.

At its meeting on 21 September the Civil Law Committee agreed to change the title of the Article to “Cross-border disputes” and to amend the start of paragraph 1 to say: “For the purposes of this directive, a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident . . .”. The term “cross-border dispute” is to be used throughout the text where currently there are references to processes or matters “having cross-border implications”.

It was also agreed at the meeting on 21 September to add a sub-paragraph (d) to paragraph 1 which will say: “for the purposes of Article 3, an invitation is made to the parties”. Without this amendment Article 3 could not be applied because it deals with processes before a mediation begins—ie where a court invites parties to use or consider mediation.

Under paragraph 2, parties will also benefit from the safeguards of Articles 6 and 7 if their mediation fails and they pursue their dispute either through the courts or through arbitration in a Member State other than that where they were domiciled or habitually resident at the time of the mediation. The Government supports this proposal which your Committee will recall is in line with our original preferred approach. The main difference is the inclusion of arbitration which we believe is a useful amendment which will benefit parties. Article 7 will also be amended to include a reference to arbitration.

Although Cathy Ashton accepted in her letter of 19 June that including the provisions of Article 5 in the cross-border context would provide some added value, following the lack of support for this from other Member States the Government is content not to pursue this point. Parties will still be able to have an agreement
declared enforceable in the Member State where they are domiciled or habitually resident and pursue enforcement in another Member State through existing Community instruments. Including Articles 6 and 7 provides more added value because parties will initiate mediation safe in the knowledge that if, following an unsuccessful mediation, they subsequently need to pursue their dispute in another Member State, the mediator will still be subject to confidentiality provisions, and if the limitation period had expired during the mediation process, they will still have time to arbitrate or initiate court action.

The European Commission and the majority of Member States have supported the Presidency’s text, as amended on 21 September. The Government believes this is a very good outcome to the cross-border debate. It respects the limitations of Article 65 TEC and provides extra safeguards for parties who need to pursue judicial proceedings in another Member State. In that way it will help to promote greater use of mediation.

ARTICLE 5
Paragraph 1 has been re-phrased to clarify the meaning but the effect of the provision has not changed. As the paragraph relating to cross-border disputes which had been proposed by the German Presidency has not been retained we did not need to pursue your drafting comments.

ARTICLE 6
Apart from minor drafting changes this remains essentially the same provision as in the text agreed by the Council in December 2005. You will see we have been successful in resisting an extension of an obligation of confidentiality to the parties. We have also obtained agreement to include in paragraph 1(a) “of the Member State concerned” as your Committee suggested.

ARTICLE 7
As there was very little support for the European Parliament’s proposed text, the Presidency has retained the form of provision agreed by the Council in December 2005. The phrase “that are not compatible with this Article” has been deleted from paragraph 2 as your Committee requested. As mentioned above, a reference to arbitration is to be added to ensure consistency with Article 1a(2).

ARTICLE 7a
The provision requiring Member States to encourage legal practitioners to inform their clients about the possibility of mediation has been moved to recital 14a.

ARTICLE 7b
The European Parliament’s suggestion that the European Code of Conduct for Mediators should be published in the Official Journal was rejected on the basis that it was not a document that had been adopted by Member States or the College of Commissioners.

ARTICLE 8a
A general review of the application of this Directive has been accepted but the European Parliament’s call to include consideration of a future instrument for harmonisation of limitation and prescription periods has been rejected.

ARTICLE 9
The European Parliament’s suggestion that implementation of the Directive could be left to the parties to the mediation has been deleted as it was rejected by most Member States and the Commission.

The Presidency is aiming to reach agreement on this proposal at the Council on 8–9 November and the Government would like to be able to support it. Therefore I would be grateful to know if your Committee can agree to clear it from scrutiny.

5 October 2007
Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 5 October which was considered by Sub-Committee E at its meeting on 24 October. We were pleased to receive the revised text and are grateful for your full explanation of the changes it contains. The Committee decided to clear the proposal from scrutiny.

However, the Committee believes that careful consideration needs to be given to the potential impact of the Directive on arbitration. The Directive will entail statutory regulation of the effects of one consensual procedure (mediation) on another (arbitration). We are particularly concerned about the practical effect of Article 7 given the prevalence of arbitration clauses in commercial transactions where, not infrequently, there are back to back contracts.

25 October 2007

MEMORANDUM OF UNDERSTANDING BETWEEN THE EUROPEAN UNION AND THE COUNCIL OF EUROPE

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

I am writing to inform you that the Council of the European Union will shortly be asked to approve a Memorandum of Understanding between the European Union and the Council of Europe. The draft text is under discussion and will be forwarded to the Council of the European Union once agreed.

The Third Summit of the Council of Europe, held in Warsaw in May 2005, tasked the Council of Europe to draft the Memorandum, with the aim of enhancing co-operation and political dialogue. The UK believes the Memorandum will ensure greater complementarity between the two organisations. As the EU Presidency in 2005, the UK initiated the first stages of the Memorandum of Understanding discussion. The UK Delegation to the Parliamentary Assembly of the Council of Europe, led by Mr Tony Lloyd MP, will be aware of the Memorandum from the Parliamentary Assembly of Council of Europe input to the discussions.

I will forward a copy of the final text as soon as it is agreed.

3 May 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

I wrote to you on 3 May to inform you that the Council of the European Union would be asked to approve a Memorandum of Understanding between the European Union and the Council of Europe. In my letter I promised to forward on to you a copy of the final text.

Please find enclosed a copy of the signed Memorandum of Understanding.

18 June 2007

Annex A

MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN UNION

Preamble

The Council of Europe and the European Union,

1. Seeking to achieve greater unity between the states of Europe through respect for the shared values of pluralist democracy, the rule of law and human rights and fundamental freedoms as well as through pan-European co-operation, thus promoting democratic stability and security to which European societies and citizens aspire;

2. Recognising the unique contribution of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the European Court of Human Rights, as well as of other Council of Europe standards and instruments for the protection of the rights of individuals, and taking into account the importance of the Charter of Fundamental Rights of the European Union, as well as Article 6.2 of the European Union Treaty;
3. Recalling the Declaration and Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe in Warsaw in May 2005, and in particular the decision to create a new framework for enhanced co-operation and political dialogue, on the basis of the guidelines set out in Chapter IV of the Action Plan;

4. Bearing in mind the strategic vision contained in the report on the relations between the Council of Europe and the European Union prepared in his personal capacity and at the request of the Heads of State and Government by Jean-Claude Juncker, Prime Minister of Luxembourg;

5. Seeking to intensify co-operation and ensure co-ordination of action on issues of mutual interest;

6. Considering their comparative advantages and specific characteristics and building upon existing good relations;

7. Bearing in mind that the Heads of State and Government at the Third Summit of the Council of Europe in Warsaw decided that all activities of the Council of Europe must contribute to its fundamental objective, i.e. preserving and promoting human rights, democracy and the rule of law, and adopted an Action Plan which defines areas where the role of the Council of Europe as an effective mechanism for pan-European co-operation should be enhanced;

8. Deciding to establish a new framework for enhanced co-operation and political dialogue.

Have reached the following understanding:

**Purposes and Principles of Co-operation**

9. The Council of Europe and the European Union will develop their relationship in all areas of common interest, in particular the promotion and protection of pluralistic democracy, the respect for human rights and fundamental freedoms, the rule of law, political and legal co-operation, social cohesion and cultural interchange. In doing so, they will follow the guidelines adopted by the Third Summit in Warsaw which called for the building of a Europe without dividing lines.

10. The Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe.

11. On the basis of enhanced partnership and complementarity, the Council of Europe and the European Union will take all the necessary measures to promote their co-operation by exchanging views on their respective activities and by preparing and implementing common strategies and programmes for the priorities and areas of shared interest set out below.

12. The co-operation will take due account of the comparative advantages, the respective competences and expertise of the Council of Europe and the European Union—avoiding duplication and fostering synergy—search for added value and make better use of existing resources. The Council of Europe and the European Union will acknowledge each other’s experience and standard-setting work, as appropriate, in their respective activities.

13. They will extend their co-operation to all areas where it is likely to bring added value to their action.

**Shared Priorities and Focal Areas for Co-operation**

14. The Council of Europe and the European Union reaffirm their commitment to establish close co-operation based on their shared priorities and, where possible, to strengthen their relations in areas of common interest such as

- human rights and fundamental freedoms;
- rule of law, legal co-operation and addressing new challenges;
- democracy and good governance;
- democratic stability;
- intercultural dialogue and cultural diversity;
- education, youth and promotion of human contacts;
- social cohesion.

15. Other areas of shared priorities and common interest may be defined on the basis of mutual consultations.
Human rights and fundamental freedoms


17. The European Union regards the Council of Europe as the Europe-wide reference source for human rights. In this context, the relevant Council of Europe norms will be cited as a reference in European Union documents. The decisions and conclusions of its monitoring structures will be taken into account by the European Union institutions where relevant. The European Union will develop co-operation and consultations with the Commissioner for Human Rights with regard to human rights.

18. While preparing new initiatives in this field, the Council of Europe and the European Union institutions will draw on their respective expertise as appropriate through consultations.

19. In the field of human rights and fundamental freedoms, coherence of Community and European Union law with the relevant conventions of the Council of Europe will be ensured. This does not prevent Community and European Union law from providing more extensive protection.

20. Early accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms would contribute greatly to coherence in the field of human rights in Europe. The Council of Europe and the European Union will examine this further.

21. Co-operation between the Council of Europe and the European Union will include the protection of persons belonging to national minorities, the fight against discrimination, racism, xenophobia and intolerance, the fight against torture and ill-treatment, the fight against trafficking in human beings, the protection of the rights of the child, the promotion of human rights education and freedom of expression and information.

22. The European Union Agency for Fundamental Rights strengthens the European Union’s efforts to ensure respect for fundamental rights within the framework of the European Union and Community law. It respects the unity, validity and effectiveness of the instruments used by the Council of Europe to monitor the protection of human rights in its member states. The concrete co-operation between the Council of Europe and the Agency will be the subject of a bilateral co-operation agreement between the Council of Europe and the Community.

Rule of law, legal co-operation and addressing new challenges

23. The Council of Europe and the European Union will endeavour to establish common standards thus promoting a Europe without dividing lines, without prejudice to their autonomy of decision.

24. Bearing this in mind, legal co-operation should be further developed between the Council of Europe and the European Union with a view to ensuring coherence between Community and European Union law and the standards of Council of Europe conventions. This does not prevent Community and European Union law from adopting more far-reaching rules.

25. To this end and to the extent necessary the Council of Europe and the European Union will consult each other at an early stage in the process of elaborating standards.

26. The Council of Europe and the European Union will continue to strive to develop appropriate forms of co-operation in response to the challenges facing European society, and to enhance the security of individuals, particularly as regards combating terrorism, organised crime, corruption, money laundering and other modern challenges, including those arising from the development of new technologies.

Democracy and good governance

27. The Council of Europe and the European Union will draw on each other’s expertise and activities to promote and strengthen democracy and good governance, and to foster gender equality as well as greater participation of women in the decision-making process in public life.

28. They will make full use of the Venice Commission’s expertise. They will co-operate through the Forum for the Future of Democracy in order to promote democracy, citizen’s participation, democratic development and good governance. They will consider the application of new technologies in this context.
29. They will explore ways of working more closely in the field of regional and transfrontier co-operation. They will endeavour to promote local democracy in view of the contribution which it can make to the achievement of their shared objectives. They should make good use of the Council of Europe Congress of Local and Regional Authorities and the Committee of Regions of the European Union, as well as the Centre of Expertise on Local Government Reform.

Democratic stability

30. Bearing in mind the common aim of promoting and strengthening democratic stability in Europe, the Council of Europe and the European Union will increase their common efforts towards enhanced pan-European relations, including further co-operation in the countries participating in the European Union’s Neighbourhood Policy or the Enlargement process, with due regard to the specific competences of both institutions and in conformity with Council of Europe member states’ observance of their obligations and commitments.

31. This co-operation, in order to promote democracy and citizens’ participation, will also include states aspiring for membership of the Council of Europe.

32. To reinforce co-operation in the areas mentioned in this chapter, they will have regular exchanges of views and will develop, where appropriate, mutually supportive and reinforcing activities as well as joint programmes as set out in paragraph 52 below.

Intercultural dialogue and cultural diversity

33. The Council of Europe and the European Union will co-operate in order to develop intercultural dialogue and cultural diversity with a view to promoting respect for human rights and mutual understanding among cultures in Europe. This dialogue is an important element in the fight against all forms of discrimination, racism and xenophobia.

34. The European Union will examine its participation in the inter-institutional open platform of co-operation for intercultural dialogue initiated by the Council of Europe and UNESCO at the Faro Ministerial Conference.

35. The Council of Europe and the European Union will promote ideas and values fostering cultural diversity both among their respective member states as well as in relevant international fora. In this spirit, the Council of Europe will promote the ratification and implementation of the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions by its member states. The Council of Europe and the European Union will promote its ratification and implementation by their international partners.

Education, youth and the promotion of human contacts

36. The Council of Europe and the European Union will co-operate in building a knowledge-based society and a democratic culture in Europe, in particular through promoting democratic citizenship and human rights education. They will support the Bologna process aimed at establishing a higher education area by 2010, as well as education networks and student exchanges at all levels.

37. The Council of Europe and the European Union will strengthen their co-operation in the youth field by developing and taking part in programmes and campaigns to empower young people to participate actively in the democratic process and by facilitating youth exchange.

38. They will encourage exchanges of good practices concerning freedom of movement, in order to improve people-to-people contacts between Europeans throughout the continent.

Social Cohesion

39. The Council of Europe and the European Union will co-operate in the field of social cohesion on the basis of the Council of Europe Social Charter and the relevant European Union texts.

40. On the basis of their respective frameworks, they will support the efforts by member states to exchange good practices on social cohesion and solidarity—in particular in combating violence, poverty and exclusion and in protecting vulnerable groups—and to develop more efficient policies in this field.
Arrangements for Co-operation

41. The Council of Europe and the European Union, within their respective policy frameworks, will consult regularly and closely, both at political and technical levels, on matters within the shared priority areas described above.

42. They should further continue to develop joint activities and co-operate through specialised Council of Europe structures, processes and initiatives as well as appropriate institutions of the European Union.

43. Such co-operation should include:
- reinforced dialogue on policy issues to identify joint priorities and develop common strategies with a medium or long-term perspective;
- regular exchanges of information and development of common views and initiatives;
- further co-ordination of operational activities in priority areas,
- enhanced consultation between networks/bodies with activities in the same priority or focal areas;
- partnership with those states benefiting from activities, programmes and other common initiatives carried out in this framework;
- joint activities and events.

Meetings and mechanisms for strengthening co-operation

44. The Council of Europe and the European Union will pursue their regular “Quadripartite” meetings devoted to the most important aspects of co-operation and strategic issues. Ways of enhancing the parliamentary contribution to this process will be examined. In addition, ad hoc consultations at a high political level could be held on topical matters of common interest.

45. More frequent consultations aimed at the reinforcement of political dialogue between, on the one hand, the Presidency/Troika of the European Union and, on the other hand, the Chairmanship and Vice-Chairmanship of the Committee of Ministers and Secretary General of the Council of Europe may take place on an informal basis in the Ministers’ Deputies and at the level of the Political and Security Committee (PSC).

Inter-institutional co-operation

46. The European Parliament and the Parliamentary Assembly of the Council of Europe are invited to reinforce their co-operation in order to further strengthen the parliamentary dimension of interaction between the Council of Europe and the European Union, in accordance with the Agreement to be signed by the respective Presidents.

47. The Council of Europe’s Human Rights Commissioner, the Committee for the Prevention of Torture, the European Commission against Racism and Intolerance and the other specialised bodies of the Council of Europe, as well as the relevant European Union institutions are especially invited to reinforce their cooperation.

48. The Council of Europe and the European Union will further co-operate by using the opportunities provided by existing partial agreements and conferences of specialised ministers.

49. The Committee of the Regions of the European Union and the Congress of Local and Regional Authorities of the Council of Europe are invited to increase co-operation, building on their agreement of 13 April 2005.

50. The contribution of civil society to achieving the objectives shared by the Council of Europe and the European Union will also be encouraged.
Institutional presence

51. The Council of Europe and the European Union will consider how best to enhance and strengthen their presence in Brussels and Strasbourg respectively.

Joint Programmes

52. In line with the Joint Declaration on co-operation and partnership between the Council of Europe and the European Commission signed on 3 April 2001, ongoing co-operation will be reinforced in the framework of the joint programmes, which could include regional thematic programmes. The Council of Europe will continue to provide for consultations with Council of Europe beneficiary member countries. Consultations involving the European Commission, the Secretariat of the Council of Europe and as a general rule the Council of Europe member countries concerned will continue to be organised to discuss the priorities of cooperation. Member and observer states which are donors will be invited to take part in this co-operation and its evaluation.

Visibility of the Partnership

53. The Council of Europe and the European Union commit themselves to improving co-operation in the area of communication with the aim of increasing awareness and understanding of their shared values and of their partnership among both the general public and specialised audiences. They will consult on the calendar of their respective awareness-raising campaigns and will consider the possibilities of organising joint events.

54. The Council of Europe and the European Union will take all necessary measures to maximise the visibility of their joint action, especially of the joint programmes, for the citizens of their member states, with a special emphasis on the countries benefiting from this co-operation.

Follow-up

55. The Council of Europe and the European Union will regularly evaluate the implementation of the present Memorandum of Understanding. In the light of this evaluation, it will be decided by common agreement, not later than 2013, to revise, if necessary, the Memorandum of Understanding with a view to including new priorities for their co-operation.

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

We are grateful to the Government for providing a copy of the Memorandum of Understanding between the European Union and the Council of Europe. This was considered by Sub-Committee E at its meeting on 11 July.

Article 25 of the Memorandum provides that “the Council of Europe and the European Union will consult each other at an early stage in the process of elaborating standards.” In the context of the proposed Framework Decision on Procedural Rights, the Council of Europe was invited by the Council Presidency to provide its views on the compliance of the text with the ECHR. There are likely to be other cases where consultation of the Council of Europe on proposed EU legislation is desirable. Has thought been given, by the Government or in the Council, to establishing a structured mechanism for ensuring consultation of the Council of Europe where appropriate?

As you may know, this Committee takes a strong interest in EU protection of fundamental rights and in cooperation between the EC/EU and its agencies and the Council of Europe. It would therefore have been preferable for this Memorandum of Understanding to be submitted for scrutiny prior to its agreement. We take this opportunity to request that the cooperation agreement envisaged between the Council of Europe and the Community as regards the Fundamental Rights Agency be submitted for scrutiny.

12 July 2007

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 12 July about the Memorandum of Understanding between the European Union and the Council of Europe.

I welcome the commitment made under the Memorandum of Understanding (MoU) to ensure that the Council of Europe is involved where appropriate. We consider that a flexible approach is preferable to a more prescriptive text, but accept that it should not be so flexible as to allow the EU to avoid seeking Council of
Europe views on a rights issue where there is a clear need for coherence with the ECHR. We will therefore give further thought to whether a more structured system is desirable.

With regard to the Co-operation Agreement between the Community and the Council of Europe on the Fundamental Rights Agency, I understand Michael Wills, Minister of State for Justice, wrote to you on 31 July. He explained the progress made in the establishment of the Fundamental Rights Agency and the Presidency’s timetable with regard the formal adoption of the agreement.

16 August 2007

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 16 August which was considered by Sub-Committee E at its meeting of 10 October 2007.

We welcome your undertaking to give further thought to the possibility of a more structured mechanism to ensure consultation of the Council of Europe regarding proposed EU legislation where appropriate. We look forward to hearing from you on this matter in due course.

16 October 2007

MULTI-ANNUAL FRAMEWORK FOR THE EU AGENCY FOR FUNDAMENTAL RIGHTS
(13025/07)

Letter from the Chairman to David Hanson MP, Minister of State, Ministry of Justice

This proposal was considered by Sub-Committee E at its meeting of 24 October 2007.

We thank you for your Explanatory Memorandum, which we found most helpful in our consideration of the Fundamental Rights Agency’s proposed Multiannual Framework. We note your concerns in some of the thematic areas, in particular as regards the possible risk of duplication. You do not, however, suggest any change to the thematic areas proposed and we therefore assume that, while alive to potential problems, the Government are nonetheless content with the Multiannual Framework as a whole. We are pleased to see the reference in Article 3 of the proposed Decision to the need for appropriate coordination with other relevant bodies and on that basis are content with the proposed themes for the Agency.

We look forward to your comments on the specific aspects you have raised when the first evaluation of the Agency’s activities is carried out.

The Committee has decided to clear the Decision from scrutiny.

25 October 2007

PROCEDURAL RIGHTS DURING CRIMINAL PROCEEDINGS
(16874/06, 5119/07, 5872/07, 7349/07, 7602/07, 8200/07, 8545/07)

Letter from the Chairman to Rt Hon Lord Goldsmith, Attorney General, Office for Criminal Justice Reform, Home Office

This proposal was considered by Sub-Committee E at its meeting of 23 May 2007.

We note that agreement has now been reached to limit the application of the Framework Decision to EAW and, possibly, cross-border cases. As you know, we highlighted the uncertainty regarding the adequacy of the proposed legal base of the proposal in our report Procedureal Rights in Criminal Proceedings (1st Report of 2004–05, HL Paper 28). We note that there remain differences of opinion on this matter and we are aware of political sensitivities surrounding the question of competence in the present instance. We would regret the emergence of different standards as regards cross-border and domestic cases and the inequality and disparities which would likely result. We also share the Presidency’s concerns regarding the difficulty of agreeing a suitable definition of “cross-border”; we have encountered similar problems in relation to a number of EC civil law instruments. Finally, we question the case for limiting the proposal to EAW cases. There is an argument that some limitation is needed but in our view, the rights afforded by the Framework Decision should, at the very least, extend to all EU instruments which relate to proceedings falling within the scope of the Framework Decision (it should, for example, apply to the ESO proposal). Member States may also wish to consider whether to extend, within the EU framework, Article 6 type guarantees to the post-sentencing stage (eg transfer of prisoners Framework Decision and suspended sentences proposal). Such a move could bring genuine added value to the protection of fundamental rights within the EU by ensuring that all EU criminal
justice measures are subject to a regime which affords a minimum protection of fundamental rights. We would welcome your views.

You say that the European Parliament has not given a view on any recent draft of the text. Is it the Council’s intention to re-consult the European Parliament? We consider it important to respect the European Parliament’s role in the legislative process and given the substantial changes to the Framework Decision, we would expect their opinion to be sought. Article 39(1) provides for a minimum three-month deadline for the Parliament to issue its opinion. Could the Council reach political agreement at the June JHA Council in the absence of an up-to-date opinion from the European Parliament?

It is unfortunate that recent changes to the draft have, in the view of the Council of Europe, rendered the proposal less compliant with the ECHR and the Strasbourg jurisprudence. We would hope that once a final scope has been agreed Member States will be better able to focus efforts on ensuring consistency with the ECHR, in cooperation with the Council of Europe.

We have decided to retain the proposal under scrutiny. We are, however, content to clear old versions of the documents held under scrutiny, namely documents 16874/06, 5119/07, 5872/07 and 7602/07, as they have now been superseded.

24 May 2007

Letter from Rt Hon Lord Goldsmith to the Chairman

I was grateful for your letter of 24 May.

This dossier was considered by the JHA Council on 13 June. The Presidency sought agreement on a Framework Decision reverting to a text that included within its scope cases wholly within the domestic jurisdiction. The proposal tabled remained unacceptable to several Member States, including the UK, and we regret that the compromise package discussed at the April JHA Council, comprising EU law covering defined cross border cases, along with a Resolution on wide-ranging practical measures which might bring real benefits, was not pursued. The Council concluded that consensus could not be reached on the Framework Decision.

The Presidency did not allow any formal discussion of the precise scope of a binding measure limited to cross-border cases. For my own part I can see the force of your argument that such a measure might cover the proposed European Supervision Order as well as the European Arrest Warrant. We envisage that it might cover any EU mutual recognition instrument which provides for arrest in another Member State. However such bilateral contacts as we have had suggest that other partners would have had doubts about extending its scope to the post-sentencing stage, which I understand.

The issue of consultation with the European Parliament is really for the Council Secretariat, but given the conclusion of the Council would appear unnecessary. We do not expect any further work on this dossier just now, but we will keep you informed if there is any movement.

I agree with you that the issue of consistency with the ECHR is vital. This issue lies at the root of objections to any binding EU measure which would cover wholly domestic cases. As the Council of Europe said, even if the provisions in the FD aimed at ensuring consistency with ECHR standards were improved, it would be “at the price of a considerably increased complexity of the overall fundamental rights framework applicable in the area concerned.” We are committed to ensuring respect for human rights but believe that the EU needs to ask what actually works, and that the answer lies in measures like tape-recording of police interviews and independent investigation of complaints, rather than in adding a layer of EU law on top of national law and ECHR law.

27 June 2007

Letter from the Chairman to Rt Hon Baroness Scotland, Attorney General, Office for Criminal Justice Reform, Home Office

We are grateful to Lord Goldsmith for his letter of 27 June 2007 which was considered by Sub-Committee E at its meeting of 11 July 2007. The Council’s failure to reach a consensus on this proposal at the June JHA Council is somewhat surprising in light of the apparent compromise reached at the April JHA. However, as we indicated in our Report Breaking the deadlock: what future for EU procedural rights? (2nd Report of 2006–07, HL Paper 20), while we strongly support the agreement of a Framework Decision which is truly worthwhile, it is doubtful whether the current draft meets that criterion.
We note that the European Council Conclusions called on Member States to continue working on procedural rights in criminal proceedings. Is it the intention of the Council to work to agree the Resolution on practical measures in light of the apparent stalemate on the Framework Decision? In our Report, we expressed our support for immediate measures to improve defendants’ rights across the EU although, as we stressed, we do not consider them to be an adequate long-term alternative to legislation.

Finally, has the Portuguese Presidency indicated any interest in trying to take forward this proposal?

The proposal is retained under scrutiny.

12 July 2007

Letter from the Rt Hon Baroness Scotland to the Chairman

Thank you for your letter of 12 July.

The Portuguese Presidency have not mentioned this dossier in their programme so it is difficult to predict what its future will be. As you say, the European Council conclusions called for work on the topic—not necessarily the Framework Decision—to continue as soon as possible, so the JHA Council will no doubt return to the issue of deciding on the best way to enhance procedural rights for defendants in criminal proceedings. However, there are no current plans to continue work on either the Framework Decision or on the Resolution on practical measures. HM Government’s view remains that practical action, rather than legislation, would be the best way to meet the European Council’s mandate and that binding law would be likely to do more harm than good, except in relation to cross-border issues.

I will keep you informed of any further developments, as and when they arise.

30 July 2007

Letter from the Chairman to Rt Hon Baroness Scotland

Thank you for your letter of 30 July 2007 which was considered by Sub-Committee E at its meeting of 10 October 2007.

We are grateful for your update on the current position of this dossier and look forward to hearing from you as regards any developments in due course.

The proposal is retained under scrutiny.

16 October 2007

PROHIBITIONS ARISING FROM CONVICTIONS FOR SEXUAL OFFENCES AGAINST CHILDREN (14207/04, 11434/06 13524/06)

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 19 April 200720 which was considered by Sub-Committee E at its meeting of 9 May 2007.

We are pleased to see that consideration is now being given to the suggestion that a general obligation to consult the criminal records of the Member State of nationality when the national criminal record of a non-national are consulted should be included in the Framework Decision on exchange of criminal record information. Our scrutiny of that proposal will consider the detail of the amendment proposed once the draft provision has been made available to the Committee.

We look forward to hearing what impact this new approach is likely to have on the remainder of the Sex Offences proposal. In the meantime, the proposal is retained under scrutiny.

10 May 2007

20 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 311.
PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW (6297/07)

Letter from the Chairman to Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Ministry of Justice

Thank you for your letter of 28 March 2007 which was considered by Sub-Committee E at its meeting on 9 May. We are grateful for the further information you have provided and in particular to learn that a substantial number of other Member States share the concerns expressed by the Government. We note that the negotiation is continuing, though focusing only on Articles 2(A) and 3. You say that this will “at least allow for a robust examination of the need to restrict the scope to Community law” and also for assessment whether administrative sanctions might be provided as an alternative to criminal ones. We will be interested to learn the outcome of these discussions.

The Committee decided to retain the proposal under scrutiny.

10 May 2007

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

Thank you for your letter of 10 May 2007 regarding the above proposed Directive. We note that you share the concerns of the Government.

Although negotiations are in the early stages, discussions on the formulation of the offences are promising, in particular as regards limiting the scope to Community rules only. We will inform you of the outcome of these discussions.

8 June 2007

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 8 June which has been considered by Sub-Committee E. We are interested to note that progress appears to be being made in limiting the scope of the Directive to Community environmental rules. This would, in our view, be an important and necessary restriction on any Community instrument of this nature. Thank you for your assurance that you will keep us informed of the progress of negotiations.

The Committee decided to retain the proposal under scrutiny.

26 June 2007

ROME I: LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (5203/06)

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

I am writing in response to your letter of 28 March 2007 and to report the outcome of the discussion on Rome I at the Justice and Home Affairs Committee on 19 April. I note also that Rome I remains under scrutiny by the Committee.

Justice and Home Affairs (JHA) Council

The Presidency took a package of provisions to JHA on 19 April which achieved political agreement, subject to a reservation by the Commission on the removal of references to European Contract Law in Article 3. I attach (not printed), for information, a copy of the Presidency’s compromise package dated 30 March and the accompanying explanatory note (not printed) of the same date.

The package, in the main, contained the less controversial articles which many Member States were already able to agree on. From the UK’s perspective there was no real major areas of difficulty. The main areas of concern for the UK, namely Articles 5, 5a, 8(3) and 13, did not form part of the Presidency package.

The articles included in the package covered:

— Article 1 (Scope): In broad terms, this was the same as the equivalent provision in the Rome Convention. UK had, however, argued that there should be a limit to the scope to ensure that it properly conformed to the requirements in Article 65 of the EC Treaty that measures adopted under

21 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 323.
22 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 330.
this were “necessary for the proper functioning of the internal market”.

The UK’s position was not supported, however, by the majority of Member States who were in favour of universal application and preferred to retain consistency with Rome II. As this point had been raised several times and had not gained support, it was felt that there was little merit in arguing it further as the same debate had been made and lost in the Rome II negotiations.

--- Article 3 (Freedom of Choice): This is an important provision as it deals with party autonomy. The UK has done reasonably well in the negotiations here in that the new elements remain broadly similar to those in the Convention. Some changes in wording were necessary to deal with language differences and a recital will be included to clarify that an exclusive choice of court agreement would be taken into account in assessing whether a choice of law had also been demonstrated.

--- Article 4 (the Default Rules): This provision is now clearer than the equivalent Convention provision and contains specific choice of law rules and specific rules of displacement. In broad terms, we believe this is acceptable. The specific choice of law rules are, in general, more detailed than those in the Convention. Article 4(1)(j1), which relates to financial transactions, remains to be agreed and has been excluded from the President’s package. Overall, our objective to achieve the necessary flexibility in the provision has generally been achieved.

--- Article 7 (Agency): The deletion of this provision is welcome, as it had been a “red line” issue for the UK. Its deletion had the unanimous agreement of all Member States. The position on agency will now be the same as it is under the Convention.

**WORKING GROUP NEGOTIATIONS—RECENT DEVELOPMENTS**

Two Working Group meetings took place in April. Our main concerns continue to centre on Article 4a (contracts of carriage), Article 5 (consumer contracts), Article 5a (insurance contracts), Article 8(3) which deals with the application of the mandatory rules of a third country and Article 13 (voluntary assignment and contractual subrogation).

I draw your attention to the most recent developments on these provisions.

--- Article 4a (Contracts of carriage): The Working Group discussed this provision for the first time on 25 April. There was general agreement that choice of law agreements should continue to be possible in relation to the carriage of goods but accordingly the proposed default rule would likely have a limited impact in practice. On carriage of passengers, however, the debate indicated positions that have the potential to have more serious consequences.

I reported in my last letter that the UK position on carriage of passengers would be to support in principle those options (Options 1 and 3) which preserved party autonomy, and oppose those which did not (Options 2 and 4). We also argued the point that no case for any significant departure from the position under the 1980 Rome Convention had been made. Indeed, the Commission in its original proposal had not proposed such a departure from the Convention. The general preference, however, was for Option 4 (no party autonomy and the following default rule: law of passengers’ habitual residence provided either place of passengers departure or destination is situated there and if that is not the case then the law of the carriers country of habitual residence). There was also some interest in a suggestion from one Member State for limited party autonomy which would allow carriers to select the law either of the passenger’s place of departure or his place of arrival. On both these points, the UK has stated that it is likely to prove difficult for operators to have to contend with potentially many different applicable laws operating in the context of a single trip. Member States appear, however, only to be concerned with the simplest form of international travel, ie from one country to another, and not with situations such as cruises or long haul flights where the vehicle in question stops in several different countries with passengers embarking and disembarking at different points along the way.

Officials in the Department of Transport are currently assessing the potential implications of this with commercial operators in the various sectors (air, sea, road and rail) to ascertain the extent to which there are “red-line” issues at stake for us here.

--- Article 5 (Consumer contracts): This article was of major concern to the UK and one where we have consistently continued to argue for a more balanced provision that took account of the needs of business as well as the rights of consumers. The article was discussed further at the Working Group on 30 April where it appears that there may be some additional support for a somewhat better balanced provision. This reflects an increasing awareness by some Member States that there could be more serious effects on business than was first envisaged, particularly for small and medium enterprises and e-commerce. In light of this we will continue to seek improvements to Article 5 from the business perspective.
— **Article 5a (Insurance contracts):** This is a complex area, which the UK has recently concluded a consultation exercise on. Although respondents to this consultation accepted that the current rules on insurance were complex, the overall view by the majority of respondents was that they did not support the kind of comprehensive solutions being proposed in Rome I. These were seen as being too inflexible and limiting of party autonomy, particularly in the area which currently falls outside the scope of the Community Directives on this subject. In light of this, the UK will explore the possibility of retaining the status quo in Rome I.

— **Article 8(3) (mandatory rules of a third country):** I previously reported that UK were engaged in seeking compromise solutions on this difficult area. In view of its sensitivity, my officials remain in close contact with City stakeholders. There are welcome indications that all Member States are open, in principle, to compromise and not insisting on Article 8(3) in the terms in which it was originally proposed by the Commission. Negotiations on this matter continue.

— **Article 13 (voluntary assignment and contractual subrogation):** The UK continues to argue that the rule proposed in Article 13(3) to regulate the priority of successive assignments is problematic and their priority issues should be determined by the law governing the debt. There is increasing support for this position within the Working Group but at the same time there is still significant support for the Commission’s proposal. It remains unclear how this issue will be resolved within the Council.

12 June 2007

**Letter from the Chairman to Rt Hon Jack Straw MP, Justice Secretary, Ministry of Justice**

The Committee is grateful for Baroness Ashton’s letter of 12 June setting out the outcome of the discussions of Rome I at the Justice and Home Affairs Council on 19 April and identifying the points of difficulty which remain in this negotiation.

We note that there are a number of matters which remain of difficulty to the UK and that Article 8(3) (Mandatory rules of a third country) may not be the only “red line” issue. It is, for example, disappointing that the majority of Member States appear to be moving in the direction of Option 4 for Article 4(a) (Contracts of carriage). On the other hand it is encouraging to see that other Member States are now beginning to appreciate the potential adverse effects on business of the rule proposed for Article 5 (Consumer contracts).

The Committee decided to retain the proposal under scrutiny. We would be grateful if you would keep us informed of developments.

19 July 2007

**ROME II: LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS (16231/04, 6622/06)**

**Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman**

Thank you for your letter of 8 March 2007.23 I am writing to you now to request that you clear the proposed Regulation (“Rome II”) from Scrutiny ahead of its final agreement by the Council of Ministers which is expected to take place on 28 June. The European Parliament is then expected to give its agreement in July and formal adoption will follow thereafter. On this basis, Rome II will be applicable in the courts of all Member States from the beginning of 2009. I attach a copy of the latest text on Rome II which, although still subject to legal linguistic verification, reflects the final political agreement on this proposal.

The Conciliation Committee met on 15 May to resolve matters of disagreement between the Council and the European Parliament on Rome II. My general conclusion is that the Regulation remains in most aspects as it was in the Council Common Position reached last September. The final outcome is inevitably a compromise with areas of difficulty for all Member States. Nevertheless, I believe that it is in overall terms an acceptable outcome for the UK and one that owes much to our positive engagement with all three European institutions on all aspects of this dossier. I am grateful to the Committee for your valuable input on Rome II which has also contributed to the present outcome.

The following Articles of particular note were considered in the conciliation process and I have set out below how each has been concluded in the text below:

23 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 333.
ARTICLE 1

— Violations of privacy and rights relating to personality: The Council, in its Common position paper, had agreed that there should be an exclusion from scope for claims based on violations of privacy and rights relating to personality, including defamation. The European Parliament disagreed. Negotiations in conciliation concluded that exclusion from scope should be maintained but that a study on this issue should be undertaken as part of the review clause. This would take account of the law applicable to violations of privacy and rights relating to personality, in addition to the rules relating to freedom of the press and freedom of expression in the media.

— Evidence and procedure: The European Parliament had proposed an amendment to reflect their proposal relating to damages. The Council disagreed with this proposal and Conciliation concluded that Rome II should not apply to evidence and procedure but that, as part of the review clause, a study should be undertaken on the practical operation of the 1971 Hague Convention on the law applicable to road traffic accidents.

ARTICLE 6—UNFAIR COMPETITION AND ACTS Restricting FREE Competition

The Commission was rightly concerned that the rule in Article 6(3) would create problems for claimants bringing private anti-trust actions and that these problems might deter these claimants from doing so. This was because the rule in the Council’s Common Position would, in cases where damage caused by a cartel was suffered in several countries, result in the application of several different national laws, thereby greatly complicating the resulting litigation. We shared these concerns and accordingly welcome the new rule in Article 6(3)(b) which has emerged from the Conciliation Committee. This is designed to minimise this difficulty. It envisages that in many cases a claimant will be able to choose as the single applicable law the law of the country where the case is being heard.

ARTICLE 26—PUBLIC Policy of the FORUM

Although there was agreement on the rule on public policy, it was felt necessary to include a recital to clarify its effect in relation to certain types of damages. The recital concerns the application of a provision which would have the effect of causing non-compensatory, exemplary or punitive damages of an excessive nature to be awarded. Depending on the circumstances of the case, this could be considered as contrary to the public policy of the Member State where the case is being determined.

ARTICLE 27—RELATIONSHIP with other COMMUNITY Law

The European Parliament originally proposed that Article 27 should also apply to provisions designed to contribute to the proper functioning of the internal market in so far as they could not be applied in conjunction with the law designated by the rules of private international law. This amendment did not receive the support of the majority of Member States in the Council. A compromise, in a recital, was finally agreed in the Conciliation Committee which should alleviate any concerns in the electronic commercial sector. The recital is designed to ensure that the application of provisions of the applicable law designated by the rules of Rome II should not restrict the free circulation of goods and services as regulated by Community instruments such as the E-commerce Directive.

June 2007

Letter from the Chairman to Rt Hon Jack Straw MP, Justice Secretary, Ministry of Justice

Baroness Ashton’s letter of June 2007 has been considered by Sub-Committee E. We are grateful for the Government providing the latest text of this proposal and for setting out the major changes resulting from the conciliation process.

We note that you were not able to persuade others of the benefits of your alternative text for Article 6 (unfair competition) but, as you indicate in your letter, the new text is an improvement.

We are pleased to note the violations of privacy and rules relating to personality (including defamation) have been excluded from the scope of the Regulation. However, we also note that there is to be a study and review of this exclusion. As you know choice of law rules relating to defamation have been the subject of concern for the Committee and therefore we would be grateful if you would keep us informed of the progress of this study and review which because of the deadline (December 2008) we assume will commence in the near future.
We note recital 33 and the intention to review the position regarding road traffic accidents. Suppose there is an accident (of any sort, not necessarily road traffic) in State A causing personal injury to a resident of State B due to the fault of a resident of another State other than B. Under Article 4 the law of State A would apply (since Article 4(2) does not apply and Article 4(3) is an all or nothing provision). Under Article 15(c), the assessment of damage is thus governed by the law of State A. Recital 33 directs attention to the injured person’s actual financial loss, which will be incurred in State B. But it makes no reference to the level of general damages (eg £x for loss of an arm) and it is very arguable under the present wording that they would have to be measured according to the law of State A, which may well give a quite different measure (lower or higher) than the measure applicable in State B where the injured person lives. The point is one which could merit attention at a future date.

The Committee decided to clear the proposal from scrutiny. This has been a long, and sometimes difficult, exercise and we are grateful for the assistance you and your officials have given us these past three and a half years.

5 July 2007

SANCTIONS AGAINST EMPLOYERS OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS (9871/07)

Letter from the Chairman to Rt Hon Jacqui Smith MP, Secretary of State, Home Office

This proposal was examined by Sub-Committee E its meeting of 4 July 2007. When considering this proposal the Committee had the benefit of seeing a submission from the Commission for Racial Equality and the points below reflect some of their concerns. I enclose a copy.

While we agree that the general purpose of the proposed Directive is to be supported, we think that this proposal needs to be looked at quite critically and we intend to seek the views of other interested parties. A number of aspects seem to relate to distortions of competition within the internal market rather than to immigration concerns. The question of subsidiarity will also require close examination: what evidence is there that disparities in Member States’ legislation is giving rise to secondary movements?

**Opt In**

We note that the Government are currently consulting as to whether the UK should opt in to this proposal. When do you expect to reach a decision?

**Competence to Introduce Criminal Offence**

We share the Government’s concerns regarding the introduction of a criminal offence by the proposed Directive. We would be grateful if you would keep us informed of discussions in the Council as to whether Articles 10 and 11 will be retained.

**Private Employers**

We would welcome your views on the scope of the proposed Directive. While in principle we are in favour of as comprehensive a regime as possible, we are concerned that a general obligation to verify an employee’s immigration status represents a significant obligation on private individuals.

Given that employment may be a criminal offence, substantial efforts would have to be made to ensure that all individuals are aware of their responsibilities here. Although the Directive talks in terms of verifying the residence permit of a third-country national, in practice anyone employing any person would have to request identity and residence papers, as it is unlikely to be obvious whether an employee is a third-country national or an EU citizen. Consideration would also have to be given to how this obligation will be implemented: are the public expected to be aware of which States are EU Member States and which are not?
“Manifestly Incorrect” Residence Permits

Given that criminal sanctions may be envisaged, we are concerned that the phrase “manifestly incorrect” in Article 4(3) is insufficiently clear. The Directive should be precise as to the extent of the employer’s responsibility to identify false papers.

Notification of Competent Authorities

The obligation on legal persons and persons acting in the course of business activities to notify “competent authorities” of the commencement and termination of employment of a third-country national appears to be an onerous one. We would be content for the provision to remain provided that clarification is obtained that existing systems within the UK suffice; we are not persuaded that a new registration system for employers would be desirable. We would be grateful for your views on this in light of working group discussions.

Financial Sanctions

Do you support the provision in Article 6(2)(b) which would render the employer liable for the costs of return of the illegally employed person? We are not immediately persuaded that such a liability would be appropriate in all cases. There is clearly an issue of proportionality and no doubt you are consulting with employers’ representatives, including those representing small firms.

We look forward to seeing the results of your consultation as to the level of civil penalties.

Back Payments

We note the legal issues raised by providing illegal immigrants with protection under UK law. We are not clear as to why the introduction of a right to payment would lead to a significant administrative burden on Government departments and would be grateful for clarification of your concerns.

We would also welcome your views as to the viability of these provisions. Do you consider that payment following the return of the illegal staying person would be straightforward and/or feasible? What is the reason for the exception in Article 7(4)?

Sub-contracting

The joint and several liability of main and intermediate contractors for back payments and financial sanctions is a cause for concern. It seems wholly reasonable to impose on intermediate or main contractors the employer obligations in Article 4 in relation to subcontractor employees. Furthermore, it seems to us that this would lead to a multiplication of effort: one could envisage a chain of three or four contractors, each of which would be required to verify residence papers of all of their own employees as well as the employees of contractors further down the chain. What discussion has there been of this provision in the working group?

Complaints

We support the protection provided by Article 14 to third parties who facilitate complaints from illegally staying third country nationals.

Inspections

We note that inspections are currently carried out in the UK. Are the Government therefore content with the terms of Article 15?

The Committee decided to retain the proposal under scrutiny and we would be grateful if you would keep us up to date as regards discussions in the working group.

5 July 2007

The Commission for Racial Equality (CRE) has since the introduction of the Asylum and Immigration Act in 1996 been raising its concerns about domestic legislation providing sanctions against employers of illegally staying workers in Great Britain.

The CRE supports the government and the EU in taking action against employers of illegally staying workers in several respects:

— persons working illegally are often working under exploitative conditions such as below minimum wage pay, without any entitlements such as holiday and sick; and
— some of the persons working illegally have been trafficked to work in the UK which is a breach of their fundamental human rights.

The CRE believes that strong sanctions are required in such circumstances as a deterrent to employers who employ such workers.

However in another important respect the CRE has concerns that the proposed EU directive and the checks that are required to verify a person’s right to work in the EU (similarly to UK laws) could be applied in a discriminatory manner or place unreasonable burdens on employers making them less likely to employ persons believed to be not from the EU.

We are not providing a detailed analysis of all the articles of the proposed directive but instead a summary of our main points which are set out below.

Criminal Sanctions where Intentional and Accompanied by Aggravating Factors

The CRE supports all the provisions in article 10 which provides for criminal offences where committed intentionally and accompanied by aggravating factors. Under the newly introduced provisions of the Immigration Nationality and Asylum Act 2006, a new criminal offence has been created where a person intentionally employs a worker staying illegally however it does not include offences for where there are other aggravating factors.

Article 10(1)(c) concerns workers that have been subject to particularly exploitative working conditions vis-à-vis other legally employed workers. In our view such treatment is in principle discriminatory and should be subject to criminal sanctions.

Article 10(1)(d) concerns knowledge that the worker has been trafficked. The UK government committed to trying to do more to prevent trafficking in the Home Office Action Plan released earlier this year and its signing of the European Convention Against Trafficking. The adoption of article 10(1)(d) would be consistent with article 19 of the European Convention which concerns introducing criminal sanctions for the use of services of someone known to be trafficked.

Facilitation of Complaints

The CRE supports the provisions under article 14 to facilitate complaints and protect those persons making complaints. The CRE made similar proposals in its submissions to the House of Commons Committee Stage on the Immigration Asylum and Nationality Bill 2005.

There are currently no safeguards on the reporting of crime as if a crime is reported, any immigration offences of the reporter/victim/witness may be considered. It is possible that this has lead to a lower reporting of crime. Secondly article 14(3) on providing limited residence permits to those who have been trafficked and cooperate against employers who provide some protection for the victims of trafficking, encourage them to co-operate with officials and be consistent with the UK government’s obligations under article 14 of the European Convention Against Trafficking.

24 CRE submission House of Commons Committee Stage, commencing 18 October 2005, see paragraphs 11–14.
Discriminatory Effect of the Directive

Recital 23 of the proposed Directive states that the Directive must be applied with respect to the principle of non-discrimination. In our view there is a real danger that provisions could be applied by employers in a discriminatory manner if checks are not applied to all persons applying for jobs.

The CRE points out that under article 3(2) of the Race Directive it states that the Directive is without prejudice to “... any treatment which arises from the legal status of third country nationals ...”. This means that there is no requirement to check all persons applying for employment to avoid breaching the Race Directive. In this sense the Race Directive and this proposed Directive provides less protection than under UK law which under the Race Relations Act prohibits discrimination in employment based on nationality.

That is why the government produced its Statutory Code of Practice on avoiding unlawful discrimination in recruitment practice while seeking to prevent illegal working. The CRE provided submissions to the government on the current version of Code and will be responding to the consultation response on the new draft Code of Practice which is due by 7 August 2007.

The CRE believes that if the proposed Directive is adopted the European Commission should produce guidance and promote it to employers across the EU which is in similar terms to the Code of Practice produced by the Home Office. In addition if the implementation of the Directive in the UK requires additional action or checks then we believe that the Home Office Code of Practice may need to be amended to reflect further factors employers should take into account in avoiding discrimination.

As a result in our view it may be premature for the Home Office to finalise the new Code of Practice until the government knows what legislative changes are or may be required by adopting the Directive.

Unnecessary and Unclear Obligations on Employers

The CRE believes that several of the current draft provisions are either unnecessary or unclear and that as a result may place a greater burden on employers and make them less likely to employ persons they think are third country nationals. This may as a result have a further discriminatory effect.

Two examples are:

— article 4(2) which requires employers to notify authorities of the start and termination of employment of third country nationals within one week. In our view this is an unnecessary and unworkable burden. The CRE believes this should be deleted; and
— article 4(3) which states that employers will have fulfilled their obligation to check the right to work unless the document presented is “manifestly incorrect”. In our view this is vague and undefined so that employers may not know whether they have acted unlawfully. Further clarity is required.

Letter from Liam Byrne MP, Minister of State, Home Office to the Chairman

I am writing to notify you of the Home Office’s decision on the draft EU Directive for Sanctions against Employers of Illegally Staying Third Country Nationals.

Following collective discussion in Government, we have decided that the UK should not opt-in to the directive at this stage, but instead will work closely with other Member States during negotiations to attempt to address the Directive’s major difficulties. If successful, we would then wish to seek approval to opt-in after adoption.

In addition, I have attached a response to your letter of 5 July, which was not sent earlier due to administrative error.

9 October 2007

Annex A

Letter from Liam Byrne MP to the Chairman

DOCUMENT 9871/07: SANCTIONS AGAINST EMPLOYERS OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS

Thank you for your letter of 5 July, with enclosure from the Commission for Racial Equality (CRE), on the above proposal. You have asked further questions regarding the proposed directive, which I will address in turn. I have noted the comments made by the CRE. 

25 2000/43/EC.
26 The Home Office is currently consulting on a new draft Code of Practice which was sent out for consultation in May 2007.
SECONDARY MOVEMENTS

The Directive suggests that the possibility of illegal work is a significant pull factor to the EU, but that combined action between Member States to reduce illegal working could potentially reduce that pull factor. This is why the Directive recommends that the respective Member States should act collectively.

A recent example of the current situation where different legislative regimes may have created secondary movement might be the accumulation of illegal migrants around Calais. This can be traced back to the days of the Sangatte camp and beyond. The individuals concerned wished to enter the United Kingdom and claim asylum or live in the UK clandestinely because they believed this would give them access to our labour market. They clearly did not wish to claim asylum in France or remain in that country. This may have reflected a perception amongst the migrants and people smugglers that different EU Member States adopted different approaches to the employment of irregular migrants, but equally other factors may have determined their choice of destination.

A uniform approach to this issue might conceivably make it more difficult for these individuals to work their way across transit countries in continental Europe to reach the channel, however, it should also be acknowledged that some migrants do not work their way across Europe and travel directly from a non-EEA country.

The Directive also contends that if the EU is to act to reduce illegal immigration, then this is one area where Member States must act together and would gain considerable advantage by doing so. It suggests that if illegal working is reduced across the whole EU, then the attraction of illegal immigration to the whole EU would also be reduced.

OPT-IN

I intend to write to the Foreign Secretary and members of the EP Committee shortly and have requested a response by the end of August. This is intended to allow time for discussion by the revised deadline of 13 September for opting-in. I shall notify both the European Union Committee and the European Scrutiny Committee once a decision has been reached.

COMPETENCE TO INTRODUCE THE CRIMINAL OFFENCE

I shall undertake to write to the Committees regarding the outcome of discussions on Articles 10 and 11. We will not be taking this issue forward until we have the judgment from the ECJ, which is expected in the autumn.

PRIVATE EMPLOYERS

There is an assumption in the Directive that there is always an employer and that working individuals are always employees. While the majority of working individuals in the UK are employees (engaged on a contract of employment) this is not always the case. Some working individuals, who are not self-employed, are engaged on a contract for the personal performance of a service, which may be the case for many agency workers. In these circumstances, they do not have an employer, as they are not engaged on a contract of employment. In UK legislative terminology, they are “workers”, rather than “employees”. As workers, whoever pays them is usually legally responsible for their employment rights for example payment of at least the National Minimum Wage, working time entitlements such as paid annual leave. This demonstrates that the “one size fits all approach” in the draft Directive does not necessarily sit well with established systems in individual Member States and cuts across fundamental principles in domestic law.

The Government would not wish to impose a legal obligation on individuals to check the immigration status of self-employed people from whom they are purchasing services because we believe this would create an impractical and unenforceable burden on the public. However, the current law on the prevention of illegal migrant working in the UK applies equally wherever there is a contract of employment, irrespective of whether the employer is an organisation or a private individual.
“Manifestly Incorrect” Residence Permits

We agree that the Directive should be precise as to the extent of the employer’s responsibility to identify false papers. We would suggest that a definition may be determined by Members States’ current policy. For example, we do not expect employers to act as Immigration Officers, however, we do expect that they are able to detect forgeries that are “reasonably apparent”. By this we mean:

“The falsity would be considered to be “reasonably apparent” if an individual who is untrained in the identification of false documents, examining it carefully, but briefly and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine. Equally, where an employee or potential employee presents a document, which may be genuine, if it is reasonably apparent that the person presenting the document is not the rightful owner of the document, then you may be subject to criminal sanctions, even if the document itself is genuine.”

Notification of Competent Authorities

In light of working group discussions, there have been reservations voiced about the requirements of the Directive; under the current draft of the proposals, employers would be required to notify a “competent authority” within one week of the starting and leaving dates of employment for non-EEA nationals.

The working group agrees that this provision would require a new layer of administration, which would impose a significant burden on both employers and on the Government. We are currently working across government to arrive at an estimated cost in order to assess whether the additional costs are merited by the benefits of notification. However, if this requirement for notification can be incorporated within existing, or proposed systems, then it may provide a more viable and less costly option.

Financial Sanctions

We would not seek to impose the actual cost of returning the illegally employed person on an individual basis, as this would have the potential for inconsistencies, especially if there were difficulties with removing particular individuals. However, we are currently consulting publicly on the maximum level of civil penalty that may be imposed upon employers for each illegal migrant worker found under the arrangements provided in the Immigration, Asylum and Nationality Act 2006. As part of this consultation, we have posed the question whether the maximum penalty should be directly linked to the average unit cost of removing an immigration offender or failed asylum seeker from the United Kingdom, which in 2003–04 was around £10,000.27 We will form a view on this issue in the light of the response to the consultation.

Back Payments

The introduction of a right to payments for illegal immigrants raises a number of concerns as it may provide an additional pull-factor for illegal migration and could place illegal migrants in a more favourable position than UK nationals where, for example, an employer becomes insolvent. We will therefore have to consider carefully the scope to address our concerns in deciding whether to opt-in to the Directive or not.

Sub-contracting

To date there has been only limited discussion of the employer obligations in relation to sub-contracted employees in working groups: we anticipate further discussions will take place shortly, including in the Social Questions Working Group. To date several Member States have stated that this is a problematic area and one which might be difficult to resolve. Concern about several aspects of the Directive which relate to employment matters—including joint and several liability and back payments—will be a key part of consideration of any decision to opt-in.

Inspections

We estimate that there are approximately 1.4million PAYE registered businesses in the UK and this would involve a minimum annual inspection target of 140,000 visits. If the definition of employer was to be expanded to include the self-employed (as potentially provided for in this Directive), this could increase the total substantially as there are 4.3million people registered as self-employed in the UK (although some of these may

also be concurrently employed). Whilst we accept that the Directive should address enforcement, we are not convinced that it should set a target of 10% of companies subject to illegal working inspections, as there may be other more resource-efficient ways of enforcing the Directive.

I have noted the Committee’s comments on all of these matters. We are currently considering whether or not to opt-in to the Directive and the Committee will be notified as soon as that decision has been made.

Letter from the Chairman to Liam Byrne MP

Thank you for your letter of 9 October which was considered by Sub-Committee E at its meeting of 23 October 2007.

OPT IN

We note that the Government is keen to participate in this Directive if a suitable final draft can be negotiated. We would be grateful if you could keep us up to date with progress in the Council working group, and in particular on the resolution of any matters which have an important bearing on whether the UK will seek to opt in once the Directive has been adopted.

SECONDARY MOVEMENTS

You suggest that there may be some evidence that different standards in regulation of the employment of illegal immigrants leads to increased secondary movements. Has a study been undertaken? A recent paper by the Centre for European Policy Studies (Carrera & Guild An EU Framework on Sanctions against Employers of Irregular Immigrants, No 140 August 2007) questions the link between disparate employer sanctions and immigrants’ movements.

LEGAL BASE

We look forward to receiving the Government’s views on Article 10 and 11 now that the judgment in Case C-440/05 Ship Source Pollution has been handed down.

On a separate matter, are the Government content with the proposed legal base? Given that Directive appears to be aimed at employment and working conditions, is a Title IV immigration legal base appropriate?

PRIVATE EMPLOYERS

We note what you say as regards the scope of the Directive. Clearly this is a matter which requires some attention in the working group and we look forward to hearing from you on this matter in due course.

“MANIFESTLY INCORRECT” RESIDENCE PERMITS

We welcome your views on the need for clarity as to the extent of the employer’s responsibility to identify false papers and look forward to hearing what specific amendments to the proposed Directive have been agreed by the working group.

NOTIFICATION OF COMPETENT AUTHORITIES

We would be grateful if you would provide us with details of the estimated cost of the notification requirement once you have collated the necessary information. We would also be interested in hearing what possibilities exist for integrating this requirement into existing systems.
FINANCIAL SANCTIONS

We look forward to hearing the results of the consultation exercise in due course.

BACK PAYMENTS

Clearly the provisions on back payments require careful consideration. Do you suggest that the guarantee of back payments would encourage more immigrants to enter the EU illegally? Even if a pull-factor to the EU could be demonstrated, presumably there would be no specific pull-factor in relation to the UK.

We too would be concerned if new provisions were to lead to UK and EU nationals and third-country nationals legally resident in the EU being put in a less advantageous position as regards back payments than illegally-resident third-country nationals. Do the Government consider that this is a matter which should be dealt with in the present proposal? If so, what amendments might be proposed to ensure uniform treatment of employees here, whether legally resident or not?

You do not expand on your concerns that back payments would lead to a significant administrative burden on Government departments and we would also be grateful to hear your explanation for the inclusion of Article 7(4) in the Directive.

SUB-CONTRACTING

We look forward to hearing from you in due course regarding discussions in the working group on this provision. What is the position of the Government? Do the Government have a “red-line” here and if so, what is it?

INSPECTIONS

We note your comments regarding inspections and would be interested to hear what you have in mind as possible “resource-efficient” alternatives.

HUMAN RIGHTS

Finally, what assessment has been made of the human rights implications of the present proposal? We note that the Commission deals briefly with fundamental rights at pages 3–4 of its Explanatory Memorandum and we would be grateful for your views on this matter.

The proposal is retained under scrutiny.

25 October 2007

SECOND PROGRESS REPORT ON THE COMMON FRAME OF REFERENCE (12269/07)

Letter from the Chairman to Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice

The Commission’s Second Annual Progress Report was considered by Sub-Committee E at its meeting on 10 October. Like the Government, we welcome publication of this Report and the importance the Commission attaches to consulting both the Council and the European Parliament. The Report provides a useful description of the work which has been undertaken since the first Report and in particular of how that work has assisted the Commission in its Review of the Consumer Acquis. As you may be aware, the Commission’s Green Paper on the Review of the Consumer Acquis is currently held under scrutiny by Sub-Committee G awaiting sight of the Government’s response to the Commission.

The description in the Progress Report of the workshops held indicates that consultation by the academic draftsmen and Commission with stakeholder experts has, outside the relatively narrow area of the existing consumer acquis, been very limited. Only two workshops on isolated topics of general contract law (pre-contractual obligations, implied terms, stipulations in favour of third parties and authority of agents), are mentioned, together with one each on the whole of the law of insurance and on e-commerce. General contract law is a huge area, and it is one requiring the closest attention because of its practical significance for all contractual topics. The two particular topics selected of insurance and e-commerce are themselves large and notorious for their difficulties. We observe that the particular stakeholder comments recorded in the Progress Report as having been made on general contract law topics and on the topics of insurance and e-commerce
themselves often indicate a lack of consensus and difficulty in arriving at common principles. This underlines the need for full consideration before steps are taken in these fields.

The Second Annual Progress Report refers to some views expressed in support of a wide CFR project, to the intention of the academic researchers to present a research draft to the Commission by the end of 2007 and to the need for the Commission “to select very carefully those parts of this draft that correspond to the common legislative objectives”. The Progress Report describes everything, including the shortly to be presented academic project, under the generic title of CFR, but it seems clear that the academic project covers much more extensive fields of contract law than have, as yet at least, been exposed to any stakeholder or other outside consultation or input. We are therefore pleased to see that the Commission will be consulting with interested parties before setting out “its approach in the form of a White Paper”.

In the meantime, the Commission, via the Second Progress Report, seeks reactions from the Council and the European Parliament. You say that it is not clear how the Presidency will deal with this. We thank you for your assurance that you will keep us informed of developments and would be grateful if you would write to the Committee when you have details as to when and how this matter is to be considered in the Council. It would also be helpful if at that time you would set out the Government’s position on any further development of the CFR.

The Committee decided to clear the Second Report from scrutiny.

16 October 2007

SIMPLIFIED BUSINESS ENVIRONMENT FOR COMPANIES IN THE AREAS OF COMPANY LAW, ACCOUNTING AND AUDITING (11771/07)

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

The Commission’s Communication was examined by Sub-Committee E at its meeting on 10 October. We were most interested to see the ideas being canvassed by the Commission and were most pleased to note that the Government have welcomed the publication of the Communication and the Commission’s commitment to take early action to reduce burdens created by existing EC company law, accounting and audit legislation.

We note that the Government are themselves carrying out a consultation on the Commission’s proposals and we would be grateful, when that exercise is concluded, if you could write setting out, in brief, its result and the detailed approach which the Government intend to take in the forthcoming discussions of the Commission’s Communication in the Council.

You say that not all Member States agree with the need for simplification and even those who do support it do not necessarily agree with the approach set out in the Communication. We would find it useful if, when responding to the request made above, you could, without breaching the confidentiality of the negotiations in the Council, set out the reasons why some Member States oppose simplification or have particular objections to the Commission’s proposals. We note that before issuing its Communication the Commission consulted its Advisory Group on Corporate Governance and Company Law. We therefore wonder to what extent opposition to simplification comes from governments and not from industry and their professional advisers.

The Committee decided to clear the proposal from scrutiny.

16 October 2007

STATISTICAL ADVISORY BOARD (14240/06)

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

I am responding to the comments made by Sub Committee E when they considered this document on 13 December 2006.

Since then, the draft Commission proposal has been subject to negotiation in the Council Working Party on Statistics. The Portuguese Presidency has now sought to agree a compromise text between the Council, Commission and European Parliament. I am therefore now in a position to update you on this proposal.

As noted in Explanatory Memorandum 14240/06, the UK and other Member States raised concerns about the Commission’s proposal of October 2006. These concerns related to the tasks, scope and membership of the Board, where Member States were keen to ensure the Board did not have a remit over, or the ability to comment on, individual National Statistical Institutes.
On tasks and scope, the current October 2007 text sets out that the Board shall ‘prepare an annual report to the European Parliament and the Council on implementation of the European Statistics Code of Practice as it relates to Eurostat’, and that any commentary on the European Statistical System is at the aggregate level, defined in the proposal as ‘the European Statistical System as a whole’. As such, the Report will not include specific commentary or recommendations relating to the individual National Statistical Institutes within the European Statistical System, key points on which Member States were concerned.

On membership, the current text now states that the Council shall select the Chair of the Board. In making this selection the Council will consult the Commission, and the European Parliament shall approve the nomination. This text therefore addresses the concerns with the original Commission proposal, which stated that the Chair of the Board would be appointed by the Commission. In comparison with the original 2006 proposal, the current text also specifies that the Chair shall not be a member of the Commission.

The compromise text was sent to COREPER on Thursday 11 October to agree a Common Council position—the UK maintained its parliamentary scrutiny reserve and abstained from voting—though as a result of the changes outlined above, we do support the text as it stands. The European Parliament has not proposed any amendments in its first reading, so the Council is therefore set to formally endorse the proposal in November. As a result, we seek to clear this proposal from parliamentary scrutiny.

I attach a copy of the compromise text (not printed)—should there be any further amendments I will update the Committee accordingly.

31 October 2007

SUCCESSION AND WILLS (7027/05)

Letter from the Chairman to Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice

You will recall that in March 2005 the Commission published a Green Paper seeking views from interested parties on what action might be taken at Union level in relation to the law governing wills and succession, including intestate succession. The Green Paper acknowledged that it would be “inconceivable” to harmonise substantive rules relating to wills and succession and accordingly restricted itself to posing questions relating to private international law (jurisdiction, applicable law and recognition) issues. The Green Paper also considered ways of removing certain administrative and practical obstacles facing individuals wishing to have their status as “heir” recognised abroad. The idea of establishing a “European Certificate of Inheritance” was mooted.

We understand that the Commission is hoping to bring forward legislation on wills and succession, in the second half of 2008. We also understand that you and your officials are considering what the UK’s reaction to such a proposal might be. The Government made clear their position in their Response to the Green Paper, a copy of which was helpfully provided to the Committee by your predecessor. Discussions are taking place with interested parties within the UK and to aid that process the Government have retained Professor Jonathan Harris, University of Birmingham.

Scrutiny History

As you will be aware from earlier correspondence the Committee has expressed a number of concerns relating to the possibility of EU action in this field. Prompted by an invitation from the Law Society and the Society of Trust and Estate Practitioners to revisit the Green Paper, on 10 October the Committee met Professor Harris and your official, Mr Paul Hughes. This provided the opportunity for the Committee to examine, with their assistance, the question of the harmonisation of private international law rules relating to wills and succession and, in particular, to seek to identify those areas where action at Union level would be helpful and how UK citizens might secure worthwhile practical benefit from such action.

Two Preliminary Points

Two preliminary points, we believe, deserve emphasis. The first is that, although the Commission may not have made out the most convincing case for action at Union level, there are an increasing number of people holding assets in more than one Member State. The growth in the number of UK citizens having second homes, working in or retiring in another Member State points to a need for simplification and greater legal certainty in this area. Second, there are substantial differences in the substantive rules and procedures relating to succession, testate and intestate, across the Union. While the extent of these differences, the Commission’s
Green Paper accepts, rules out harmonisation of substantive succession law, there is, we believe, scope for common conflicts rules. Accordingly we very much welcome and support, in principle, the present exercise being undertaken by the Government. It is important to ensure that an EU instrument, suitably qualified or flexible in its provisions, would provide real practical benefits to UK citizens.

**Need for Realism**

Our reconsideration of the Green Paper reinforces our view that the Commission’s plans are highly ambitious. We recall that attempts in the past to produce international regimes for wills and succession matters have not been very successful. As we said in our earlier letter (13 June 2005) the absence of a positive response from States to the Hague Convention on the international administration of the States and on the law applicable to succession show the difficulty of finding common workable rules in this area. Why should the Commission be any more successful?

With Professor Harris’s assistance, we have sought to identify the priorities for the UK in its approach to any Union initiative on wills and succession. We start from the position that the UK should be positive in the search for a Union measure which could bring benefits to its citizens and the citizens of other Member States. But we agree with Professor Harris that this may mean that it will be necessary to curb some of the Commission’s ambitions.

**Red Lines**

It is at this time fashionable to talk in terms of “red lines”. We agree that the first, if not the most important, red line in the present context relates to the issue of so-called clawback. The Union measure should not in any way call into question the validity of otherwise valid inter vivos dispositions. Second, it would be necessary to limit the scope of application to “succession” issues. As Professor Harris indicated, the easier way to do this might be to make clear to what matters any harmonisation or common rules did not apply, in particular to exclude matters such as administration of estates and questions relating to the validity and operation of testamentary trusts, matrimonial property law, and interests terminating on death such as joint tenancies.

**Universal Application**

A separate issue of scope is the extent to which any EU instrument should apply to non-Member States; for example, to determine the governing law where the testator died habitually resident in the UK but having a house in Florida. We discussed the pros and cons with Professor Harris. A key consideration, in our view, would be whether the Community had competence to prescribe a rule having extra-Union consequences. It will not surprise you that the Committee takes a strict view of the scope of Article 65 TEC and we note that the new Article 69d proposed by the Reform Treaty refers to “civil matters having cross-border implications”. The instrument would therefore not apply on the facts posited above to property outside the Union.

**Scission v Unitary Approach**

We believe the focus of the Commission’s work should be on identifying an appropriate choice of law rule. We acknowledge that there are differing views as to what that rule might be and strong competition between a scission based approach and a unitary approach. Where, for example, an individual dies domiciled and resident outside the UK and leaves immovable property in the UK, we can understand that many here might baulk at applying the law of habitual residence of the deceased rather than the law of the relevant law district of the UK as the lex situs. But in the converse case, namely where an individual is domiciled and resident in the UK leaving immovable property abroad, there would seem advantage in a UK court being able to apply domestic law in such circumstances, thus giving effect to the testator’s intentions (a principle which we think should be respected wherever possible). For this reason we believe that a unitary scheme, based on the law of the domicile/habitual residence of the deceased, is potentially an attractive one and we would encourage the Government to give it further consideration. If, however, that were to prove impossible, we would request that further consideration be given to the possibility of parties being free to choose the applicable law, subject to there being an appropriate connection between the testator and that law.
**Mutual Recognition**

We note that in the Government’s Response to the Green Paper, whilst supporting in principle mutual recognition, it was considered that differences in legal systems across Member States in matters of succession give rise to significant obstacles to the creation of mutual recognition and enforcement measures in this area. We would urge the Government to give favourable consideration to mutual recognition of personal representatives, an issue we believe of ever increasing importance in practice.

**Registration of Wills**

We were interested to learn the results of consultation on this aspect of the Green Paper. We would not oppose a scheme for the lifetime registering of wills in Member States provided that registration was not mandatory.

**European Certificate of Inheritance**

Finally, we believe that further consideration should be given to the question of the European Certificate of Inheritance (ECI). We do not see any objection to this being applied to heirs (in the civil law sense) but see a danger if it were in some way to be sought to be extended to deal with executors (in the common law sense). We doubt the wisdom of trying to bridge the two systems. We do not see why an ECI should not be created by an EU instrument. But as the law of wills and successions is one where a “one size fits all” solution would almost certainly be destined to fail, we suggest that any instrument at European level should provide the framework for the creation and recognition of ECIs into which Member States could opt if their domestic laws fitted. Jurisdictions with similar rules on “heirship” should not be denied a system of mutual recognition.

We hope the above comments will be of assistance to the Government and would be grateful if you would keep us informed of developments and in any event let us know how matters stand by the end of March 2008.

25 October 2007

**SUSPENDED SENTENCES AND ALTERNATIVE SANCTIONS (5325/07)**

**Letter from the Chairman to Rt Hon David Hanson MP, Minister of State, Ministry of Justice**

Further to Baroness Scotland’s letter of 19 April this matter was considered by Sub-Committee E at its meeting of 9 May 2007.

**Scope**

We note what you say as regards the benefits of limiting the scope of this instrument to more serious offenders. However, we are yet to be convinced that the difficulties in transferring less serious sentences would outweigh any benefits. You suggest that the least serious offences will require the most bureaucracy: on what basis have you reached this view? It seems that more information as to current practice and numbers affected would be useful here.

Is it your position that the Framework Decision should be limited to cases which in the UK would cover release on licence only?

**Disparity of Alternative Sanctions—Impact Assessment**

We are pleased to hear that steps have been taken to gather relevant data. We look forward to hearing from you on the result of that exercise; we assume that the Presidency will prepare a summary which can be made available to national parliaments.

**Transfer of Judgment**

You say that it is unclear whether any Member States would impose a suspended sentence without conditions. We note the position in England and Wales although you are less clear about the Scottish position; is there a power to impose a suspended sentence in Scotland or Northern Ireland? Would release on licence also require the imposition of at least one condition under each of the UK jurisdictions?
In any case, only suspended sentences and alternative sanctions containing the conditions listed in Article 5 will in the first instance be capable of transfer. The Article 5 list does not appear to include judgments where the only condition imposed is to refrain from criminal activity. Is there a need to amend the Article 5 list?

You refer to the voluntary nature of this Framework Decision. However, in our view it is not clear how the mechanism would operate. Recital 10 does not make any reference to the voluntary nature of the process. Article 5 simply states that a judgment “may be transferred”: is this decision entirely within the discretion of the sentencing State (subject to the right of the executing State to refuse to recognise and supervise under Article 9)? Is the consent of the convicted person required?

FUNDAMENTAL RIGHTS

As you may be aware, in the context of our inquiry into the European Supervision Order, witnesses have raised the question of the need for hearings at the various stages in the procedure. We find it alarming that you suggest that in some Member States no hearing would be required prior to revocation of a suspension of sentence as this appears to us to raise potentially significant Article 6 ECHR concerns. Where the Framework Decision fails to provide for hearings, are Member States expected to “fill the gaps” when implementing the Framework Decision to ensure compliance with their obligations under the ECHR (we note the terms of Recital 5 and Article 3)?

GROUNDS FOR REFUSAL TO RECOGNISE JUDGMENT

You say that without a provision allowing Member States to refuse to recognise and supervise on grounds of age, the instrument would be unworkable. On what grounds do you reach this conclusion?

It is not clear why you consider that the voluntary nature of the process has a bearing on whether grounds for refusal to recognise should be discretionary or mandatory. The European Supervision Order, for example, appears also to be “voluntary” in the sense in which you use the term here, but Member States are obliged to refuse to execute where execution would infringe *ne bis in idem* (Article 10 of the ESO proposal).

COMPETENCE FOR SUBSEQUENT DECISIONS

We are grateful for the clarification as to the need for reservation of competence in certain cases. In light of what you say, we agree that inclusion of conditional sentencing measures in the scope of the present Framework Decision may raise some difficulties. We trust that the Government will explore the problems raised and seek a solution. While we consider that competence should not be reserved wherever possible, it may on balance be more appropriate to include conditional sentence arrangements on the basis of reserved competence than to exclude them altogether.

REVOCAITION OF SUSPENSION

We note that there is a lack of clarity regarding the operation of Article 15. It appears that, as currently drafted, the sentencing State could order the imposition of a sentence or the revocation of a suspension without issuing an enforcement order or arrest warrant to return the convicted person to its territory. The effect in the executing State of the sentencing State’s order in such cases requires some attention should the possibility of reserving competence remain.

The Framework Decision is retained under scrutiny.

10 May 2007

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

Thank you for your letter of 10 May to David Hanson, which has been passed to me for reply as I am responsible for European and International matters within the Ministry of Justice. The Committee asked for further information following its continuing consideration of this draft Framework Decision. I will deal with each of the points in turn.
**SCOPE OF THE INSTRUMENT**

You ask why we consider that the least serious sentences would require the most bureaucracy. This links back to the possible division of competence between the sentencing and implementing states. For suspended custodial sentences and offenders subject to release on licence the decisions to be taken in the event of breach are straightforward: the suspended sentence will be triggered or the offender will be returned to custody. The instrument provides for the presumption that these sentences will transfer entirely to the implementing state not least because the headline sentence has been determined.

However, the outcome of a breach of an alternative sanction or conditional sentence does not have such certain outcomes and it is these cases where the sentencing state is likely to want to retain responsibility for subsequent decisions. This would mean, therefore, that, in addition to the original consideration and possible modification of the sanctions for transfer, information would have to continue to go back and forth between states on whether or not the behaviour of the offender amounted to a breach under the relevant scheme in the sentencing state. When punishing a breach a court in the sentencing state might decide to modify the original sentence. This could, in turn, lead to further consideration by the implementing state as to what might be possible and/or need modification for the sentence to continue to be supervised in the implementing state. This is complex and burdensome and many alternative sanctions are likely to have expired before any breach action could be determined and/or further sanctions were agreed and enforced.

We take the position that the instrument should focus on the transfer of offenders released on licence and those subject to suspended custodial sentences where the benefits of public protection are greatest. The discussions on scope are continuing in the Working Group and one or two Member States have raised the issue of possible thresholds or proportionality requirements.

**DISPARITY OF ALTERNATIVE SANCTIONS**

As requested, I attach a copy of COPEN 49 (not printed) which summarises the responses by Member States to questions about what sanctions are available.

**TRANSFER OF JUDGEMENT**

There is no provision under Scottish legislation for a suspended custodial sentence and we have indicated, together with some other Member States, that UK jurisdictions would find it difficult or impossible to supervise and enforce a measure that does not exist in our domestic legislation. If a Member State imposed a suspended sentence without conditions there might still be value in recognising and transferring, and therefore recording, such a sentence so that where, for example, the offender committed a further offence in the implementing State the court dealing with that offence would also have the power to deal with the original suspended sentence. However, this issue is still subject to discussion in the Working Group.

All offenders who are subject to release on licence from prison will, by definition, have at least one licence condition. It is likely that offenders transferred to the UK on release on licence would be made subject to any standard conditions applicable here such as being well behaved, keeping in touch with the supervising officer as instructed, residing at an approved address and notifying the supervising officer of any change, undertaking only work approved by the supervising officer and notifying him of any proposed change, and a prohibition on travelling abroad unless permitted by the supervising officer (in exceptional circumstances).

Article 5 is still the subject of considerable debate in the Working Group. Some delegations have suggested that there should be a condition that the sentenced person should not commit a new offence during the period of his probation. We are not sure of the value of including this in any list to be contained in Article 5 given that if the offender does commit another offence that will be dealt with in its own right.

I am sorry if we previously gave you the wrong reference to show the voluntary nature of the Framework Decision. Article 1, as currently drafted, states that “... this Framework Decision lays down rules according to which the Member State of the person’s ordinary and lawful residence, in cases where the sentenced person has returned or wants to return to that State, recognises judgments issued in another Member State ...”.
FUNDAMENTAL RIGHTS

You are concerned that some Member States may take certain decisions without having a court hearing. Some Member States have said that certain decisions flow automatically from the original sentencing decision of the court and that they do not want the Framework Decision to impose additional processes that would not be applied to their domestic offenders. But we would expect all Member States to have in place procedures which are compliant with Article 6, ECHR.

GROUNDS FOR REFUSAL TO RECOGNISE JUDGMENT

You ask why we consider that it is necessary to have a provision allowing Member States to refuse to recognise and supervise on the grounds of age. We would not consider amending our legislation to provide for the transfer, supervision and enforcement of sentences imposed on children below the age of criminality that applies in the UK. There would be no means of providing for such a group and the same would apply in other countries.

You suggest that the European Supervision Order is of a similar voluntary nature to this Framework Decision. This is not the case. As noted above, the Framework Decision applies to offenders who have returned or wish to return to the State where they are ordinarily and lawfully resident. Under the European Supervision Order the issuing State is obliged to inform the suspect/defendant of any obligations to be imposed together with the consequence of non-compliance but does not require an undertaking from the suspect/defendant to comply before issuing the Order.

COMPETENCE FOR SUBSEQUENT DECISIONS

You suggest that, rather than excluding conditional sentences from scope, it might be better to include them but with the sentencing state reserving competence for subsequent decisions. This would be the only way to make transfer of these disposals possible but we are not convinced this level of complexity for the lowest level of sanctions is a practical or desirable way forward.

REVOCATION OF SUSPENSION

We agree with the point you make about the possibility of the implementing State being bound by a decision of the sentencing State, even where the offender will remain in the implementing State. We have already raised this issue in the Working Group and it is why we consider that, as a matter of principle, judgments should wholly transfer to the implementing State and there should be no division of competence.

8 June 2007

Letter from the Chairman to Rt Hon Jack Straw MP, Justice Secretary, Ministry of Justice

Baroness Ashton’s letter of 8 June was considered by Sub-Committee E at its meeting of 4 July 2007.

SCOPE

The Government’s comments regarding the scope of the instrument are helpful. We appreciate that extending the scope to alternative sanctions and conditional sentences may pose certain difficulties and is likely in some cases to increase the need for liaison between the two States. This may in turn have cost implications. However, we consider it a matter of considerable concern that those sentenced to alternative sanctions for a minor offence would not have the possibility of returning to their home State and be supervised there while those released on parole following a conviction for murder would. What assessment has the UK made of the numbers involved and the likely cost to the UK of implementing this Framework Decision?

We note that some agreement on scope was reached at the June JHA Council. What is the current position in the Council on the inclusion of (i) conditional sentences; and (ii) alternative sanctions? What limitations, if any, have been agreed?

Baroness Ashton explained that Article 1 of the current draft of the Framework Decision makes it clear that the consent of the sentenced person is required. We would be grateful for a copy of the latest draft of the proposal.
DISPARITY OF ALTERNATIVE SANCTIONS—IMPACT ASSESSMENT

We thank the Government for providing the results of the Presidency questionnaire. What analysis has been made of the correlation between the questionnaire results and the Article 5 list of measures?

We look forward to hearing from you as regards the latest position in the Working Group on the content of the Article 5 list following the 3 May, and subsequent, discussions.

FUNDAMENTAL RIGHTS

While all Member States are bound by the ECHR it is regrettable that EU measures in the field of criminal justice do not themselves provide for the necessary human rights guarantees to be put in place. Can the Government assure the Committee that they have pressed for the inclusion of the necessary guarantees in this Framework Decision?

GO Notre FOR REFUSAL TO RECOGNISE JUDGMENT

We agree that there are difficulties regarding the application of this Framework Decision to those who are under the age of criminal responsibility in the executing State. Clearly the enforcement of a custodial sentence following a breach of conditions would raise serious problems, although it is not clear to us why supervision itself would be problematic.

One way of resolving the problem of underage persons might be to stipulate in the Framework Decision that the sentencing State must retain competence for subsequent decisions where the transfer relates to a person who has not attained the age of criminal responsibility in the executing State. We note that there is a need for further discussion generally as regards division of competences between the sentencing and executing States but would nonetheless welcome your views on this matter.

DIVISION OF COMPETENCES

We consider that the Framework Decision should make it clear that where a custodial sentence has been imposed but suspended, competence should in all cases transfer fully to the executing State. It seems that Article 12 seeks to achieve this, although in light of the Government’s comments it may be that Article 12(2) will need to be amended to refer to alternative sanctions where it remains possible for a custodial sentence to be imposed at some future point.

If conditional sentences and alternative sanctions are to be included in the scope of the Framework Decision then the question of reservation of competence by the issuing state will need to be resolved. We are not in principle opposed to a sharing of competence between relevant States and indeed consider that in certain cases such an arrangement is sensible. It is, however, important to ensure that the competences of each State are clearly set out in the Framework Decision. We look forward to hearing from you as regards recent developments in the Working Group.

REVOCATION OF SUSPENSION

We note the Government’s position regarding revocation. We do not consider that this problem can only be resolved by a full transfer of competence to the executing State; it would in our view be sufficient to stipulate that the sentencing State must either (i) order the revocation of the suspension and request the return of the person by, for example, issuing an EAW or a request under the Transfer of Prisoners Framework Decision; or (ii) order the revocation of the suspension only with the permission of the authorities of the executing State.

On a related matter, do you consider that a request by the sentencing State under the Transfer of Prisoners Framework Decision could competently be made in these circumstances?

It may be helpful to set out in the Framework Decision that the basic assumption is that enforcement of a custodial sentence will be carried out by the executing State. Although this is implied by Articles 14 and 15 it is not, as far as we can see, clearly set out in the Framework Decision.

The Framework Decision is retained under scrutiny.

5 July 2007
Letter from Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

Thank you for your letter of 5 July to Jack Straw, which has been passed to me for reply as Minister responsible for European and International matters within the Ministry of Justice. The Committee asked for further information following its continuing consideration of this draft Framework Decision. I will deal with each of the points in turn.

Scope of the Instrument

You ask whether we have made an assessment of the numbers involved and the likely cost to the UK of implementing this Framework Decision. We have not attempted to carry out such an assessment as the scope of the instrument, and the processes for transfer and enforcement has not yet been finalised. Such an exercise will, in any event, be limited given that we do not collect data on the numbers of EU nationals who are sentenced to suspended custodial sentences or community sentences; nor do we know how many UK nationals sentenced abroad would come within scope. In addition, it is difficult to estimate whether or not the courts would sentence differently, or whether more offenders would be subject to early release provisions (either here or abroad), in the light of the possibility of transferring judgments for execution in another member State. However, regardless of the potential numbers involved, we remain of the view that the resources required to transfer and supervise an offender subject to a minor alternative sanction and deal with any enforcement issues, outweigh the potential benefits of such a transfer.

At the June JHA Council there was support for the objectives of the proposal and for the general direction of the negotiations, which will continue at Working Group level. The Council concluded that conditional sentences would be included and that inclusion of alternative sanctions would be subject to further discussion on practical aspects.

As requested, I enclose the latest draft of the Framework Decision.

Disparity of Alternative Sanctions

The Working Group is continuing its discussions on the content of Article 5, which lists the various measures that should be available for supervision. To-date it has focussed on the specific wording of the Article in order to achieve clarity on each of the measures. Whilst the Government has not undertaken an exhaustive comparison exercise, it is readily apparent from the analysis undertaken by the Council Secretariat that the basis and extent of alternative sanctions varies substantially across member States. The Portuguese Presidency is holding a seminar on alternatives to custodial sentences at the end of September, but the extent to which this may inform the discussions on this instrument is not entirely clear.

Fundamental Rights

You are concerned that EU measures in the field of criminal justice do not specifically provide for human rights guarantees. The Government is satisfied that the Framework Decision is compliant with the ECHR and that specific guarantees are not necessary or appropriate in individual instruments, given the over-arching nature of Article 6 of the TEU, which requires the Union to respect fundamental rights guaranteed by the ECHR. This is confirmed by Recital 5 of the Framework Decision.

Grounds for Refusal to Recognise Judgment

You recognise that there would be serious problems in trying to enforce a sentence imposed on someone who was under the age of criminal responsibility in the executing State and suggest that a solution might be to stipulate in the instrument that the sentencing State should retain responsibility for subsequent decisions in such cases. Whilst it should be borne in mind that the grounds for refusal contained in Article 9 are all optional and not compulsory, I am afraid that we do not see how such cases could be transferred.

As Baroness Ashton explained in her letter of 8 June, such offenders would have special needs different from children above the age of criminality in the executing State and would require supervisors specifically trained to deal with the very young. Enforcement of sentences would not be solved by the sentencing State retaining responsibility for subsequent decisions as the executing State would not be able to carry them out and the only alternative would be for the judgment to be returned to the issuing State for execution.
DIVISION OF COMPETENCE

The current position as set out in the draft is that in cases where a suspended custodial sentence has been imposed or the offender is subject to conditional release then both supervision and responsibility for subsequent decisions will be transferred to the executing State when the judgment has been recognised.

The discussions in the Working Group on how to deal with conditional sentences and alternative sanctions are continuing. At present the instrument provides for conditional sentences and those alternative sanctions where the judgment does not set a custodial sentence for breach, to be an exception to the general rule, with the issuing State retaining responsibility for all subsequent decisions.

As you mention, further discussion is needed on the issue of a division of competence between the issuing and executing States. We are opposed in principle to the issuing State retaining responsibility for subsequent decisions and we are also concerned that such a provision will prove to be unworkable in practice. We tabled a paper at the latest Working Group explaining our position more fully and setting out the practical problems that have yet to be properly addressed. This prompted a more detailed discussion of some of the practicalities and as a result we have garnered some more support for our stance on this issue. I attach a copy of the paper.

REVOCATION OF SUSPENSION

You suggest that revocation of the suspension of a sentence could be dealt with either by the issuing State issuing a European Arrest Warrant (EAW) or a request under the Transfer of Prisoners Framework Decision, or ordering the revocation of the suspension only with the permission of the executing State. If the issuing State were to be responsible for subsequent decisions then use of the EAW or the Framework Decision on the transfer of Prisoners could be applicable in the event of breach. However, the EAW only applies to serious offences and may well not cover all sentences within the current scope of this instrument.

Article 15 is still the subject of discussion in the Working Group. The Article is primarily concerned with the exchange of information and was drafted to allow for pre-emptive action on the part of the executing State, such as temporary detention, pending receipt of an EAW or a request under the Framework Decision on the Transfer of Prisoners. If, as you suggest, the executing State should have a say in the decision on revocation in the event of breach then this would add yet another layer of complexity to the division of responsibilities between the issuing and executing States. We are not sure how such a provision would work or on what basis the executing State could give or withhold permission on the revocation of the suspension of the sentence.

In response to your specific question, we do consider that a request by the issuing State under the Transfer of Prisoners Framework Decision could competently be made where it had decided to impose a custodial sentence or revoke the suspension of a custodial sentence. That instrument provides for provisional arrest in the executing State pending a decision to recognise the judgment and enforce the custodial sentence.

You suggest that the Framework Decision should set out the basic assumption that the enforcement of a custodial sentence will generally be carried out in the executing State. It was suggested at the last Working Group meeting that something on these lines should be inserted in the text, and the UK will support such an addition.

The Portuguese Presidency has made this dossier a priority and is aiming to obtain JHA Council agreement in December.

Annex A

PROPOSED FRAMEWORK DECISION ON THE RECOGNITION AND SUPERVISION OF SUSPENDED SENTENCES, ALTERNATIVE SANCTIONS AND CONDITIONAL SENTENCES

OBSERVATIONS OF THE UNITED KINGDOM DELEGATION

1. The United Kingdom delegation has, in the course of discussions in the Council Working Group, made observations concerning three aspects of the proposed Framework Decision, namely:
   — scope, and the practicability of including alternative sanctions;
   — division of competence; and
   — the definition of competent authorities.

A more detailed explanation of these concerns, expanding on the questions set out in this paper, appears at Annex B.
2. The United Kingdom is carefully examining the detail of the text and has a number of questions about how the proposal, if agreed, would operate in practice. The UK would welcome an early opportunity to consider the answers to these questions, and suggests that a debate specifically on these matters in the Council Working Group would be helpful for all delegations.

Scope

3. The UK has questioned the practicability of including alternative sanctions within the scope of the proposal. However, a number of other delegations have said they do not share these concerns. The UK would therefore like to understand better how Member States intend to implement the proposal.

4. In particular, the UK would welcome the following information from other Member States:
   — how do Member States plan, in practice, to give effect to alternative sanctions of short duration? In particular, do Member States foresee internal mechanisms designed to act with sufficient speed and efficiency to make such recognition proportionate?
   — some Member States have explained that they do not have, within their national law, equivalents of certain kinds of alternative sanctions. How do these Member States intend to operate the proposal to recognise and give effect to such sanctions in these circumstances?

Division of Competence between the Issuing State and the Executing State

5. The UK is among those Member States who consider that the mutual recognition of all sentences covered by the Framework decision should imply that responsibility for both supervision and subsequent decisions should pass to the executing State. We take the view that this would be fully in accordance with the principle of mutual recognition, namely that the executing State should give effect to the issuing State’s decision as if it were its own.

6. We would have various questions about the practical operation of the proposal if, contrary to what we have suggested, competence for enforcement of alternative sanctions were to be retained by the issuing State:
   — what measures do Member States envisage should or could be put in place to enable (or require) the offender to make representations to a court in the issuing State in relation to breach?
   — how do other delegations envisage that evidence would be taken?

It is proposed that in cases where a custodial sentence for breach is specified in the judgment then responsibility for all subsequent decisions could transfer to the executing State. But will there be any flexibility on the part of the executing State to impose a lesser penalty for a minor breach?

7. The UK would also welcome a discussion on the application of the enforcement regime in the executing State in relation to the transfer of conditional release cases. In particular, is there any read across to the provisions in the draft FD on the transfer of prisoners?

Dual Criminality

8. The UK firmly believes that mutual recognition is a cornerstone of judicial cooperation. We therefore wonder why there should be a need for the additional provisions on dual criminality that have been imported into the text; and we should prefer a return to the original Franco-German draft.

Competent Authorities

9. The UK is among those delegations which consider it essential that, although the initial sentence is necessarily passed by a judicial authority, an authority other than a court is able to impose concrete measures that flow from that judgment. In the UK, for example, the setting of licence conditions is sometimes a matter for the prison governor and the probation service rather than a court.

10. We also see no difficulty in a non-judicial authority being competent to recognise, refuse or adapt a judgment for the purposes of this instrument. The possible adaptations are limited, constrained by legislation and cannot be made to the detriment of the offender.
PROPOSED FRAMEWORK DECISION ON THE RECOGNITION AND SUPERVISION OF SUSPENDED SENTENCES, ALTERNATIVE SANCTIONS AND CONDITIONAL SENTENCES

MORE DETAILED EXPLANATION OF UK CONCERNS

AIM OF THIS PAPER

The UK welcomes the proposal in principle, and the aim of this paper is to help deliberations in the Working Group and in capitals by identifying possible practical issues arising from the proposal as currently drafted and looking constructively for solutions.

2. As explained in the main paper, the UK has particular concerns on three aspects of the proposed Framework Decision:

--- scope, and the practicability of including alternative sanctions;
--- division of competence; and
--- definition of competent authorities.

SCOPE

3. At present, the draft Framework Decision has very wide scope. Whilst we know some delegations see this as an advantage, we question whether there is benefit in attempting to transfer alternative sanctions, given the effort required and the short duration of many such sentences—they can last as little as a few months or even weeks. We are also concerned that the complex systems currently proposed for the transfer and execution of alternative sanctions would prove bureaucratic and be unworkable in practice. We would like to explore solutions to this problem. In the absence of a solution we would prefer to exclude such sanctions altogether.

4. We would welcome the opportunity to discuss these issues in detail. In particular, we would be interested to see any proposals for solutions based on proportionality.

5. A number of practical questions arise:

--- Article 10 provides that the executing state has 60 days in which to decide whether or not to accept transfer. Given that it may well take 15 days to decide to make a transfer request and translate the necessary documentation, and then at least that long at the end to make the arrangements for the transfer, by the time the transfer is arranged the sentence may have expired. We have therefore asked for your views on how transfer could be effected before short sentences expired;

--- the response to the German Presidency’s questionnaire showed that many Member states do not have alternative sanctions. We have therefore asked how you would operate the proposal to recognise and supervise sanctions that do not exist in your own legislation;

--- some Member States have indicated that it would be very difficult or impossible to supervise or enforce an alternative sanction which is not available domestically. We would welcome advice from those who did not identify this as a problem as to how they propose to do it. Even if the executing state can supervise a sanction that it does not have domestically, what does it do if enforcement is necessary? Article 15(4) suggests that the issuing state should decide and then inform the executing state as to what action to take. Is this really feasible? Are you comfortable with the notion of imprisoning someone on the instructions of a foreign court for breach of a sentence that does not exist in your own jurisdiction?

6. The last point goes wider than alternative sanctions. Within the UK, for example, Scotland does not have any provision for suspended custodial sentences, and many Member States do not have conditional sentences. In order to resolve this dilemma, one solution might be that there should be an optional ground for refusal where a member State does not have the relevant sanction under their domestic legislation. The UK is ready to consider other possible solutions, but we see this as a significant practical problem with the present text.
DIVISION OF COMPETENCE BETWEEN THE ISSUING STATE AND THE EXECUTING STATE

7. The UK is among those Member States who consider that mutual recognition should mean that responsibility for both supervision and subsequent decisions should pass to the executing State once the judgment has been recognised. This is not the position in the current draft in relation to alternative sanctions.

Alternative sanctions

8. We believe that the following practical issues arise and we would be interested in how it is proposed to address them:

— how would an offender in one Member State be able to make representations to a court in another member State at the hearing to determine whether there was a breach and what the penalty should be? Is the offender expected to go to the issuing State? Can this be enforced? Who would pay? Video links will not be available everywhere;

— how is evidence to be presented? It would be unreasonable to expect witnesses to travel to the issuing State but, again a video link may not be available. Also, the offender must have the right to question the witness or his rights under article 6(3) ECHR may be violated. What measures do you propose to address these problems?

— we note that in some cases the Framework Decision provides for the executing State to supervise and enforce alternative sanctions where the court in the issuing State specifies at the outset a custodial sentence which is to be served if the offender breaches the sanction. But this, too, causes problems. First, it is not clear to us how these sentences differ from a suspended custodial sentence. Second, the executing State must have some flexibility in dealing with a breach. For example, an offender may miss an appointment towards the end of his sentence after good compliance up to that point. It would not be proportionate in such cases to impose a custodial sentence for breach and the executing State must be able to impose a lesser penalty, as appropriate.

9. The UK takes the view that these issues of practicability should be resolved by avoiding a division of competence between the issuing and executing State and proceeding on the basis of full mutual recognition.

Conditional release

10. In all cases of conditional release the executing States takes responsibility for supervision and enforcement, a position the UK fully supports. But we would welcome clarification on certain aspects of imposing the enforcement regime of the executing State in relation to these cases.

11. There are likely to be different provisions in different member States relating to the period to which licence conditions apply. For example, the law in one member State may require that licence conditions apply for the whole of the period of the sentence spent in the community, whereas in another member State the duration of the licence conditions may apply for a shorter period, for example up to the three-quarter point, of the sentence. In these circumstances, do you envisage that the executing State could shorten or lengthen the duration of the period spent on licence in line with its domestic legislation, provided that the sentence itself was not lengthened?

12. Where the offender has been given a life sentence in the issuing State, and would therefore be subject to a life licence, but the issuing State does not have such a sentence does the executing State have to consider what the maximum determinate penalty would have been for the offence in its domestic law and adapt the licence period accordingly? In such circumstances we assume that the issuing State would consider the adaptation and may decide not to pursue the transfer. There may also be differences between member States in relation to the provisions for re-release where the offender has been recalled to custody for breach of his licence conditions. Should the issuing State be informed of the enforcement provisions that apply in the executing State when transfer is being considered as this might constitute a ground for refusal. Is there a need to consider whether there is any read across to the provisions of the draft FD on the transfer of prisoners, in particular Articles 8 and 13?

Dual Criminality

13. On the issue of dual criminality, we should prefer a return to the original text of article 8 in line with our general view in favour of mutual recognition.
COMPETENT AUTHORITIES

14. The UK is among those delegations which consider that, while a judicial authority passes the initial judgment, an authority other than a court may impose the concrete measures. A number of Member States have systems where probation (or similar) take decisions flowing from court judgments, such as setting licence conditions and the detailed content of community sentences. In the UK, there are also some non-judicial decisions relating to enforcement such as recall to prison for breach of licence conditions. It is also the probation service, or similar, that would assume the responsibility for supervising the sentence; the courts do not generally have such a role here.

15. In order to deal with the process for transferring sentences, we envisage setting up a central administrative authority in each of the three UK jurisdictions (England and Wales, Scotland and Northern Ireland) which, if necessary, could liaise with the courts, probation, social services and the Parole Board(s) as appropriate.

16. We see no difficulty in a non-judicial authority being competent to recognise or refuse to recognise a judgment for the purposes of this instrument. We take the Framework Decision on the transfer of sentenced prisoners as setting a precedent for this Framework Decision. It should be borne in mind that no modifications can be made to the sentence to the detriment of the offender and such modifications should be limited to the various maximum and minimum limits that apply to the relevant sentences and requirements. When acting as an executing State, such an authority would be best placed to consider whether there were any grounds for refusal under Article 9 and to confirm whether or not the person was ordinarily and lawfully resident in the

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 7 October which was considered by Sub-Committee E at its meeting of 24 October 2007.

SCOPE AND ALTERNATIVE SANCTIONS

We note your comments on the scope of the instrument and we look forward to hearing the outcome of the Portuguese Presidency’s seminar which was held in September.

While we understand that the Government has not conducted a comprehensive comparison of the alternative sanctions available across the Member States, it is in our view important that someone undertake such a study as without proper consideration of the position it is difficult to see how a helpful discussion on the scope of the instrument and the viability of supervising alternative sanctions imposed by another Member State can be had.

FUNDAMENTAL RIGHTS

You say that the Government do not consider specific human rights guarantees to be necessary or appropriate here. In the context of the Commission’s recent report on the implementation of the European Arrest Warrant, the UK was criticised for departing from the provisions of the Framework Decision in its transposition of the instrument. The Government’s response was that the departure was necessary to ensure respect for the rights of the individual. This appears to suggest that there may be benefits in agreeing fundamental rights provisions for specific instruments at EU level to prevent problems arising at the implementation stage, at least until such time as an overarching instrument on defendants’ rights is adopted.

We find it interesting that you say in your letter that the Government are “satisfied that the Framework Decision is compliant with the ECHR” when your paper at Annex A of your letter reveals in paragraph 8 a number of human rights concerns with the present draft. We would be grateful to have your full comments on the fundamental rights issues arising in relation to this Framework Decision.

GROUNDS FOR REFUSAL TO RECOGNISE JUDGMENT

As we highlighted in our Report on the European Supervision Order (31st Report of 2006-07, HL Paper 145 at paragraph 116 et seq) provisions in mutual recognition instruments which prevent their application to those under the age of criminal responsibility do not always work in the favour of the young person concerned. We note your comments on the potential supervision problems here and urge the Government to have full regard to the welfare of the child when implementing this Framework Decision.

Your letter suggests that some change has been made to the dual criminality provisions of the text. The latest draft was not enclosed with your letter and we would be grateful for further details of the changes introduced.
DIVISION OF RESPONSIBILITIES

We note that discussion is still underway in the Council on the question of division of competence. Given that the Council has agreed to the inclusion of conditional sentences, is it the Government’s position that in such cases the executing State should be responsible for the imposition of a sentence in the event that the conditions are breached? Should the sentencing law of the UK be applied to the foreign conviction? How would this work in practice?

REVOCATION OF SUSPENSION

We look forward to hearing from you on the progress made in discussions on Article 15. We reiterate that it is difficult to see how the issuing State could order that the individual be detained without either requesting his return under an EAW or issuing a certificate under the Transfer of Prisoners Framework Decision. We agree that a full transfer of competence to the executing State would be one way to avoid this difficulty.

We note that the Presidency hopes to secure agreement on the Framework Decision at the December JHA Council. Do the Government consider that agreement is likely?

The Framework Decision is retained under scrutiny.

25 October 2007

THIRD COMPANY LAW DIRECTIVE AND SIXTH COMPANY LAW DIRECTIVE: REQUIREMENT FOR INDEPENDENT EXPERT ADVICE (7207/07)

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

I am writing to update your Committee on progress relating to Explanatory Memorandum 7207/07 on which your Committee has lifted its scrutiny reserve, as confirmed in your letter to Ian McCartney on 26/04/07.28

The proposed Directive received its First Reading by the European Parliament on 8–12 July 2007. The outcome of the European Parliament’s first reading, document 11665/07, is attached for information (not printed). The text of the amendments adopted by the European Parliament’s legislative resolution is set out in an Annex to document 11665/07. The amendments adopted correspond to what was agreed between the Council, the Parliament and the Commission.

The First Reading has resulted in minor changes to the text of the proposed Directive:

— to reflect that the provision for shareholders to dispense with need for an independent experts report should be without prejudice to the systems of protection of the interests of creditors;
— to confirm the fact that the report is for shareholders; and
— a change in the transposition date from July 2008 to December 2008.

The amendments do not impose additional regulatory burdens and we have no objection to them.

Relaxation of the requirement for an independent expert’s report has been identified by the European Commission as part of its programme to reduce administrative burdens, and suitable for fast track procedure. A series of informal contacts between the Council, the European Parliament and the Commission has meant that agreement was reached on the first reading avoiding the need for a second reading and conciliation.

The proposed Directive will now go to Jurist Linguists for translation. We expect it will be adopted formally by the Council and the Parliament later this year. We will arrange to consult stakeholders with a view to implementing the Directive by April 2008. This will enable us to implement the Directive when restating the corresponding parts of the Companies Act 2006.

30 August 2007

28 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 345.
TRANSFER OF RESPONSIBILITIES TO THE MINISTRY OF JUSTICE

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

I would like to inform you that following the launch of the Ministry of Justice on 9 May four dossiers have transferred responsibility from the Home Office to the new Ministry. These are:

— Doc 13080/06, Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving the deprivation of liberty for the purposes of their enforcement in the European Union (more commonly known as Prisoner Transfer.)
— Doc 8866/06, Intellectual property rights.

I have, in the past, made it clear that I give the utmost priority to the scrutiny process and I would like to reassure you that this will continue as the Ministry’s scrutiny business increases.

This Department enjoys good working relations with the scrutiny committees and I undertake to ensure that we continue to respect the work of your committee and adhere to Cabinet Office guidelines on scrutiny.

24 May 2007

WORLD CUSTOMS ORGANISATION: EC ACCESSION (9692/07)

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

This proposal has been considered by Sub-Committee E. We welcome EC membership of the World Customs Organisation, which seems to be a sensible way of ensuring a co-ordinated EC approach in matters of exclusive Community competence. We note the measure is being made under Article 133 TEC but it is clear from the declaration of competence that the Community’s involvement may extend beyond the Common Commercial Policy. Are the Government satisfied that Article 133 provides an adequate legal base? It would be helpful to have your analysis of the legal position.

You say that for matters falling under joint or national competence, “it will be desirable for the Member States and the European Commission to try and co-ordinate an agreed position to present a unified view in the WCO Meetings” and that a coordination mechanism will need to be agreed in discussions on the proposal in the Council working group. In this context you also refer to action on Third Pillar issues. We are puzzled by your reference to Third Pillar matters as these clearly do not fall within the ambit of this Decision. We would be grateful for your clarification of what is envisaged here and how it is expected to be achieved.

Finally, we would be interested in your views on the declaration of EC competence annexed to the proposal. Are the Government content that the matters listed in the declaration do fall within the Community’s exclusive competence?

We have decided to retain the proposal under scrutiny.

26 June 2007

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

Thank you for your letter of 26 June 2007 to John Healey, following consideration of this proposal by Sub-Committee E. I am replying to you as the newly appointed Financial Secretary to the Treasury, with Ministerial responsibility for HM Revenue & Customs. I am pleased to provide some further information on the legal base and the arrangements for Community coordination for meetings of the World Customs Organisation.

I must first tell you that the Decision has already been agreed at the Competitiveness (Internal Market, Industry and Research) Council on 25 June. Member States were given the minimum of six weeks to complete their scrutiny procedures because the EC membership issue was on the agenda of the annual meeting of the WCO Council on 28–30 June and the Commission was working to a tight deadline. The proposal cleared scrutiny in the House of Commons on 6 June 2007, but the UK abstained from voting at the Competitiveness Council because the proposal had yet to clear scrutiny in the House of Lords. This did not affect the outcome as the decision was subject to qualified majority voting and all other Member States were in a position to
support the proposal. It is worth noting that the UK has supported EC membership of the WCO since a common position was reached in the Community in 2002. The EC’s application for membership has subsequently been agreed by the WCO Council and came into effect from 1 July 2007 under the interim arrangements.

Turning to the questions in your letter of 26 June, our legal advice is that the use of Article 133 TEC for the legal base of this Decision is appropriate as the issue of EC membership of the WCO is predominantly a matter of common commercial policy and we do not regard any other matter as having any significant or equivalent relevance. Another potential legal base would be Article 37 in relation to cooperation between Member States and the Commission on customs law and agricultural matters, but this concerns common agricultural policy which in itself is not appropriate to membership of the WCO. A further potential legal base is Article 135 which concerns customs cooperation. Although by the title of this provision it would appear to be appropriate, the objective of the article is primarily aimed at internal relations between the Member States and the Commission, not external relations with other non-Community customs authorities or the Commission’s competence on international organisations.

The Decision was examined in the European Council Customs Union Working Group as a result of which there was some redrafting of both the body of the Decision and Statement of Community Competence. The final version of the Council Decision is attached to this letter.

The recital on Community coordination was amended as follows:

“For matters falling under European Community competence a European Community position must be established. For matters falling partly within Community competence, Member States of the European Community should strive to adopt a common position to ensure the unity of external representation of the European Community and its Member States.”

We are content that the matters listed in the declaration do fall within the Community’s exclusive competence.

On the question of mixed competence the WCO makes no distinction between 1st and 3rd Pillar issues although the main working bodies have a similar division between customs procedures and enforcement matters.

Member States do retain the right to speak in WCO Meetings on all matters which are not subject to Community competence. However we recognise that it is desirable for the Member States and Commission to avoid public disagreements in an international organisation, particularly as many delegates from other countries are not aware of the subtle distinctions between Community and national competence. For this reason it is likely that the Commission and Member States will try informally to reach a common view to follow in a meeting even though the Commission would not speak on behalf of the Member States.

I hope you find this helpful.

18 July 2007

Letter from the Chairman to Rt Hon Jane Kennedy MP

Thank you for your letter of 18 July 2007 which was considered by Sub-Committee E at its meeting of 10 October 2007.

We are grateful for your views on the legal base of the Decision and for your clarification of the position as regards Member States’ cooperation in matters of joint or national competence. We also welcome your confirmation that you are content with the Declaration of Competence.

We have decided to clear the proposal from scrutiny.

16 October 2007
Home Affairs
(Sub-Committee F)

ASYLUM: EVALUATION OF THE DUBLIN SYSTEM (10517/07)

Letter from Chairman to Liam Byrne MP, Minister of State, Home Office

Sub-Committee F of the Select Committee on the European Union considered this report on the evaluation of the Dublin system at a meeting on 25 July 2007.

The Committee found it difficult to share your and the Commission’s positive assessment of the working of the Dublin system in the light of the findings. Indeed, it appears to us that the findings suggest rather that the system has failed on many accounts:

(i) It has not guaranteed effective access to asylum determination procedures in at least one Member State—a circumstance which, as you will know, has led the High Court recently to rule that provisions of UK immigration law which do not allow an assessment of the risk to asylum seekers who are being sent back to another country under the Dublin arrangements are in contravention of the European Convention on Human Rights (Nasseri v Secretary of State for the Home Department [2007] EWHC 1548 Admin). The system plainly cannot operate if there are any Member States to which asylum seekers should in principle be returned, but to which they cannot in practice be returned because those States offer insufficient protection. We would be grateful if you could let us know whether and if so how this problem is being addressed, and whether an amendment to the relevant immigration provisions is to be expected as a consequence of this judgment.

(ii) While the rules allocating responsibility might work, the low rate of effective transfers of asylum seekers between the Member States indicates that in most instances this responsibility is not exercised in practice. This is, by admission of the Commission itself, a major problem for the efficient operation of the Dublin system. Member States explain this as being due to the absconding of asylum seekers to avoid such transfers. However, given the extensive use of custodial measures, the absconding may account for only a limited part of the failed transfers. The Commission’s own analysis does not support the view that there is a correlation between custodial measures and transfer rates. Could you give us your view as to what other factors might explain the low transfer rate?

(iii) The annulment of transfers in some Member States (in particular large users of the Dublin system, such as Germany) indicates that despite considerable expense (let alone hardship to individuals who are unwillingly moved), some Member States end up with more or less the same overall number of applications to deal with. You object to the Commission’s proposal for bilateral arrangements concerning “annulment” of the exchange of equal numbers of asylum seekers in well-defined circumstances on grounds of unfairness towards applicants. However you may agree that it might at the same time introduce a degree of fairness into a system which operates in the absence of fully harmonised asylum rules and therefore can result in different outcomes of an asylum claim depending on where it is lodged.

(iv) The system does not “strike a balance between responsibility criteria in a spirit of solidarity” (see Dublin Regulation, preamble, recital 8) as it operates at a great disadvantage for Member States at the Eastern and Southern borders of Europe (Poland, Slovakia, Italy, Greece, Estonia, Hungary, etc), which are more exposed to migratory pressure. What proposals are being made to address this imbalance?

(v) On the Commission’s own admission, the increasing rate of multiple applications indicates that the Dublin System does not have the expected deterrent effect against “asylum shopping”, which as you say is the main political objective of the system.

It is doubtful whether the Commission proposals, which amount to tightening time limits and tidying up definitions, will be sufficient to bring order to a system which, while extremely resource intensive, clearly is not meeting any of its objectives. Moreover, the Committee found the lack of estimates regarding the overall cost of the Dublin system deeply disturbing; they thought it extraordinary that the Commission saw no need to undertake a serious cost/benefit analysis, but were content to act on the assumption that Member States regard
fulfilling the political objectives of the system as very important, “regardless of the financial implications involved” (Conclusions, p 13). It cannot be right that we are to accept that taxpayers’ money might simply be wasted.

Finally, we welcome the suggestion in the report that the Commission will carry out a full impact assessment on the use of Eurodac data for law enforcement purposes. We expect this to be submitted along with the legislative proposal on the police use of Eurodac, which the Council in June asked the Commission to submit shortly. Given the significance of this measure, we look forward to an in-depth analysis particularly of the issue of proportionality and the impact on fundamental rights.

The Committee has decided to keep this document under scrutiny pending receipt of your views and comments on the points we have raised above.

26 July 2007

BENEFICIARIES OF INTERNATIONAL PROTECTION (10515/07)

Letter from the Chairman to Liam Byrne MP, Minister of State, Home Office

Sub-Committee F of the Select Committee on the European Union considered this proposal for an amendment to the Long-term Residents Directive at a meeting on 25 July 2007.

Your Explanatory Memorandum gives only the Government’s initial views on the proposal, and you undertake to write to the Committee in due course with the Government’s final view after further consideration. We are content to keep the document under scrutiny pending receipt of these views.

You will be aware that in its report Economic Migration to the EU (14th Report, Session 2005–06, HL Paper 58) this Committee considered the Long-term Residents Directive in paragraphs 100 to 105, and recommended that the United Kingdom should review its opt-out from this measure. We stated that in our view it provides an excellent foundation of rights for migrant workers in the EU without having any consequences for the UK position on border controls. The Government, in its response, declined to review its opt-out. It would not of course be possible to opt in to this amending Directive without opting in to the Directive it amends. We are encouraged by the reply of Baroness Ashton of Upholland to a Question in the House on 25 July 2007 to hope that the fact that the Government has not finalised its policy means that it is actively reconsidering whether to opt in to the Long-term Residents Directive.

26 July 2007

BORDER SECURITY: RAPID BORDER INTERVENTION TEAMS (RABITS) (15745/06, 6613/07, 7647/07)

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 5 April 20071 which Sub-Committee F of the House of Lords Committee on the European Union considered at a meeting on 9 May 2007 along with the revised text of the proposed Regulation for the establishment of Rapid Border Intervention Teams (RABITS). We are also grateful to you for writing to us again on 30 April to inform us that the German Presidency is planning to put this proposal forward for adoption before the June Council.

The Committee noted that the text of the proposal underwent substantial amendment and considered the current draft an overall improvement on the original proposal. We believe that the new text goes some way to addressing concerns we had previously expressed, particularly by qualifying the exercise of the border guards’ wide powers by reference to fundamental rights and international obligations relating to refugees, as well as data protection laws; by clarifying to some extent the applicable law when joint operations under the aegis of FRONTEX take place; and by requiring an evaluation by the Commission of the implementation of its provisions.

We note that the Commons European Scrutiny Committee cleared the latest draft from scrutiny. However, we believe that there is still a question of oversight of FRONTEX to be answered. While the Agency’s role is clearly being transformed from a purely managerial to an operational one in which, as you say, it is “charged with enforcement matters”, the legal framework is not being adapted to ensure that the Agency is fully accountable and transparent, with due account being taken of the necessity to safeguard the confidentiality of operational information. This contrasts for instance with Europol where the European Parliament has some, though modest, supervision powers over its activities. Would you not agree that Parliaments should be given

1 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 348.
oversight of the activities of an Agency entrusted with the enforcement of border controls, and that it would be appropriate to lay down some process of scrutiny of FRONTEX’s activities by the European and national Parliaments?

With regard to the UK’s future involvement in RABITs operations, it is not clear to us how the UK is to participate in operations which involve the application of the Schengen Border Code to which it is not a party. The issue would seem to arise even if the Court of Justice in the pending challenge to the UK’s exclusion from the FRONTEX Regulation were to decide in favour of the UK and allow it to opt in to that Regulation and the RABITs Regulation. We would be grateful if you could explain to us what further consideration is being given to the process and legal framework of the UK’s participation.

At the Council meeting on 19/20 April a general approach was agreed to the draft based on document 7467/07. As you know, this Committee has for many years taken the view that agreement on a general approach to a document still held under scrutiny constitutes a scrutiny override; I see that the Commons European Scrutiny Committee now takes the same view.

The Committee accept your apology for the delay in replying to the letter of 18 October 2006, and the delays in depositing the latest explanatory memorandum. It is frankly intolerable that these delays, coupled with the German Presidency’s haste in taking forward the negotiations, have not allowed us to undertake a meaningful scrutiny of this proposal, and have led to this scrutiny override. We cannot properly undertake the scrutiny function which Parliament has entrusted to us unless we receive prompt replies to our queries, and an explanatory memorandum on each draft which has significant differences from the previous draft. It is not acceptable to have to wait until the final draft has been agreed by officials and is shortly coming before the Council.

We clear from scrutiny documents 11880/1/06, 15745/06, 16226/06, as they have been superseded, and 6613/07, on which we have no further queries.

10 May 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 10 May 2007, regarding scrutiny of the above regulation. I am pleased the Committee shares our view that this draft is an improvement on the original proposal. I address your outstanding concerns in turn below.

Firstly you question the transparency and accountability of Frontex. Frontex’s remit is to co-ordinate operational co-operation between Member States in the management of the EU’s external border, it does not have enforcement powers. Even with the assistance of Rapid Border Intervention Teams (RABITs), it remains the responsibility of Member States to carry out enforcement action at their external borders; and despite Frontex operations being joint EU efforts, domestic oversight exists as host Member States remain accountable for operations on their territory.

The Government is keen to ensure the existence of accountability and transparency in Frontex activities balanced against the need for confidentiality in planning for operations to be effective. We recognise that Frontex needs to develop fuller reporting and evaluation of operations and the Management Board meetings and the independent review of Frontex in 2008 do and will provide opportunities for the UK and all Member States to feed back suggestions for development and better regulation where needed. The findings and recommendations of the review will be made public. In addition, the European Parliament can employ discharge powers in the accounting process for Frontex and a review of RABITs is also provided for in the RABITs Regulation one year after the measure comes into force.

My view is that the existence of current monitoring mechanisms, which the UK has the opportunity to feed into, negate the need for supplementary oversight by national parliaments. I believe the extent of European and national parliamentary scrutiny, when legislation is being negotiated and adopted and the review mechanisms built into both Regulations, allow scrutiny proportionate to Frontex’s current remit.

Secondly, you asked for clarity on the legal and procedural framework for UK participation in operations which involve the application of the Schengen Borders Code, to which the UK is not party. Where UK immigration officers participate in a Frontex operation in another Member State under Article 20(5) of the Frontex regulation by agreement with the Management Board, UK immigration officers will be guest officers as a matter of the domestic law of the host State for the purpose of the operation (by virtue of the RABITs Regulation as applies in, and binds, the host State), and so will be able to exercise executive powers in the host State. The RABITs Regulation stipulates the Schengen Borders Code is to be applied by guest officers taking part in RABITs and other joint operations. So our participation in Frontex operations enables UK officers to apply the Schengen Borders Code framework as apart of the domestic law of the host State. Through the
host State’s domestic law (deriving from the RABITs regulation), UK guest officers can apply a measure on the State’s territory which does not apply to nor bind the UK. This is a similar concept to our Frontex participation where we have negotiated operational participation despite exclusion from the Regulation.

Frontex will provide training for UK officers taking part in RABITs operations, so that they have the appropriate knowledge to apply the Schengen Borders Code during Frontex operations. This participation extends solely to Frontex operations. It is important that there is clarity on the legal framework that applies in these circumstances, and as Frontex is concerned with protecting the external Schengen border in Schengen States, it is appropriate for the Schengen Borders Code to be applied by all guest officers.

You also asked about what further consideration is being given to the legal and procedural framework of UK participation in RABITs. My officials are currently considering the options which will best enable UK Immigration Officers to take part in RABITs operations, similar to our participation in Frontex operations, and taking into account the implications of the ECJ judgement. Once we have the ECJ ruling, the options will be considered and developed more fully, in consultation with Frontex and its Management Board. I will then be in a position to provide further information.

Finally, I must apologise again for the delays in responding to your letter of 18 October and depositing the last EM as well as the unfortunate circumstances in which there is a conflict between National Parliament and EU Presidency timetables. The latest information we have from the Presidency is that the RABITs Regulation will be put forward for adoption at the JHA Council on 12 to 13 June and I greatly appreciate your making time specifically to consider this matter again. Please be aware this timescale is subject to translation and jurist work so I will keep you informed of any changes to this date.

21 May 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 21 May 2007 which Sub-Committee F of the House of Lords Committee on the European Union considered at a meeting on 6 June 2007.

We are grateful to you for replying to the points we raised before the Council meeting of 12/13 June, when the proposal is coming forward for adoption. However, we remain to be persuaded that there is enough oversight of FRONTEX operations, and believe that since the United Kingdom participates in these operations and contributes to them financially Parliament should be informed about them. We would welcome more information in the future.

We continue also to have doubts about the legal framework of accountability for FRONTEX operations. You tell us, for instance, that host Member States remain accountable for operations on their territory, but who is accountable for operations which take place on the high seas or in the territorial waters of a third country?

You explain that the UK immigration officers participating in a FRONTEX operation will apply the Schengen Borders Code framework as part of the domestic law of the host State. We wonder whether you could clarify a general point concerning the applicability of the Schengen Borders Code in the context of FRONTEX operations. As the Code would arguably be applicable only at the EU external borders, what are the applicable rules when operations take place beyond such borders?

These are all matters on which we would have hoped to obtain satisfactory answers before the adoption of the instrument. The Committee has nevertheless decided that it will clear document 7647/07 from scrutiny. However, we would be grateful if you could address these further points and in due course keep us informed on the ECJ ruling and the options being considered for the UK’s participation in RABITs.

7 June 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 7 June 2007. I am grateful for the convening of a special meeting to discuss the RABITs regulation prior to the June JHA Council and the decision to clear it from scrutiny. As you will be aware, the Regulation was adopted on 13 June.

In your letter of 7 June, you asked for further information on Frontex operations. As indicated in my previous reply, there needs to be an appropriate level of confidentiality about Frontex operations to ensure their success. However, the Government is committed to sharing as much information with you about Frontex operations as possible. Further to my letter of 22 February, I can now attach the Frontex Annual Report for 2006 (not printed). I also attach copies of annual work programmes for 2005 and 2006 (not printed). Future Frontex publications should appear on the organisation’s website—www.frontex.europa.eu.
You have asked who is accountable for Frontex operations on the high seas or in the territorial waters of a third country, and also what the operational framework is when the Schengen Borders Code does not apply beyond the EU external borders. The UK has not participated in such operations. Our understanding is that accountability and responsibility in these circumstances is agreed by the Member States involved as part of the operational plan, taking account of international law.

As referred to in my letter of 22 February, we are keen to clarify the rules concerning operations outside the territorial jurisdictions of the Member States. At an expert meeting in Brussels on 8th June, it was proposed that an EU working group be established to discuss general guidelines for Frontex operations. The UK fully supports this objective and will request a seat. We also welcome the Commission’s recent publication of a working paper calling for clarification of the international law of the sea as it relates to illegal migration.

You asked to be kept informed of developments in the ECJ case and on UK involvement in RABITs. As I am sure you are aware, the Advocate General’s opinion on the UK’s ECJ case challenging our exclusion from the Frontex Regulation has been delayed until 10 July. I will of course keep you informed of subsequent developments on this and on consideration of how the UK might support any deployment of RABITs in future.

Separately, I understand the Lords’ Sub-Committee F will be conducting a full length inquiry into Frontex. I very much welcome this and I and my officials will endeavour to give the inquiry all possible assistance.

21 June 2007

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office

Your predecessor, Joan Ryan MP, wrote to me on 21 June 2007 with further information about these documents, which had already been cleared from scrutiny. Sub-Committee F of the House of Lords Committee on the European Union considered the letter at a meeting on 11 July 2007.

The Committee were grateful for the replies in her letter, and for the information she enclosed. However they have now embarked on a major inquiry into Frontex, the EU external borders agency, which Ms Ryan welcomed. The matters raised in her letter can now be dealt with in the context of that inquiry. We will shortly be issuing a Call for Evidence which will be sent to the Home Office, and will subsequently be inviting you and your officials to give oral evidence to the Committee.

16 July 2007

CIRCULAR MIGRATION AND MOBILITY PARTNERSHIPS BETWEEN THE EU AND THIRD COUNTRIES (9776/07)

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F of the House of Lords Select Committee on the European Union considered this communication at a meeting on 27 June 2007.

The Committee noted your views and tends to share your scepticism about the proposals that are being advanced by the Commission. We believe these proposals need to be given more thought and welcome the consultation process that the Commission is intending to launch.

We expect the consultation document and any measure to be adopted to implement the proposals to come before the Committee for future scrutiny and have therefore decided to clear this document from scrutiny.

27 June 2007

COMMON EUROPEAN ASYLUM SYSTEM (10516/07)

Letter from the Chairman to Liam Byrne MP, Minister of State, Home Office

Sub-Committee F of the Select Committee on the European Union considered this Green Paper at a meeting on 25 July 2007.

The Committee shared your view that it might be early to move straightaway into the second stage of the Common European Asylum System without the first-phase legislation having bedded-down and been evaluated. The Green Paper, however, raises many questions, some of which seem to us worthy of urgent attention and we look forward to receiving a copy of your full response to it.

The Committee would further like to seek your comments on two issues which are related to the establishment of the Common European Asylum System.
First, as you will be aware, delays in the bedding down of the first-phase instruments are to a large extent due to failure of implementation of the Directives by several Member States, as is clear from the numerous infringement proceedings commenced by the Commission. Proceedings are currently underway also in respect of the UK for its failure fully to implement the Qualification Directive. We would be grateful if you could explain what problems the Government has encountered with the implementation of this instrument.

Secondly, even in the absence of a formal evaluation process, it is apparent that the current legal framework leaves much to be desired. The Commission raised questions regarding the effectiveness of the Dublin system in its evaluation report (document 10517/07 on which I have written to you separately). The Green Paper mentions the serious lack of adequate protection of the most vulnerable. In addition, the effectiveness and fairness of the Common European Asylum System is called into serious question by the gross disparities in protection rates amongst Member States. According to UNHCR, for instance, the chance of finding protection in industrialised countries for Iraqi asylum seekers varies from 90% to zero, depending on which country they are in when they apply. In 2006, the protection rate for Iraqi asylum seekers was 91% in Sweden, 74% in Austria, but only 12% in the UK (see UNHCR, Refugees Magazine Issue 146). Would you not agree that this fundamentally undermines the credibility of the common asylum system?

The Committee has decided to keep this document under scrutiny pending receipt of your comments and the UK Government’s response to the Commission consultation paper.

26 July 2007

Letter from Liam Byrne MP to the Chairman


I am pleased that Sub-Committee F shares our view that the development of the second phase of the Common European Asylum System would benefit from evaluation of the first.

Your letter raised two specific issues in relation to the Common European Asylum System (CEAS). I hope that this letter and the UK’s written response to the Commission’s Green Paper2 will answer those questions.

You state in your letter that delays in the bedding down of the first-phase instruments are to a large extent due to the failure of several Member States to implement the Directives. However, the deadline for Member States to implement the Qualification Directive was only 10 October 2006 and insufficient time has elapsed to evaluate its full impact on Member State practices. In addition, the deadline for implementing the Procedures Directive is 1 December 2007. It is therefore too early to say that the first phase of the CEAS has bedded in.

You asked for an explanation of what problems the Government encountered during the implementation of the Qualification Directive. The UK implemented the Qualification Directive through existing legislation and the introduction of secondary legislation. The Statement of Changes in the Immigration Rules (Cm 6918) and The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) were laid on 18 September 2006 and came into force on 9 October 2006.

The specific family unity provisions of Article 23 paragraph 2 of the Directive were not incorporated into the Immigration Rules at that time. This was because officials were conducting a review of family unity policy as a whole and wanted to consider its wider implications in the Border and Immigration Agency and across Government before making any changes to the Immigration Rules and policy.

Although the Article 23 paragraph 2 provisions were not in the Immigration Rules changes, they were reflected in existing UK published policy on Humanitarian Protection prior to the deadline for transposition of Directive 2004/83/EC. Documentation outlining that policy has been easily accessible to members of the public via the official website of the then Immigration and Nationality Directorate of the Home Office.

The other aspect of the Commission’s infraction proceedings relates to the failure of Gibraltar to transpose the provisions of the Directive. Legislation transposing this Directive in Gibraltar has been drafted. Amendments to the first draft are substantially advanced and will shortly be submitted for ministerial clearance. However, an election is likely to be held in Gibraltar in the coming months which may impact on the passage of primary legislation such as this. It is therefore the intention of the Government of Gibraltar to take it through all its stages by 30 June 2008.

Your final question asks about disparities in recognition rates. Whilst widely divergent recognition rates may indicate that there is further work may be needed to bring Member State practices closer together, I do not accept that it fundamentally undermines the credibility of the Common European Asylum System.

In our written response to the Commission the UK has emphasised the importance of practical co-operation between Member States. We recognise that disparities in the outcomes and processes of individual Member States asylum procedures can encourage ‘asylum shopping’. The UK will be keen to share its experience of improving the quality of initial asylum decisions and we hope that closer co-operation between Member States will bring greater levels of consistency to asylum outcomes across the EU.

24 September 2007

CONTROL OF SYNTHETIC DRUG I-BENZYLPIPERAZINE (BZP) (11974/07)

Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office

In the explanatory memorandum I submitted to the Committees on 8 August I said that I would write to clarify the Government’s policy position in the light of consultation with the Advisory Council on the Misuse of Drugs.

The advice of the Council has now been received. After reviewing the European Monitoring Centre’s risk assessment it has offered its support for the Commission’s proposal to make BZP subject to control measures across the EU.

Professor Sir Michael Rawlins, the ACMD Chair, has recommended that control measures introduced as a result of the proposal should be appropriate to the relatively low risks of the substance, but that overall the position is proportional and in line with the thinking of the ACMD’s Technical Committee. In the light of Sir Michael’s advice the Government is content to support the proposal.

If the Commission’s proposal is agreed the Government will seek further advice from the ACMD on the level of classification appropriate under the Misuse of Drugs Act 1971.

16 October 2007

CRITICAL INFRASTRUCTURE PROTECTION (16932/06, 16933/66)

Letter from Rt Hon Tony McNulty MP, Minister of State, Home Office, to the Chairman

Thank you for your letter of 19 March 2007 regarding the above documents. I would like to take this opportunity to update you on negotiations.

The UK has continued to participate fully in the negotiations at the ProCiv working group under the German Presidency. Negotiations have to date been slow, with June’s working group meeting reaching Article 8 of the Directive.

The UK has continued to argue that a non-binding approach to critical infrastructure protection would be the best way forward for the EU, and that we would prefer to have a narrower definition of what could be classified as ‘European Critical Infrastructure’ (ECI) in order to avoid designation of unnecessarily large numbers of ECI.

The German Presidency produced Council Conclusions which were agreed in the April JHA Council, a copy of which I attach to this letter (not printed). The UK pushed hard to retain references to a voluntary approach in the Conclusions, as well as reiterating that it is fundamentally a responsibility of individual member states to protect their own critical infrastructure.

The Portuguese Presidency has now taken over as chair of the ProCiv working group where negotiations will continue and the UK will continue to press for our position as outlined in the relevant Explanatory Memoranda.

5 July 2007

Letter from Rt Hon John Hutton MP, Secretary of State for Business, Enterprise & Regulatory Reform, Department for Business Enterprise and Regulatory Reform

I am writing to let you know about a DG TREN Communication—SEC(2006)1697 final of 2 February 2007—on protecting Europe’s Critical Infrastructure in the Energy and Transport sectors, and to explain why this document is not being deposited in Parliament in the normal way.

3 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 357.
Our key reason is that the document is classified and cannot be downloaded from the Commission’s document website. The package is classified as it contains sensitive information, in particular regarding criteria and methodology under which critical infrastructure in the energy and transport sectors might be considered European critical. This information is of potential use to malefactors.

The Commission’s overall European Programme for Critical Infrastructure Protection (EPCIP) comprising Directive (COM(06) 787, accompanying Communication COM(06)786 and earlier Green paper COM(05)576 have all been the subject of extensive scrutiny including examination by Lords Sub-Committee F and a debate on the floor of the Commons on 2 May. The Communication itself contains no proposals for legislation, although the Commission will draw on it to bring forward a proposal after the adoption of the EPCIP Directive. This will trigger further public scrutiny.

24 July 2007

Letter from the Chairman to Rt Hon Tony McNulty MP

Thank you for your helpful letter of 5 July 2007, which Sub-Committee F of the European Union Select Committee considered at a meeting on 25 July.

We are glad that the Government is continuing to play a full part in the negotiations, and is continuing to press its previous arguments, which we fully support. The protection of critical infrastructures is, as the Council Conclusions stress, ultimately the responsibility of the Member States. Cooperation between States where they have a joint interest and can assist one another is important, but it seems to us that this could take place just as easily—perhaps more easily—without EU legislation.

We will continue to keep these documents under scrutiny, and would be grateful to be kept informed of the progress of negotiations under the Portuguese Presidency.

26 July 2007

Letter from Rt Hon Tony McNulty MP to the Chairman

Further to your letter of 26 July regarding the above documents, I would like to update you on negotiations.

The UK has continued to contribute extensively to the negotiations at the ProCiv working group under the Portuguese Presidency. Following the German Presidency’s Council Conclusions, the UK has proposed constructive solutions to the Presidency and Commission in order to try and resolve our concerns.

A strong reservation remains the introduction of unnecessary burdens on Member States and owners/operators of European critical infrastructure, and we continue to argue against this. We have made some progress towards ensuring the security of our information, and to limiting the role of the Commission.

We will continue to negotiate towards resolving our outstanding concerns.

26 October 2007

DATA PROTECTION FRAMEWORK DECISION (DPFD): REVISED PROPOSAL (7315/07)

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs

Sub-Committee F of the House of Lords Select Committee on the European Union considered the revised proposal for a Data Protection Framework Decision (DPFD) at a meeting on 6 June 2007.

As you know, in our report on Prüm we suggested that the anxiety of the German Presidency to obtain agreement on the draft Council Decision incorporating parts of the Prüm Treaty into EU law provided an unrivalled opportunity for achieving agreement on a satisfactory new DPFD. We understand from your response to our report that the Government is prepared to let the Presidency adopt the Prüm Decision without any guarantee of progress on the DPFD. This is a matter we very much regret.

The Committee welcomes the German Presidency’s attempt at re-starting negotiations on the DPFD. However, it seems to us that the fresh text it has produced utterly fails to create high, or even adequate, standards of data protection valid across the EU. Most provisions have been radically simplified, key data protection principles have been removed or weakened, and conditions for transfer and further processing remain to a large degree subject to national laws thus undermining uniformity and consistency of standards.

We entirely subscribe to the view expressed by the European Data Protection Supervisor in his Opinion on the German proposal of 27 April 2007 that the need to reach unanimous agreement in the Council “cannot justify a lowest common denominator approach that would hinder the fundamental rights of EU citizens as well as
hamper the efficiency of law enforcement”. He also believes that the text as it stands not only fails to provide added value to Council of Europe Convention No. 108, but also fails to meet in many aspects the level of protection required by that Convention.

The Committee would be grateful for your comments on the following issues of concern raised by the EDPS:

**Purpose Limitation**

- The general reference, in Article 3, to the purposes of Title VI of the EU Treaty does not constitute a specific and legitimate purpose for data storage, as required by Convention No. 108.
- The derogations to the purpose limitation principle in Article 12 fail to lay down the requirement that derogations must be necessary. They are also far too broad in allowing processing of data for “any other purpose” as long as the authority from which the data were received gives its consent. Again, this seems to contradict basic principles of Convention No. 108.

**Data Quality**

- The German proposal has removed important guarantees with regard to the quality of data and, as its stands, fails to ensure that personal data transmitted are accurate and reliable (Article 9).

**Rights of Data Subjects**

- The provisions in the German proposal are incomplete: they should set out clearly the obligation of the controller to inform individuals that data about them are held (Article 16), and any exception to the right of access should be clearly and narrowly defined (Article 17).

**Transfer of Data**

- The German proposal no longer regulates the issue of transfer of data to private bodies, or to public bodies other than law enforcement agencies. It also fails to regulate access and further use by law enforcement authorities to personal data controlled by private parties.
- The German proposal fails to regulate at EU level the transmission of data to third countries, and fails to ensure that these data are adequately protected (Article 14).

With regard to the last point, I had noted in previous correspondence with you concerns about a lack of common standards and co-ordinated decision-making on the adequacy of data protection provisions in third countries. In your letter of 15 February 2007 you confirm that the UK and most of the other Member States are opposed to adequacy decisions taken at EU level and you explain that, in practice, data is shared safely with countries that have inadequate data protection by several means, including sharing with a trusted recipient or subject to specific conditions. However, in view of other developments, such as availability of information and law enforcement access to centrally held information in EU databases, we do not think it is appropriate that this matter should be left to be dealt with by domestic law or bilateral arrangements. We note in this regard that the Consultative Committee of the Convention No. 108 has recommended that the DPFD lay down the conditions under which personal data may be transferred to third countries, and that these conditions should respect the principle that the third country concerned ensures an adequate level of protection for the intended data transfer, while any derogations to the principle should be specifically defined. What problems are there in supporting such an approach?

The German proposal also raises a new concern with regard to the rules on precedence. Article 12.2 allows the possibility that Title VI instruments take precedence over the conditions for further processing laid down in the DFFD. This contradicts the general understanding that the DPFD should constitute the *lex generalis* upon which more detailed provisions in relation to other Title VI instruments would build. The German proposal also envisages, in Article 27, that the DPFD is without prejudice to obligations incumbent upon Member States by virtue of bilateral or multilateral agreements with third countries. Failure to limit this provision clearly to existing agreements would allow future agreements to undercut the basic protections provided in the DPFD. You have told us repeatedly, most recently when giving evidence to Sub-Committee F on *Prtim: an effective weapon against terrorism and crime?* 18th Report of Session 2006–07, HL 90), that the DPFD is to be an instrument underpinning the third pillar data protection regime. Would you not agree then that the standards it provides must be met by any existing or future more detailed agreements and Title VI instruments?
Finally, the Committee notes that the German text now proposes to establish a single Joint Supervisory Body (JSB). This is an initiative we welcome, as we have suggested in previous correspondence over the proposed DPFD that, in the framework of a new third pillar data protection regime, consideration should be given to bringing together the various supervisory authorities set up under different third pillar instruments. We would not want, however, the discussions around the merging of the JSBs to prejudice the adoption of the DPFD. We are also aware of the difficulties in accommodating specific arrangements such as those that concern the JSB for Eurojust and which have been expressed by Mr. Kennedy in his letter to the Presidency of 7 March 2007.

We would be grateful to be informed of developments in the negotiations as soon as possible after each Working Group meeting. Could you also confirm that you have sought the views of the Information Commissioner on this draft, and provide us with the views expressed as soon as they are available?

In the meantime, and pending receipt of the information requested, the Committee has decided to keep this document under scrutiny. Document 13246/2/06 has been superseded and is cleared.

7 June 2007

Letter from Bridget Prentice MP, Parliamentary Under Secretary of State,
Minister of Justice, to the Chairman

Thank you for letter of 7 June 2007 to Baroness Ashton in which you raise a number of points about the German Presidency’s redraft (dated 13 March) of the Data Protection Framework Decision (DPFD) in response to the Explanatory Memorandum that Baroness Ashton submitted on 19 April. I am now the Minister responsible for European issues in the Ministry of Justice and I look forward to working with you on this and other European issues. Before addressing each of the specific points you raise, I would first like to take this opportunity to provide a general update on the DPFD negotiations.

The German Presidency chaired its final DPFD Working Group meeting on 15 June and completed the third reading of articles 1-16. The German Presidency has made considerable progress on the DPFD negotiations and we believe the text has improved in many respects. I have enclosed the latest redraft dated 6 June for your information although we expect a further revised draft to be released shortly to take into account the Working Group discussions of 6 and 15 June.

The Justice and Home Affairs Council on 12 June adopted Council Conclusions on the DPFD (copy enclosed). The Council Conclusions confirm that the Council is seeking to reach agreement on the final text of the DPFD by the end of 2007 at the latest. This is a challenging but achievable goal; Member States appear to be trying to agree compromise positions and the incoming Portuguese Presidency is keen to progress negotiations. The next Working Group meeting will take place on 18 or 19 July.

You raise a number of issues in your letter concerning the European Data Protection Supervisor’s (EDPS) opinion on the 13 March text. On the point about purpose limitation you state that Article 3 of the new text does not constitute a specific and legitimate purpose for data storage as required by Convention 108. However, Article 3 has been revised in the current draft text and now states that data may only be collected for “specified, explicit and legitimate purposes . . . and may be processed only for the same purpose for which data were collected”. Further processing (Article 3(2)) may be permitted only in so far as the purpose of this is not “incompatible with the purpose for which the data were collected” and must be lawful, necessary and appropriate.

Also in relation to purpose limitation, you note that the derogations in Article 12 permitting further processing for purposes others than those for which the data were transmitted or made available do not require that they be necessary in order to be relied upon. However, the latest version of the text requires the derogations for further processing to be in accordance with the requirements of Article 3(2). This will ensure that the derogations permitting further processing for purposes others than those for which the data were transmitted or made available may only be relied upon when the processing is lawful, necessary and appropriate.

Still on the issue of purpose limitation, you explain that the derogations in Article 12 seem to contradict the basic principles of Convention 108 because by allowing the processing of data “for any other purpose” providing the transmitting authority gives consent, they are too broad. We regard this to be an important derogation because it is currently the only mechanism by which data transferred under Title VI of the Treaty of the European Union may subsequently be used for civil, regulatory and disciplinary matters. For example, it is not always clear at the outset of investigations into market abuse activity, accusations of clinical negligence or the defence of intellectual property rights whether the investigation will result in a criminal prosecution or in regulatory, disciplinary or civil action. Once data has been processed for third pillar purposes, we understand that it must continue to attract the same third pillar data protection safeguards, even if it is further processed for first pillar purposes. The UK has tried repeatedly to include the term “regulatory” in Article
12(1)(b) but has been advised by the Presidency that Article 12(1) d) adequately addresses our concerns about further processing for regulatory and other first pillar matters.

The next point you raise in relation to the EDPS' concerns is about data quality. You explain that the German draft has removed important guarantees about the quality of data and fails to ensure that personal data transmitted are accurate and reliable. There are no substantive differences between Article 9 in the final text produced by the Finnish Presidency on 22 November 2006 and the drafting in the German text of 13 March so it is not entirely clear what the EDPS believes the German draft has removed. Furthermore, Convention 108 requires data to be “accurate and, where necessary, kept up to date”. Article 9 of the current draft text requires competent authorities to “take all reasonable steps to provide that personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available”. Article 9 in the current draft requires that “as far as possible in all transmissions, available information should be added which enables the receiving Member State to assess the degree of accuracy, completeness, up-to-dateness and reliability”. The current text is therefore consistent with Convention 108 and includes sufficient safeguards to help ensure that personal data transmitted are accurate and reliable.

In your letter you also express concerns about the rights of data subjects. You will be encouraged to see that Article 16 in the current text (Information for the data subject) is drafted more fully and includes the obligation to inform the data subject of the identity of the data controller; this was missing from the 13 March text. The drafting of Article 17 (Right of access) has also improved and is much clearer. However, the Working Group has not yet reached agreement on these two key articles and they are likely to be refined further in subsequent drafts.

The final point raised in relation to the EDPS' concerns is about the transfer of data to third parties and third countries. With regard to third parties, you will see that Article 14a of the latest draft aims to regulate such data transfers and I hope the inclusion of this article removes your concerns on this issue. I note that you also state that the German draft fails to regulate access and further use by law enforcement authorities to personal data controlled by private parties. I do not believe this is the case as, for example, data transferred by a private body in one member State to a law enforcement authority in another member State will be subject to the Framework Decision as implemented by national laws.

On the transfer of data to third countries and the recommendation that adequacy is required in the first instance with clearly defined derogations, I am hopeful that Article 14 of the current text will allay a number of your concerns. The UK has no difficulty with the principle that third countries should ensure an adequate level of protection for the intended data transfer, with any derogations to this clearly defined. Indeed, the provisions in the Data Protection Act on the transfer of data to third countries are based upon the principle that data should only be transferred to countries considered to be adequate except in the circumstances described in Schedule 4 to the Act.

You also note concerns over the rules on precedence and understand that Article 12(2) contradicts the Framework Decision's role as lex generalis. You will see that the word “specific” has been added to Article 12(2) in the current text to ensure that the data protection safeguards in other Council acts in accordance with Title VI would apply as lex specialis and so the general nature of the DPFD's application is not undermined. Our understanding is that where more than one Council act applies the higher standard of data protection should prevail.

On the question of Article 27, I expect the amended drafting in the current text will address your concerns. The word “existing” has been added to article 27 to make clear the intention that bilateral and multilateral agreements with third countries must comply with the rules in Article 14 of the DPFD. Consistent with its role as lex generalis, the DPFD is intended to be without prejudice to specific data protection provisions in existing Council acts. Recitals 24 and 24a clarify this further.

You also note in your letter the proposal for a single third pillar Joint Supervisory Body. As you know, the UK agrees with the Committee’s views on this matter. We are still waiting for further details from the Presidency about the practical implications of the proposal and how Eurojust's concerns may be dealt with. I will update you on this matter when I next write to the Committee.

Finally, you sought confirmation that the Information Commissioner’s Office (ICO) had been consulted on the 13 March draft of the DPFD. My officials discussed this text with the ICO and other stakeholders before negotiations on it began in Brussels on 29-30 March. My officials completed a second stakeholder consultation exercise in early May where the revised draft of 24 April was considered in detail; as a key stakeholder, the ICO was also involved. You may wish to contact the ICO directly to seek their views directly. However, in short, the ICO agreed that the drafts were generally moving in the right direction. We agreed that the reference to adequacy, dropped from the 13 March draft should be reintroduced and that the rules around notification and data subject access should be clarified. The ICO agreed that the provisions in Article 23 about prior
consultation should make clear that this should only apply to high risk and/or new large scale processing procedures and not be routine; this is now reflected in the current text. We also discussed the articles relating to national supervisory authorities and the joint supervisory authority and agreed to update one another as further information and ideas became available through the Working Group and EU supervisory authority networks. My officials enjoy a good working relationship with the ICO and value the Office’s input. We will continue to work closely with the ICO as negotiations progress.

I hope this letter addresses your concerns and provides the information you were seeking. Please do not hesitate to contact me if I can provide any further details at this stage. I will continue to update you on the progress of the DPFD negotiations.

26 July 2007

Letter from Bridget Prentice MP to the Chairman

I would like to update you on the ongoing negotiations on the Data Protection Framework Decision (“DPFD”).

I last wrote to you on 26 July 2007. The MDG-Mixed Committee finalised a third reading of the draft DPFD on 18 July 2007. A revised text which took into account the meetings of the Working Groups held in June and July was issued on 21 September. A further revised text which took account of Working Group on 27 September was issued on 1 October. Further discussions at expert level took place on 4 and 5 October.

The Presidency listed two items—scope and transfers to third countries—for discussion by JHA Council on 18 September. In the run up to the meeting the Presidency decided to put those items forward for general agreement. The Presidency concluded that the instrument would only apply to data that is transferred between member States or between member States and bodies or information systems that are established by Council acts. This limited scope is reflected in Article 1, a new recital 6, the existing recital 6a and the evaluation clause of Article 27a. An agreement was also reached on the regime for onward transfer of personal data that is subject to the DPFD to non-EEA States—see Articles 14 and 27 and recitals 12a, 12b and 25.

The Portuguese Presidency has clearly stated its intention to reach political agreement on the whole of the DPFD at the Justice and Home Affairs Council on 9 November 2007. Discussions on the DPFD have now concluded at working group level. Outstanding issues are currently being discussed at Counsellor and COREPER level before the November JHA Council.

Annexed to this letter is an update on the current DPFD position (not printed), including anticipated changes from the expert level meetings on the 4 and 5 of October. I hope you find this helpful.

I will now address some of the most important issues on the DPFD.

Firstly, scope. As you know, the Government agreed with your view that the DPFD should not apply to data that is only processed domestically and was keen to remove any ambiguity about this from the text. At its meeting of 18 September, the Council confirmed the understanding that the DPFD only applies to data that is transferred between member States or between member States and bodies or information systems that are established by Council acts. This is reflected in the following elements: Article 1(2), a new recital 6 which states “the scope of the Framework Decision is limited to the processing of personal data transmitted or made available between Member States”, the existing recital 6a and the evaluation clause of Article 27a.

Article 1(2) is clear that the scope of the DPFD is limited to personal data that is transmitted or made available by one member State to another member State or EU bodies. Member States do not agree on whether there was competence for the DPFD to deal with data that is only processed domestically. Recital 6 simply states that no conclusion about competence can be inferred from the limited scope of the DPFD. This does not lead to an inference that the EU has competence in relation to domestic processing.

Article 27a is an evaluation clause by which the data protection system set in place pursuant to the DPFD, including the formal limitation of its scope to cross-border data exchange, will be the subject of an evaluation by the Commission three years after the date on which the Member States will be obliged to apply the DPFD. The Commission will look at the operation of the DPFD and whether or not it has achieved what it set out to.

Second, the JHA Council agreed wording of the provisions dealing with the onward transfer to non-EEA States of personal data that is subject to the DPFD (Articles 14 and 27 and recitals 12a, 12b and 25). Article 14(1) requires, inter alia, that the transmitting member States must get the consent of the originating member State before the data can be transferred. There are derogations from this requirement. Article 14(2) provides a derogation for circumstances where “transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third State or to essential interests of a Member State and the prior consent cannot be obtained in good time”. We think this is important as we do not want a situation to arise where we have data that could be useful to a third country to prevent such a threat, but are
unable to send it in time simply because we cannot contact the appropriate authority in the originating Member State. Significantly, “each Member State may determine the modalities of such consent, including, for example, by way of general consent for categories of information or for specified countries” (Recital 12a) which will reduce the administrative burden on operational agencies. Existing agreements are preserved but Article 27 acknowledges that Member States must respect the requirement for consent, where applicable. This should not have any significant impact on stakeholders who usually seek consent before transmitting another party’s data under existing agreements.

From the working group meetings on 4 and 5 October, it seems there is consensus agreement on Articles 6—establishment of time-limits for erasure and review, Article 8—automated individual decisions, Article 15—information on request of the competent authority, Article 19—right to compensation, Article 20—judicial remedies, Article 21—confidentiality of processing, Article 22—security of processing, Article 23—prior consultation and Article 24—sanctions, and subject to scrutiny reservations of other Member States, more difficult Articles like Article 3—principles of lawfulness, proportionality and purpose and Article 12—processing of personal data received from or made available by another Member State.

There are still some outstanding issues which need to be addressed at councillor level. These include: the national security carve-out (Recital 7a and Article 1 (4)), clarification that Member States may provide a higher level of data protection in relation to their domestic data (Article 1(5)), processing of special categories of data (Article 7), draft Council declaration on a joint supervisory body (Annex II) and relationship of the DPFD to other Council Acts (Article 27b). The Government supports the current text on national security and believes the text on the other Articles are acceptable to the UK.

Stakeholders are largely satisfied that the new text is an improvement for the UK. The main issues raised by stakeholders relate to the implications of the DPFD on the operational side of their business. They support the exemption for national security as it stands and do not want it to be changed (proposed by Germany). We will continue to liaise with stakeholders to ensure these matters are resolved, but we are confident that an agreement can be reached.

As part of the consultation process, my officials also discussed the current text with the Information Commissioner’s Office (ICO). The ICO also agrees that the present draft of the DPFD is an improvement for the UK. The main issues raised by the ICO related to Article 25 where they feel a clear reference to national supervisory authorities is needed in the text and the Annex on joint supervisory bodies where they feel a clear commitment should be made to ensure the joint supervisory body has a role to consider matters related to the DPFD.

I hope this letter provides the information you were seeking. As ever, I would be very happy to discuss any aspects further with you.

15 October 2007

Letter from Bridget Prentice MP to the Chairman

I am writing to inform you of our intention to support a general approach on the Data Protection Framework Decision (‘DPFD’) at the Justice and Home Affairs Council on 8–9 November. Unfortunately it has not been possible for your Committee to meet to consider the latest text and clear it from scrutiny. I realise this is not ideal and apologise. However I take the view that the current text of the DPFD is one which is in the UK’s interest. I am concerned that if we fail to reach general agreement at the November JHA Council we could lose the chance to achieve a what is good result for the UK on this document. Negotiations on this document have been protracted and, as your Committee is aware, earlier drafts gave rise to considerable difficulties for the UK. The current text represents a delicate political compromise which we cannot guarantee would remain available were we to block the proposal at the November Council.

I and my officials have endeavoured to keep you fully informed as negotiations have progressed. I wrote to you on 26 July 2007 addressing your concerns about the text and again on 15 October (following a meeting my officials had with your clerk on 3 October) setting out in detail how the negotiations had progressed and updating you on the latest version of the DPFD text. I also took the opportunity to remind you that the Portuguese Presidency had clearly stated its intention to reach agreement on the whole of the DPFD at the Justice and Home Affairs Council on 9 November 2007.

We have engaged both your Committee and the Commons Scrutiny Committee throughout the negotiations. Over the last month there have been frequent working group meetings on the DPFD and each time a new text has been released which we have sent a copy to the Committee. The articles in the text are the final draft, but the Committee are unable to consider it due to prorogation. The Committee’s next available meeting is 14 November—after the Council. Ultimately this is an unfortunate case of domestic and EU timetables and procedures being out of step.
The text is acceptable to the UK and I believe it is now clearly in the UK’s interest that a general approach be agreed at the JHA Council when it meets in November. If any new points arise at that meeting then I shall write to you again.

I hope this letter answers any questions you may have. Once again I am sorry that you will not have a chance to consider the latest text and I would be very happy to discuss any aspects further with you.

31 October 2007

EUROPEAN MIGRATION NETWORK (12481/07)

Letter from the Chairman to Liam Byrne MP, Minister of State, Home Office

Sub-Committee F of the House of Lords Select Committee on the European Union considered this proposal at a meeting on 17 October 2007.

The Committee shares your views that the European Migration Network is useful and worth keeping and welcomes the proposal to put it on a proper legal basis. We noted that you have a number of points which you will seek to clarify during negotiations, particularly those concerning the proposed allocation of responsibilities between the Steering Board and the Commission, the role of the proposed ‘scientific experts’, and the criteria for the allocation of financial support between the National Contact Points.

We are aware that the proposal might come up for adoption before the end of the current Presidency and look forward to receiving timely clarification on these issues, as well as on whether the Government will opt in to this measure. In the meantime, we will retain this document under scrutiny.

17 October 2007

EUROPOL: ESTABLISHING THE EUROPEAN POLICE OFFICE (5055/07)

Letter from the Chairman to Rt Hon Tony McNulty MP, Minister of State, Home Office

Thank you for your letter of 23 April 2007 in which you update us on the progress of negotiations over this proposal. Sub-Committee F of the House of Lords Select Committee on the European Union has examined this dossier at a meeting on 6 June 2007.

The Committee accepts that, while Europol’s priority areas should remain organised crime and terrorism, there might be scope for expanding Europol’s mandate to include serious crime which is not organised. Could you tell us, however, how the draft text will be amended to ensure that Europol’s involvement in serious crime that is not linked to organised crime is appropriately limited? What further safeguards will the Government press for to limit Europol’s involvement in relation to the proposed list of offences in Annex I of the draft Council Decision?

We would also welcome clarification on two issues with relevance to data protection which were highlighted by the Joint Supervisory Body (JSB) of Europol in an opinion published on 5 March 2007. One is the question of the new power to collect, store and process personal data from public or private entities (Article 5(1)(a)). Will the text be amended to reflect the JSB’s view that the processing of personal data from other public or private entities should take place exclusively via national units?

The other issue is the relationship between this proposal and the proposed third pillar Data Protection Framework Decision (DPFD). Can you confirm that it is still intended that the DPFD will be applicable to Europol and clarify the relationship between these two proposals?

On the question of parliamentary oversight, you say that you are broadly satisfied with the provisions which are emerging from the Working Group discussion. Could you tell us what these provisions are? You will also be aware that the Commission proposal was meant to enhance democratic oversight by proposing that Europol should be funded from the general budget of the EU and giving the European Parliament, as one of the budgetary authorities, the power to control the development of Europol, which national parliaments hitherto had through the ratification process. This will not happen if it is decided that Europol will continue to be funded by Member States. How likely is it that agreement on transposing the Europol Convention into a Council Decision will maintain funding by Member States? What would you do to maintain parliamentary oversight of the way in which Europol might develop?

4 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 360.
With regard to privileges and immunities, and the related issue on the application of the EC Staff Regulations, we would be grateful if you could report on the outcome of discussions as to how this matter will be taken forward.

The Committee has decided that it will continue to keep the document under scrutiny pending a further report on the progress of negotiations and receipt of the information requested.

The Committee also considered a point in a letter you wrote to the Chairman of the Commons European Scrutiny Committee on 2 May 2007, which you kindly copied to me. In that letter you say that the German Presidency recognise “that it will be impossible to adopt the Council Decision as a whole by the end of their Presidency. However they are keen to reach a general approach on the first Chapter” at the forthcoming JHA Council.

We are concerned at the suggestion that it is possible to reach a general approach on parts of a proposal. As far as we are aware this is a new practice, at least in this area of EU policy. As you know, a general approach on a whole instrument means that it is no longer possible, as a matter of practical politics, to re-open the matters agreed. This Committee treats agreement on a general approach to an instrument under scrutiny as a scrutiny override. Can you say what you think the consequences would be if a general approach was agreed on part of this Proposal?

7 June 2007

Letter from Rt Hon Tony McNulty MP to the Chairman

Thank you for your letter of 7 June in which you raised a number of issues.

LIMITING THE EXPANSION OF EUROPOL’S MANDATE AND LIST OF OFFENCES—ANNEX 1

The Government is pleased that the Select Committee recognises that there might be scope for expanding Europol’s mandate to include serious crime which is not organised. However, you are seeking clarification as to how Europol’s involvement in serious crime which is not linked to organised crime is appropriately limited.

In the revised text Article 4 of the proposed Council Decision, we have ensured that the changes to Europol’s mandate have been limited to cover situations where there is a very serious crime which would require a common approach owing to the scale, significance and consequences affecting several Member States.

As stated in my previous letter to the select Committee, we will continue to press for further safeguards to limit Europol’s involvement in serious crime, once discussions in the Working Group move onto the role of the Management Board which have oversight of Europol and the proposed list of offences at the Annex I of the proposed Council Decision.

COLLECTION, STORAGE AND PROCESSING OF DATA VIA NATIONAL UNITS

In principle the Government’s preference is for the processing of personal data from other public or private entities to take place exclusively via national units as they are the only liaison body between Europol and the competent national authorities. However, this is to be discussed under the revised Chapter IV Relations with Partners. Negotiations are still underway and the issue of how Europol can communicate data received from public or private entities stands to be addressed.

APPLICABILITY OF THE DATA PROTECTION FRAMEWORK DECISION (DPFD)

It is not yet clear whether Europol will come within the scope of the Data Protection Framework Decision (DPFD) because both the draft Europol Council Decision and DPFD texts are still under negotiation. However, we are in close contact with colleagues at the Ministry of Justice, the lead Department for data protection issues and will be able to comment on this further as the DPFD negotiations progress. The Framework Decision will set overarching minimum standards of data protection across the whole of the third pillar and so will have an impact upon other third pillar measures, including Europol, unless Europol is specifically exempted from the DPFD which is not our intention.
PARLIAMENTARY OVERSIGHT AND THE APPLICATION OF PPI AND ECSR

The Council Conclusions from the June JHA Council foresee Community financing for Europol subject to satisfactory solutions on a number of outstanding issues such as the clarification of budgetary issues guided by the principle of budget neutrality, the lifting of immunity for Europol officials in Joint Investigation Teams (JITs) and the application of Protocol, Privileges and Immunities (PPI) and the European Community Staff Regulations (ECSR). The decision is by unanimity.

We believe these issues would be addressed before the scheduled date of 1 January 2010 for Community financing. Europol and the Commission will draw up an implementation plan with clear milestones which have to be reached before the start date. Negotiations are still on going with respect to PPI & ECSR and the Government’s position is clear that Europol officials in JITs should not have immunity.

As a result and rightly pointed out by the Select Committee, the European Parliament would play an active role in the development of Europol. In the interim period aside from the Parliamentary oversight in the transposing of the Europol Convention to a Council Decision, the Scrutiny Committees will continue to receive periodical reports and will be informed of any new developments.

GENERAL APPROACH

Thus far negotiations have centred on the first chapter of the proposed Council Decision, which deals with establishment and tasks. The revised version has taken into consideration most of our concerns. At the June JHA Council all other delegations took the same position. This does not mean that the provisions of chapter 1 are finally agreed but rather that work on these provisions have been closed for the present time in order to allow work to begin on other chapters. We are therefore content with that section of the text, and have indicated we are content to proceed to negotiating the next chapters.

The Committee will understand that in order to manage a negotiation on a proposal of this size it is best to take it in parts in order to make progress. However, it is not possible to look at parts of the text in isolation and this means that subsequent work on Articles 10 onwards will undoubtedly affect some of the components in Chapter 1, which will therefore have to be looked at again. There is no bar to further negotiation on the first section of the text should we find that there are elements we consider unsatisfactory. In any event it is clear that the entire document remains under Parliamentary Scrutiny.

I hope this addresses the points you have made and I will keep the Committee updated on the progress of discussions on the draft proposal.

27 June 2007

Letter from the Chairman to Rt Hon Tony McNulty MP

Thank you for your further letter of 27 June 2007 commenting on the issues raised in my letter of 7 June. Sub-Committee F of the House of Lords Select Committee on the European Union considered your letter at a meeting on 11 July 2007.

We are very grateful for your full reply on the points that concerned us. The Committee are glad that the JHA Council foresees that there will be Community financing of Europol, and that the Government’s position is that officials in JIT teams should not have immunity. We will be following the negotiations to see whether these desirable objectives are achieved.

We hope that, when negotiation continues on Chapter IV, the Government will insist on its preference that processing of data from other public or private entities should take place only through national units.

We are concerned that not all Member States may be making full use of the Europol Information System, and would be grateful to have figures showing the extent to which it is used.

We appreciate that, while the state of negotiations on the DPFD is so fluid, it is not possible to reach a conclusion on the relationship with this proposed Decision; that too is something we will continue to pursue.

The Committee are still unhappy about the absence of safeguards to ensure that Europol will not be involved in crimes which are not organised crimes, and they are not reassured by your statement that the mandate of Europol will be limited to “very” serious crimes where a common approach is needed; they are not aware of any definition of the distinction between a serious crime and a very serious crime. In the Select Committee’s recent report on the EU/US Passenger Name Record (PNR) Agreement we referred to the lack of a definition of “serious” crime, and contrasted the smuggling of children (an example given to us by Baroness

6 Paragraphs 104–105.
Ashton of Upholland) with the with the smuggling of tobacco (an example given to us in oral evidence by Joan Ryan MP).

You say that the Government will continue to press for safeguards to limit Europol’s involvement in serious crime. This is welcome. However you add that the Management Board will have oversight of the proposed list of offences at Annex 1. We would like to know how the Management Board will acquire this role, and how it will be exercised.

As you know, the Committee were concerned at the suggestion that a general approach had been agreed on part of the proposal. They accept that negotiations must move on from Chapter I to the next chapters, but are glad that you say Chapter I will undoubtedly have to be looked at again, and that there is no bar to further negotiation on it.

You have said that “aside from the Parliamentary oversight of the transposing of the Europol Convention to a Council Decision, the Scrutiny Committees will continue to receive periodical reports and will be informed of any new developments”. We understand this to mean that you will take the initiative in informing us of the progress of negotiations, and in particular of any developments in the points we have highlighted. For the present, we continue to keep the document under scrutiny—the entire document, as you rightly point out.

12 July 2007

Letter from Rt Hon Tony McNulty MP, to the Chairman

Thank you for your letter dated 12 July, which was received here on the 17.

You mentioned your concern that not all Member States may be making full use of the Europol Information System, and asked for usage figures.

As you may recall the Information System was only established in October 2005. At the end of June 2007 around 40,000 ‘objects’ (records) had been entered onto the system but there is an ongoing process of review and removal to ‘clean the data’ with updates and data deletion to remove unrefined and expired material. The Europol Management Board has expressed its concern that the amount of inserted data remains low and while several Member States had very little data in the system others had expired data that needed to be updated or deleted. Members of the Management Board have expressed a commitment to increase the amount of data input into the Information System, and believe that the introduction of an “automated data loader” may help the situation.

In strict numerical terms the UK is not a major user when compared to the data input by Germany, France, Italy and Austria but part of this is explained by the fact that about 45% of the objects on the Information system relate to forgery of money (Euro counterfeiting). This makes easy comparison of system usage by country problematic.

However, taking June 2007 as an example sixteen countries input new material onto the Information System. In terms of volume the UK was fifth behind Germany, Belgium, Cyprus and Italy, but since it was not possible to identify the types of material input volume comparisons become meaningless.

A concern for the Management Board is data quality and this echoes the approach adopted by the UK which is based on inputting highly refined material. Data from our high impact cases is submitted to and checked against the Information System and our contribution is of a very high quality in relation to serious and organised crime. That said the Information System is relatively new and the way in which it can be utilised is still being reviewed by our Europol Liaison Bureau, but we anticipate consistently rising levels of engagement with the Information System as other countries also engage more as the added value of the database is enhanced.

You also asked about the possible role of the oversight by the Europol Management Board of the proposed list of offences for which Europol would be competent.

I am sorry if the mention of the future discussions in the Europol Working Group, in my last letter to the Committee dated 27 June, has led to a slight misunderstanding. We do see a role for the Management Board in limiting Europol’s involvement in crime that is not of an organised nature, and to ensure that it does not lose its primary focus which is to support Member States’ activities to combat organised crime. The question for us is whether there is value and if it will be possible to get agreement at the Working Group on additional language in the Chapter dealing with the Management Board in the proposed Council Decision which will support this ambition. We see this as quite separate from later discussions in the Working Group on the Annex itself, the proposed list of crimes for which Europol will be competent, which in our view sits outside the remit of the Management Board.
The Portuguese Presidency is keen to bring discussion on the draft Council Decision to a conclusion before the end of the year and I will keep the Committee informed on the progress of the negotiation.

23 July 2007

Letter from the Chairman to Rt Hon Tony McNulty MP

Thank you for your very helpful and prompt reply of 23 July 2007 to my letter of 12 July. Sub-Committee F of the House of Lords Select Committee on the European Union considered your letter on 10 October at its first meeting after the summer recess.

We are grateful to you for having clarified the role of the Management Board. We agree with you that it should not be for them to decide which particular criminal offences are to be within the competence of Europol; we believe (as seems also to be your view) that the Management Board is best employed in directing the energies of Europol to helping Member States in combating serious organised crime. We therefore look forward to seeing just who is going to decide which are to be the relevant criminal offences, and how.

What you say about the use being made of the Information System seems to bear out the concerns we had heard expressed. It seems too that some of these concerns are shared by the Management Board. They put this down to the limited awareness of and lack of trust in Europol by the national competent authorities (Europol Management Board, The Strategy for Europol, The Hague, 1 August 2007). We accept that this is a relatively new system, that it will take some time for all Member States to increase the volume and quality of the data they insert, and that full use will not be made of it until this happens. However it seems to us that data quality is fundamental to establishing a climate of trust conducive to increased sharing of information and intelligence. It is reassuring to know that the UK inputs good quality data, but it would be even more reassuring to know that this was true of every Member State. How is the Council Decision expected to make a difference in this respect?

You say that the Portuguese Presidency is keen to bring discussion on the draft Decision to a conclusion, and you undertake to keep the Committee informed of the progress of negotiations. No doubt there has been some progress since you last wrote, and we look forward to hearing about it. We would also be grateful if you could let us know how the Reform Treaty, if adopted, is going to influence the discussions on some outstanding issues, such as the Agency’s financing. In the mean time we will continue to keep this document under scrutiny.

10 October 2007

ILLEGAL MIGRANTS: PROPOSALS FOR A COMMON EU RETURNS POLICY

Letter from Liam Byrne MP, Minister of State, Home Office, to the Chairman

Thank you for your letter of 4 June 2007, raising additional questions regarding the above report. I will answer your questions in turn.

You may be aware that this week the Government published an executive summary, key milestones and recommendations from the report of a review of the family removals process. We welcome that report and are currently taking forward the recommendations stemming from it.

You referred to Guideline 11 of the Illegal Migration Proposals for a Common EU Returns Policy. I should clarify our position; while we accept the principles outlined in Guideline 11, we believe that there are already ample safeguards regarding the protection of children in domestic legislation. Whilst the Guidelines are not binding, and we entered our reservation to guideline 11 notwithstanding that fact, we do not intend to give those who overstay a further avenue to frustrate the removal process where we feel that there is already adequate legal oversight. The Government is therefore not prepared to lift the reservation to Guideline 11 at this time.

You asked me to clarify the Ministerial commitment to which we refer when dealing with the issue of the return of unaccompanied children. The statement was made by Charles Wardle on 7 June 1993 during the passage of the Asylum and Immigration Appeals Bill. He said:

“...simple humanity demands that any immigration decision to remove an unaccompanied child involves consideration of whether safe and adequate reception arrangements for the child can be made. We would not send an unaccompanied child to another country, whether or not that child had claimed asylum, unless we were satisfied that arrangements had been made”.

This commitment in itself does not include “collection by a suitable partner organisation at the airport”. Paragraph 31 of our response highlighted issues that would be taken into account when considering the return of those with no basis to stay in the UK. Currently we are reconsidering the level of arrangements that would need to be in place for us to be confident that safe and adequate reception arrangements exist. The Border and Immigration Agency ensures that it has regard to the safety of the child in making arrangements to effect removal and will only return a child where it is satisfied that safe and adequate reception arrangements are in place.

5 July 2007

Letter from the Chairman to Liam Byrne MP

Thank you for your letter of 5 July 2007 in reply to mine of 14 June 2007. Sub-Committee F of the House of Lords Select Committee on the European Union considered your letter at a meeting on 25 July.

We still do not understand why lifting the Government reservation to Guideline 11 of the Council of Europe Guidelines on Forced Return should give those who overstay “a further avenue to frustrate the removal process”. Since you agree that the Guidelines are not binding, we see no prospect of their being relied on to frustrate the removal process. On this we shall plainly have to differ.

The recommendation in paragraph 82 of our report about the return of unaccompanied children is one of the most important, and follows from the evidence we received (and quote in paragraph 81) of fears that children can be met by persons who purport to be family members but are themselves involved in trafficking. We are therefore grateful for the text of the 1993 ministerial commitment on the return of unaccompanied children. The undertaking of the Border and Immigration Agency that it “will only return a child where it is satisfied that safe and adequate reception arrangements are in place” is in almost identical terms, and, as you have said, neither undertaking contains a specific commitment that collection will be by a suitable partner organisation.

We do not understand why you persist in emphasising this point when, as we have pointed out in previous correspondence, paragraph 31 of the Government response to our report (to which you yourself again refer) states in terms that the reception arrangements for unaccompanied minors would involve “an appropriate escort on the flight home and collection by a suitable partner organisation at the airport”. We would like to have your express confirmation that this is a ministerial commitment that will govern the future return of unaccompanied minors.

You say that you are currently reconsidering the level of arrangements that would need to be in place for you to be confident that safe and adequate reception arrangements exist; we would be grateful if you could keep us informed of any changes made.

We are grateful for the extracts you enclosed from the report of the Family Removals Review: the Executive Summary, Summary of Recommendations and Progress to Date. There does not however appear to be any mention of the return of unaccompanied children. We understand that it is not your present intention to publish the full Review, but we would nevertheless be grateful to see it.

26 July 2007

Letter from Liam Byrne MP to the Chairman

Thank you for your letter of 26 July 2007, in which you refer to the Government reservation to Guideline 11 of the Council of Europe Guidelines on Forced Return and also the Government policy on the return of unaccompanied children.

The issue of how the UK government might effect the removal of unaccompanied children is currently being developed. On 1 March this year we launched a consultation on the proposed reform of the immigration and care processes surrounding unaccompanied asylum seeking children. Options for reform were set out in our consultation paper entitled—“Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children”. We welcomed the considerable interest that the consultation has generated; well over 100 responses were received.

We have been analysing the consultation responses carefully. Early scrutiny of the responses shows general consensus around a number of key issues. These include the need to rationalise procedures for where UASC are geographically located in the United Kingdom: the need to find a better system to determine their age, the need to find an adequate way of funding their support needs when they turn 18, and the need to ensure that they can be safely returned to their countries of origin if their asylum claims are refused.

The recommendation that you make in paragraph 82 of your report will be considered as we develop our future policy in this area. Paragraph 31 of our response to your report indicated relevant considerations when considering the return of an unaccompanied minor. It was not in itself a Ministerial commitment. Each case,
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would, of course have to be considered on its merits. As mentioned above, we are currently developing our policy on the return of unaccompanied minors. The Border and Immigration Agency will only return a child where it is satisfied that safe and adequate reception arrangements have been made.

You referred to the report “Review of UKIS Family Removals Process”. This document has now been published, and I enclose a copy as requested.

We intend to publish the summary of responses to the UASC Consultation and our policy proposals on reforming the immigration and support arrangements for unaccompanied asylum seeking children, later this autumn.

13 September 2007

Letter from the Chairman to Liam Byrne MP

Thank you for your further letter of 13 September 2007 in reply to mine of 26 July 2007. Sub-Committee F of the House of Lords Select Committee on the European Union considered your letter at a meeting on 10 October.

We are glad now to have been able to see the full text of the Review of the UKIS Family Removals Process. We regret that the removal of unaccompanied children is regarded as outside the scope of the review. The authors are surely right to say that “public perception is unlikely to differentiate between unaccompanied minors and children who belong to family units.” We agree with their conclusion that “In view of one of the principle [sic] aims of the review i.e. to place the welfare of the child at the centre of operations, it may be appropriate to see how this aim might be achieved in the case of unaccompanied minors.” We hope that this will be taken forward.

We are glad that you will be taking into account the recommendations in our report when you review the procedures for unaccompanied asylum-seeking children. We would be grateful if, when you publish your policy proposals, you could send copies to the Clerk to the Sub-Committee.

We remain mystified by your refusal to be committed to the statement made in paragraph 31 of the Government response. We of course accept that each case must be considered on its merits, but are anxious to know what principles you will apply when considering each case. The statement made by a Home Office Minister in 1993 during the consideration of Lords’ Amendments to the Asylum and Immigration Appeals Bill is, you say, a Ministerial commitment. The statement made by another Home Office Minister (yourself) in the Government’s formal response to a report of the House of Lords European Union Committee is, you say, “not in itself a Ministerial commitment”. We should like to know why not.

Your statement was that the adequate reception and care arrangements in the proposed country of return (referred to in the 1993 Ministerial commitment) “would involve a package of reception, care and integration support, an appropriate escort on the flight home and collection by a suitable partner organisation at the airport.” This is part of a response which you undertook to place in the Library of the House, and which (like all Government responses to our reports) will itself in due course be published in a report to the House of Lords. If you do not intend this to be a commitment binding on yourself and future Home Office Ministers when considering cases of returns of unaccompanied minors, we do not understand why you made this statement. We await your comments.

10 October 2007

MEETING OF THE G6 INTERIOR MINISTERS, VENICE, MAY 2007

Letter from the Chairman to Rt Hon John Reid MP, Secretary of State, Home Office

As you know, Sub-Committee F of the House of Lords Committee on the European Union has in the past taken a keen interest in the meetings of the G6 Interior Ministers, and the Select Committee has published reports on the two meetings which took place in 2006: Behind Closed Doors: the meeting of the G6 interior ministers at Heiligendamm (40th report, session 2005–06, HL Paper 221), and After Heiligendamm: doors ajar at Stratford-upon-Avon (5th report, session 2006–07, HL Paper 32).

In both these reports the Committee urged on the Home Office greater transparency about these meetings, and in the Government’s response to the first report, printed as Appendix 2 to the second report, Ms Joan Ryan said: “it was not our intention to be secretive about G6 meetings”.

We were therefore surprised and very disappointed that the first we heard of the meeting in Venice on 11–12 May was from an address by the United States Secretary of Homeland Security to the LIBE Committee of the European Parliament at a meeting on 14 May attended by Lord Wright of Richmond, the Chairman of Sub-Committee F.

The English version of the Conclusions published by the Italian Ministry of the Interior was placed on the Home Office website on 16 May. We do not regard this as adequate. In reply to a Parliamentary Question on 26 October 2006, Baroness Scotland of Asthal undertook to place the Conclusions of the meeting in Stratford-upon-Avon in the Library of the House. We do not understand why this was not done in the case of the Venice meeting.

Moreover we recommended in both our reports that G6 meetings should be the subject of a written ministerial statement. There was no such statement after the Venice meeting. We have yet to receive a Government response to our second report, which was published on 21 February, so we do not know whether you accept that recommendation. We cannot imagine why this should be problematic. Ministers make written statements almost every day informing Parliament about meetings they have attended, and undertaking to put the conclusions in the libraries of both Houses; why should this not be done in the case of meetings of the G6, which are of major importance in the formulation by the six largest Member States of common policy on, among other things, counter-terrorism and immigration?

7 June 2007

PASSenger Name Record (PNR): AgreementS With The US

Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs, to the Chairman

When I gave evidence to your Committee about the EU-US PNR agreement on 7 March, I referred to the benefits of PNR profiling with regard to identifying and disrupting human trafficking activity. I offered to provide the Committee with further details of how data profiling can be used in this way and I am pleased to provide a detailed example below.

The US Immigration and Customs Enforcement Field Intelligence Unit (ICE FIU) used PNR profiling to uncover a human smuggling operation during the spring and summer of 2004. This work resulted in the arrests of seven smugglers and one previously deported adult, ten expedited removals, and the disruption of an organization responsible for successfully smuggling thirty-seven individuals.

On 13 March 2004, C.G. was arrested at Newark International Airport for attempted human smuggling. She was escorting a Dominican national who had been supplied with her own son’s valid Puerto Rican birth certificate as his travel document. C.G. admitted this was not the first time she had smuggled people in this way and an analyst from the North East Field Intelligence Unit (NE FIU) began researching her previous travel.

PNR information from C.G.’s two known arrivals in the US revealed that in each case she had traveled alone on the outbound section of her trip from the US to the Dominican Republic, but returned on the inbound portion of her reservation accompanied by travelers passed off as her children. These children had been supplied with round trip tickets indicating they were returning to their point of departure, but the outbound segments of their reservations had never been used. The NE FIU analyst identified three associates of C.G. who had each traveled several times with her from the US to the Dominican Republic. Their PNR data revealed the same pattern: all three returned to the US with travelers identified as their children, but these children had not traveled outbound from the US before “returning.” When the Advanced Passenger Information System reported that the three associates were scheduled to return to the US on separate flights within 48 hours, the NE FIU analyst ensured the travelers were intercepted.

M.P. was arrested on April 29, 2004 at Miami International Airport for attempting to smuggle three Dominican children. All three had been supplied with valid Puerto Rican birth certificates and M.P. posed as their mother. M.P. was indicted on human smuggling charges and is currently awaiting sentencing. On 30 April 2004, M. T. was also arrested at Miami International Airport after attempting to smuggle another three Dominican children. Once again, the children were in possession of valid Puerto Rican birth certificates. M.T. was indicted on human smuggling charges and has since been sentenced to five years in prison. After M.P. and M.T. were arrested, C.G.’s third associate changed her flight reservation. She had also been scheduled to fly into Miami International Airport with three children who had not been with her on her outbound flight. Instead, she arrived at San Juan International Airport alone, but had three extra suitcases after a one-week trip, indicating a probable last minute change of plans.
The NE FIU analyst described the smuggling operation in an Intelligence Alert, identifying the steps that Customs and Border Protection (CBP) officers could take to reveal similar human smuggling activity. CBP officers in San Juan later informed the analyst that the information in the Intelligence Alert was responsible for the discovery of three more smugglers, again using PNR information. Q.C. was arrested at San Juan International Airport on 24 May 2004, while attempting to smuggle a Dominican child with a valid Puerto Rican birth certificate. Q.C. was indicted on human smuggling charges. Y.S. was arrested at the same airport on 13 June 2004, attempting to smuggle two Dominicans with Puerto Rican birth certificates and was also indicted on smuggling charges. One of the Dominican nationals was in fact not a minor, but a previously deported adult; he too was arrested. On 16 July 2004, M.C. was arrested at San Juan International Airport while attempting to smuggle a Dominican child, once again supplied with a Puerto Rican birth certificate. M.C. was indicted on human smuggling charges.

In addition to illustrating the benefits of PNR profiling, the human smuggling cases also highlight the value to the US of being able to share PNR between different agencies with law enforcement and counterterrorism missions. If the smuggling ring had operated out of the EU, the US would not have been able to identify its ring members via PNR profiling: in 2004, the US interpretation of the Undertakings annexed to the Agreement was such that Immigration and Customs Enforcement could not obtain PNR data unless it was in relation to a specific case.

You may also be interested to know the details of a drug smuggling operation, also exposed via PNR profiling. In January 2003, CBP in Miami used PNR data to disrupt an internal conspiracy within an airline in which an employee was smuggling cocaine between Venezuela and Miami. A corrupt ticket counter agent would identify low risk travelers (typically families) and add an additional bag, filled with cocaine, to their reservation details after they departed the ticket counter. Corrupt airline employees in Miami were primed to remove the extra bags prior to inspection by CBP in Miami. By noting the change in bags during connecting flights, CBP was able to identify those passengers whose reservations were being abused and so identify the corrupt ticket agent.

I hope this letter provides you with the information you were seeking and reassures you of the benefits of PNR profiling. As ever, I am very happy to discuss any aspect of this matter further.

3 May 2007

Letter from the Chairman to Michael Wills MP, Minister of State, Ministry of Justice

You will be aware that on 5 June the House of Lords Select Committee on the European Union published its report: *The EU/US Passenger Name Record (PNR) Agreement*, (21st Report, HL Paper 108). This was prepared by Sub-Committee F. Baroness Ashton of Upholland, your predecessor at the Ministry of Justice responsible for data protection, very kindly gave evidence to the Sub-Committee in the course of their inquiry. When the report was published copies were sent to the Minister. The Committee are looking forward to receiving in due course the Government’s response to the report.

The report was largely concerned with the negotiation of a revised draft of the EU/US PNR Agreement. At a meeting on 11 July the Sub-Committee considered a draft of the new Agreement which was submitted to COREPER for consideration (Document 11304/07, 28 June 2007). They also considered a letter of 27 June 2007 from the European Data Protection Supervisor to Dr Wolfgang Schauble, then the President of the Council, expressing his concern about an earlier draft. We, like him, would be very concerned if the Agreement ultimately concluded bore any resemblance to the draft we have seen.

We look forward to receiving the Explanatory Memorandum on the final draft, and we hope that either the EM or the Government response will deal fully with developments since the publication of our report, and will in particular explain what steps the Government, and the Permanent Representative in Brussels, have taken to ensure that the recommendations in our report have been borne in mind during the negotiations.

16 July 2007

Letter from Michael Wills MP, to the Chairman

Thank you for your letter of 16 July. I am grateful to you for your report on *The EU/US Passenger Name Record (PNR) Agreement*. I was pleased to learn that the Select Committee fully accept the potential value of PNR data in the fight against terrorism.

Your report was very valuable. A copy of the report was given to the EU Commission and the UK Permanent Representation to the European Union discussed it with them. The Commission was aware of all the points at the time of the negotiations, which was helpful. As you would expect these were tough negotiations, where the US has a strongly held position.
The EU Commission and Member States are satisfied that the necessary data protection safeguards for the processing and transfer of PNR data by air carriers to the Department for Homeland Security are in place through the Agreement. It is clear that this Agreement is much better than no agreement. The UK Government believes that this Agreement provides a good level of data protection for UK passengers.

We expect the Agreement to be agreed by the General Affairs & External Relations Council when it meets on Monday, 23 July.

We intend to respond formally to the report by the end of this month, as well as submit an Explanatory Memorandum on the final Agreement, once the Agreement has been signed, in the normal way.

23 July 2007

POLICE COOPERATION BETWEEN MEMBER STATES (5284/06)

Letter from Michael Wills MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter of 26 July 2007, in which you clear from scrutiny document 9997/05—Commission Communication: Developing a Strategic Concept on Tackling Organised Crime. In that letter you also refer to document 5284/06 on police co-operation.

I am sorry that I have not written to you formally on the progress of negotiations since Paul Goggins’ letter to you of 26 July 2006, although my officials have been in contact with yours during the intervening period to provide an informal update. Negotiations were last held on this document in April 2006 under the Austrian Presidency, but were discontinued because, we believe, of the difficulty in reaching agreement among Member States. The subsequent Finnish Presidency made no attempt to resuscitate those negotiations and the German Presidency did not resume discussion either. There has been no indication that the Portuguese will seek to recommence negotiations.

The Government remains committed to promoting deeper cross-border co-operation between law enforcement authorities, particularly through bi-lateral agreements. The draft Council Decision in its original form included proposals on information exchange, something which the Government believes is a vital tool for the detection and investigation of crime, providing there are sufficient safeguards in place such as data protection. The Government has therefore since supported a number of information sharing dossiers, including the Framework Decision 2006/960/JHA of December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of Member States of the European Union, also known as the Swedish Initiative. There are current proposals on the table which the Government considers add significant value in the area of data sharing, for example, the Draft Council Decision on the stepping up of cross-border co-operation, commonly known as the Prüm Decision. This Decision will speed up the process by which DNA, fingerprints and vehicle registration data is shared for law enforcement purposes. We are also continuing to support the proposal for access by police and law enforcement agencies to Eurodac, the shared EU database which contains records and compares the fingerprint images of asylum applicants and certain categories of illegal entrant.

In our view the suspension of negotiations on document 5284/06 on police co-operation presents no disadvantage to the UK and in any event has been, or is being, sufficiently offset by our support of other police co-operation instruments.

Should discussions be resumed the relevant Minister will of course write to the Committee setting out any changes and implications to the Government’s position, or provide a new Explanatory Memorandum as appropriate.

No reply has yet been received to Paul Goggins’ letter of 27 March 2006 to the Information Commissioner, which sought a view on the extent to which the proposal might impinge on privacy rights. The matter has not been followed up because of the dormant status of the dossier and lack of enthusiasm displayed by the subsequent Presidencies. For the sake of completeness, I have asked my officials to pursue this matter and to respond to you with the Information Commissioner’s reply as soon as it is received.

12 September 2007

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 12 September 2007 which Sub-Committee F of the House of Lords Select Committee on the European Union considered at a meeting on 10 October 2007.
The Committee last considered this proposal on 1 March 2006. You say that negotiations were discontinued in April 2006 "because, we believe, of the difficulty in reaching agreement among Member States". We would be glad to know what those difficulties were, and whether they were in any way connected to other initiatives such as the Prüm Treaty (which, unlike the Prüm Decision, includes provisions on hot pursuit).

You say that there is no indication that the Portuguese Presidency will seek to recommence negotiations. In the circumstances we clear this document from scrutiny. However we note your undertaking to write to us if discussions should unexpectedly be resumed, and in that case we would expect any new draft to be deposited for scrutiny.

Your predecessor, in a letter of 27 March 2006 copied to me, sought the views of the Information Commissioner about the data protection issues which troubled us. At intervals, your officials have been asked if his views could be copied to us. Now it appears that you yourselves never received them, but are now again seeking them. We look forward to receiving a copy of them in due course.

10 October 2007

PRÜM TREATY: INCORPORATION INTO EU LAW (6566/07, 11045/07)

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

I write to inform you of the progress that has been made on the negotiations on the Prüm Council Decision and the position which the Government consequently plans to take at the JHA Council on 12 June.

The Presidency will be seeking political agreement to the Prüm Council Decision at the JHA Council. Although I am conscious that it remains subject to scrutiny in the House of Lords, pending the debate recommended in the European Union Committee’s 18th report of session 2006–07 on 9 May, I have decided that the UK will participate in that agreement, thereby overriding the Scrutiny Reserve Resolution.

I am sorry that it was not possible to schedule a debate on the proposal in advance of the Council. I understand that several dates were mooted but a combination of the Whitsun recess, lack of time in the House, and diary commitments on both sides meant that it was impossible. We do of course stand ready to have this debate at a future date. However, I think there are strong reasons for nonetheless proceeding with an agreement on the Council Decision, which I will set out here.

As you are aware the UK has supported in principle the draft Council Decision which incorporates elements of the Prüm Convention into the EU in particular insofar as it relates to the sharing of DNA, fingerprint and vehicle registration data. We have made considerable progress in negotiations and I believe that the text as now proposed meets the UK needs, in particular having taken on board amendments to:

i. delete the provision on measures in urgent situations (hot pursuit);
ii. allow Member States to limit access to vehicle registration data to cases involving serious crime; and
iii. include a Council Declaration on the application of existing non-automated data sharing arrangements between Member States.

The Government believes that the potential benefits to UK public security of agreeing Prüm sooner rather than later are such that this measure should come into operation as soon as possible. We know that effective mechanisms for the sharing of information are vital for the protection of public security. These are the types of measures that can be valuable in the swift investigation of the most serious crimes that involve a cross-border element. The continued international investigation into the disappearance of Madeleine McCann is an example of the sort of case which can only benefit from closer co-operation. We have already seen in the experience of Austria and Germany, where data has begun to be exchanged under the Prüm Convention, that it has provided them with information relating to serious crimes including rape and murder. For example, the German authorities matched DNA profiles of open cases against data held by Austrian authorities and found hits in more then 1,500 cases. In this context, over 700 open traces from Germany could be attributed to persons known to the Austrian criminal prosecution authorities. Broken down by types of crime, 14 hits in homicide or murder cases, 885 hits in theft cases, and 85 hits in robbery or extortion cases were found (as of 4 January). It is true that every hit needs to be examined carefully, and it will not be possible to clear up open cases by a DNA hit alone. Nevertheless it can be expected that hitherto unsolved cases in Germany and Austria can be closed and the perpetrators be brought to justice. In any case, prosecution authorities are confident that the number of hits will increase constantly as further Prüm countries take part in this process, and that they will thus be able to solve numerous other open cases.

A decision to block the agreement next week would be inconsistent with the support we have given to this initiative to date and could possibly jeopardise both the package of amendments we have secured and undermine our ability to influence the further development of the Prüm arrangements, where the implementation agreement is due to be presented for discussion in the near future. We are aware that no other Member State plans to oppose next week; the UK could therefore also be blamed for undermining an initiative which would bring practical benefits to law enforcement co-operation.

My decision to signal the UK’s agreement to this measure next week has of course been informed by your report, to which the Government responded on 15 May. Our intention in taking forward negotiations on this proposal has always been to fully involve the Committees, which was why we supplied information in advance of the official publication of the proposal at the start of the year. This decision is not therefore one that has been taken lightly. However, as I have explained, I consider the potential benefits to law enforcement of the Prüm Decision too great to not support agreement on 12 June.

11 June 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 15 May 2007 to which you attached the Government’s response to Prüm: an effective weapon against terrorism and crime? (18th Report of Session 2006–07, HL Paper 90) Sub-Committee F considered the response at a meeting on 6 June 2007. Thank you too for your letter of 11 June 2007 explaining the Government’s intention to agree the draft Decision at the Council on 12/13 June. The Sub-Committee considered this letter at a meeting on 13 June, together with your written statement made in anticipation of the Council (and the identical statement made by Lord Falconer to the House of Lords).

First let me say that I am most grateful, as are the Sub-Committee, to you, your officials, and those of the Ministry of Justice for having prepared the response within a week of publication of the report. We much appreciate this.

You explain in your letter of 11 June the Government’s reasons for overriding the scrutiny reserve. We particularly regret this given that, as you know, one of the report’s principal recommendations is that:

“The Government should seize the opportunity to stipulate that they will agree to the Prüm Decision only if other Member States, led by the German Presidency, simultaneously agree to a Framework Decision setting high standards for the protection of data across the third pillar.”

We note that political agreement on the Prüm Decision was in fact reached at the Council yesterday, so this opportunity has now been lost. Nevertheless we hope that the Government will continue to press for the agreement of a satisfactory Data Protection Framework Decision, and in doing so will bear in mind the points made in my letter to Baroness Ashton of 6 June.

There are a number of points on the Government’s response which we would like to explore further, but these will be best raised when the report comes to be debated in due course.

14 June 2007

Letter from the Chairman to Meg Hillier MP, Parliamentary Under-Secretary of State, Home Office

Sub-Committee F of the Select Committee on the European Union considered this proposal for an Implementing Decision for the Prüm Decision at a meeting on 25 July 2007.

As you will know, the Prüm Decision was the subject of a report by this Committee published on 9 May 2007: Prüm: an effective weapon against terrorism and crime? (18th Report, Session 2006–07, HL Paper 90). Your predecessor, Joan Ryan MP, very kindly gave evidence to the Sub-Committee for that inquiry, and a Government response to the report was provided within a very short time, though it was unfortunately not possible for the report to be debated before the Decision was agreed at the JHA Council on 12 June.

This Implementing Decision, prepared by the Germans during the last week of their Presidency, seems to us to embody a great many of the failings of the Prüm Decision itself which we criticised in our report. Because it is an initiative of a Member State rather than a Commission proposal there is no obligation to include an explanatory memorandum, a regulatory impact assessment or a cost estimate, and none are included; nor, from the evidence we received from Mr Jonathan Faull, the Director-General of D-G JLS, are such documents ever included with proposals from Member States, something he regretted. We can only repeat what we said in paragraphs 72–74 of our report.

The Government’s response on this point was:

“The Government agrees that any EU initiatives, whether submitted by the Commission or by Member States, should respect better regulation principles, including the use of explanatory memoranda to explain the need and reasoning for the proposal and the use of regulatory impact assessments. However, the Government also believes that there may be cases, such as with the Prüm proposal, where practical experience of operating a particular system can provide the same information and evidence of costs and benefits.”

Whatever the arguments may have been for dispensing with these vital preparatory documents in the case of the Prüm Decision, we do not see why they should apply in the case of the Implementing Decision, given that there is not the same urgency about concluding this. We would be glad to know why you seem to be prepared to take this proposal forward without any explanatory documents, and in particular without any sort of cost estimate.

Your own best estimate of the start-up costs of the whole Prüm package is £31 million, the same figure given to us in evidence by Joan Ryan. Paragraph 17 of the Explanatory Memorandum does not mention running costs. However the Government response to our report put them at approximately £2.5 million per annum, and we assume that this estimate is unchanged. You say that you “do not consider this [£31 million] an unreasonable figure considering the benefits that the Prüm arrangements could bring to the prevention and investigation of crime across Europe”. Until we know better exactly what these benefits may be, it is hard to tell whether they will justify the large sums involved. This is another reason why we deplore the lack of any estimate from the German proponents of the draft Decision, and why we believe you should insist on this.

Our other main concern relates to the fact that a large number of the implementing provisions are to be contained, not in the Decision itself, but in “a manual as stated in Article 18”. The provisions needed to implement the Prüm Treaty are contained in the detailed Implementing Agreement approved by all the signatory States; we are not aware of any such provisions which are not contained in the Agreement and its annexes. We do not understand why it was not possible to wait until all the provisions needed to implement the Prüm Decision could be included in the Implementing Decision itself, when the normal procedures for Council legislation would have applied, including the need for unanimity.

As it is, all we know about this manual is that it is to be based on the Implementing Agreement of the Prüm Treaty. Nothing in Article 18 says who is to be responsible for formulating this manual, who is to decide where it should follow the Implementing Agreement and where it should depart from it, how any disputes are to be resolved, or how any amendments are to be agreed subsequently. Article 19 of the Implementing Agreement contains such provisions; similarly, detailed implementing provisions for Schengen are taken by an Executive Committee whose constitution and procedure are set out in the Schengen Convention. There is no suggestion that the manual will have equivalent provisions. These are serious matters on which we would be glad to have your views.

You state in the Explanatory Memorandum that the manual will be formulated and agreed during the Portuguese Presidency, and you undertake to submit a formal Explanatory Memorandum as soon as a formal document is published. While we are grateful for this, we assume that the manual is not a proposal for legislation which would be subject to formal scrutiny; once it is “formulated” and published, it will be too late for us to comment on it.

We intend to keep this document under scrutiny. As you know, our report on the Prüm Decision was recommended for debate. This debate will not now take place before October, but we hope that by then we shall have your views on this Implementing Decision.

26 July 2007

READMISSION AGREEMENT WITH UKRAINE (8977/07)

Letter from Liam Byrne MP, Minister of State, Home Office, to the Chairman

I am writing to advise you on developments regarding the above agreement.

On 31 May, we advised the President of the Council that it is our intention to opt-in to this Council Decision on signing and concluding the EC-Ukraine Readmission Agreement. The United Kingdom’s policy is to opt in to both mandates and completed European Community Readmission Agreements (ECRA) wherever possible, under Title IV of the EC Treaty relating to immigration and asylum measures, provided they are in the national interest and consistent with our policy of retaining frontier controls. Our practice to date has been to participate in all such agreements and to provide technical, political and diplomatic support in relation to the Community negotiations wherever we are able to do so.
The Justice and Home Affairs Council voted to sign and conclude the Ukrainian ECRA on 12 June 2007. Agreement was by Qualified Majority Voting, and, as the Council Decision had yet to be cleared from scrutiny, the UK maintained its Parliamentary Scrutiny Reserve and voted against adoption.

I should briefly outline the present position. The Commission has completed its mandate, and the agreement would appear to meet the requirements which the Member States had outlined when they granted it permission to negotiate on their behalf. The United Kingdom stated its intention to opt-in on 31 May 2007. In light of this the Commission had authority to sign this agreement on our behalf.

22 June 2007

Letter from the Chairman to Liam Byrne MP

Sub-Committee F of the Select Committee on the European Union considered these proposals at a meeting on 27 June 2007. The Sub-Committee also considered your letter to me of 22 June 2007, for which I am grateful.

As you will recall from the Select Committee’s report Illegal Migrants: proposals for a common EU returns policy, 32nd report, session 2005–06, HL Paper 166, the Committee favours the conclusion of readmission agreements, and recommended that more effort should be put into negotiating them. We are therefore glad to see that a draft of an agreement with Ukraine has been agreed which is satisfactory to both sides, and that the United Kingdom has opted in to it. We regret only the two-year delay before the entry into force of Article 3.

This document was deposited in Parliament on 30 April. Had an Explanatory Memorandum been prepared within ten working days, as it should have been, the document would have been cleared from scrutiny no later than the Committee’s meeting on 6 June. Ministers could then (subject to the position in the Commons) have voted at the JHA Council on 12 June in favour of a proposal for the signing of the agreement.

Instead, the Explanatory Memorandum was dated 7 June. It was not therefore possible for the Committee to consider it and clear the document before the Council. It is clear from your letter that it was solely in order to avoid a scrutiny override that Ministers voted at the Council against a proposal for the return of illegal immigrants which they opted in to and supported, as we do.

I need hardly say that this is not the purpose of the House of Lords scrutiny reserve resolution. The intention is that ministers, when deciding on the position to adopt in relation to any particular proposal, should be aware of and take into account the views of the European Union Committee, and should not therefore give their agreement to a proposal on which the Committee has not completed its scrutiny. It is not the intention that Ministers should be forced into the position of voting against proposals they support—and which we too support—solely because of their (and their departments’) delays in preparing explanatory memoranda.

I would be glad to know why there was such a delay which had this very unfortunate consequence, and whether any steps have been taken to explain to Ukrainian Ministers why United Kingdom Ministers voted against an agreement which they support. Meanwhile, we clear the document from scrutiny.

27 June 2007

Letter from Liam Byrne MP to the Chairman

Thank you for your letter of 27 June 2007, in which you stated that the Committee is glad to see a draft agreement that was satisfactory for both the EU and Ukraine. The two year delay before the entry into force of the third country national provisions is, as you say, regrettable. The Commission has been careful to ensure that this does not become a precedent and that the provisions in each readmission agreement that is negotiated are necessary and relevant to the prevailing conditions in that country. The Government will aim to ensure that Ukraine is given every assistance, where necessary, to realise those obligations.

Please accept my apologies that an Explanatory Memorandum was not deposited in time for the Committee to consider it and clear the document before a vote took place in the JHA Council of 12 June 2007. This Department began the internal consultation process very soon after the Commission issued the proposal. This was timed to enable an Explanatory Memorandum to be submitted giving an indication of the Government’s intention early enough for the Committee to consider and clear it before a vote took place. Unfortunately the correspondence became delayed at the Ministerial Committee on European Policy clearance stage, thereby delaying the submission of the Explanatory Memorandum.

I have noted your concerns about how the Ukrainian Government may view our actions. I should explain that the United Kingdom had informed the Council that while we would be taking part in the Council Decision, we would have to vote against it because of the outstanding Parliamentary Scrutiny Reserve. However, while noting the UK’s reserve, the Presidency had the majority necessary to adopt the proposal and therefore added it to the list of points to be adopted without discussion.
I hope that this clarifies our position. I do not think there is any need to explain this to Ukrainian Ministers. The Readmission Agreement is an agreement between the Community and the Ukraine. By opting-in to the Council Decision we made it clear that we supported the proposal and we remain bound by the Decision once adopted, whether we voted against it or not. It would be most unusual for a Member State which voted against a measure which was nevertheless adopted, to elaborate on the internal reasons for their vote against. Our inability to vote for the agreement does not in any way reflect an intention not to be party to it, or an unwillingness to implement its provisions.

I would like to assure you that it is always our intention to keep the Committee informed of the Government’s thinking on these matters and to take into account the views of the Committee when taking decisions of this sort on EU proposals.

11 July 2007

Letter from the Chairman to Liam Byrne MP

Thank you for your letter of 11 July which Sub-Committee F of the Select Committee on the European Union considered at a meeting on 25 July 2007.

We note the reasons for the delay in submitting the Explanatory Memorandum, and accept your apologies for this.

We also note, but find it difficult to understand, the reasons you give for believing that there is no need to explain matters to Ukrainian Ministers. You say that “it would be most unusual for a Member State which voted against a measure which was nevertheless adopted, to elaborate on the internal reasons for their vote against.” Those reasons are of course clear from your correspondence with this Committee—correspondence which, as you know, is placed on our website and published by us. We would have thought it preferable to explain to Ukrainian Ministers that the United Kingdom vote was dictated solely by delays in the Parliamentary scrutiny process, and in no way reflected United Kingdom policy. These however are matters on which you, perhaps with the advice of the FCO, must be the final arbiters.

26 July 2007

READMISSION AGREEMENTS WITH BOSNIA AND HERZEGOVINA, MONTENEGRO, FORMER YUGOSLAV REPUBLIC OF MACEDONIA AND SERBIA

Letter from Liam Byrne MP, Minister of State, Home Office

I am writing with reference to the above agreements, which were the subject of Explanatory Memoranda dated 4 September 2007, and cleared at your sift on 11 September 2007.

The House of Commons European Scrutiny Committee was unable to clear these documents before a vote took place in the JHA Council of 18 September 2007, due to the summer recess.

I am aware of your recent concerns regarding scrutiny of previous similar agreements. I should explain that the United Kingdom informed the Council that whilst we would be taking part in the Council Decision, we would have to vote against it because of our outstanding Parliamentary Scrutiny Reserve. Voting against the Decisions and thus preserving the UK’s scrutiny reserve, whilst unfortunate, made it clear to the Council that our domestic Parliament plays a crucial role in formulating the UK’s position and that the Government is not prepared to circumvent the proper procedures when adopting EU legislation. However, while noting the UK’s reserve, the Presidency had the majority necessary to adopt the proposals and therefore added them to the list of points to be adopted without discussion.

Opting-in to all four Council Decisions made it clear that we supported the proposals and we remain bound by the outcome once adopted, whether we voted against them or not. Our voting against adoption of the agreements does not in any way reflect an intention not to be party to them, or unwillingness to implement their provisions and we made this clear to the Presidency before the JHA Council.

I would also like to take this opportunity to express my gratitude to you and your staff for ensuring that these proposals were considered at your sift on 11 September, given the large amount of other business that would have required your attention.

I would like to assure you that it is always our intention to keep the Committee informed of the Government’s thinking on these matters and to take into account the views of the Committee when taking decisions of this sort on EU proposals.

9 October 2009
SCHENGEN INFORMATION SYSTEM II (SIS II): COMMUNICATION INFRASTRUCTURE
(10702/07, 10706/07)

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F of the House of Lords Committee on the European Union considered these proposals at a meeting on 25 July 2007, and agreed to clear them from scrutiny.

Like the Government, we regret the delay to the SIS II programme, and would be equally concerned if the need to change to a different communication system led to any further delay.

What concerns us even more, however, is that the Government apparently still has no intention of joining SIS II as soon as it becomes operational. In our recent report (Schengen Information System II (SIS II), 9th Report, Session 2006–07, HL Paper 49) we said (paragraph 30): “Whenever the central system is ready, the United Kingdom should be ready and able to participate as early and as fully as possible.” In its response the Government stated: “The Government agrees that a national connection to SIS II should be developed to enable full connection as early as possible…” We are therefore very disappointed to read that “The UK’s connection is due to go live in 2010”. We would be glad to know as soon as possible, and in any event before the report comes to be debated after the Summer recess, when in 2010 it is intended that the UK connection should go live, and why this cannot be done as soon as SIS II becomes operational in December 2008.

26 July 2007

Letter from Meg Hillier MP to the Chairman

I am writing to you in response to your letter of the 26 July 2007 on the Communication Infrastructure for the Second Generation Schengen Information System (SIS II).

In that letter you ask for information about when in 2010 it is intended that the UK connection should go live. The current date for the UK to join SIS II is planned as being April 2010.

Your letter also asks why the UK connection cannot be in place to go live as soon as SIS II becomes operational in December 2008. This is a complex programme which we need to ensure we get right. Based on current plans April 2010 is the earliest possible date by which the connection can be delivered, bearing in mind the need for rigorous development and testing work. If it is possible to accelerate the timetable without risk we will do so.

The Government is fully committed to delivering a system which will give maximum benefits to the UK’s law enforcement community. Due to the need to link all UK law enforcement agencies to SIS II via the Police National Computer, this is a particularly complicated programme—far more so for the UK than for some other Schengen Member States. In such a complex, and important environment it is crucial that we take the time to do things right.

5 October 2007

SOCIAL SECURITY FOR MIGRANT WORKERS (12166/07)

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

My Explanatory Memorandum of 15 August 2007 refers. I am writing to you now to correct an error that was contained in that Memorandum relating to the timetable for a decision by the UK on whether to opt in to the proposal.

In that Memorandum I had explained that as this was a proposal made under Title IV of the Treaty, it is covered by a protocol allowing the UK to choose whether it wishes to opt in to measures under that part of the Treaty. The Government is currently considering its position on opting into this proposal.

The deadline for indicating to the Council whether or not the UK will opt in is three months from when the proposal is formally presented to the Council. We had understood in this case that the three month period would not start to run until September/ October 2007. We have now been informed that the period started on 26 July. Therefore the UK will need to make its decision before 26 October 2007.

I apologise for the error in the original Memorandum and I will be writing to you again soon with our views on the implications of this proposal.

24 September 2007
Letter from the Chairman to James Plaskitt MP

Sub-Committee F of the House of Lords Select Committee on the European Union examined this proposal at a meeting on 10 October 2007.

The Committee agree with the need to update and simplify current EC social security provisions. However we found it difficult to assess the impact of this proposal. The Commission’s impact assessment suggests that the extension of the scope of Regulation 883/2004 to cover persons who are not professionally active will not have a significant impact on the burden borne by Member States because of “the small number of persons who will be concerned in comparison with the current situation”. It is difficult to see how the Commission could have come to this conclusion given that it carries on by saying that “[t]here are no data available to estimate how many people are concerned by this extension of the provisions of Regulation (EC) No 883/2004.”

In the circumstances it seems to us fortunate that the Government will be in a position to make a more thorough assessment of the implications of this proposal before deciding whether to be bound by it. We gratefully accept your offer to inform us about your assessment of the policy implications, and your decision on whether or not to opt in to this proposal. In the meantime, we will keep the document under scrutiny.

10 October 2007

Letter from James Plaskitt MP to the Chairman

Thank you for your letter of 10 October. I am writing to you now to outline both the policy implications of this proposal and the decision that we have taken on whether or not to opt in to this proposal.

My Explanatory Memorandum of 15 August 2007 and my letter of 24 September refer.

To put the proposal in context, I will briefly explain the background. Regulation (EC) No 859/03 (Reg. 859) gave third country national (TCN) workers social security rights as laid down in Regulation (EC) 1408/71 (Reg. 1408). This was an extension of rights to TON workers who were not already covered by the provisions, and legally resided in one Member State (MS), and were in a social security situation that was not confined to one MS.

Giving TCN workers social security coordination rights does not affect, in any way, the rights of TCNs to enter the UK. All immigration rules stand. But the “no access to public funds rule” is affected by the equal treatment provisions in the coordination rules. This impact on the public funds rule is only relevant in the case of social security benefits covered by the coordination provisions. This means that when we agreed to Reg. 859, we knew there would be resultant, but minor, increases in benefit expenditure.

Reg. 1408 will be replaced by Regulation (EC) 883/04 (Reg. 883) within the next two to three years. The personal scope of Reg. 883 is greater than that of Reg. 1408. It will apply to non-economically active EEA nationals as well as to the workers and their families who are currently covered. As part of a continuing process of simplification, the current Commission proposal is to give all TCNs access to Reg. 883.

The UK agreed to bring TCN workers into the scope of the social security coordination rules when we signed up to Reg. 859. But as the personal scope of Reg. 883 is wider than that of Reg. 1408, the effect of this proposal is to extend social security coordination rights to non active TCNs—people who have never worked, such as lone parents, people who have been supported by others, those who never entered the labour market due to sickness/disability, carers, etc.

There is a range of reasons why non active TCNs would be living in the UK. This could include for example family reunion, resettlement, for medical care, education and long residency. In many cases, they will currently be subject to immigration control and the “no access to public funds” rule. Of course, not all TCNs are subject to immigration control. For example, they might have lived in the UK for many years and have settlement with no restrictions on their leave to remain. They have the same rights to benefits as UK nationals.

But when we compare the rights of EEA nationals and TCNs, it does appear that TCNs would receive better treatment under this proposal. Under current rules, non active EEA nationals and TCNs are excluded from income-related benefits, child benefit and the child tax credit—the non active EEA nationals’ right to reside depends on being self-sufficient. TCNs are subject to a condition of entry that they do not claim certain benefits (or public funds). If non-active TCNs were brought within the scope of the coordinating rules, it seems that this would affect the “no access to public funds” condition in UK law, while the EEA national would still have to be self-sufficient.

I will turn now to the European Commission’s impact assessment and to the point that you made in your letter. Like the Commission, we have no figures. The benefit impacts will fall mainly on non contributory benefits such as Child Benefit, Child Tax Credit, Pension Credit and the non contributory disability benefits. There will be also an impact on contributory retirement pension as a result of the pension reforms. It does seem very likely...
that the numbers of people who would be affected by this extension are low. The extension of rights is to TCNs who move within Europe, come to live in the UK legally and have no access to social security benefits through their status as a worker or as a family member. However, it is not the potential effect on benefit expenditure that is of most concern to us; it is the impact on our policy on immigration. This impact outweighs any potential cost in benefits and increased complexity of administration to which the European Commission refers in its impact assessment of the proposal (at page 3 of Doc. 12166/07 in particular).

In the light of the above, the Government has decided not to opt in to this proposal. We will, of course, attend all of the discussions on the proposal.

30 October 2007

TACKLING ORGANISED CRIME (9997/05)

Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

I am writing to update you on the position of the above dossier that was last considered by the Committee in November 2005. This Commission Communication, published in 2005, dealt with a range of possible actions and proposals in the area of organised crime. It was last discussed at Working Group level in 2005. Enquiries with the Council Secretariat have shown that there is unlikely to be any discussion on the paper in the foreseeable future. Any specific proposals that are put forward based on the Communication will be discussed and negotiated separately. They will, of course, be deposited with Parliament and be subject to scrutiny in the normal way.

Undated, received 13 July 2007

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter, undated but received on 13 July 2007, which Sub-Committee F of the House of Lords Select Committee on the European Union considered at a meeting on 25 July 2007.

The Committee last considered this document on 9 November 2005 [sic]. I wrote the following day to Paul Goggins MP, the minister then responsible, explaining that it had been decided to keep the document under scrutiny, and asking to be informed of further developments.

It is clear from your letter that there have been no such developments, and are unlikely to be in the foreseeable future. This has indeed been clear for over a year from conversations between your officials and the Clerk to the Sub-Committee. The Clerk has explained on a number of occasions that the Committee cannot consider clearing a document from scrutiny unless and until it is informed by a minister of progress, or lack of it. Having now received the courtesy of a ministerial reply, the Committee is content to clear the document from scrutiny.

It may be appropriate for me to mention that there is another document in very much the same position. This is the Proposal for a Council Decision on the improvement of police cooperation between Member States of the European Union, especially at the internal border and amending the Convention implementing the Schengen Agreement (Document 5284/06). The Committee considered a re-draft of this proposal on 1 March 2006, and I wrote to Mr Goggins that day highlighting in particular the privacy implications of the extension of police powers to cross-border surveillance of non-suspects. We suggested that the views of the Information Commissioner be sought, and Mr Goggins wrote on 27 March 2006 to say that this had been done. But although I have since seen copies of letters between several Home Office ministers (including yourself) and the Commons European Scrutiny Committee, I have not myself (despite reminders at official level) received any letter explaining whether or not there has been progress in the negotiations, or whether the views of the Information Commissioner were received, and if so what they were. This too is a document still under scrutiny.

26 July 2007

UNIFORM FORMAT FOR RESIDENCE PERMITS FOR THIRD-COUNTRY NATIONALS (7298/06, 12658/07)

Letter from Liam Byrne MP, Minister of State, Home Office, to the Chairman

You have previously indicated that you would like further information regarding the costs/benefits analysis, and an explanation of the changes to the overall level of cost for the Biometric Residence Permit (BRP), through which we plan to implement the regulation. Following reappraisal of the project, I am now in a position to be able to provide this.

Further work undertaken in costing the BRP, indicates we require £21.7 million for set-up costs and £25 million per year for running costs. The costs have changed from initial set-up cost estimates of £24 million in 2003 and £62.6 million in 2006 due to several re-scoping exercises.

The £21.7 million set-up costs will provide a system which does more than the minimum required by the EU Regulation. The cost of minimum implementation is £16 million. We believe the additional £5.7 million will provide benefits, as described below, which are otherwise unachievable.

The BRP will form part of our improvements to security and border control, it will link-in to the national identity scheme and will enable other government departments to realise benefits. These benefits include increased document security, by making forgery and counterfeiting more difficult, therefore reducing the number of fraudulent immigration applications and simplifying, for employers and other government agencies, the process of establishing whether a person is eligible for employment or state benefits.

By recording and storing biometric details and providing a verification service to employers we expect to significantly reduce the scope for illegal working. The card will contain fingerprints within a security protected chip, which will be far more secure than current arrangements. This will substantially reduce fraud through the use of multiple identities and fraudulently obtaining a national insurance number and is a clear benefit for the Department of Work and Pensions.

We have researched methods of quantifying these benefits. Following examination by Home Office economists of a range of formulae, officials have concluded that there are too many variables for the results to be considered robust. My view is that whilst it is not possible to quantify these benefits in financial terms, I judge that they outweigh the additional £5.7 million on top of the minimum implementation solution.

24 May 2007

Letter from the Chairman to Liam Byrne MP

Thank you for your letter of 24 May 2007 in reply to my letter of 2 February 200712. Sub-Committee F of the House of Lords Select Committee on the European Union considered, it at a meeting on 13 June. The Committee also considered your interim reply of 27 February explaining the involvement of the Treasury in approving cost estimates. We are grateful for that letter.

We are astonished by the further changes in the estimated cost of including biometric data in residence permits. When the first proposal was put forward in 2003 the start-up cost of was estimated at £24 million. This rose to £62.6 million last year, but in your letter of 24 May you give the estimate as £21.7 million—ie less than the 2003 estimate. We are prepared to accept that £5.7 million of this £21.7 million provides justified benefits above those of minimum implementation. What we cannot understand is how, only a year ago, the estimated start-up cost was nearly three times higher than it is now.

For annual running costs the 2003 estimate was £15 million. This rose to £56 million in 2006, but is now £25 million—less than half, though still substantially higher than the 2003 estimate. The only reason you give for these changes is “several re-scoping exercises”.

In my letter of 25 October 2006 I said: “We would be glad to see a detailed breakdown of the figures which made up the original estimate … and now make up the revised estimate”, and in your reply of 14 December 2006 you apologised for not having been able to supply us with a more detailed response, but added: “I remain committed to providing the Committee with the appropriate information as soon as I am able to.”

In my letter of 2 February 2007 I referred to a report you had mentioned in your evidence to the Commons European Scrutiny Committee which you said would be submitted to Parliament. I said that we looked forward to seeing it (we have not been sent it), and said: “I hope it will contain a detailed breakdown of these very large costs”.

Your letter of 24 May does not contain any sort of breakdown of the costs, detailed or otherwise. I now look forward to receiving from you very shortly a detailed breakdown of the costs which will enable us to understand the reasons for the variations between the estimates in 2003, 2006 and 2007. Parliament deserves an explanation of the reasons for these wild fluctuations in the estimates. Until a satisfactory explanation is given there can be no confidence in the latest estimates, nor can any assessment be made as to whether the benefits justify the costs. For this purpose we would in particular be glad to know the number of applications for permits which you anticipate receiving each year and which forms the basis for the costs estimate.

12 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p378.
This proposal for a Council Regulation was on the agenda for agreement at the Justice and Home Affairs Council on 12 June. It does not however appear from the draft Conclusions that the proposal was agreed, but we would be glad if you would clarify this. In the meantime we are keeping the document under scrutiny until we receive a satisfactory reply.

14 June 2007

**Letter from the Chairman to Liam Byrne MP**

Sub-Committee F of the House of Lords Select Committee on the European Union considered at a meeting on 17 October 2007 the latest draft of this proposal. It was accompanied by an Explanatory Memorandum signed by you on 18 September 2007. We understand that this is the date on which a general approach to the instrument was agreed at the JHA Council.

We have yet to receive a reply to my letter to you of 14 June 2007 in which I raised, for the fourth time in the space of a year, the Committee’s concern over the wide fluctuations in the estimated set-up and running costs of this proposal, and asked for a detailed breakdown of these costs. The costs given in paragraph 26 of the EM for the latest proposal are the same as the latest estimates for the cost of the previous proposal given in your letter to me of 24 May 2007. I am glad to know that there has been no further change in these estimates. But this does nothing to explain how the set-up costs, estimated in 2006 at £60 million, can now be estimated at £21.7 million; nor how the annual running costs, estimated in 2004 at £15 million, can have gone up to £56 million in 2006 and then come back to £25 million.

We kept the previous draft—document 7298/06—under scrutiny until we received a satisfactory reply. Now that it has been superseded it can formally be cleared from scrutiny, though this does not of course in any way diminish our interest in the outstanding issue on costs.

It is a matter of great concern to us that a general approach was agreed on the latest draft while the costings issue was, and is, still outstanding. In the view of this Committee any step, whatever its name, which marks the end of any possibility of negotiation on the substance of the text of an instrument under scrutiny constitutes a scrutiny override. This too is a point on which we look forward to hearing from you.

17 October 2007

**VISA INFORMATION SYSTEM (VIS): ACCESS FOR CONSULTATION (15142/05)**

**Letter from Rt Hon Tony McNulty MP, Minister of State, Home Office, to the Chairman**

Thank you for your letter of 7 March 2007 concerning law enforcement access to VIS and the Data Protection Framework Decision (DPFD).

As you will be aware from correspondence with Baroness Ashton, the UK is keen to reach agreement on an appropriate version of the DPFD text as soon as possible. The Government has welcomed the DPFD in principle as a way of guaranteeing minimum standards for data protection across the EU.

The Presidency produced a revised version of the DPFD text on 14 March and this was deposited in Parliament on 22 March. Negotiations on this new draft began at the expert level Working Group on 29 March and a further redraft was discussed at expert level on 10 and 11 May. The Working Group met again on 6 June. The UK has welcomed the progress made on the DPFD under the German Presidency. Baroness Ashton will be able to provide further details as negotiations on the DPFD progress.

Although the Government would welcome agreement on a DPFD text as soon as possible, this is of course subject to its provisions being appropriate for the needs of UK stakeholders. For example, among the issues we are exploring with stakeholders is whether the latest draft might perhaps prevent regulatory bodies such as the Financial Services Authority from continuing with their current data sharing arrangements when dealing with civil rather than criminal matters. While the Government has made clear it will support the Presidency in making the swiftest progress possible on DPFD negotiations, we cannot sign up to a text that might prevent UK stakeholders from fulfilling their duties, including statutory functions, in an effective and efficient manner.

Dealing more specifically with VIS and data protection, Article 8 (5) of the current proposal makes clear that data must be transferred in accordance with the national law of the Member State which transfers or makes the data available. However Article 8 (5) also states that data from the VIS may only be transferred or made available to a third country or an international organisation subject to the consent of the Member State originally entering the data into the VIS and under the circumstances set out in Article 5(1) b,c,d. This stresses...
that data may only be transferred where it is necessary for the purposes of preventing, detecting or investigating terrorist or other serious criminal offences; is linked to a specific case; and VIS data is considered to make a substantial contribution to prevent, detect or investigate the particular crime in question.

You will be aware that the reference to an adequacy judgement no longer appears in the text. As reflected by Article 26 of the Data Protection Directive, there are situations where it will be important to share personal data with countries where levels of data protection do not match those normally required by the EU, for example, in extradition and deportation cases.

Article 8(6) provides that the competent national supervisory body is responsible for monitoring the lawfulness of the processing of personal data under this Decision. In the UK that role falls to the Information Commissioner. Under the Data Protection Act 1998 personal data processed for the purposes of the prevention and detection of crime and the apprehension and prosecution of offenders are exempt from the subject information provisions and the first data protection principle (except to the extent that it requires compliance with the conditions under schedule 2 and schedule 3). Under the Act, the Information Commissioner may make an assessment whether or not processing of personal data is being carried out in compliance with the Act.

Article 12 sets out a number of monitoring and evaluation procedures that will take place following the implementation of VIS. For example, Article 12 (2) commits the Commission to submitting a report to the European Parliament and the Council on the performance of VIS against predefined quantitative indicators. Furthermore, as indicated by Article 12 (3) of the proposal, the Commission will produce an overall evaluation report of VIS every four years which will include an analysis of the system’s success in achieving its objectives. Again, this report will be submitted to the European Parliament and the Council.

In addition to the points raised in your letter of 7 March, I thought it would also be helpful to update you with further information on progress with negotiations on this dossier. The Presidency has now reached broad agreement in the Council and with the European Parliament on the VIS Regulation and the VIS Council Decision. The Presidency therefore hopes to secure a political agreement to the legal texts at the JHA Council on 12–13 June. The UK will not have a vote on either measure.

As the proposal currently stands, the UK is excluded from the Council Decision having chosen not to opt-in to the Regulation. Our exclusion from the Council Decision follows from the assessment it builds on a first-pillar Schengen measure in which the UK is not participating. This follows the approach taken in excluding the UK from Frontex (the EU Borders Agency). As you may be aware, we are challenging that exclusion through the European Court of Justice. Pending the outcome of that case, which we hope will resolve the general issue of principle, we have secured a Council Declaration to accompany the VIS instruments in which the Council acknowledges the shared security benefits of the UK and Ireland on a reciprocal basis having access to the VIS for law enforcement purposes and makes clear that the Council has agreed to keep the position of the United Kingdom and Ireland under review.

12 June 2007

Letter from the Chairman to Rt Hon Tony McNulty MP

Thank you for your further letter of 12 June 2007 in reply to mine of 7 March 2007 to Sub-Committee F of the House of Lords Select Committee on the European Union considered it at a meeting on 27 June 2007.

The Committee were grateful for your explanation of the progress (or lack of it) of negotiations on the revised draft of the Data Protection Framework Decision. You will be aware that the Ministry of Justice submitted an explanatory memorandum on this draft which the Committee considered on 6 June. I wrote to Baroness Ashton of Upholland the following day about this, and it will probably be easier to continue this correspondence with her.

On the two data protection issues specific to the VIS Decision—the absence of a provision governing data transferred to third countries or international organisations, and the lack of a formal supervisory role for the European and national data protection authorities acting jointly—the Committee were sorry to see that you could offer them no reassurance.

You say that the Presidency “hopes to secure a political agreement” at the then forthcoming JHA Council. In fact your letter is dated 12 June, the day on which agreement was reached on the draft of the Decision which is the successor to the document we still hold under scrutiny. Because the United Kingdom did not have a vote, this did not constitute a scrutiny override. We assume however that the United Kingdom, while not voting, supported the adoption of the Decision. Without it, there would be no scope for the informal arrangement allowing the United Kingdom to have access to the VIS for law enforcement purposes. Moreover, success in the FRONTEX case before the European Court would presumably result in the United Kingdom seeking to
participate fully in the VIS Decision. We therefore think it very regrettable that the scrutiny process could not have been completed before the Council, perhaps by a speedier reply to my letter of 7 March. The earlier draft of the Decision, document 15142/05, is no longer of relevance and we clear it from scrutiny.

27 June 2007

VISAS TO ENTER THE SCHENGEN AREA (11668/06)

Letter from the Chairman to Joan Ryan MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 3 April 2007 concerning the Regulation changing the Common Visa List. Sub-Committee F of the House of Lords Committee on the European Union considered this matter again at a meeting on 23 May 2007.

The Committee is again very grateful to you for endeavouring to provide us with the information requested, and has no further queries in relation to this measure.

17 May 2007
ADULT LEARNING: IT IS NEVER TOO LATE TO LEARN (14600/06)

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

Thank you for your letter of 11 January 2007 and your Committee’s comments on the Commission’s proposals in this area. I am grateful for your support for the Government’s position with regard to adult learning.

As you say, the recent Leitch Review underlined the importance of adult learning, and offered a number of recommendations for how we can become a world leader in skills by 2020. We accept these stretching skills ambitions. Lord Leitch’s analysis is absolutely right; if we are to compete internationally in the global economy of 2020, we must ensure that we have a world class skills base. We will consider, with our partners, the detailed action we need to take to deliver the ambition for the UK to be world leader on skills. However, we must seize the unprecedented opportunity it presents to bring about a cultural change in the nation’s attitudes to skills. We need to dramatically raise awareness and aspirations on skills. We need employers to see the value of and the need to invest in skills at all levels; and, we need individuals to pay more attention to and take action to address their own skills needs. Officials have already emphasised the importance of these points in EU level discussions of adult learning issues and will continue to do so.

We believe that we have already made a good start in England on these priorities by concentrating our efforts on the groups with the lowest skills. We are delivering through a number of channels, often linked to the workplace through initiatives like Train to Gain. This is a flexible service tailored to employer needs and offers free training to low-skilled employees. Our Skills for Life Strategy has already enabled over 1.5 million adults to gain crucial basic skills, meeting the interim PSA target in this area.

One of the key aims of the Commission’s Communication is to expand participation in adult learning further. The Leitch Review makes some important suggestions on how we can do this, which have informed officials formulating the UK response on this issue. Increasing adult participation in learning is also one of our current suite of challenging PSA targets and is a precondition for any higher ambitions, setting the foundation from which to build towards our 2020 vision. As part of the current Spending review, we will consider how to incorporate Leitch’s ambition into our next round of PSA targets, which will inform our response to the Action Plan and any subsequent initiatives arising from it.

The recommendations on the development of a new adult careers service to improve advice for those groups who need advice on how to improve their skills levels coincide with the key message in the Communication around guidance. Officials recently attended a consultation event to help shape the action plan which will emerge from the Communication. They had a useful exchange of views with officials from other Member States and the Commission, who agreed with the UK view on the importance of effective guidance for individuals throughout their careers, especially on the skills which will be needed in an ageing society. They also promoted the idea of a skills health check, as suggested by Leitch, and expressed our reservations about the detail of some of the proposed data requirements. These views were taken on board by the Commission.

You asked about the breakdown of the participation rate figure. I am afraid that I am unable to give more detail on how the figure is made up, due to the way in which the data is collected. The figure is derived from the European Labour Force Survey and is the percentage of the working age population participating in education and training in the four weeks prior to the survey. Eurostat produce the figure from an analysis of responses to a number of different questions supplied to them by the Office for National Statistics (ONS) in the UK (covering participation in regular education, other taught activities, various training schemes, New Deal, Apprenticeships, University sandwich courses, PGCEs etc). We do not have access to the dataset that Eurostat produce so officials cannot do further analysis or comment on the data. However, ONS are trying to secure access to the dataset in future.

1 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 386.
It is clear that there is a lack of data both nationally and at European level to help assess what is happening in adult education. Following our intervention at the recent consultation the Commission is re-examining what is required and what is practicable in this field. This approach is consistent with our long-standing view that any additional data requirements must add value and not impose disproportionate burdens.

1 May 2007

Letter from the Chairman to Bill Rammell MP

Your letter of 1 May relating to the above Document was considered by Sub-Committee G at its meeting of 10 May 2007.

We welcome the information you provide about the way in which you aim to incorporate the findings of the Lord Leitch’s Review into both your response to the Commission’s Communication and to the next round of DfES’s PSA targets.

On the issue of how the overall 29% UK participation rate in adult learning was made up in terms of different types of training, we feel that you could be more helpful to us. While the European Labour Force Survey (LFS) data itself may not be accessible, the data from the UK component of this is widely used by the DfES to produce education and training analyses. For example, the attached chart, downloaded from the DfES website, shows that adult participation in job-related training is around 14%, in contrast to the figure of 29% participation in all forms of adult education and training quoted by the Commission.

Our view is that, in assessing the Commission Communication’s relevance in the UK, it is most important to consider information relating to the proportions of the adult UK population engaged in different forms of training. The statistic of 29% engaged in all forms of adult learning is too broad a figure to be of much value. Our particular concern is that statistics should be considered that relate to forms of adult learning designed to address the very weak skills base of the UK identified in Lord Leitch’s Review Report. The Press Release which announced that Report, for example, showed that:

— out of 30 OECD countries, the UK lies 17th on low skills, 20th on intermediate skills and 11th on high skills;
— 5 million adults in the UK lack functional literacy;
— 17 million adults in the UK have difficulty with numbers; and
— more than one in six young people leave school unable to read, write or add up properly.

Please let us have some further information about the relative extent of different types of adult training in the UK, in particular focussing on the extent of those types of training which are most relevant in connection with the skills agenda advocated in the Leitch Review report.

We would be grateful also to have your view of the extent to which this further information about participation in job-related training in the UK influences your assessment of the suggestions made in the Commission Communication relating to good practice in the area of adult training.

We will retain this document under scrutiny pending your further reply on these issues.

10 May 2007

Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 10 May 2007. I am writing to supply the data you requested on the proportions of the adult UK population engaged in different forms of training (see Annex).

I also address your questions on the implications of this information for the skills agenda advocated in the Leitch Review report and for my assessment of the suggestions made in the Commission Communication. Since the publication of Lord Leitch’s final report, we have worked closely with a wide range of partners and stakeholders to consider how best to rise to the challenge Lord Leitch articulated, and take forward the package of recommendations he proposed. The Government’s Implementation Plan, due to be published this summer, will set out how, working with partners, we will take forward Lord Leitch’s proposals and deliver his ambition.

The European Commission recently released new versions of its Labour Force Survey data, with explanations of how the statistics are derived. We are now able to supply demographic breakdowns of the figure of 29% participation in all forms of adult education and training that the Commission cites. A third of women take part over a four-week period, compared to a quarter of men. Participation declines steeply with age.
As you requested, we then use the UK component of the LFS to analyse the participation of working-age employees in the more specific category of job-related training. A striking fact here is that employees with higher level qualifications (degree etc) were more than four times more likely to have received any training than those with no qualifications—22% compared to 5%. We aim to break this cycle by focusing public funding on individuals aiming for a first full Level 2 qualification.

The exact form of delivery (on-job experience, off-job training at the workplace, courses in FE colleges, etc) is a matter of choice for individuals and employers, working with skills brokers and learning providers.

I recognise that the Government will need to work very hard if the UK’s skills are to reach the upper quartile of the Organisation for Economic Co-operation and Development’s surveyed countries by 2020 as the Leitch Review report recommends.

The Government has set a number of targets to increase the skills of the UK workforce. Many of these targets will make an impact on adult skills by improving the qualifications held by young people entering the labour market—eg increasing the proportion of 19 year olds that achieve level 2 and level 3 qualifications. Others, such as the basic skills target, also cover those already in work. A PSA target has been set to improve the basic literacy and numeracy skills of 2.25 million adults in England by 2010. An interim target of achieving 1.5 million by 2007 was achieved in February of that year.

A target has been set to reduce by at least 40% the number of adults in the workforce in England who lack Level 2 qualifications by 2010. This is equivalent to a 3.6 million increase in the numbers with at least a Level 2 qualification, compared to the autumn 2001 baseline of 15.9 million adults. An interim target of raising by 1 million the number of adults in the workforce with at least a level 2 qualification, between 2003 and 2006, was met by a margin of 141,000.

Turning to the recommendations in the Commission Communication: these are set out in five key messages.

Message 1: . . . public authorities must take the lead in removing barriers and promoting demand, with a special focus on the low-skilled. This will include developing high-quality guidance and information systems . . .

The Government’s key adult skills targets to increase the numbers with Skills for Life and first, full Level 2 qualifications embody our policy focus on the low-skilled and are at the heart of our skills strategy. We are working with partners to develop a new universal careers service for England to give people the advice they need to progress in the modern labour market and adapt to change. The careers service will be underpinned by high quality labour market information, purpose built by Sector Skills Councils and accessible to all advisors.

Message 2 focuses on teaching quality and Continuing Professional Development

As announced in the FE White Paper—*Raising Skills, Improving Life Chances* (2006), we are introducing a wide range of workforce reforms which are aimed at professionalising the FE workforce and improving the quality of FE leaders, teachers and teaching. Lifelong Learning UK (the sector skills council for the FE workforce), has already published new standards for teachers and will shortly publish standards for leaders, to underpin developments in our reform programme. In July this year, we will be laying a series of regulations that will come in to force in September. These will reform initial teacher training and introduce new qualification pathways that will lead to teachers gaining Qualified Teacher Learning and Skills status, which will become the future standard for teachers in FE; require teachers to undertake at least 30 hours continuing professional development each year (with adjustments for those working part time, in order to maintain their professional standing and their “licence to practice” teaching in FE; and require all new college principals to become qualified, through a programme delivered by the Centre for Excellence in Leadership. CEL supports the professional development of sector managers and leaders through their portfolio of programmes. These are being refreshed to reflect the challenges for the FE sector articulated in the Leitch report, particularly responding to demand led learning and the globally competitive market.

Also, from September this year we are establishing a network of Centres for Excellence in Teacher Training. These will play a leading role in supporting improvements in the quality of support for teachers across the FE sector, from design of programmes that enhance the quality of teacher training, to provision of support through networks of coaches and mentors. Development of CETTs is being led by QIA, with an investment of £9m over the next three years. A further £30 million will be provided in 2007–08 to support implementation of our workforce reforms, as announced in *Equipping Our Teachers for the Future* (2004). We are also investing up to £18 million this year in incentives to attract good quality recruits to work in the sector through
our Bursary and Golden Hello programmes. A further £11 million over the next three years, will be spent by LLUK on developing new workforce recruitment and continuing professional development programmes, as announced in the FE White Paper.

Message 3: Within the next five years Member States should implement systems for validation and recognition of non-formal and informal learning

The UK is in the lead here. Our well-established NVQ system is founded on recognising competence regardless of whether it has been acquired on the job or through formal training.

Message 4: above all ensure efficiency by designing education and training which matches the needs of the learner

The Government is committed to an adult skills system that is driven more directly by employer and learner choice to ensure it meets their needs. Employer and learner demand will determine what is funded and how services are delivered. This will be underpinned by qualification reform with employer-designed qualifications. The expansion of Train to Gain and the development of learner accounts will be key components of a demand led system for adult vocational learning.

The Train to Gain programme uses skills brokers to help employers find the training they need. We will expand this so that more adult training is delivered in the workplace through programmes designed and delivered in partnership with employers covering the Skills for Life programme (adult basic skills), provision leading to qualifications at Level 2 and above, and Adult Apprenticeships. From 2007–08 we will trial a new system of learner accounts for individuals giving them greater choice and control over their learning.

We are also developing a Foundation Learning Tier of flexible, unitised provision below level 2, designed to ensure that learners at these levels can engage and progress towards their learning goals.

Message 5: The quality and comparability of data on adult learning must continue to improve

The UK has been a leader in the development of Eurostat’s new Adult Education Survey, and was one of the first countries to implement it, in 2005. We await comparable results from other EU member states.

The Communication also mentions the importance of good coordination. The Leitch Review Report contains detailed recommendations in this respect, focusing on a new Commission for Employment and Skills. The CES will be employer-led and report to central Government and the devolved administrations. The Commission will manage employer influence on skills, within a national framework of individual rights and responsibilities.

11 June 2007

Annex A

EU AND UK STATISTICS ON ADULT LEARNING

PARTICIPATION IN EDUCATION OR TRAINING

(European Labour Force Survey, spring 2005. Adults aged 25–64 in the UK)

Nearly 3 in 10 adults (29%), equal to 6.8 million, took part in education or training in the previous four weeks—see Table 1 below. Within the EU-25, only Sweden (35%) had a higher rate. This means that the UK already comfortably exceeds the target (benchmark) of a participation rate of 12.5% across the EU in 2010.

Whilst 1 in 10 (10%) participated in regular education, more than 1 in 4 (26%) took part in learning activities outside the regular education system.

More women than men participate: 1 in 3 (34%) compared to 1 in 4 (24%).

Participation reduces with age, 25–29 year-olds being more than twice as likely to take part (37%) as 60–64 year-olds (18%).
Table 1.0 (Source: Eurostat)

Participation in Education or Training during the Previous Four Weeks, Spring 2005

United Kingdom: People aged 25 to 64\(^1\)

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receiving any education or training</td>
<td>6,807,000</td>
<td>16,609,000</td>
<td>23,415,000</td>
</tr>
<tr>
<td>By type of education or training</td>
<td>29.1</td>
<td>70.9</td>
<td>100</td>
</tr>
<tr>
<td>Regular education only(^2)</td>
<td>708,000</td>
<td>22,707,000</td>
<td>23,415,000</td>
</tr>
<tr>
<td>Non-regular education only(^3)</td>
<td>4,611,000</td>
<td>18,804,000</td>
<td>23,415,000</td>
</tr>
<tr>
<td>Both regular and non-regular education</td>
<td>1,488,000</td>
<td>21,927,000</td>
<td>23,415,000</td>
</tr>
<tr>
<td>By gender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>2,836,000</td>
<td>8,877,000</td>
<td>11,713,000</td>
</tr>
<tr>
<td>Female</td>
<td>3,970,000</td>
<td>7,732,000</td>
<td>11,702,000</td>
</tr>
<tr>
<td>By age</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25–29</td>
<td>1,074,000</td>
<td>1,821,000</td>
<td>2,895,000</td>
</tr>
<tr>
<td>30–34</td>
<td>1,038,000</td>
<td>2,184,000</td>
<td>3,223,000</td>
</tr>
<tr>
<td>35–39</td>
<td>1,134,000</td>
<td>2,447,000</td>
<td>3,581,000</td>
</tr>
<tr>
<td>40–44</td>
<td>1,073,000</td>
<td>2,448,000</td>
<td>3,522,000</td>
</tr>
<tr>
<td>45–49</td>
<td>854,000</td>
<td>2,268,000</td>
<td>3,122,000</td>
</tr>
<tr>
<td>50–54</td>
<td>738,000</td>
<td>2,076,000</td>
<td>2,814,000</td>
</tr>
<tr>
<td>55–59</td>
<td>657,000</td>
<td>2,230,000</td>
<td>2,887,000</td>
</tr>
<tr>
<td>60–64</td>
<td>240,000</td>
<td>1,133,000</td>
<td>1,373,000</td>
</tr>
<tr>
<td>By employment status</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In employment</td>
<td>5,815,000</td>
<td>13,247,000</td>
<td>19,062,000</td>
</tr>
<tr>
<td>Unemployed/Inactive</td>
<td>992,000</td>
<td>3,362,000</td>
<td>4,354,000</td>
</tr>
</tbody>
</table>

Source: Eurostat Labour Force Survey, spring 2005

\(^1\) Females aged 60–64 are only included if they were in employment.

\(^2\) Student or apprentice in regular education during last four weeks.

\(^3\) Taught learning activities outside regular education system within the last four weeks (courses, seminars, private lessons etc.)

Job-related Training

(Labour Force Survey, spring 2005; employees aged 16–59/64 in the UK)

Overall volumes 16% (3.8 million) of working age employees received job-related training in the previous four weeks. However, nearly twice as many (29%) said that they had never been offered training by their current employer—see Table 2.1 below.

Mode of training Off-the-job training was more widespread than on-the-job training: 11% compared to 8% (these figures include the 3% receiving both types)—see Table 2.2 below.

Prior qualifications Employees with higher level qualifications (degree etc.) were more than four times more likely to have received any training than those with no qualifications—22% compared to 5%.
**Ethnicity** Non-white employees were slightly more likely to have received training than white employees—17% compared with 16%. However, within the non-white grouping the participation rate varies: while employees in the “Other” ethnic group had the highest incidence of training (22%), Asian or Asian British employees (14%) reported the lowest levels.

**Occupation** Employees in the professional, associate professional and technical occupations were most likely to have received training—almost four times more likely than process, plant and machine operatives—25% compared to 7%.

**Industry sector** Those employed in agriculture, forestry & fishing were least likely (8%) to have received training. The likelihood was highest (24%) among employees in public administration, education and health.

### Table 2.1

**Employees1 of Working Age2 in the UK—Summary of Job-Related Training3, 4 Received 2005**

<table>
<thead>
<tr>
<th>United Kingdom</th>
<th>Thousands and percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total number of employees (thousands)</td>
</tr>
<tr>
<td></td>
<td>Males</td>
</tr>
<tr>
<td><strong>By occupation</strong></td>
<td></td>
</tr>
<tr>
<td>Agriculture, forestry &amp; fishing</td>
<td>164</td>
</tr>
<tr>
<td>Energy &amp; water supply</td>
<td>268</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>3,418</td>
</tr>
<tr>
<td>Construction</td>
<td>1,330</td>
</tr>
<tr>
<td>Distribution, hotels &amp; restaurants</td>
<td>4,728</td>
</tr>
<tr>
<td>Transport</td>
<td>1,651</td>
</tr>
<tr>
<td>Banking, finance &amp; insurance</td>
<td>3,550</td>
</tr>
<tr>
<td>Public administration, education &amp; health</td>
<td>7,317</td>
</tr>
<tr>
<td>Other services</td>
<td>1,164</td>
</tr>
<tr>
<td><strong>By occupation1</strong></td>
<td></td>
</tr>
<tr>
<td>Managers and senior officials</td>
<td>3,438</td>
</tr>
<tr>
<td>Professional occupations</td>
<td>3,008</td>
</tr>
<tr>
<td>Associate professional and technical</td>
<td>3,282</td>
</tr>
<tr>
<td>Administrative and secretarial</td>
<td>3,224</td>
</tr>
<tr>
<td>Skilled trades</td>
<td>2,073</td>
</tr>
<tr>
<td>Personal service occupations</td>
<td>1,893</td>
</tr>
<tr>
<td>Sales and customer service occupations</td>
<td>2,056</td>
</tr>
<tr>
<td>Process, plant and machine operatives</td>
<td>7,184</td>
</tr>
<tr>
<td>Elementary occupations</td>
<td>2,842</td>
</tr>
<tr>
<td><strong>By region</strong></td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>23,614</td>
</tr>
<tr>
<td>North East</td>
<td>972</td>
</tr>
<tr>
<td>North West</td>
<td>2,653</td>
</tr>
<tr>
<td>Yorkshire and the Humber</td>
<td>2,001</td>
</tr>
<tr>
<td>East Midlands</td>
<td>1,703</td>
</tr>
<tr>
<td>West Midlands</td>
<td>2,104</td>
</tr>
<tr>
<td>Eastern</td>
<td>2,276</td>
</tr>
<tr>
<td>London</td>
<td>2,799</td>
</tr>
<tr>
<td>South East</td>
<td>3,322</td>
</tr>
<tr>
<td>South West</td>
<td>1,999</td>
</tr>
<tr>
<td>England</td>
<td>19,829</td>
</tr>
<tr>
<td>Wales</td>
<td>1,088</td>
</tr>
<tr>
<td>Scotland</td>
<td>2,108</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>589</td>
</tr>
</tbody>
</table>

Source: Labour Force Survey. Spring 2005

1 Employees are those in employment excluding the self-employed, unpaid family workers and those on government employment and training programmes.

2 Working age is defined as males aged 16–64 and females aged 16–59.

3 Job-related training includes both on and off-the-job training.

4 The highlighted estimates are based on small sample sizes and are subject to a higher degree of sampling variability and should therefore be treated with caution.

5 Apart from rounding, figures may not sum to grand totals because of questions in the LFS which were unanswered or did not apply.

6 Government Office Regions in England and each UK country.

7 Users of these data should read the LFS entry in Annex A, as it contains important information about the LFS and the concepts and definitions used.
## Table 2.2

**Participation by Employees\(^1\) of Working Age\(^2\) in the Job-Related Training\(^3\) in the Last Four Weeks by Type of Training and a Range of Personal Characteristics, 2005**

<table>
<thead>
<tr>
<th>United Kingdom</th>
<th>Thousands and percentages(^4)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total number of employees (thousands)</td>
</tr>
<tr>
<td></td>
<td>receiving off-the-job training only (%)</td>
</tr>
<tr>
<td>All employees</td>
<td>23,614</td>
</tr>
<tr>
<td>By gender</td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>12,153</td>
</tr>
<tr>
<td>Females</td>
<td>11,461</td>
</tr>
<tr>
<td>By age</td>
<td></td>
</tr>
<tr>
<td>16–19</td>
<td>1,374</td>
</tr>
<tr>
<td>20–24</td>
<td>2,306</td>
</tr>
<tr>
<td>25–29</td>
<td>2,614</td>
</tr>
<tr>
<td>30–39</td>
<td>6,096</td>
</tr>
<tr>
<td>40–49</td>
<td>6,003</td>
</tr>
<tr>
<td>50–64</td>
<td>5,222</td>
</tr>
<tr>
<td>By ethnic origin</td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>21,864</td>
</tr>
<tr>
<td>Non-white</td>
<td>1,745</td>
</tr>
<tr>
<td>of which:</td>
<td></td>
</tr>
<tr>
<td>Mixed</td>
<td>155</td>
</tr>
<tr>
<td>Asian or Asian British</td>
<td>795</td>
</tr>
<tr>
<td>Black or Black British</td>
<td>446</td>
</tr>
<tr>
<td>Chinese</td>
<td>88</td>
</tr>
<tr>
<td>Other ethnic group</td>
<td>262</td>
</tr>
<tr>
<td>By highest qualification held(^5)</td>
<td></td>
</tr>
<tr>
<td>Degree of equivalent</td>
<td>4,980</td>
</tr>
<tr>
<td>Higher Education qualification (below degree level)</td>
<td>2,339</td>
</tr>
<tr>
<td>GCE A level or equivalent</td>
<td>5,674</td>
</tr>
<tr>
<td>GCSE grades A* to C, or equivalent</td>
<td>5,565</td>
</tr>
<tr>
<td>Other</td>
<td>2,804</td>
</tr>
<tr>
<td>None</td>
<td>2,094</td>
</tr>
<tr>
<td>By region</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>23,614</td>
</tr>
<tr>
<td>North East</td>
<td>972</td>
</tr>
<tr>
<td>North West</td>
<td>2,653</td>
</tr>
<tr>
<td>Yorkshire and the Humber</td>
<td>2,001</td>
</tr>
<tr>
<td>East Midlands</td>
<td>103</td>
</tr>
<tr>
<td>West Midlands</td>
<td>2,104</td>
</tr>
<tr>
<td>Eastern</td>
<td>2,276</td>
</tr>
<tr>
<td>London</td>
<td>2,799</td>
</tr>
<tr>
<td>South East</td>
<td>3,322</td>
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<tr>
<td>South West</td>
<td>1,999</td>
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<tr>
<td>England</td>
<td>19,829</td>
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<td>Wales</td>
<td>1,088</td>
</tr>
<tr>
<td>Scotland</td>
<td>2,108</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>589</td>
</tr>
</tbody>
</table>

Source: **Labour Force Survey, Spring 2005**

\(^1\) Employees are those in employment excluding the self-employed, unpaid family workers and those on government employment and training programmes.

\(^2\) Working age is defined as males aged 16–64 and females ages 16–59.

\(^3\) Job related training includes both on and off-the-job training.

\(^4\) Expressed as a percentage of the total number of people in each group. Percentages are based on the number of employees of working age receiving job-related training.

\(^5\) Apart from rounding, figures may not sum to grand totals because of questions in the LFS which were unanswered or did not apply.

\(^6\) Users of these data should read the LFS entry in Annex A, as it contains important information about the LFS and the concepts and definitions used.
The UK’s qualifications profile has improved since 1997—see 2.3 (Source: Labour Force Survey, Q4 1997, Q4 2006).

Over a similar period, participation in vocational learning increased significantly—see Table 2.4 which draws on the National Adult Learning Survey. Each time NALS runs, it measures participation over the previous three years. Estimates are therefore much higher than those from the LFS, where the reference period is the previous four weeks.

### Table 2.4

**Participation in Combination of Vocational and Non-Vocational Learning—NALS 1997–2002**

<table>
<thead>
<tr>
<th></th>
<th>1997 %</th>
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<td>5,505</td>
<td>5,654</td>
<td>3,871</td>
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<td>5,532</td>
<td>5,725</td>
<td>3,340</td>
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</tbody>
</table>

Base: All respondents aged 16–69 not in continuous full-time education.

Evidence suggests that UK participation in learning is spread thinly across a wide number of participants but with relatively short course hours on average. In terms of the overall volume of learning the UK is around the EU average. Much of the training that employers do is either job-specific or statutory. The National Employer Skill Survey (LSC, 2004) found that of employers providing training, 81% provided job-specific training, 80% provided health and safety training and 66% provided induction training.

Having training lead to qualifications (generally requiring substantial course lengths) is important because it helps to ensure standardised training, transferability of skills between firms and easier progression to higher levels. Government intervention concentrates on getting people to at least Level 2, in general through the Level 2 entitlement and specifically through the Train to Gain programme. There are strong earnings returns to many Level 2 qualifications, particularly academic ones. Returns to low level vocational qualifications are generally low although when compared to having no qualifications they can be substantial.

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1 EU Continuing Vocational Training Survey; OECD Education at a Glance.
2 At least five GCSEs at Grades A*–C, or a vocational qualification such as NVQ2.
REFERENCES


Letter from the Chairman to Bill Rammell MP

You letter of 11 June relating to the above Document was considered by Sub-Committee G at its meeting held on 21 June 2007.

We are grateful for the array of informative statistics that you have now been able to provide relating to the extent of adult training in the UK. We note, in particular, that, in 2005 among all employees of working age, 16% undertook some form of job related training in the past four weeks, but that the equivalent figure for adult employees with no qualifications was only 5%.

This sort of information underlines the problem of poor skills highlighted in the report published by Lord Leitch and makes clear, as you remark in your letter, “that the Government will need to work hard if the UK’s skills are to reach the upper quartile of the OECD’s surveyed countries by 2020 as the Leitch Review report recommends”.

We are most interested to learn that the Government’s Implementation Plan responding to the recommendations of the Leitch Review is to be published in summer 2007 and we request that you send us a copy of that plan when it is available.

We now clear this Commission document from scrutiny.

21 June 2007
Letter from Bill Rammell MP to the Chairman

In your letter of 21 June you asked me to send you a copy of the Government’s Implementation Plan responding to the Leitch Review of Skills.4

The Government’s response to the Review has now been published and I have pleasure in enclosing a copy (not printed). I hope you find this helpful.

30 July 2007

ADVANCED THERAPY MEDICINAL PRODUCTS (15023/05)

Letter from Lord Hunt of Kings Heath, Minister of State, Department of Health to the Chairman

I am writing to update you on recent progress in the negotiations on the European Commission’s proposals for a Regulation on advanced therapy medicinal products. The key message is that it appears that a first reading agreement can be achieved, and one that is acceptable from a UK point of view.

In my letter of 12 March 2007,5 I outlined that the current German Presidency had indicated that a first reading agreement was a possibility on this dossier. Since then the European Parliament voted in plenary on a proposed compromise package (25 April 2007). The European Parliament voted to accept the compromise package and rejected other amendments which were related to ethical issues and sought to restrict the use of particular types of cells such as embryonic stem cells. The position taken by the European Parliament is consistent with the position taken in the Council working group and with the UK’s position. Our position is that the option of prohibition or restriction of products containing particular kinds of cells or tissues should remain a national responsibility. This is the position that was agreed when the Tissues and Cells Directive (2004/23/EC) was agreed.

The Council working group is supportive of the proposed compromise package as is the European Commission. Overall, the compromise package is also acceptable from the UK Government’s perspective, including the proposed hospital exemption which was an important priority for the UK in the negotiations.

The committee will be aware that the proposed hospital exemption raised a number of complex issues in the negotiations. Under the Commission’s original proposal, any advanced therapy medicinal product which is both prepared in full and used in the same hospital, in accordance with a medical prescription for an individual patient would be exempt from the new regulatory requirements. The Government had serious concerns about the original text. Our main concern was about linking the exemption to a single hospital. This approach seemed overly restrictive given the evidence that hospitals may wish to collaborate in this highly specialised area. Under the current version of the exemption, production would not need to take place in the hospital where the product was used. The exemption would apply where advanced therapy medicinal products were prepared on a non routine basis and used within the same Member State in a hospital under the exclusive professional responsibility of a medical practitioner in order to comply with an individual medical prescription for a custom made product. Member States would be responsible for developing specific quality and pharmacovigilance requirements that would apply under the exemption and for authorising manufacturing. We believe that this outcome would provide a useful degree of flexibility at national level in helping to manage regulatory impact where hospitals are engaging in the crucial early developmental stages of tissue engineering, while ensuring necessary public health protection.

The other key substantive issue which featured in the negotiations related to the scope of the proposed Regulation and the overlap with the medical devices legislation (a first reading agreement has been secured on the review of the medical devices legislation). The Government’s preferred position was that where a product containing tissues or cells is at the borderline of the medicines and devices regime it should be regulated with appropriate health safeguards, either as a medicine or as a device, on the basis of its principal mode of action in accordance with the existing regulatory arrangements for determining the classification of medicine/medical device borderline products. However, the majority of other Member States took the view that where a product meeting the definition of a medicinal product contains viable tissues or cells it should always be regulated under the advanced therapy medicinal products Regulation. This majority position was consistent with that taken by the European Parliament. There was strong support for extending the scope of the devices regime to cover products containing non viable human tissues/cells. However, there was not sufficient support for delaying agreement on the negotiation of the devices legislation to make this change at the present time. The impact of possibly opening up the devices regime is to be considered by the European Commission before deciding whether legislative proposals are to be brought forward in this area to fill a remaining gap.

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4 World Class Skills: Implementing the Leitch Review of Skills in England, Cm 7181.
5 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p386.
The MHRA has continued to meet with interested parties, including the industry trade associations, hospital and academic research interests, during the negotiations to brief them on progress. The main industry trade associations as well as a range of patient organisations have signalled their support for the compromise package for which the European Parliament voted on 25 April.

An updated regulatory impact assessment is enclosed for the committee’s information (not printed). The proposed Regulation would not change the definition of a medicinal product and so would not alter which products come within the scope of the medicines regulatory regime. The main effect of the Regulation for products affected would be to modify the normal requirements of the medicines regulatory regime to put in place a framework for introducing tailored technical requirements reflecting the nature of the product. This means that at this stage it has proved difficult to quantify the impact on those in the sector. Moreover, the scale of the tissue engineering sector is currently small—it is expected to develop as a result of scientific and technological progress in the coming years. It will therefore take a number of years for new, innovative products to be developed and to come on to the market. As a result, it will take some time before we will be in a position to make a robust assessment of the economic impact.

The Committee will be aware that the Government has consistently supported the case for regulation in this area and is supportive of the current compromise package. Both industry and patient groups have expressed a strong view that the opportunity should be taken to secure a first reading agreement thereby ending the current regulatory uncertainty that is holding back development. Our intention is to signal our support at the Health Council which is scheduled to take place on 30/31 May. I hope that the information I have provided in this letter will enable the committee to grant scrutiny clearance at this time, ideally before the Health Council.

14 May 2007

AGEING WELL IN THE INFORMATION SOCIETY (10971/07)

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

Your EM dated 28 June was considered by Sub-Committee G at its meeting held on 12 July 2007.

We accept that the actions envisaged in the Commission’s Communication are consistent with the role Member States have asked it to take on in coordinating the i2010 strategy.

The issues associated with harnessing the potential of ICT solutions to improve the working and social lives of older people are multi-facetted, and, in particular need to be developed in a way that will make them well regarded by the target users. We welcome, therefore, your recognition that ICT solutions can only be of value if they are practical, are introduced against the background of a full understanding of the health and social issues involved and that they respect the human rights and privacy of individual users.

There are, of course, a host of economic and social policy issues which arise as a result of the increase in the average lifespan of EU citizens and the older age structure of the population which is developing, partly as result of this. We would be interested to hear your views about how the actions planned to improve the quality of life for older people by using ICT solutions fit in with the Government’s wider policy agenda for handling the issues in the UK which will arise as a result of the older age structure of its population.

We clear this Communication from scrutiny and ask you: (a) to let us know the outcome of the Ministerial debate on this subject which is to be hosted by the Portuguese Presidency; and (b) to let us have your thoughts on how this work on ICT solutions fits in with the wider policy agenda relating to the older age structure of the UK’s population.

16 July 2007

Letter from Rt Hon Stephen Timms MP to the Chairman

Thank you for your letter of 16 July, concerning the Explanatory Memorandum of 28 June on this dossier.

Information Communication Technologies are an important tool in improving the quality of life for the older members of society by assisting them to stay healthier and live independently longer, as well as enabling them to remain active at work or in the community. Through the use of ICT to maintain the wellbeing and independence of the older members of the population, it should be possible to achieve the objectives set out in the 2006 Riga Ministerial Declaration on e-Inclusion and the EU policy in the areas of growth and competitiveness as stated in the revised Lisbon agenda.

In the UK we have been proactive, and have attempted to foresee the challenges which we will have to surmount in the coming years. In March 2005 we published the Government’s strategy for an ageing society
“Opportunity Age: Meeting the challenges of ageing in the 21st century”. The principle objective of the strategy is to put an end to the perception of older people being dependent; ensure that longer life is healthy and fulfilling; and that older people are full participants in society. The three key areas of the strategy are: work and income, active ageing and services; which are all consistent with the Commission’s Action Plan for ageing well in the information society.

Also in March 2005, the Partnership for Older People Projects was published. At the launch Ministers stated the “Our Health, Our Care, Our Say” White Paper is a pledge to give people more choice with their services, and help shift funding away from institutional and hospital-based crisis care, towards earlier, targeted interventions”. This change in approach should result in older people being able to lead a healthy and active life as well as being able to remain independent for longer.

In order to address the identified priorities of a progressively older society, the UK Government has launched numerous programmes and projects to help manage the increased demands that will be placed on health and social services. The National Programme for IT (for England) is a perfect example of work being undertaken to prepare for the challenges of the future. The programme will result in the creation of an information infrastructure, including national electronic care records and a national broadband infrastructure, which will facilitate the introduction and take up of home telecare services. However the provision of this service should not be seen as a solution in its own right, only as a component of an overall solution.

Another area where the UK leads is in the electronic access that individuals have to Government services. In comparison to other Member States, the UK is atypical in that it provides a large volume of Government services over the telephone or via website portals for those who have access and the necessary skills and ability to use the technology. By being able to gain access to the Pensions Service via the telephone, each year 1 million pensioners are able to arrange their pension by making a 20 minute phone call to the Pensions Service thereby eliminating the onerous task of having to fill in numerous forms.

With regards to the use of ICT in the work environment, several projects have been launched to support the older members of society that want to continue to work. However, I acknowledge that this is an area where more needs to be done in order to provide the relevant training and technology that will enable the older employee to continue to contribute to the UK/European economy.

I hope you are assured that the Government appreciates the benefits to be gained from incorporating ICT in the overall approach to service delivery for the older members of the UK society.

I will write to you again in December, to provide an update on the Portuguese Presidency Ministerial Debate on European e-Inclusion Policy, which will take place at the beginning of that month, and to provide you with any further national developments in the use of ICT in relation to ageing.

29 August 2007

COMMON AUTHORISATION PROCEDURE FOR FOOD ADDITIVES, ENZYMES, FLAVOURINGS AND INGREDIENTS (12179/06, 12181/06, 12182/06)

Letter from the Chairman to Caroline Flint MP, Minister of State for Public Health, Department of Health

Your Supplementary Explanatory Memorandum (12179/06) on the above Proposal was considered by Sub-Committee G at its meeting of 10 May 2007.

We note the outcome of your consultation with stakeholders and the content of your Regulatory Impact Assessment. It is welcome that the authorisation process will apply to food enzymes rather than to food enzyme preparations.

In the light of the Regulatory Impact Assessment, we are content to release the Proposal from scrutiny.

10 May 2007

Letter from the Chairman to Caroline Flint MP

Your Supplementary Explanatory Memorandum (12181/06) on the above proposal was considered by Sub-Committee G at its meeting of 10 May 2007.

We note the outcome of your consultation with stakeholders and the content of your Regulatory Impact Assessment. In that context, we are supportive of your approach to the negotiations in Council.

We are therefore content to release the Proposal from scrutiny.

10 May 2007
Letter from the Chairman to Caroline Flint MP

Your supplementary EM (12182/06) dated 14 June, and the accompanying Partial Regulatory Impact Assessment (RIA), were considered by Sub-Committee G at its meeting held on 28 June 2007.

We note that the industry and consumers organisations are broadly content with the proposed Regulation but that some concerns have been raised including: (a) the issue of the minimum level permitted for the percentage of a flavouring advertised as “natural” which must come from the source indicated; and (b) the setting of limits for the amount of biologically active principles (BAPs) in compound foods (e.g., a meat pie or a fish dish in sauce) stemming from the use of herbs and spices.

We encourage you to take full account of the views of stakeholders in arguing the case in Council discussions for modifications to the draft Regulation along the lines of options 4 and 5 set out in the RIA. In particular, we urge you to seek changes in the requirements relating to BAP limits that would damage the interests of small restaurants and food preparation businesses.

Against this background, we now clear this document from scrutiny.

28 June 2007

COMMON PRINCIPLES OF FLEXICURITY: MORE AND BETTER JOBS THROUGH FLEXIBILITY AND SECURITY (10255/07)

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

Your EM dated 11 July was considered by Sub-Committee G at its meeting held on 26 July 2007.

We note your view that “the Communication does not itself have any policy implications”, but we have some concerns about the underlying approach which may be taken by the Commission in formulating the “common principles of flexicurity” which they wish to put forward later this year. These concerns were reflected in our Inquiry Report published on 27 June Modernising European Union labour law: has the UK anything to gain?

One example is the use in the example of flexicurity common principles put forward in the Communication (section 5) of the terms “insiders” and “outsiders” in the labour market. In our view, this reflects the same error made in the Commission’s Green Paper on Modernising Labour Law. In relation to this issue, our Report made the following comment.

Modernising European Union labour law: has the UK anything to gain?

165. Several organisations suggested to us that the focus in the Green Paper, on a possible extension of employment rights to all workers, was based on a faulty interpretation of the degree to which people working on non-standard contracts are actually vulnerable or insecure, and might therefore be considered labour market “outsiders”. According to Business Europe, for example: “Outsiders are the unemployed. All those legally employed, whether under full-time indefinite contracts, working part-time, under a fixed-term contract, or doing temporary agency work should be considered as insiders.”

More generally, our Report made the following recommendations relating to flexicurity, which we urge you to take into account in discussions of the Communication.

Modernising European Union labour law: has the UK anything to gain?

93. We commend the Commission for starting, in the Green Paper and elsewhere, an important policy debate on how labour market flexibility and employment security might be combined and reinforced to the benefit of both employers and workers and in furtherance of the common good.

94. However, we recommend that the purpose of this debate should be primarily to share information and examples of good practice, recognising the diversity of circumstances between Member States identified by the report of the Commission’s Expert Group on Flexicurity. Any common principles of flexicurity agreed at EU level should therefore be interpreted as guidelines rather than as obligations.

95. We recommend also, that as far as the UK is concerned, progress toward enhancing flexicurity requires action on skills and welfare to work measures rather than changes in labour law.

We ask you to outline to us what arguments the Government will put forward in addressing the task of ensuring that the common principles of flexicurity to be drawn up by the Commission later this year will not reflect concepts and ideas which are unacceptable in the UK context. In particular, please would you let us have your views on the use made by the Commission of the terms “insiders” and “outsiders” in the labour market.
Pending your reply, we will retain this document under scrutiny.

I am copying this letter to Pat McFadden MP (DBERR) for information.

26 July 2007

Letter from James Plaskitt MP to the Chairman

Thank you for your letter of 26 July 2007 outlining the Committee’s concerns about the “common principles of flexicurity”. You ask me to outline the arguments that the Government will use to ensure that the common principles of flexicurity to be agreed by the Council in December do not reflect concepts which would be unacceptable in the UK context.

Firstly, the UK will continue to reiterate the principle made clear by both the Council and the Commission that the Communication will only be acted on by Member States in the context of the Integrated Guidelines and the National Reform Programmes. The principles will therefore have to encompass all the various policy approaches across the EU.

Secondly, the UK will continue to argue that the EU should focus the debate on what works in achieving full employment and in particular to increase the employment rate amongst disadvantaged groups. You seek my views on the use made by the Commission of the terms “insiders” and “outsiders” in the labour market. The most important division in the labour market is between those with jobs and those without. This viewpoint is reflected in the fourth of the eight principles that the Communication proposes (section 5, page 10). While there is also a reference to “stable contractual arrangements” it is not the main emphasis and it does not raise the issue of permanent and full-time work versus temporary or part-time work.

The UK broadly agrees with the Commission proposals. Our approach to the December Council will be to ensure that Member State ownership of policy development and delivery and the concept of employment not job security, are enshrined in the Conclusions. I will be happy to update you on progress in the discussions leading up to final agreement.

18 September 2006

Letter from the Chairman to James Plaskitt MP

Your letter dated 18 September was considered by Sub-Committee G at its meeting held on 11 October 2007. We welcome the robust position you intend to take at the December Council meeting in relation to the Commission’s Communication on Flexicurity. We support strongly your intention to argue that the EU emphasis should be on achieving full employment and, in particular, on increasing the employment rate among disadvantaged groups.

We note your agreement with our view that the most important division between “insiders” and “outsiders” in the labour market is that between people who have a job and those who do not. However, we are less convinced that the Commission have yet dropped the emphasis they put in their Green Paper on Modernising Labour Law that an important group of labour market “outsiders”—for whom policies to reduce labour market “segmentation” should be aimed—is composed of people in precarious and informal employment. We trust that you will seek to ensure, if necessary, in the December Council discussions that this point of view is not emphasised.

We now clear this Communication from scrutiny.

16 October 2007

COMMUNITY STRATEGY 2007–12: HEALTH AND SAFETY AT WORK (6775/07)

Letter from the Chairman to Lord McKenzie of Luton, Parliamentary Under Secretary of State, Department for Work and Pensions

Thank you for your letter of 12 April 2007 which replied to my letter to you of 29 March. This was considered by Sub-Committee G at its meeting on 3 May.

The additional clarification you have provided—about the Commission’s view that specific plans and targets for reducing accidents at work are for Member States to define on the basis of national conditions, not for the Commission—is helpful. In particular, we are pleased to note that—at the 21 March Working Party meeting—the Commission made clear that the 25% accident rate reduction figure they have quoted is an aspiration and not a specific target.

6 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p407.
We are therefore now content to release this document from scrutiny.

4 May 2007

CONSUMER PROTECTION: SALE OF TIMESHARE AND OTHER LONG-TERM HOLIDAY PRODUCTS (10686/07)

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

The Explanatory Memorandum from Ian McCartney relating to the above Proposal was considered by Sub-Committee G at its meeting of 5 July 2007.

Bearing in mind the importance of this Proposal for UK consumers in particular, we have decided to make it the subject of a short inquiry. I attach a copy of the Call for Evidence that we are issuing for that inquiry. Our intention is that the evidence we publish in an Inquiry Report, during the autumn of 2007, will both inform our scrutiny role and make a valuable contribution to the EU’s decision-making process. We therefore retain this document under scrutiny.

We hope that you will be willing to attend a Sub-Committee G meeting in order to give us oral evidence for our Inquiry.

Please would you keep us informed about significant developments that arise in your discussion of the Proposal with the Commission, other Member States and the European Parliament.

5 July 2007

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

Thank you for your letter of 5 July to Stephen Timms. I am replying as this matter falls within my portfolio.

I am grateful for the news that your Committee has chosen to make the above proposal the subject of a short enquiry and look forward to attending a Sub-Committee G meeting which has now been arranged for 18 October.

I and my officials will be pleased to keep the Committee informed about significant developments which arise in the course of ongoing discussions on the proposal.

26 July 2007

Letter from Gareth Thomas MP to the Chairman

I am writing to provide an update on progress and on the Government’s position in the continuing Council Working Group meetings in respect of the above proposal, in advance of my attendance on 18 October at your Committee’s Inquiry into the Revision of the EU’s Timeshare Directive.

The Presidency has taken a keen interest in this dossier; holding four meetings of the Council Working Group since the introduction of the proposal in June this year. There is general support across Member States for the Commission’s proposal. Discussion has therefore concentrated on the detail of coverage.

Subject to concerns over the accuracy of the definitions in Article 2 and “fine tuning” of the required pre-contractual and contractual information in the relevant annexes we have continued to support the proposed approach in respect of timeshare agreements and the extension of the Directive to other long-term holiday products.

However, in line with our initial position set out in paragraph 4 of EM 10686/07 + ADD1 & ADD2 (ie that we support the objectives of the proposal and would work to ensure that the directive provides effective and proportionate solutions to identified problems in this sector), the Government has identified three main areas of concern with the detail of the proposal—definitions, application to exchange contracts and application to resale contracts. On these we have been arguing for greater clarity and for provisions which more closely fit the differences in the services to which the Directive is extended.

We believe that by seeking to apply the whole range of provisions of the Directive to timeshare related services (services other than the original purchase of the timeshare), the proposal seeks to apply requirements and restrictions on business which are disproportionate or inappropriate given the cause and nature of the consumer detriment they are designed to deal with.
Definitions
The Government has been keen to ensure that the definitions proposed in Article 2 properly cover the activities intended to be covered and do not inadvertently include other activities. For example, we have concerns that the term “accommodation” is too wide and would prefer this to be qualified as “overnight” or “living” accommodation. Similarly we believe the proposal fails to define timeshare exchange agreements accurately and have been working to achieve a workable definition.

Application to Exchange Contracts
In respect of exchange systems (described in paragraph 11 of the Explanatory Memorandum) the government has argued for a more proportionate approach.

In order to deal with the identified causes of complaint (overselling the prospects for and standard of exchange accommodation which are accessible under the contract) our view is that the answer lies in ensuring that adequate accurate information is provided to the consumer and that this information forms part of the contract. For example, information about, among other things, the consumer’s actual entitlement which may be limited by the location and time of the timeshare they are exchanging, and other restrictions such as demand for particular destinations in peak periods.

We believe the case for applying a separate cooling off period to exchange contracts is not made. When membership of an exchange scheme is sold at the same time as a timeshare purchase the exchange contract falls within the definition of an “ancillary contract” under the proposal. The cooling off-period during which a consumer can withdraw from the timeshare contract (14 calendar days proposed) simultaneously applies to the exchange contract because the effect of withdrawing from a timeshare contract is to terminate ancillary contracts. Accordingly a separate cooling off period for exchange contracts does not appear to be needed in these circumstances. Indeed, because an exchange contract is generally concluded after the 14 day timeshare cooling off period has lapsed, the exchange contract would in practice be subject to 28 days cooling-off.

Further consultation with the two main exchange schemes (both have their European headquarters in the UK) has confirmed that the vast majority of timeshare owners who join an exchange system do so at the time they purchase their timeshare. In addition, generally, there is no extra charge for the first period of membership and the consumer is provided with their exchange terms and conditions at the point at which they sign up to a timeshare purchase. They say that the imposition of a separate cooling-off period is unnecessary and would cause them significant administrative difficulties.

Consumers can also join exchange schemes after they have bought and used their timeshare. In this case the consumer is generally making a far more informed choice within their home State as they have experienced their own timeshare and will have learned of the experiences of others in exchange schemes. It should also be noted that the financial outlay for membership of an exchange scheme (£100–200) is far less than for the purchase of a timeshare.

For the reasons noted above concerning the small (initially often nil) financial outlay, in respect of exchange contracts a ban on advance payment is not needed, and would not necessarily fit sales practices in any case.

Application to Resale Contracts
For a description of resale services please see paragraph 10 of the Explanatory Memorandum. The proposal seeks to ensure that information and contracts be provided setting out basic information about who the contract is with, the price for the service etc. We support this element of the proposal.

We do not consider that a cooling off period is needed in respect of resale contracts. Under the proposal the consumer is not required to pay until the sale has been completed or the contract is otherwise terminated, there is therefore no financial risk. Furthermore, a cooling-off period might be counter productive because the reseller would be reluctant to undertake any work on behalf of the consumer until the completion of the cooling-off period—delaying the delivery of the service.

The Government agrees with the provision in article 6.2 which prohibits payments before a sale has taken place or the contract is terminated. This would have the essential effect of not only providing protection for consumers’ money, but also providing consumers with the means by which they will be alerted to the rogue traders and fraudsters who currently prey on timeshare owners by requesting up-front fees, not facilitating any sale, and leaving the consumer out of pocket.
Ongoing Consultation

Since the publication of the proposal BERR officials have arranged further meetings with stakeholder representative groups and businesses and have kept the Office of Fair Trading informed of developments in the meetings of the Council Working Group.

Both the Association of Timeshare Owners' Committees (TATOC) and the Timeshare Consumers Association have said that they support our approach to resale and exchange outlined above. In some respects both organisations would prefer stronger information requirements than those currently proposed. For example, they believe that information on exchange should be more closely tied to the individual consumer's actual entitlements, and that there should be more information about any restrictions on a consumer's ability to benefit from entitlements. We shall continue to take their views into account as we consider the most proportionate approach to achieving the objectives of the proposal.

Interval International and RCI, the two worldwide exchange companies, which cover by far the biggest proportion of exchanges between them, have expressed strong views that the proposal as it stands does not reflect how their business operates or the types and levels of detriment to which their customers may be exposed. For example, there are no long-term contracts with exchange, they are renewable usually annually, and the information requirements in the Commission's proposal clearly had not been adapted from information requirements more appropriate for timeshare sales. They have said that the separate application of a cooling-off period would cause them considerable difficulties and would amount to a "double" cooling-off period. They therefore support our approach to exchange. They are content that exchange agreements should be considered ancillary and should fall in the event that the consumer exercises their right to withdraw from a timeshare agreement within that cooling-off period. They have confirmed that this essentially reflects the current situation in any case—if a consumer has nothing to exchange then they cannot belong to the exchange scheme. One company said they provided pro-rata refunds for consumers who sold their timeshare mid-contract.

They also support the formalisation of information and contractual provisions, though they have some concerns that, as their international operations take in very many different resorts worldwide, there is a danger that they will be required to provide a very great amount of information, pre-contract, which would add considerably to their costs. We have acknowledged these concerns and continue to seek to ensure that requirements on this sector are proportionate while providing consumers with adequate information in advance of agreeing to membership.

We are also aware of another exchange business model (operated by Dial-an-Exchange, the European franchise of which is based in the UK). BERR officials have met this company, which allows direct access to exchanges via a web site and does not involve ongoing membership but an administration fee per exchange. We are conscious of the need to ensure that such alternative business models are not disproportionately affected by the proposals.

While continuing to argue that they would prefer that other long-term holiday products should not be covered under this proposal the Organisation for Timeshare in Europe (OTE) appears to have accepted the general support for the proposal across Member States and has provided input to the Commission and the European Parliament on the detail of the proposal. We understand that they too generally agree with our approach to exchange and resale.

16 October 2007

Letter from the Chairman to Gareth Thomas MP

The Chairman and Members of EU Sub-Committee G were most grateful for the clear and helpful evidence you gave them, relating to the Committee's Inquiry into Timeshare and related holiday products, when you attended their meeting on 18 October. There had been insufficient time before that meeting for Sub-Committee Members to study your letter to me of 16 October 2007, and I am writing now to follow up on some of the points you raised in that letter.

As you know, the transcript of your 18 October oral evidence to the Sub-Committee will be published with the Inquiry Report. In the same way, we will publish your letter of 16 October and our subsequent correspondence, in order that the points made will be on the record as a source of further evidence to be drawn upon in drafting the Committee's Inquiry Report.
DEFINITIONS

You refer to the Government’s concern over the too wide meaning of the term “accommodation”, and your preference for this to be qualified as “overnight” or “living” accommodation. It would be helpful for our Report if you could let us have a little background about your thinking on this, giving some examples which illustrate the type of problems that might arise if the existing unqualified definition were retained.

It would also be helpful if you could clarify your concerns about the proposed definition of timeshare exchange agreements.

EXCHANGE CONTRACTS

Our understanding from evidence received is that the exchange contract automatically terminates (under Article 7) if the consumer withdraws from the main contract, and that Article 5 has the effect of creating an additional, consecutive, cooling-off period for exchange contracts. In your evidence to the Committee you suggested that there may be issues of principle here, rather than of drafting. It would be most helpful to have clarification on what these might be.

Please could you also let us know whether, in Council Working Group discussions, concerns have been raised about possible demands for advance payments for exchange contracts being made at the point at which the consumer signs the timeshare contract, and whether the absence of withdrawal rights might present a loophole. Do you see it as a problem, for example, that traders might change the balance of pricing, with higher advance payment in respect of the exchange contract, which could be a disincentive to consumers from using their rights of withdrawal from the main timeshare contract.

RESALE CONTRACTS

You refer to the Government’s reservations concerning a cooling-off period in respect of resale contracts. We understand that the Commission’s proposed definition of “resale” at present covers both timeshares resold by traders and timeshares sold by consumers, and it has been suggested to the Committee that these two issues would be better dealt with separately within the Directive. We would welcome your views on this point.

Evidence submitted to the Committee suggests that a previously-owned timeshare being resold by a business to a consumer would be covered by the Directive on the same basis as a new timeshare, including in respect of the cooling-off period provisions. Can you please clarify for us whether the Government shares this interpretation and, if so, whether it supports the cooling-off provisions in respect of previously-owned timeshares being resold by a business to a consumer.

If this is the case, please could you clarify whether we would be correct to conclude that the Government’s objection to a cooling-off period in respect of the resale contracts applies only to the sale of a timeshare by a consumer to a trader.

23 October 2007

COORDINATION OF SOCIAL SECURITY SYSTEMS (11519/07)

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

Your EM dated 19 July was considered by Sub-Committee G at its meeting held on 26 July 2007.

We note your explanation that the key issue for the UK relates to the content of Annex X to Regulation 883/2004 (which lists those special non contributory benefits which are non-exportable). We note also that the Government disagrees with the Commission’s interpretation of the case law which determines this content.

We understand that the issue has been referred by the Commission to the European Court of Justice and that a legal ruling is awaited. We do have some regret, however, that, if the Court upholds the Government’s position, the groups of UK citizens who will have no entitlement to Disability Living Allowance, Attendance Allowance and Carer’s Allowance when resident in other Member States are among the most vulnerable in our society.

We are content to release this document from scrutiny. When the European Court’s ruling is known, please write to us setting out the implications for the UK.

26 July 2007
CREDIT AGREEMENTS FOR CONSUMERS (13193/05)

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

Thank you for your letter of 27 April 2007.

I am grateful for your decision to clear the document from scrutiny in advance of the Competitiveness Council that was held on 21–22 May. I can now confirm that the draft Directive was discussed at the Council and that political agreement was reached on the proposal.

The UK joined the qualified majority in support of the proposal because we believed that it is now free of most of the negative impacts inherent in earlier drafts and that it almost certainly represents the best package achievable for UK consumers and lenders. I am satisfied that it takes account of all our key consumer protection concerns. During final negotiations we retained the many concessions already achieved and managed to secure further improvements to the text—in particular regarding:

— Overdrafts—the German Presidency had proposed that an APR be displayed for overdrafts which we think would have resulted in an indication of cost which would often be meaningless for consumers. A compromise was reached to allow Member States the freedom to require the disclosure of more relevant information on interest rates and charges as an alternative to the APR. The Presidency also originally proposed that a standard information sheet should apply to overdrafts, but we succeeded in making that requirement optional.

— Wealth warnings—we secured changes to ensure that warnings about the consequences of failing to keep up with repayments in both pre-contractual and contractual information could continue to be required under UK law.

— Credit advertising—the Presidency made an important concession that would allow the UK to continue to require a typical APR for adverts making implied claims—such as “cheap loans available”—without triggering full information. This is an important protection particularly at the sub-prime end of the market (although it does not go as far as existing UK law, which allows lenders to indicate an APR and an interest rate without triggering full information requirements.

— Right of withdrawal—we secured further improvements to the text which we believe would enable us to implement this provision in a way which would not create legal uncertainty in the case of linked (point of sale) transactions.

— Assumptions to be used in calculating the APR—we succeeded in aligning these more closely with UK assumptions and the final text now appears satisfactory.

— Early repayment—we succeeded in removing a threshold below which compensation could not be required, which would have discriminated against smaller lenders. But see below concerning one outstanding issue with early repayment.

This has left only a few outstanding concerns where we think changes would be required to UK law. The main issue concerns Early Repayment, where a late addition to the text would limit compensation to cases where lenders could demonstrate that base rates had fallen. We think that in addition to effectively outlawing compensation in most cases, this could result in a degree of complexity. We will be considering carefully how information about early repayment would be presented to consumers.

Our other main concerns are more long-standing, in particular the requirement for amortisation tables to be provided for fixed term loans. We continued to argue against this requirement on the basis that such tables are burdensome to provide and of limited value for consumers. However, we were alone on this issue as it was clear that other Member States wanted them included. Finally, we were not convinced that provisions in Article 20 preventing intermediaries from charging fees to both lenders and consumers and from charging a fee where business is not concluded were justified, but these remain in the proposal.

The proposal will now pass to the European Parliament for its second reading once the text has been officially translated into the community languages. We will supply a new Explanatory Memorandum on the common position text once this has happened. Further changes to the text may be proposed by the Parliament, who, as you may recall, have been quite critical of the proposal in the past. This was certainly true during their first reading of the proposal in 2004 (where they shared the UK view on issues relating to advertising, amortisation tables and early repayment), although it is fair to say that a number of their other concerns have been addressed in the current text.

13 June 2007

7 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 412.
CULTURE IN A GLOBALIZING WORLD (9496/07)

Letter from the Chairman to David Lammy MP, Minister for Culture,
Department for Culture, Media and Sport

Your Explanatory Memorandum dated 6 June 2007 was considered by Sub-Committee G at their meeting held on 21 June.

We recognise that the Communication sets out only very broad objectives at this stage. Nevertheless, we are somewhat concerned, despite the acknowledgment by the Commission in the Communication—“Culture is and therefore will primarily remain a responsibility of Member States”—that there is considerable potential scope for the Commission’s implementation of these objectives to go beyond what is acceptably within the Competence for EU action under Treaty Article 151.

In forthcoming discussions, we therefore urge you to be on the alert for, and to resist, any suggestions for actions which, under the principle of subsidiarity, should properly be for action at Member State, not at EU, level.

We note from your letter that you particularly support the principle put forward in the Communication of “mainstreaming culture into other policy areas”. We would be grateful if, in order to clarify our understanding of what this might mean in practice, you could write to us setting out some specific examples of how you would see this as being of value in the UK.

We ask you to send us the results of the consultation about the Communication with UK stakeholders which is due to be completed in September 2007. Please also let us know of the progress of discussions about the Communication, in advance of the Ministerial level Education, Youth and Culture Council Meeting scheduled for November 2007.

In the meantime, we will retain this document under scrutiny.

21 June 2007

Letter from Rt Hon Margaret Hodge MP, Minister for Culture, Creative Industries and Tourism,
Department for Culture, Media and Sport to the Chairman

Thank you for your letter dated 21 June 2007 to my predecessor, David Lammy MP.

In response to your question regarding the mainstreaming of culture into other policy areas, Article 151.4 calls on the Community to take cultural aspects into account in its action under other provisions of the Treaty. The UK has always supported this approach and believes it provides the key basis for supporting cultural activity within the Lisbon agenda which is the main focus of the Commission’s communication. An example of how this is of value would be the UK’s work on Creative Industries which supported thinking of culture and cultural activities in the broadest possible terms.

The consultation with UK stakeholders on the Communication began on 27 June. Details of the consultation can be found on the Department for Culture, Media and Sport website at http://www.culture.gov.uk/Reference_library/Consultations/2007_current_consultations/consult_globalizing.htm

The closing date for responses is Monday 10 September 2007. When all responses have been collated, I will write to inform the Committee of the outcome of this consultation.

17 July 2007

Letter from the Chairman to Rt Hon Margaret Hodge MP

Your letter of 17 July was considered by Sub-Committee G at their meeting held on 26 July.

We note that you will send us a report on the outcome of your consultation with stakeholders after all responses have been collated in September.

On the issue of what was meant in the Explanatory Memorandum by the statement that “In particular, we support the principle of mainstreaming culture into other policy areas”, your citation of the example that this applied in the case of the UK’s work on creative industries leaves us little clearer.

It would be helpful if you could clarify whether, in this context, the use of the term “culture” was intended to refer to the promotion in other policy areas of the diversity of cultures in Europe (in what the Commission’s Communication refers to as the “anthropological “sense) rather than to the promotion of “culture” in the sense of values relating to the fine arts.
We will await your reply with interest and, in the meantime, we clear this Communication from scrutiny.

26 July 2007

**Letter from Rt Hon Margaret Hodge MP to the Chairman**

Thank you for your letter dated 26 July 2007.

You ask for further clarification about the use of the term “culture”, and whether this was intended to refer to the promotion of cultural diversity in other policy areas rather than the promotion of culture in the sense of values relating to the fine arts. The intention is that, as the Treaty states, “The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and promote the diversity of its cultures” (Art 151.4, my italics). But the Communication under discussion here is seeking to expand the concept of culture to include what we in the UK call the creative industries. This does not replace in any way the “values relating to the fine arts”, but rather adds to the spectrum of what in the 21st century can be considered as culture.

28 August 2007

**Letter from Rt Hon Margaret Hodge MP to the Chairman**

I am writing to inform you of the latest position on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalizing world. My predecessor sent you an Explanatory Memorandum on this in June: your letter of 26 July 2007 stated that the Communication was cleared from scrutiny by the European Union Committee.

I undertook to send you the results of our consultation on the Communication. Nineteen (of one hundred initial) consultees responded. Broadly these were content with the Communication. A summary of responses to the Consultation has been published on the DCMS website:


I thought you would also be interested to see the Resolution (copy enclosed) which derives from the Communication that you have already considered and cleared. This was drafted following a recent informal meeting of Ministers of Culture in Lisbon on 28 September and sets out the key elements of the Communication but adds nothing new. Of particular interest to the UK is the acknowledgement that culture remains essentially an issue for Member States; and that participation in the Open Method of Coordination is both voluntary (paragraph 10a) and non-binding (paragraph 9).

Given that the Resolution is in line with UK interests, I propose to agree to it at the Culture Council on 16 November.

I hope this information is helpful.

24 October 2007

**EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS COUNCIL, MAY 2007**

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

I am writing to inform you of the key issues on the agenda for the Health part of the Employment, Social Policy, Health and Consumer Affairs Council, which will be on 31 May in Brussels.

Items on the main agenda are; Four proposals for Regulations on food additives, flavourings, enzymes and common authorisation procedure; the draft Council Resolution on EU Consumer Policy Strategy (2007–13); Health promotion by means of nutrition and physical activity; proposals for a Regulation on advanced therapy medical products; the Council Recommendation on the prevention of injury and the promotion of safety; Combating HIV/AIDS within the European Union and neighbouring countries; Health Care across Europe; and the “Smoke-Free” Green Paper.

The proposals for Regulations on food additives, enzymes, and a common procedure for their authorisation are coming to the Council for agreement to a general approach. The UK government is broadly supportive of the proposals. The additives proposal simplifies existing EU legislation whilst the common procedure proposes authorisation by comitology (regulatory procedure with scrutiny) rather than by co-decision. For the fourth proposal on flavourings an update report will be presented but the Presidency do not plan to seek agreement on this proposal at this Council. There will be further discussions at the Council Working Group on the flavourings proposal in May and June.
Ministers will be asked to adopt draft Council Resolution on the EU Consumer Policy Strategy. The UK is very supportive of this consumer policy strategy, which focuses on many of the UK’s own priorities for EU action. The new consumer policy strategy focuses on empowering consumers, enhancing consumer welfare and protecting consumers from serious risks and threats.

The Presidency will ask Ministers to adopt a draft Council Recommendation on the prevention of injury and the promotion of safety. The UK government supports this Recommendation as drafted, which complements our national work in this area.

Also tabled for adoption are Council Conclusions on Health promotion by means of nutrition and physical activity, HIV/AIDS and Health Care across Europe and a Council Recommendation. The UK is fully supportive of the Conclusions as drafted. There will be a policy debate on HIV/AIDS which the Presidency will use to highlight the importance of tackling the disease in Europe. On Health Care across Europe there will be an exchange of views based on Member States’ responses to the Commission consultation on health services.

On the proposals for a Regulation on advanced therapy medicinal products, the Presidency’s intention is to reach political agreement. The UK will be supporting the proposed compromise text at Council.

31 May is “World No Tobacco Day” and as such the agenda item on the Commission Green Paper “Towards a Europe free from tobacco smoke” will be the main item. We expect there to be a debate where Member States are invited to comment on their response to the Commission consultation. The UK is very supportive of an EU initiative, but caution against any action that could ‘water-down’ our own smoking ban. We will want to stress that there is no safe level of exposure to tobacco smoke so an EU initiative should have only very limited exemptions.

Under any other business, there will be progress reports on; the Second Programme of Community Action in the field of Health (2007–13); Presidency conferences; on discussions of the EU position on the Framework Convention for Tobacco Control; the International Health Regulations; the remit of the Health Security Committee and the European Strategy on Diet, Physical Activity and Health. There will be information from the Commission on the forthcoming Communications on improving the mental health of the population and on organ donation and transplantation. Finally, the Presidency will provide information on the outcome of negotiations with the European Parliament on the review of the medical devices directive.

Over lunch at the Health Council, the Presidency will chair an informal discussion on the European Health Strategy which the Commission intends to adopt in 2007. The UK response to the consultation on the Strategy stressed that EU level action on public health must be reinforced by work to embed health objectives into work across a wider range of activities at EU level. Moreover, we believe this is a key moment to address strategic uncertainties, particularly in the application of the EU Treaty to health systems.

24 May 2007

ERASMUS MUNDUS PROGRAMME FOR 2009–13 (11708/07)

Letter from the Chairman to Bill Rammall MP, Minister for Life-long Learning, Further and Higher Education, Department for Innovation, Universities and Skills

Your Explanatory Memorandum dated 20 August 2007 was considered by Sub-Committee G at their meeting held on 11 October.

We very much welcome the Government’s support for the proposed extension of the Erasmus Mundus programme, which we consider to be an example of where joint action at EU level can have a positive benefit over and above the efforts of individual Member States.

We understand the concerns you have about some of the definitions set out in the Commission proposal. In particular, we strongly support your view of the need for the Commission to adopt a definition of a Masters student that will ensure that Erasmus Mundus places are open to suitably qualified students who wish to pursue a lifelong learning opportunity, but do not have a first degree. We trust that you will address in Council discussions this and the other issues on which you have reservations.

Two of the key issues relating to the UK’s participation in the Erasmus Mundus programme were raised in our April 2005 Inquiry Report—Proposed EU integrated action programme for Life-long learning, as follows:

— We recommend that the Government should carry out a systematic investigation, in consultation with educational institutions and other relevant bodies, into the reasons why United Kingdom participation in some of the present programmes, notably Erasmus, is decreasing and why the United
Kingdom is no longer the first choice of destination for incoming Erasmus students from other participating countries.

— We conclude that the United Kingdom is already falling badly behind in language-learning capability. This will seriously limit British ability to take part fully in and benefit from the new EU programmes, especially Erasmus.

The Government’s response to our report, which you sent to us as a DfES Minister on 6 June 2005, includes the following commitments designed to address these issues.

— It (the Government) considers that a key reason for the decline of the number of incoming Erasmus students relates to the relatively low number of outgoing students in so much as institutions will seek to bring their exchanges more into balance. The Government’s main objective therefore is to increase the number of UK students going out.

— However, the Government recognises that we need to do more to encourage higher participation. The Government will engage with all relevant stakeholders to devise strategies to improve the mobility of UK students.

We consider it to be important that the UK should play a full part in the implementation of both the current and proposed future Erasmus Mundus programme. Please would you therefore write to us supplying a report on the progress that has been made by the Government with both the intended actions set out in these comments. Please would you let us know also the degree to which these actions have been successful in increasing the number of UK students participating in Erasmus; and in increasing the proportion of Erasmus students from third countries who choose the UK as a destination for their studies.

We will await this information with interest but, in the meantime, we are content to clear the Commission document from scrutiny.

16 October 2007

E-SKILLS FOR THE 21ST CENTURY: FOSTERING COMPETITIVENESS, GROWTH AND JOBS

(12795/07)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Innovation, Universities and Skills

Your Explanatory Memorandum dated 3 October 2007 was considered by Sub-Committee G at their meeting held on 18 October.

We welcome the Commission’s account of the issues relating to e-skills that have been identified following discussion across the EU under the auspices of the European e-skills Forum and ICT Task Force.

We recognise the value of the actions that the Communication sets out at EU level for the period 2007–10 under existing instruments, but encourage you to pursue vigorously the aims of ensuring: (a) that the actions to be taken do not duplicate existing activities; and (b) that they respect the principle of subsidiarity.

In the context of seeking to avoid duplication between EU initiatives, we are interested to know your views on the actions that might be taken to ensure that the Commission’s plans—relating to e-skills and to the proposed European Institute of Technology (the subject of a recent report by our Committee)—will complement each other to best advantage.

We clear this Communication from scrutiny and ask you to write to us on the EIT issue and also, following the November Competitiveness meeting, to report on any other issues which have arisen relating to the two issues of potential duplication and subsidiarity in the e-skills programme.

18 October 2007

EU CONSUMER POLICY STRATEGY 2007–13 (7503/07)

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 27 April 2007 notifying me that the scrutiny committee had cleared explanatory memorandum 7503/07 on the EU consumer strategy 2007–13. I do, however, note that the committee had three questions which I am happy to address now.

8 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, pp419.
COMPETENCE OF THE EUROPEAN COMMISSION

The Government believes there is competence for the European Commission in encouraging the development of consumer issues in educational courses, although we remain cautious about the extent to which the Commission should be involved in this activity. Article 153(1) of the Treaty establishing the European Community states that “...the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as promoting their right to information, education and to organise themselves in order to safeguard their economic interests.” Under the principle of subsidiarity, the European Commission can act by reason of the scale or effects of the proposed action being better achieved at Union level, and developing the capacity of European consumer issues within higher and adult education has been considered as meeting that principle by the Commission.

Last year, the Government expressed concern about the funding of the development of a post-graduate Masters degree in consumer issues as we considered that any such demand could be met independently of the Commission; for example by universities, consumer bodies and business working jointly across the EU. We remain of this opinion and will challenge the Commission to identify how any additional initiatives could be better supported independently of Commission funding.

We also remain of the opinion that consumer information campaigns are usually run best at national or sub-national level. Targeting young consumers is a sensible aim however, and the Europa School Diary is now an established way of presenting this information in schools to 15–18 year olds, with an emphasis on the digital environment and cross-border EU sales. The Diary is also designed to be used by teachers, together with teaching-aid resources. The Diary needs to be regularly and rigorously evaluated for effectiveness, and the extent to which they are backed up by teacher-led discussion rather than simply distributed to school children.

PENETRATION OF EUROPA SCHOOL DIARY

The Europa website has figures for all Member States in terms of the school diary. The website address may be of use to committee members for comparative purposes. The figures for the UK in 2006–07 are 110,600 diaries in 533 schools, one of the highest figures across the EU and at an average cost of €1.97 per diary.


PUBLICATION OF PROPOSALS FOR TIMESHARE DIRECTIVE

Preliminary meetings have taken place but, as yet, there have been no formal proposals. It is difficult to be precise on the timetable but we believe there will be initial proposals around the end of May/early June 2007.

15 May 2007

EUROPE FREE FROM TOBACCO SMOKE (5899/07)

Letter from Caroline Flint MP, Minister of State, Department of Health to the Chairman

Thank you for your letter of 8 March 2007 following your Committee’s consideration of the explanatory memorandum for the above document dated 14 February 2007. I am writing further to my initial response of 22 March 2007.

The Department of Health has now submitted the Government’s response to the Green Paper and I have attached it to this letter for your information.

You specifically asked about the Treaty Articles which would be relevant as the basis for legislation in this area; and for my assessment of their limitations for this purpose.

As set out in the Explanatory Memorandum, the Green Paper explains that:

“The exact legal basis of the legislation could only be determined once the exact nature and scope of the instrument will be defined and this choice will have to take into account the results of this public consultation.”

9 Correspondence with Minister, 30th Report of Session 2007–08, HL Paper 184, p 419.
However, it also mentions possible options for introducing the legislation. These are:

(i) Revision of the existing directives based on the Framework Directive on workplace safety and health 89/391/EEC. This option could include, in particular, extending the scope of the Carcinogens and Mutagens Directive 2004/37 (to cover secondhand smoke) and/or strengthening the requirements for the protection of workers from tobacco smoke in Directive 89/654/EEC on minimum health and safety requirements.

(ii) Enacting a separate directive on workplace smoking.

With respect to the consolidated treaties, it therefore seems that Articles 136–138 would be used as the basis for any legislation. Article 152(4)(c) enables the Community to introduce incentive measures to encourage Member States to introduce their own measures to protect human health, but it would not enable the Community to make smoke-free requirements itself.

Paragraph 19 of the Government’s response to the Green Paper sets out our specific concerns on using worker protection or occupational health and safety legislation, based on Articles 136–138, to take action on secondhand smoke. This is principally because of the more restricted scope that such legislation would have. All of the UK smokefree laws (and that in Ireland) have been passed as a public health measure, meaning that protection from the harmful effects of secondhand smoke can be extended to both workers and the public in virtually all enclosed or substantially enclosed public places.

On the basis of this, and other concerns with EU legislation in this area that are set out in the Department’s response, the Government’s preference is for a Council or Commission Recommendation that encourages Member States to enact comprehensive legislation.

25 May 2007

EUROPEAN CHARTER ON THE RIGHTS OF ENERGY CONSUMERS (11573/07)

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

Your Explanatory Memorandum dated 5 September 2007 was considered by Sub-Committee G at their meeting held on 11 October.

We welcome the Commission’s intention to draw up an EU Energy Consumers’ Charter and are content to clear their Communication about this from scrutiny.

We are interested in the application within the UK of Article 3(3) of the 2003 Electricity Directive, to which reference is made on page 10 of the Commission document. This requires that:

Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises, (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices.

Please could you let us know the extent to which households in the more remote parts of the UK have benefited from the application of this Directive; whether there remain any problems of access to electricity for such households; and, if so, what steps the Government is taking to address these problems.

Articles 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive, to which reference is made on page 16 of the Commission document, require that:

Member States shall... in particular ensure that there are adequate safeguards to protect vulnerable consumers, including measures to help them avoid disconnection.

Please would you clarify for us the manner in which this requirement is addressed in the UK.

16 October 2007
EUROPEAN CREDIT SYSTEM FOR VOCATIONAL EDUCATION AND TRAINING (ECVET)
(15289/06)

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

I attach a copy of the Government’s response to the Commission’s consultation on a European Credit System
for Vocational Education and Training. This follows the results of our own consultation on this proposal;
responses were generally positive although many technical aspects of the proposal remain unresolved.

The German Presidency is to hold a conference in June on future cooperation in vocational training. This will
follow the completion of the Commission’s consultation on ECVET and will allow all interested parties to
consider how, or if, a credit system can be taken forward. The Commission will produce a further proposal at
a later date if the consultation and conference suggest that a credit system is practicable.

I recognize your point that the ability to communicate in a foreign language will often be a necessary skill to
effectively transfer training between countries and the Government will encourage the Commission to consider
this issue in any future proposal.

1 May 2007

Annex A

UK RESPONSE TO A PROPOSED EUROPEAN CREDIT SYSTEM FOR VOCATIONAL EDUCATION AND TRAINING

INTRODUCTION

The Department for Education and Skills in the United Kingdom launched a UK wide consultation on the
Commission Staff Working Document on the European Credit System for Vocational Education and Training
(ECVET) on 12 December 2006. 173 stakeholders were invited to respond to the consultation directly,
including from the devolved administrations in Scotland, Wales and Northern Ireland. The consultation
invited interested parties to comment on the questions raised in the Commission’s document, and also invited
respondents to comment on any other issues surrounding the proposal.

The responses received were from a wide range of organizations across each of the administrations of the UK.
They included competent authorities, whose occupations are covered by the provisions of the mutual
recognition Directives, awarding and examination bodies, employers and employer organizations, trade
unions, and higher education institutions.

This response reflects the views of the UK Government, taking account of the comments received.

SUMMARY

The UK welcomes the Commission’s proposal for a European Credit System for Vocational Education and
Training. Increased transparency, comparability, transferability and recognition of competence and
qualifications are all important if we are to enable greater mobility and ensure that lifelong learning becomes
a reality. If developed carefully, ECVET has the potential to aid us in meeting these objectives. In particular,
the UK strongly supports the emphasis on learning outcomes as the primary means of describing achievement.
This should help move towards a system where individuals are recognised for what they achieve, rather than
how long they have studied.

However, we believe that there are a number of issues that need to be addressed as ECVET develops further:

— The UK questions the need for separate credit systems for higher education (ECTS) and vocational
education and training (ECVET). We recommend that the Commission evaluates the two systems
and examines how the two can be brought closer together to provide a single system for lifelong
learning.

— The basis for allocating credit needs to be defined more clearly for all participating Member States
if ECVET is to operate outside specific bilateral arrangements. The UK recommends that the
Commission examines this issue in more detail.

— The process for allocating credit should be based on an incremental, bottom-up approach, where
units can stand apart from qualifications. The UK recommends that the proposals are revised to
reflect this.
social policy and consumer affairs (sub-committee g)

— Proposals around quality assurance mechanisms will need to be clarified and strengthened. The UK recommends that this is made more explicit.
— As the ECVET proposals develop, efforts should be made to support countries who have not yet adopted a learning outcomes and unit-based approach to their vocational qualifications. The UK recommends that the Commission examines ways to achieve this.

Response to Specific Consultation Questions

The Purpose and Reasons for an ECVET System

1. Are the most important objectives and functions of a European system of credits for vocational education and training and the role of competent authorities fully outlined in the consultation document? If not, what is missing?

The UK supports the objectives of the proposed ECVET system, as set out in the consultation document. Increased transparency, comparability, transferability and recognition of competence and qualifications are all important if we are to enable greater mobility and ensure that lifelong learning becomes a reality. If developed carefully, ECVET has the potential to aid us in meeting these objectives. In particular, the UK strongly supports the emphasis on learning outcomes as the primary means of describing achievement. This is consistent with the development of vocational qualification systems across the UK, and should help move towards a system where individuals are recognised for what they achieve, rather than how long they have studied.

However, the UK is concerned about the potential problems arising from having separate credit systems for higher education (ECTS) and vocational education and training (ECVET). We suggest that there is a need to break down the artificial barriers between “vocational” and “academic” education, and the adoption of two different credit systems—one for vocational education, and one for academic—is not helpful in this respect. We believe that the ECVET proposals may not facilitate the mobility or credit transfer between VET and HE, given ECTS’s focus on workload, and ECVET’s focus on learning outcomes. Moreover, the presence of two credit systems has the potential to confuse stakeholders. The UK therefore recommends that the Commission evaluates the two systems and examines ways to bring ECTS and ECVET closer together so that they are compatible, or to create a single credit accumulation and transfer system which encompasses both academic and vocationally-orientated learning. This could be done through public consultation on ECTS and how it should develop in relation to ECVET.

Many respondents suggested that the definition of a competent body should be clarified and strengthened. We would welcome more detail on the proposed roles and responsibilities of competent bodies, and where these might be subject to regulatory differentiation.

Some stakeholders have also expressed concern about how ECVET will work in practice. While the proposed European Qualifications Framework (EQF) is intended as a meta-framework to which national systems can relate, ECVET is presented as an operational framework that nations are recommended to adopt as their national systems. Given that there are some countries with national systems already in place, ECVET should follow the same principle as EQF in acting as a reference tool.

2. What would be the main added value of the ECVET system?

If successful, the main added value of this system would be the facilitation of credit accumulation and transfer, thus enabling learners to have their learning outcomes recognised abroad. This would help to support transnational mobility for individuals, but also would aid the development of institutional and sectoral partnerships across Europe. ECVET therefore has the potential to support the internal market, and to address specific skills gaps within certain organizations and sectors. It could also help individuals to achieve personal fulfilment by allowing them to work and study more easily in different Member State’s. This could be particularly attractive to currently disengaged learners, who may be encouraged to update their existing skills.

However, for this added value to be realised, there will have to be consensus around aspects of the technical specifications and operational criteria of the system. The process of allocating credit, the specification for certain ECVET components (eg a unit), and the relationship between ECVET and national credit systems need particular clarification. In its current form, the proposal lends itself well to the context of bilateral exchanges, but cannot be generalised for a European system unless a common approach is agreed.

In addition, clear communication of the purpose, objectives and workings of ECVET will be essential in order to build support amongst stakeholders, many of whom are not convinced that the proposal is implementable in its present form.
THE TECHNICAL BASIS FOR ECVET

3. Do some technical specifications need to be set out in greater detail with a view to the practical implementation of ECVET? If so, which ones?

The UK believes that certain technical specifications do need to be set out in greater detail if ECVET is to be widely accepted and implemented. In general terms the UK advises that, in order for a European credit system for VET to work, the basis for allocating credit needs to be clearly defined for all participating Member States. This could serve as a “converter” for those Member States with national credit systems, or as a basis for developing national credit systems. In this way it would complement the EQF, which serves as a translation device to which Member States relate through their national qualifications frameworks or systems.

The UK also has more specific technical concerns. We are concerned about the process of allocating credit, as set out in section 2.3.2 of the consultation document. Here, the document suggests a process of allocating credit to a qualification first, which is then subdivided into units. This “top-down” process does not facilitate credit accumulation and transfer, as there is no real understanding of the size or demand of that unit and so no confidence in the credit values assigned. To ensure a flexible system, where learners can take small elements of learning to suit their needs, a more incremental, ‘bottom-up’ approach is advocated. Units should therefore be independent entities and capable of being individually assessed. They should be designed with credits and levels that reflect their size and difficulty. Units may then be combined (following certain rules) to form qualifications.

The UK also suggests that proposals around quality assurance procedures will need to be strengthened. Transparent and rigorous quality assurance principles and practice will be crucial to the success of ECVET, and the requirements for these should be clearly communicated in any subsequent proposal. Mutual confidence in the processes of recognizing competent bodies, assigning credit values, and ensuring that units remain up-to-date must be assured and maintained.

We also believe that certain definitions need to be clarified in order to minimize the potential for confusion. For example, in the consultation document, the term ‘validate’ is used to denote the acceptance of credits. In the UK, however, “validate” generally indicates the formal approval of a programme of study leading to a qualification by an authorised body.

4. Do ECVET’s technical specifications take sufficient account of the:
   — evaluation
   — validation
   — recognition
   — accumulation
   — transfer
of learning outcomes whether formal, non-formal or informal?

The UK understands that the detail of this will be largely left to the Memoranda of Understanding or bilateral arrangements suggested for adoption. As no common methodology for allocating ECVET credit has been proposed, credit will not generally be transferable outside these bilateral arrangements.

It is important to note that it is credits and not learning outcomes that may be transferred and accumulated. If credit transfer is to work on a consistent and stable basis, it is necessary that a common understanding of how to define credit values is defined and advocated. The UK also advises the credits can only be awarded on the basis of the successful completion of a full unit, and not in respect of parts of units as the proposal suggests.

Several respondents were also unclear as to how rigorously ECVET could be applied to non-formal and informal learning, and requested more detail about how individuals could evidence these. Moreover, careful consideration will have to be made at both national and European levels of the role that the accreditation of prior learning would play in an ECVET system. This issue is currently being discussed in England in the context of developing a Qualifications and Credit Framework (QCF) and is a part of the ongoing work in the Credit and Qualifications Framework for Wales (CQFW).
5. Are the allocation of credit points to qualifications and units and using a reference figure of 120 credit points sufficient to ensure the convergence of approaches and coherence of the system at European level? If not, what do you suggest?

The yardstick of 120 credit points may be useful, but is insufficient to guarantee a common approach to allocating credit in the context of European mobility. Unless there is a common European basis for allocating credit, the coherence of the system at European level cannot be ensured. Bilateral agreements may be formed, as suggested in the proposal, which will result in recognition and transfer between certain institutions, but the goal of supporting mobility across Europe is unlikely to be achieved by this method.

IMPLEMENTING ECVET

6. Under what conditions could describing qualifications in terms of learning outcomes and expressing them in units effectively improve the transparency of qualifications and contribute to the development of mutual trust?

Qualifications expressed in learning outcomes clearly define to the learner, the employer, and the receiving institution what the learner is expected to achieve in order to gain a unit or qualification. However, in order to provide effective transparency of learning, a learning outcomes approach needs to be underpinned by rigorous common quality assurance principles, which will lend credibility to the assessment of these learning outcomes. It is not the case that ECVET needs to add unnecessary layers and procedures for quality, as this would add bureaucracy and jeopardize its chances of success. However, there must be clear minimum requirements for quality that Member States can demonstrate they meet. In this way, transparency can develop into mutual trust, and will encourage widespread consultation and sharing of good practice.

7. Which criteria or combinations of criteria for allocating credit points could be selected and used?

If the benefits of an ECVET system are to be maximized, there needs to be a set of underlying principles for allocating credit values that is capable of being applied across the lifelong learning spectrum. These should be as minimal as possible, in order to minimize the potential for a clash with other Member States’ systems, but clear. Within many national and international frameworks, the allocation of credit is based upon notional learning time (i.e. the time it would take the typical learner to achieve the learning outcome). The UK would recommend that credit is allocated on this basis, and that a small building block is used in order to guarantee maximum flexibility. A system where one credit point represents a notional 10 hours of learning would therefore seem the most effective and flexible way of allocating credit.

In section 2.3.2 of the consultation document, it is suggested that part of the basis for allocating credit points could be “an estimation of the importance of the contents of each unit defined in terms of knowledge, skills and competence”. We are not clear what is meant by “importance” in relation to content. We would suggest that, unless the learning outcomes associated with units justify additional credits, it would be inappropriate to allocate credits on the deemed “importance” of the unit.

8. Are there any features in your qualifications system which would favour the introduction of ECVET? What constraints, if any, do you foresee?

There has been a move across the UK in recent years towards a unit-based, learning outcomes approach to vocational qualifications, and this will complement the proposed ECVET system. Moreover, the UK is developing and trialling a new credit-based qualifications system called the Qualifications and Credit Framework (QCF), which will supplement this process of qualifications reform. Within the QCF, units provide the building blocks of the system and are comprised of learning outcomes and associated assessment criteria, along with the unit level and credit value. This corresponds well to the ECVET proposals. There is also systematic quality assurance of vocational qualifications in the UK, including through regulatory bodies and the commitment of awarding bodies to certain quality standards. This should provide a sound foundation for the introduction of ECVET if it can work with these systems.

The UK does, however, have certain concerns. As mentioned previously, we hold reservations over the lack of a basis for allocating credit. Many stakeholders were also unclear about how ECVET would be able to overcome the variation in standards that exists across Europe, particularly in Health and Safety. Finally, concerns were also voiced that the cost of the initiative may not be worth the added value. It will therefore be crucial to develop a system that will benefit learners and employers significantly, and to communicate these benefits to them.
9. How and within what timeframe (launch, introduction, experimentation, widespread introduction) could ECVET be implemented in your country?

If the issues surrounding the basis for allocating credit can be resolved, and if this basis can be related to the systems developed in the UK, then the ECVET system could be implemented in the UK without a great deal of technical difficulty. With these issues still unresolved, however, it is difficult to put a timeframe on implementation. Moreover, the development of the European Qualifications Framework (EQF) is not scheduled for completion before 2010, and it would seem unwise to take measures towards the implementation of ECVET before the EQF is operational.

**Measures for Supporting the Implementation and Development of ECVET**

10. What kind of measures should be taken at European, national and sectoral levels to facilitate the implementation of ECVET?

Agreement over the outstanding technical issues will be an essential first step towards the implementation of ECVET. It will also be important to remain in close consultation with all relevant stakeholders as the proposals are developed further. If ECVET is to succeed, it will require the active support of employers and learners.

Member states that have not yet developed a learning outcomes, credit and unit-based system would benefit from significant support at European and national levels. We would suggest that experience of this type of reform be shared and disseminated, including through study visits and the development of case studies.

Once the details of an ECVET system are agreed, UK stakeholders suggested it would require a trial period, concentrating initially on selected qualifications or sectors.

11. What documents, manuals and guides could be developed to facilitate the implementation of ECVET?

Most respondents believed that guidance should be developed at Member State level, within a framework and parameters agreed at European level, as different countries would require different levels of support. Stakeholders generally agreed that a reference guide to agreed definitions would be useful and that realistic case studies and model Memoranda of Understanding and unit specifications should be provided in order to aid implementation. In time, user-friendly documentation for learners and employers would also need to be developed in order to make the system accessible to all Europeans.

**ECVET’s Potential for Enhancing Mobility**

12. To what extent and how will ECVET be able to contribute to the development of transnational and even national partnerships?

If an ECVET system works smoothly and brings benefits to the bodies involved, the potential for fostering transnational partnerships between institutions would be increased. ECVET may increase mutual confidence in, and the quality of, qualifications systems across Europe, and the UK would encourage efforts to exchange best practice in these areas.

However, if ECVET is overly bureaucratic and difficult for learners to use, it could act as a potential barrier to mobility and the formation of transnational partnerships. Some stakeholders expressed the view that the absence of ECVET was not a significant barrier to mobility at the present time. It will therefore be crucial to ensure that ECVET adds significant value in the field of European mobility, and to demonstrate this added value to stakeholders.

13. To what extent and how will ECVET improve the quality of Community programmes on mobility and participation in these programmes?

A learning outcomes, unit-based system has the flexibility to recognise the short instances of learning most likely to occur in these circumstances. If ECVET helps European stakeholders to adopt these principles, the transfer of learning from one context and sector to another would be facilitated and encouraged. This has the potential to lead to increased participation, but the possible benefits of ECVET would have to be realised and demonstrated to end-users first. It is also important to recognise the ECVET is only one part of the equation. The motives and barriers to participation are complex, including language and cultural barriers, and these cannot be solved simply by the adoption of ECVET.
14. To what extent and how do you think that ECVET and Europass could complement each other to enhance mobility?

An ECVET system would quantify the learning described by the Europass portfolio, and in this way they could be mutually reinforcing. This would be particularly appropriate for the European Certificate Supplement and would enhance the possibility of assessing and certifying an overseas placement on the Europass Mobility. However, there is a need to guard against potential overlap between the ECVET learning agreement and existing Europass documents (such as the Europass Mobility).

EUROPEAN INSTITUTE OF TECHNOLOGY (14871/06)

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

Thank you for your letter of 27 April 2007, in which your Committee requested an update on certain aspects of the European Commission proposal to establish a European Institute of Technology (EIT). I have also seen a copy of your Committee’s Interim Report, to which the Government will respond separately.

On funding, the Government’s position remains as outlined in my letter to you dated 21 March. While it supports the general objective of the proposal, namely to contribute to industrial competitiveness by reinforcing European innovation capacity, during Council Working Group discussions and in bilateral meetings with other Member States, the Government has been arguing in favour of a smaller-scale EIT with a commensurately reduced budget. This will ensure that lessons may be learned from the operation of the pilot Knowledge and Innovation Communities (KICs) before embarking on any future expansion. At the Informal Competitiveness Council which I attended on 26 April, the progress made in negotiations was welcomed, though the German Presidency noted that there were still outstanding financial and governance issues to be addressed.

In relation to incentives for business participation, my officials have discussed this with the business community, including representatives of the CBI and British Venture Capital Association. These discussions make it clear that there is need for more detail on the practical operation of the EIT and KICs and the specific themes that they will be tackling before business is likely to commit substantial resources. Forging successful partnerships with business is inevitably going to be a long-term process, but as the EIT develops over time, we hope that the private sector contribution will increase as the EIT demonstrates its value.

Regarding the timetable for negotiations, the Presidency stated at the Informal Competitiveness Council that its aim was to achieve agreement (a “general approach”) on the EIT at the 25/26 June Competitiveness Council, on the basis of a revised Presidency text.

I look forward to updating your Committee on the Government’s approach to the EIT proposal at the evidence session scheduled to take place on 7 June.

11 May 2007

Letter from Malcolm Wicks MP to the Chairman

I have previously written to you on 21 March 2007 and 11 May 2007 to update you on developments on the European Commission proposal to establish a European Institute of Technology. I also attended an oral evidence session with Sub-Committee G on 7 June, when I updated the Committee on the Government’s position on this proposal. I feel that now would therefore be an appropriate point in the process to further update you on the current state of affairs with regard to this draft proposal.

The Government’s overall approach to the Commission proposal has been one of cautious support: support for the Commission’s analysis of the innovation gap in Europe and endorsement of the general objectives of the EIT in terms of integrating the “knowledge triangle” of education, research and innovation. The current EIT proposal has a large measure of support across Europe, at the highest political levels, and the European Parliament appear on the whole to favour the proposal. The Government has sought to work constructively with our partners to achieve an outcome which improves the chances of the EIT becoming a useful addition to the range of instruments available to support European Innovation and competitiveness.

The Government is of the view that the EIT proposal as amended during the course of negotiations in the Council Working Group could enhance the innovation performance of Member States, by linking up existing excellent organisations. It would focus on strategic priority areas where given the nature and scale of the
innovation challenge, action at European level could generate the “critical mass”, that could not be achieved by Members States alone.

During the course of negotiations the concept of the EIT has evolved substantially. In particular:

- It has moved away from a single, bricks-and-mortar institutional model to one based on networks of existing organisations.

- There will be no independent degree-awarding powers for the EIT which will remain the preserve of individual institutions and the systems of Member States.

- It will have a more gradual launch, with two to three Knowledge and Innovation Communities (KICs) in the first period to 2013, rather than the original proposal of up to six KICs.

- Agreement on a two-phase approach which will allow lessons to be learnt from progress of the initial KICs, and a requirement for a further legal decision by Council and European Parliament before any expansion in the number of KICs.

- There will be a light-touch governance regime, which allows substantial autonomy for the individual KICs, while maintaining appropriate transparency, quality assurance, accountability and evaluation provision.

A copy of the latest version of the Presidency compromise text is attached for information at Annex A.

The issue of the budget is still outstanding and it is still under discussion in both Council Working Group and the European Parliament. The text states that the indicative financial envelope for this regulation during 2008–13 is set at €308.7 million. The suggestion is that this would be sourced from the margin of heading 1A (Competitiveness for Growth and Employment) of the EC Budget. The Government has opposed this figure during negotiations. Insufficient justification has been provided for an amount that represents more than 25% of the margins of budget heading 1A, designed to cater for unforeseen needs during the current 2007–13 Financial Perspective. The Commission is also yet to explain satisfactorily why a smaller number of KICs than the six originally proposed would require the same level of direct funding from the Community budget.

While the Government hopes that a way will be found to reduce the call on the margin, it is clear from the most recent Council Working Group meetings that a large majority of Member States appear ready to agree to the Commission’s proposal as it stands. The Presidency has announced its aim of achieving a “General Approach” on this proposal at the 25 June Competitiveness Council Meeting. I hope that the information above is sufficient to enable your Committee to lift its scrutiny reserve prior to the Competitiveness Council meeting on 25 June.

12 June 2007

Letter from the Chairman to Malcolm Wicks MP

Your letter of 12 June was considered by Sub-Committee G at its meeting on 14 June.

Sub-Committee Members found your oral evidence on 7 June to be most helpful, and they very much welcomed the thoughtful and cautious approach that you are taking in negotiating in Council the detail of the proposed EIT Regulation.

Title of the EIT

We know that the EIT proposals have evolved very much, from an initial position, when a major new technological institute was envisaged—with students and researchers on site working towards EIT degrees—to the existing proposal for a bureaucratic entity, which is not really an educational institution at all. While we are much relieved that the initial proposal was dropped, we feel that the title “European Institute of Technology” is inappropriate for what is now put forward. A more apposite title might be along the lines of “Centre for the encouragement of business-university collaboration”.

How we think the Commission should have Formulated the EIT Proposal

We recognise that there is a weakness in the European Union in the commercial application of technological innovation, which arises from its limited capacity to convert education and research results into commercial opportunities. Moreover, we feel strongly that it is important for this weakness to be addressed at the political level. However, our view is that the approach taken by the Commission in formulating its EIT proposals has been misguided.
The first step that should have been taken, in our view, is to have conducted, across the EU, a study of the type carried out in the UK by Richard Lambert, which resulted in the publication in December 2003 of the report *Lambert Review of Business-University Collaboration*. In that report, a careful analysis was made not only of the funding needs of universities to carry out innovative research, but also of how to ensure that there was significantly more business input into the priority setting and decision-making processes relating to that research. This business leadership was seen as a necessary condition for making sure that the projects carried out had more chance of taking account of consumer markets; and of therefore resulting in the introduction of products and services which are commercially successful as well as innovative.

**THE EIT CONCEPT THAT WE WOULD HAVE PREFERRED**

We believe that, had such a study been carried out, the Commission might have put forward a different, and more effective, concept for the EIT. This could have been a business-orientated innovation and commercialisation centre at EU level. It could have had the roles of:

- stimulating local business-university collaboration in technological innovation with a strong emphasis on fostering an understanding by all the parties involved of the market realities and the need to ensure that the projects undertaken are commercially realistic as well as technologically stimulating;
- helping to join together related local efforts of this kind in cases where they could benefit from such wider cooperation;
- encouraging and helping to finance the development of business-orientated skills in the application of innovation; and
- directing the available funding not only to help university research related to technological innovation, but also to assist business start-ups that could successfully put into practice the fruits of such research.

**THE CURRENT EIT PROPOSAL**

While we regret very much that such an approach was not taken by the Commission, we accept the reality that the fundamental nature of the present form proposed for the EIT is not going to be changed at this stage.

We welcome the improvements in the text of the draft EIT Regulation that have been achieved in negotiation already, but we have a number of remaining concerns that we would wish you to take into account in your forthcoming discussions in Council about the form in which the EIT Regulation might ultimately be adopted.

(a) **Budgetary provision**

We are astonished, and cannot understand at all, why the latest draft proposal, while now envisaging “a gradual phased implementation of the EIT”, still retains the same budgetary figure of €308.7 million, for the six years from 1 January 2008, as that put forward when a larger scale operation was envisaged from the outset. We note the comment you made to Sub-Committee G that your view is that the smaller sum of €100 million would be more appropriate. In your letter of 12 June, you suggest that the large majority of Members States appear ready to agree to the latest version of the proposal “almost as it stands”. Nevertheless, we urge you to argue strongly in Council that a smaller budgetary sum should be identified which is commensurate with the reduced scale of the EIT during its early phases.

Even if such a smaller sum is agreed, we see it as most unsatisfactory that no distinct budgetary provision has been made for this, and that the source of funding is envisaged to be the unallocated margins of Heading 1A of the Community budget. Such a source is intended for emergencies and unforeseen expenditure and it seems to us extremely bad financial management practice to raid such a source in this way. This concern is exacerbated by the information you gave us that there are already other calls on the same emergency source from projects such as “Galileo”.

We ask you to draw attention to this point with a view to establishing agreement in Council that such a loose form of budgetary management should not become the acceptable norm for funding EU projects in future. In support of this view, you will no doubt be aware that the European Parliament’s Budgets Committee is reported to have expressed strong disapproval of the concept of funding the EIT by the transfer of funds from other budget headings or from the margins of Heading 1A.
(b) Support staff
You indicated that the profile for the build up of EIT staff was now envisaged to be 20 in the first year, and that the build up to 60 staff would occur only by the end of year 6. We would be grateful to have your assessment of whether even as many as 20 staff would be needed initially.

(c) Composition of the EIT Governing Board
It is proposed that the EIT would have a Governing Board composed of high level members experienced in innovation, business, research and higher education. Our strong view is that there must be a high proportion of business representatives among the Board in order to ensure that its activities are focussed on commercially viable technological developments.

(d) EIT priorities
We note that the latest proposal includes the suggestion that the initial KICs to be set up might focus on issues related to renewable energy and climate change. While these may be appropriate areas for technological innovation, it is a concern for us that it should be a properly constituted EIT Board, with the strong business representation that we advocate above, that should drive priorities, not the European Commission. It would be a mistake, in our view, to retain this reference to renewable energy and climate change in the final text, since this puts out a message that the Governing Board may be set up as an agency which is obliged to implement the wishes of the Commission.

(e) Monitoring of initial KICs
While we welcome the revised proposal to introduce the EIT on a phased basis, we have little confidence that a sufficiently rigorous evaluation will be carried out of the effectiveness of its work before it is expanded. We urge you to argue for agreement in Council to a firmly based commitment in the Regulation to a process which ensures that a rigorous evaluation must be carried out and assessed in Council before the initial scale of the EIT can be significantly expanded. This evaluation should focus on an assessment of the impact of the work of the KICs at a local level.

These are serious concerns, in particular those relating to budgetary provision, and we would be grateful if you would let us know what further progress you are able to make in addressing them, both at the forthcoming Competitiveness Council meeting and subsequently. Nevertheless, we were persuaded by the evidence you gave us that sufficient further progress has been made with the draft text, it could be in the UK's interests to support a general approach on the EIT proposal.

We therefore, with some reluctance, clear this Commission proposal from scrutiny.

14 June 2007

Letter from Malcolm Wicks MP to the Chairman
I have previously written to your Committee on 21 March, 11 May and 12 June on the European Commission proposal to establish a European Institute of Technology. I also attended an oral evidence session with Sub-Committee G on 7 June as part of its inquiry into the EIT. Your Committee cleared this proposal from scrutiny on 14 June. I am writing to inform your Committee of latest developments.

At the 25 June Competitiveness Council which I attended, the Presidency concluded that in the light of comments made by delegations it had secured a “General Approach” on its compromise text (as slightly amended during the course of the meeting), including on the level of direct contribution from the Community budget. This met the remit contained in the 21–22 June European Council Conclusions. I indicated that while the UK welcomed the substantial improvements made to the legal text, we were unable to approve the budget of EUR308.7m, especially given the reduction in the number of Knowledge and Innovation Communities from a maximum of six to “two to three”. The question of which budgetary headings the above amount would be attributed will form part of subsequent negotiations with the European Parliament.

With regard to other outstanding issues in the text, the Council agreed to include wording referring to “renewable energy and climate change” as possible priority fields in the preamble (Recital 21). There was also agreement on the language regime, with the addition of a requirement that “Official documents and publications will be translated in accordance with Regulation 1/58”, to be inserted into Article 13 9 (new para 7).
The Presidency expressed its hope that a First Reading Agreement could be reached with the European Parliament.

26 June 2007

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

We were most grateful to receive the letter of 26 June from Malcolm Wicks MP so very promptly after the 25 June Competitiveness Council meeting. This enabled us to include the letter in Appendix 3 of the EIT inquiry Report which we published on 4 July, hence recording the outcome of the discussion of the EIT proposal at that Council meeting.

We regret that it was not possible at the Council meeting to reach agreement to a lower budget for the EIT than the €308.7 million that was identified when the scale of the EIT planned was much larger. However, we note that the Government did not approve this budget. We note also that the question of from which budgetary heading these funds should be allocated is to be discussed further with the European Parliament.

We understand from Mr Wicks’s letter that the Council agreed to include wording in the preamble to the EIT regulation to “renewable energy and climate change” as possible priority fields for EIT attention. While, as recommended in our report, we would have preferred the document to include no mention of specific fields for EIT work, we trust that the inclusion of the word possible in the text will allow complete freedom to the EIT Governing Board and Knowledge and Information Communities (KICs) to identify alternative priorities if they think fit.

We have an interest in knowing how the EIT budgetary issue is handled, and we ask you to let us know what the final arrangements agreed with the European Parliament turn out to be.

We also wish to keep a close watch on whether or not the EIT’s operations turn out to be successful and we therefore ask you to keep us informed about its performance at significant stages in the future; the first of these occasions being before a decision is taken to expand the scale of operations of the EIT.

In compiling these reports to us on the EIT’s performance, please would you ensure that an assessment is included—in commercially relevant terms—of the business impact of each KIC’s activities at local level.

5 July 2007

Letter from Ian Pearson MP to the Chairman

I attach (not printed) for your Committee’s information a Commission staff working document on certain financial aspects of the draft Regulation to establish a European Institute of Technology (EIT).

The Commission staff working document consists of a slightly modified legislative financial statement, which reflects the outcome of discussions in Council and European Parliament (in particular the reduction in the number of Knowledge and Innovation Communities (KICs) to a maximum of 2–3 in the initial phase). Malcolm Wicks wrote to your Committee on 12 and 26 June outlining the key changes.

The document does not however provide any further detail on the source of direct Community funding for the EIT, which is subject to separate discussions between the Council and European Parliament on the basis of a Commission financing proposal (on which HM Treasury colleagues are submitting an Explanatory Memorandum).

17 October 2007

EUROPEAN SURVEY ON LANGUAGE COMPETENCES (8387/07)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Education and Skills

Your Explanatory Memorandum on the above Document was considered by Sub-Committee G at its meeting held on 17 May 2007.

We note your view that the Commission’s proposals—for testing to create a “linguistic competence indicator” for each EU Member State which is comparable across the EU—are sensible and worthy of support.

We share your concerns, however, that a 2009 start to testing would be likely to impose an overload on both staff and pupils in schools because other international testing has already been scheduled for that year. We support your intention to argue for a 2010 start to testing to be recognised as fully acceptable.
We clear this document from scrutiny and ask you to report to us please on the outcome of discussion of this topic at the 25 May Education Council meeting.

18 May 2007

Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 17 May in which you asked me to report back to you on the discussion of this topic at the 25 May Education Council.

The Commission presented its plans to develop a European Indicator of Language Competence. I intervened at this point to raise our objection to carrying out the new survey in 2009. Our view was supported by many Member States, and the Commission agreed to put back the languages survey to 2010.

Ministers also agreed that subsequent surveys would include tests of all official EU languages, rather than being limited to the five most taught languages (English, French, German, Spanish and Italian).

5 June 2007

EUROPEAN TRAINING FOUNDATION (12241/07)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Innovation, Universities and Skills

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee G at its meeting of 11 October 2007.

We welcome the proposed expansion of the ETF’s remit but we also share the Government’s view that further consideration should be given to the legal basis. We would welcome an update from you on the progress of your discussions with the Commission and other Member States in this regard.

We also note that some of the changes to governance of the ETF are based on the Commission’s 2005 draft Inter-institutional agreement on the operating framework for the European Regulatory Agencies. Moreover, in the context of work being undertaken by Sub-Committee E (Law and Institutions), the Minister for Europe, Jim Murphy MP, informed me by letter of 31 August 2007 that the Portuguese Presidency will not be taking the dossier forward. We would therefore welcome your views on how consistency can be ensured between the arrangements made for the Governing Board of the ETF and the terms of the Inter-institutional agreement once it is concluded.

In the light of the above comments, we shall maintain the proposal under scrutiny.

16 October 2007

FUTURE OF PHARMACEUTICALS FOR HUMAN USE

Letter from Rt Hon Dawn Primarolo MP, Minister of State, Department of Health to the Chairman

UK GOVERNMENT CONTRIBUTION TO THE EC CONSULTATION: THE FUTURE OF PHARMACEUTICALS FOR HUMAN USE IN EUROPE MAKING EUROPE A HUB FOR SAFE AND INNOVATIVE MEDICINES

I am writing to inform you of a consultation the European Commission is holding on a proposed Communication on pharmaceuticals, and to enclose the Government response. While this will not come before the Committee for scrutiny until next year, I thought that it would be helpful to be made aware of this proposal at this stage.

The European Commission has continually recognised the importance of the pharmaceutical industry to Europe in relation to its contribution to healthcare and the economy more widely. It has undertaken a number of initiatives to support the competitiveness of the European Union, including the establishment of the High Level Group on Innovation and Provision of Medicines (also known as G10) in 2001, and the current Pharmaceutical Forum, which is looking strategically at improving the attractiveness of the European environment.

In July, the Commission announced that it would publish a Communication on pharmaceuticals. It published a consultation document inviting stakeholders to comment on six questions. I attach a copy of the Commission’s document (not printed).
The UK Government supports this initiative from the Commission, and wants to be at the forefront in developing European policy in this area. We have good experience of having a constructive relationship with the industry, and we believe this will be useful in helping Europe position itself in the global market. I attach the Government response to the Commission’s consultation, and I will be happy to provide more detail when the final Communication comes before you for scrutiny, which we expect will be next year.

25 October 2007

Annex A

UK GOVERNMENT CONTRIBUTION TO THE EC CONSULTATION: THE FUTURE OF PHARMACEUTICALS FOR HUMAN USE IN EUROPE MAKING EUROPE A HUB FOR SAFE AND INNOVATIVE MEDICINES

SUMMARY

1. The UK fully supports the Commission’s view on the benefits, both health and economic, which the pharmaceutical industry brings to the citizens of Europe. We support the work the Commission has done through G10, the High-Level Pharmaceutical Forum (HLPF), and the Innovative Medicines Initiative (IMI) to improve the environment for the industry within the EU. We believe that this communication will be important in setting out where the EU should focus its efforts in the future and looking at how this can be achieved. We also believe the industry has an important role in promoting access to medicines beyond Europe—particularly in the developing world. This Communication, as well as the forthcoming EU Health Strategy, should address how the EU might best facilitate this global role and whether additional actions are needed.

2. Europe remains second behind the US in attracting investment from pharmaceutical and biotechnology companies. However, we know from Professor Pammolli’s report and regular surveys that Europe lags behind the US as a location for investment. For example, while Europe matches the US in the number of pharmaceutical companies spending more than £250 million a year on R&D, the US attracts 20% more industry R&D investment than Europe.

3. In addition, we are now seeing the emerging economies of India, China, and Singapore providing serious competition in attracting this investment. For example, India is producing more science graduates than Europe while China has trebled its spending on R&D in the last five years.

4. The US is a major player in biopharmaceuticals and emerging economies are establishing their position in the pharmaceutical market. The UK Government believes that this communication gives the Commission the opportunity to set out where the EU should focus its strengths in such a global market.

5. To achieve this it will be important to have a better information base about the pharmaceutical industry in Europe. Better information about the existing presence of the main sub-sectors of the biopharmaceutical industry in each Member State would indicate the sectoral strengths and weaknesses of the EU industry, and give Member States a better understanding of their stake in the further development of the industry. The UK Government therefore suggests that the Commission undertakes a study to map the presence across Europe of the main sub-sectors of the biosciences industry.

6. In developing a Communication that sets out a vision of the future of pharmaceuticals in Europe, it is important to be aware of the issues that companies take into account when making decisions where to invest. UK Trade & Investment and the Association of the British Pharmaceutical Industry commissioned NERA Economic Consulting to carry out a study which looked at “Key factors in attracting internationally mobile investments by the research-based pharmaceutical industry”. The findings of this study identify the areas on which the Communication might concentrate. A hard copy of the study is attached at Annex A (not printed), and can also be found at http://www.nera.com/publication.asp?p_ID=3277.

7. In the UK, we have found that being able to have frank and open discussions between the Government and the industry has helped to develop a constructive relationship. We have done this through the Ministerial Industry Strategy Group, which brings Ministers and global leaders from industry together to discuss and commission work to benefit the UK environment—terms of reference and membership is attached at annex B (not printed). A similar body at European level would be beneficial in taking forward the outputs of this Communication.

CONCLUSION

8. The UK Government would like to see the Commission’s Communication set out a clear direction on where we want the European environment for pharmaceuticals, both medicines and vaccines, to be heading in future years, and a clear plan of action for achieving this.

9. In taking this forward the UK Government would like to see:

— Enhancement of the competitiveness of the environment for the pharmaceutical industry. This will have a number of components and should include:
  — Learning the lessons of the NERA study.
  — Ensuring that the EU has the appropriate labour supply and science skills, and that these are retained within the EU.
  — Maintenance of the integrity of the EU’s intellectual property protection.
  — Enhancement of the European environment for R&D through the adoption and implementation of the legislation that will create the Innovative Medicines Initiative.

— Application of the better regulation principles to the regulation of medicines, whilst recognising that we must continue to ensure the highest standards of public health protection. This includes not introducing unnecessary requirements or otherwise disadvantaging the EU science base in comparison to those of other economic regions.

10. The UK Government response to the individual questions posed by the Commission consultation document follows.

1. Do you agree with the analysis of the main challenges outlined above? Do you see other challenges?

The UK Government agrees with the main challenges outlined by the Commission.

We would also see that another key challenge facing the EU is that it is becoming increasingly uncompetitive in attracting investment from European, US and other global pharmaceutical and biotechnology companies. European-based companies are themselves competitive with their US counterparts, but global companies are increasingly locating their R&D and other investments in other regions. Of the 10 largest investors in pharmaceutical R&D, five are European-based and five are US based. Of the top 30, 12 are US-based and 12 European-based. However, in 2006, pharmaceutical industry R&D spending in the US was 27,053 million Euros, compared with 22,500 million Euros in Europe. According to a survey of 22 global companies carried out by EFPIA and IFPMA over the period 2001–06, Europe suffered a net loss of 16 pharmaceutical R&D sites, whereas the US made a net gain of one and Asia a net gain of 13. Unless there are significant improvements in the attractiveness of the European pharmaceutical environment, Europe’s relative decline as a location for industry investment seems certain to continue.

2. Do you see other areas than those already targeted by the Commission where regulatory action should be taken?

The UK strongly supports the application of better regulation principles to the regulation of medicines, whilst recognising that we must continue to ensure the highest standards of public health protection. The Commission has already launched a review of the procedures for handling variations to product licences, which we strongly support and which we expect will take account of the work already undertaken in this field by the UK under our Better Regulation of Medicines Initiative (BROMI).

An efficient regime for the approval and conduct of clinical trials is an important consideration for industry in making investment decisions. We welcome the efforts that the Commission is making to improve implementation of the clinical trials directive, and hope that improved harmonisation of implementation will avoid the need to reopen discussions in the form of revised legislation.

The UK also supports the trend in regulation towards a “lifecycle approach” in which there is less focus on single decision points and more on continuous monitoring of the benefit-risk balance as medicines are more widely used and more information about them becomes available. Regulation needs to provide better for a risk based approach which will ensure we can better target resources to higher risk activities or operations whilst maintaining high standards of public health protection.
The UK also believes that there is scope to reduce duplication of effort, for example, by improving coordination in the use of EU resources in monitoring commercial manufacturing and assembly operations and the application of other Good Practice principles outside the EU, which supply products that are ultimately marketed within the EU.

3. What would you suggest as concrete measures to ensure the safety of medicines supplied in the EU, addressing in particular counterfeit medicines, and provision of high quality and affordable medicines also to third countries?

The Commission has announced its intention to strengthen EU pharmacovigilance and the UK believes this offers a real opportunity to achieve significant improvements to the way pharmacovigilance is conducted in the EU. In particular, we want to see a shift from reactive to pro-active pharmacovigilance, a move in industry from data management to risk management and the use of more robust sources of data. The Commission’s review should also include clarifying and reinforcing industry’s reporting obligations and the regulator’s powers to enforce. We also believe that revised regulatory requirements should take a more risk-based approach and be linked to measurable public health benefit. We look forward to working with the Commission on its review and in considering the appropriate way forward.

Counterfeit medicines are an increasing problem within the EU and elsewhere both within the regulated supply chain through wholesalers and pharmacies and via the unregulated chain usually through internet websites. We believe that robust and consistent application of EU legislation by all Member States is key to fighting the threat of counterfeiting within the EU.

The UK has developed a strategy for tackling counterfeit medicines that involves developing close links between relevant agencies with a view to making the UK a hostile environment for counterfeiting. We believe that the key to addressing this problem is to develop the means for greater collaboration with other agencies across the EU and worldwide to facilitate sharing of information and experience.

The UK has contributed to the Commission studies concerning Parallel trade and Counterfeit medicine, and are fully engaged with the WHO counterfeit taskforce. Counterfeitors are quick to exploit loopholes in regulation and legislation and continue to focus their products against the largest and most lucrative markets.

We recognise that parallel trade in medicines is a legitimate activity under Single Market rules, but we would welcome greater clarity in the legislation about measures the regulator is entitled to impose to ensure that medicines supplied as a result of parallel trade are of the same quality and meet the same requirements as those imposed by the legislation on the manufacturer. We welcome the Commission’s recently launched review on the safety of medicines in parallel trade and look forward to making a significant contribution to this work.

The health of the UK is increasing linked to the health of the rest of the world. That is why we are developing a cross-Government global health strategy to join up our activity in this area. The UK is committed to ensuring better health systems and access to medicines for the world’s poorest. The pharmaceutical industry are key partners in this.

4. What can be done to improve Europe’s international competitiveness?

Information

In seeking to improve the environment in Europe it would be helpful to have a better information base about the pharmaceutical industry in Europe. Better information about the existing presence of the main sub-sectors of the biopharmaceutical industry in each Member State would indicate the sectoral strengths and weaknesses of the EU industry, and give Member States a better understanding of their stake in the further development of the industry. The UK Government therefore suggests that the Commission undertakes a study to map the presence across Europe of the main sub-sectors of the biosciences industry.

A recent study by NERA Economic Consulting looked at “Key factors in attracting internationally mobile investments by the research-based pharmaceutical industry”. This found that a stable, business-friendly environment, including low taxation, minimal bureaucracy and a flexible labour market, was an important prerequisite. The key criteria vary significantly for different functions, with quality of the science base and availability of high quality scientific staff being paramount in the case of R&D investments, whereas tax is the key criterion in the case of manufacturing investments. Decisions about the location of clinical trials take account of the need to access key markets, but the choice of additional locations will be strongly influenced by cost and speed of patient recruitment. While not primary drivers, pharmaceutical market conditions (the pricing environment and the rate of adoption of new technology) can have an influence on investment
decisions when firms have a choice of alternative locations that are broadly equal in other respects. These factors help to explain why many European countries have struggled to compete with the US and Asia in attracting pharmaceutical industry investment in recent years.

**G10 & High-Level Pharmaceutical Forum**

The work the Commission has done with the industry and other stakeholders through the G10 and High-Level Pharmaceutical Forum (HLPF) will be significant in ensuring that Europe remains competitive in these areas. To achieve this, it is essential that all Member States now implement the recommendations from the G10 report that were not implemented through the “2001 review”. The outcome of the HLPF will assist Member States in achieving this. In particular,

- The sharing of information and networking of good practice on relative effectiveness as identified by the Working Group.
- The use of the guiding principles for good practice in pricing and reimbursement endorsed by the Forum.
- The development of a strategy for the provision of patient information to all in the European Union should be based on three pillars, in line with the work already underway in the Pharmaceutical Forum, as follows:
  - improvement of quality of statutory patient information;
  - accreditation of non-statutory medicines information based on quality criteria;
  - promulgation of the concept of “information partners” together with better access to statutory information.

The UK will continue to take an active role in the development of the work of the Forum in these key areas.

**Innovative Medicines Initiative**

The Innovative Medicines Initiative (IMI) has a potentially important role to play in making Europe a more attractive location for R&D investment, by encouraging and facilitating academic-industry collaboration and addressing bottlenecks in the drug development process with a view to improving the productivity of drug research, which has declined in recent years.

The establishment of the Scottish Translational Medicine Research Collaboration between leading Universities in Scotland, the pharmaceutical industry and NHS Scotland was strongly encouraged by Scottish Government and is a prime example of how the infrastructure can be created to support pharmaceutical research.

The UK also believes that the work programme of the Innovative Medicines Initiative (IMI) offers a real opportunity for the EU to regain ground lost to the US and elsewhere, by commissioning work that will look to the future of medicines development. The Commission needs to move this initiative forward swiftly to ensure continued support and allocation of industry research resources. There is a very real concern that if the EU does not move to establish the necessary infrastructure and start the process of prioritising and commissioning work, the benefits of this initiative will be lost and the industry’s research resources allocated elsewhere.

**Better Regulation**

It is important that EU actions serve to enhance Europe’s attractiveness and that the implementation of existing regulations and of any new regulations satisfy this requirement. For example, animal research is an essential component part of the research, development and testing activities of the pharmaceutical and allied industries. The current revision of Directive 86/609/EEC offers the opportunity for the Commission to demonstrate its commitment to better regulation and provide a regulatory framework that positively promotes the success and sustainability of the EU science base and does not introduce unnecessary requirements or otherwise disadvantage the EU science base in comparison to those of other economic regions.

**Intellectual Property**

The credible protection of intellectual property rights is a prerequisite for the establishment of R&D operations, and in this area the EU currently holds an advantage over emerging markets. The aim of the current medicines legislation is to provide a careful balance of benefits for both the research-based and the generics industries. This balance of benefits was carefully developed by the Commission when proposing
changes to medicines legislation in the “2001 review”, and equally carefully considered by the Member States and the European Parliament during negotiations. It was broadly welcomed as an acceptable compromise by both sides of the industry and in our view it makes a significant contribution to the competitiveness of the EU. Any deviation from the current regime would be highly detrimental to the competitiveness of the EU and would lead to unwelcome requests for a wider review of the legislation on the basis that it had become “unbalanced”.

Labour Supply and Science Skills

Upskilling our workforce is crucial to take advantage of the opportunities provided by innovation and scientific advancement. The EU can add value by identifying good practice in Member States and facilitating the exchange of information, therefore contributing to an informed debate on the links between skills and competitiveness. The UK has a number of programmes underway to help maintain graduates with appropriate skills, and would be happy to share this with the Commission.

5. What can be done to foster convergence and transparency as regards pricing and reimbursement in the EU?

The pricing and reimbursement of medicines are the responsibility of Member States. However health economics differ across Member States, therefore it is probably unrealistic to expect anything more than fairly modest movements towards convergence.

There are a number of initiatives that have facilitated the flow of information that has allowed Member States to understand better how other MS’s deal with pricing and reimbursement. This should lead to more transparency and, to the extent that best practice is adopted, some convergence as well.

The UK will continue to support such initiatives.

6. Do you think the current EU regulatory framework can accommodate emerging technologies like regenerative and personalised medicine, as well as nanobiotechnology?

Huge scientific advances are being made and these are changing the nature of medicines and the way they are developed. It is important that regulation keeps pace with these changes, whilst accepting that science must always lead regulation. The challenge for the regulatory system is to develop approaches to assuring a positive benefit-risk balance for these products without taking an over prescriptive approach.

There is also a growing global concern about the long term sustainability of drug development, with concerns that regulation is placing additional burdens on drug developers that inhibit innovation and delay patients’ access to new medicines. A shift towards more “personalised” medicines suitable for a smaller, more targeted patient population will exacerbate this concern. One solution to this problem is to rethink the current drug development pathway and to consider ways of making products available to patients at an earlier stage of their development. Sir David Cooksey report “A review of UK health research funding”13 outlines a vision for a new pathway. The EU could usefully consider alternative and appropriate regulatory approval regimes that would meet this need.

The EU’s Innovative Medicines Initiative (IMI) is expected to commission research into new ways of demonstrating the efficacy of new drugs such as use of biomarkers and surrogate endpoints. The US has its own project—the Critical Path Initiative—which is also commissioning research into new drug development pathways. It is not only important that the EU moves forward swiftly with its own IMI project but that it ensures that it takes account of the US initiative to ensure that their respective research projects are complementary and avoid duplication.

In summary, the Commission and the EMEA must continue to be proactive in response to the changing environment and be prepared to ensure that legislation and guidance accommodates scientific advances, such as stem cells, that can bring real benefits to patients.

7. Any other issues you wish to bring to the Commission’s attention

The G10 report recommended the publication of a set of competitiveness indicators. These were developed by the G10 Sherpa group but not published. In the UK we publish on an annual basis our Competitive and Performance Indicators which can be found at http://www.advisorybodies.doh.gov.uk/pictf/publications.htm

We have found that these are valuable both to Government and industry in identifying trends and how the UK compares globally and where the environment for medicines might be improved. We would therefore propose that publication of the indicators is revisited, and that they are made easily accessible for all stakeholders.

HEALTH AND CONSUMER PROTECTION STRATEGY (9905/06)

Letter from Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health to the Chairman

I am writing to update you on progress in negotiations on this dossier since your letter of 23 November 2006,14 clearing scrutiny. I apologise for the delay in providing this update. However, progress on this dossier has been slow and it has not been possible to report any significant developments before now.

As expected, following the discussions in the Public Health Working Party, political agreement on this dossier was reached at Council on 30 November 2006. Alongside this, as my predecessor’s letter explained, Finland, the Member State then holding the Presidency, conducted a number of informal trialogue discussions with the Commission and the European Parliament with a view to seeing whether an early agreement could be reached. Although the European Parliament was content with the Council’s proposals in a number of areas, they continued to have concerns about the level of funding available for the Programme. In addition, they sought a number of further textual amendments.

To resolve the outstanding issues, the German Presidency continued the informal trialogue negotiations. On the basis of those discussions and further discussions in the Council Working Group a general consensus was reached on a number of compromise amendments to the text and a trilateral declaration, which, as a package, could form the basis of a second reading agreement. The trilateral declaration established that the financial needs of the Health Programme would be considered in the annual budgeting process, but made no commitment to allocate additional funds unless new, specific circumstances arose. The textual amendments focused on specific wording and did not significantly alter the substance of the text.

24 July 2007

HEALTH AND MIGRATION CONFERENCE, LISBON, SEPTEMBER 2007

Letter from Rt Hon Dawn Primarolo MP, Minister of State, Department of Health to the Chairman

I am aware that it is usual practice to make a report to the Committees after each EU Presidency Informal, setting out the business taken and what stance the UK took in discussions. Under the Portuguese Presidency, a health informal is not being held but I thought it may be useful for your Committee to be briefed on a recent Health and Migration Conference held in Lisbon on 27/28 September which was attended by my officials. The conference, “Health and Migration in the EU—Better Health for all in an inclusive society”, is the main initiative of the Health Programme for the Portuguese EU Council Presidency.

Some 200 delegates representing Member States, national and international institutions and NGOs attended to better identify the main health problems affecting migrants to the EU, together with the determinants of their health status and ways to respond to their health needs. Issues considered included health promotion, disease prevention, mental health, occupational health, child and maternal health, and access to healthcare.

I will of course comment further on any issues arising from the conference that will be the subject of further discussion in the context of my statements before and after the 6/7 December Health Council.

I hope that this update is helpful, and should you wish it I am happy to provide further information.

16 October 2007

IMPROVING THE QUALITY OF TEACHER TRAINING (12414/07)

Letter from the Chairman to Jim Knight MP, Minister of State for Schools and Learners, Department for Children, Schools and Families

Your Explanatory Memorandum dated 3 October 2007 was considered by Sub-Committee G at their meeting held on 18 October 2007.

14 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 430.
We accept that the Commission has a role under EC Treaty Articles 149 and 150 to contribute to the
development of quality education vocational training by encouraging cooperation between Member States
and, if necessary, by supporting and supplementing their action.

We understand that the Government is largely content with the ideas set out in the document and already has
in place in the UK policies for teacher education that are designed to improve its quality in the ways suggested
by the Commission.

We welcome your assurance that you will work to ensure that any activity that results from this
Communication will respect the principle of subsidiarity viz. that, as set out in the Treaty, the Commission
should fully respect the responsibility of Member States for the content of teaching and the organisation of
education systems and vocational training.

We now clear this document from scrutiny. Please would you inform us of any developments that arise at the
16 November Education Council meeting which relate to this document.

18 October 2007

INJURY PREVENTION AND PROMOTION OF SAFETY (10938/06, 10950/06)

Letter from Caroline Flint MP, Minister of State for Public Health,
Department of Health to the Chairman

I am writing further to my letter to Michael Connarty MP (Chairman of House of Commons European
Scrutiny Committee) (not published) of 7 December (to which you were copied in) and recent correspondence
sent to you by Rosie Winterton on the forthcoming Health Council on 30 May (annotated agenda sent on 15
May) which alerted you to the intention of the Presidency to ask Ministers to adopt the draft Council
Recommendation on the prevention of injury and the promotion of safety. As I mentioned in previous
 correspondence, the UK government supports this Recommendation (as drafted) which complements our
national work in this area.

It was initially thought that this item was to be on the Health Council agenda for information only. I must
apologise that it was identified only recently in the Department of Health that the Recommendation is to
actually be adopted at Council and that scrutiny clearance had not yet been received. Due to recess, it has not
been possible to re-submit the Recommendation to the Committee in time for clearance before Health
Council. It was not our intention to override the Committee and I hope that you will feel able to accept the
Government’s adoption of this proposal at Council. I have asked officials to ensure that measures are taken
to avoid an oversight like this occurring again in the future.

In my letter of 7 December to Michael Connarty MP, I referred to the European Scrutiny Committee’s specific
questions about the Commission’s proposals for mechanisms to avoid duplication of work, the estimated cost
of actions listed in the draft Recommendation and the proposed arrangements for monitoring and evaluation
of the actions.

I would like to reassure you that the UK, along with other Member States, has raised concerns about the
possible costs of the Commission’s proposals and suggested alternative wording at Health Working Group to
address these concerns. The text of the Recommendation now focuses on utilising existing systems to minimise
costs and avoid duplication, except where new work would add value.

Moreover, the Commission has committed itself to complete a thorough evaluation report within four years of
the adoption of this Recommendation and to determine whether the measures proposed are having the desired
impact. I attach the updated draft Recommendation (not printed), which reflects these changes.

25 May 2007

Letter from the Chairman to Caroline Flint MP

Your letter dated 25 May was considered by Sub-Committee G at their meeting held on 14 June.

It is regrettable that this case of scrutiny override arose so unnecessarily as a result of your officials not briefing
you to write to us sufficiently far in advance of the 30 May Health Council meeting. You suggest in your letter
that part of the reason for this was the timing of the Whitsun recess. In fact, this cannot possible have been
the case, since the only meeting that the Sub-Committee missed as a result of the recess would have been on
Thursday, 31 May, which was after the date of the Council meeting.

Nevertheless, we welcome your apology for this override and trust that the measures you have asked to be
taken to avoid a future oversight of this kind are effective.
We will list this as a case of scrutiny override.

14 June 2007

Letter from Caroline Flint MP to the Chairman

Thank you for your reply of 14 June further to my letter dated 25 May about the adoption of the draft Council Recommendation on the prevention of injury and the promotion of safety.

As I mentioned in my previous letter, it was identified too late before Health Council that the Recommendation was actually to be adopted at Council to seek scrutiny clearance in time. I would like to apologise again for this oversight and I can assure you that my officials have put in place a number of measures to avoid any further such regrettable instances. A key part of this will be frequent and regular stocktaking and review of dossiers under scrutiny to ensure that the Committees are kept fully up to date on progress and the likely progression of dossiers through the Council. Alongside this, better processes for liaison between Departmental officials and FCO officials in Brussels on scrutiny issues have been implemented so that developments at both ends are communicated without delay. As an additional check, each time a new iteration of a prospective Council agenda is received, key officials will undertake a thorough check of the scrutiny status of each item on the agenda and identify what actions are required. In addition, officials in the Department’s International Division will undertake actions to ensure that all relevant officials, particularly those new to the process, have a full understanding of their responsibilities and the requirements of the scrutiny process.

I would like to reassure your Committee of the importance I place of the Department’s dialogue with them and hope that the measures I have outlined will help my Department meet its obligations to Parliament on European proposals.

22 June 2007

INTERNATIONAL HEALTH REGULATIONS (13501/06)

Letter from Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health to the Chairman

You asked to be kept informed of the Commission’s proposals regarding the International Health Regulations (IHR) in your letter of 11 January 2007.15

Under the German Presidency there have been relatively few developments on this issue: the Commission provided an update on how they are intending to take this work forward at the Employment, Social Policy, Health and Consumer Affairs Council on 31 May. I hope you will find the following details useful.

The Commission plan to use the existing legal base, and in particular Decision 2119/98/EC, to facilitate a coordinated implementation of the IHR within the EU. A discussion forum has been convened for this purpose with representation from the national contact points for the Early Warning Response System (EWRS) and the EU national IHR focal points. The Commission envisages offering technical solutions for IHR notifications which will be closely associated with the existing internal EU electronic notification systems.

Currently further discussions of this issue have not been tabled for Council under the Portuguese Presidency. The Commission is focussing on cooperating with Member States on the practical aspects of implementation and it may be sensible to wait and see how this work evolves. The UK can, of course, request a discussion in the Health Working Group at any time should any issues of concern arise.

I will write to you as soon as there is further useful information to report.

19 July 2007

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you for your letter of 19 July 2007, which was considered by Sub-Committee G at its meeting of 26 July 2007.

We are grateful for your update on the Commission’s approach to work at the Community level on implementation of the International Health Regulations (2005).

We understand from your letter that the Commission is proceeding along a path based on co-operation and co-ordination between Member States. It is also clear that the UK and other Member States are sensitive to any issues of competence that may arise.

15 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 440.
On the basis of the above, we are content to release the Communication from scrutiny but we nevertheless accept your offer of writing to us as soon as there is further useful information to report.

26 July 2007

LABELLING OF SPIRIT DRINKS (15902/05)

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

I am writing to inform your Committee of the latest developments on this dossier.

Since the publication of the Commission proposal on 15 December 2005, considerable progress has been made on this dossier culminating in a compromise text which was approved by the European Parliament at its plenary session on 19 June 2007. Subject to WTO comments on this dossier the UK has secured its main objectives including:

(i) A new London Gin definition allowing for authenticity indicators to be used as an anti-fraud measure;
(ii) A strengthened whisky definition which ensures the highest quality of whisky;
(iii) a compromise on vodka which allows any raw material of agricultural origin to be used in the production of vodka, with minimal labelling requirements for vodka not made from cereals and potatoes;
(iv) Enhanced protection for UK geographical indications (Scotch whisky, Irish whisk(e)y and Plymouth Gin); and
(v) Comitology, allowing the new regulation to be amended by a regulatory committee with scrutiny.

The dossier is currently under consideration by the WTO, which is expected to deliver its view by 5 August. If the WTO raises no objections to the proposal it is unlikely to undergo any substantial change in the final stages of discussion in Brussels. The proposal is expected to go to one of the Agriculture and Fisheries Councils in the autumn to be agreed as an “A” point.

30 July 2007

LISBON OBJECTIVES IN EDUCATION AND TRAINING (6672/07)

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

I am writing in response to your letter of 24 April 2007,16 in which you requested additional information on the above Communication. In particular, you asked for further details on the proposed indicators, on the European Indicator of Language Competence, and on the appropriateness of this initiative.

Council Conclusions responding to this Communication have now been drafted, and I attach these for your information (not printed). The Conclusions are necessarily very general, and reflect the fact that Member States cannot agree to use the indicators until more detail is provided. The Conclusions helpfully divide 16 of the proposed indicators into different categories, depending on the level of information and data currently available. Four of the 20 indicators (numbers 10 (school management), 11 (schools as multipurpose learning centres), 13 (stratification of education and training systems), and 20 (returns to education and training) have been dropped. Where information is currently lacking, for example on the civic skills indicator, the Conclusions call the Commission to report back to the Council with more details in due course.

The Government can support these Conclusions. The proposed framework of sixteen core indicators represents a much more simplified and coherent approach to data collection and, importantly, is relevant to UK policy priorities in the field of education and skills. International comparisons are integral to the evidence base for policy development and review; the agreed indicators will therefore provide a source of high-quality, internationally comparable data which will be of significant use to UK policy makers. Helpfully, the Conclusions make no reference to the 2% of GDP spending target on Higher Education that was originally proposed by the Commission, as this was opposed by almost all Member States. The Conclusions will be adopted at the Education Council of 25 May.

16 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 442.
More information on the development of the European Indicator of Language Competence has now been released by the Commission in their Communication on a Framework for the European survey on language competences. This Communication was deposited in Parliament on 18 April and an Explanatory Memorandum will be provided by the Government on 2 May.

In broader terms, the Government believes that it is appropriate for the European Union to be setting a framework of indicators, as long as the process of data collection does not impose an unnecessary financial and administrative burden on Member States. The Open Method of Co-ordination in Education and Training is designed to facilitate the exchange of good practice among EU Member States. A coherent framework of indicators and benchmarks is an important tool to support this exchange—it provides an aid for Member States to measure their progress and assess the strengths and weaknesses of their education and training systems. However, the development of comparable data within this framework does not imply that the European Union is prescribing how Member States should seek to improve these systems. Participation in the surveys is voluntary, and whether Member States choose to use the results will be entirely at their discretion. The Government therefore believes that this initiative is an appropriate and helpful one.

2 May 2007

Letter from the Chairman to Bill Rammell MP

Your letter of 2 May relating to the above Document was considered by Sub Committee G at its meeting of 10 May 2007.

The letter and the attached draft Council Conclusions document provide useful information to address the concerns we expressed in my letter of 24 April.

We note the Government’s view that it is appropriate and helpful for the European Union to be setting a framework of indicators, as a basis for supporting the exchange of good practice carried out under the Open Method of Coordination in Education and Training. We note further that participation in the process by Member States is entirely voluntary and that there is no implication that the European Union is prescribing how Member States should seek to improve their education and training systems.

In relation to the 16 core indicators now proposed, we welcome the fact that the Council Conclusions document clearly recognises that detailed work is needed, to establish how a number of the indicators should be defined and measured, before these can be used by Member States.

As part of this work we consider it to be most important—as indicated in section c) of the draft Council Conclusions paper—that close attention should be paid to cooperation with other international organisations which are engaged in this field. In particular, our view is that it is essential that, where possible, close comparability should be achieved with the very well regarded education indicators which have already been developed by the OECD.

A further point to which we feel close attention should be paid in developing the indicators is the need to restrict as far as possible the additional burden that data collection to monitor them will place on data providers.

We clear this document from scrutiny; please let us know the outcome of the May 25 Council meeting.

10 May 2007

Letter from Bill Rammell MP to the Chairman

Your Committee cleared the above document from scrutiny (your letter of 10 May) and you asked me to let you know the outcome of the Council meeting. The Council adopted the Conclusions on the framework of indicators and benchmarks without further discussion. The Commission will now move forward to develop the agreed 16 indicators.

5 June 2007

MEDICAL DEVICE DIRECTIVES (5072/06)

Letter from Lord Hunt of Kings Heath, Minister of State, Department of Health to the Chairman

Further to Andy Burnham’s letter to you of 19 December 2006[17] I am writing to inform you that negotiations in the Council of Ministers Working Group on the above Amendment Directives have been completed and first reading of the revised texts was passed in the European Parliament on 29 March. The revised Directives

The finally agreed position on the main points covered by our Explanatory Memorandum signed on 20 January 2006 and during EP and UK parliamentary scrutiny were as follows:

1. **Clinical data and evaluation.** Changes in terms of strengthening the clinical trial requirements to make it clear what clinical data is required to support the CE marking of the device as well as the circumstances and form of such data have been included. Important new elements relating to the exchange of information between member states on regulatory decisions concerning clinical investigations have also been introduced.

2. **Medical purpose.** Attempts by a number of member states including the UK to introduce the concept of medical purpose into the definition of a medical device to clarify the regulatory status of aesthetic/cosmetic style products were not successful. However, in the end the Commission agreed to undertake a study to look at the whole area of cosmetic surgery and the products used and has already produced an initial scoping paper to which the UK response is in the process of being prepared.

3. **Economic Operators.** We continued to resist attempts by a number of Member States to specify requirements to be placed on economic operators (such as authorised representatives, importers and distributors) within the body of the Directive. This was because we felt it would be premature at this stage to include such requirements given that similar considerations are being looked at as part of the Commission’s Review of the New Approach. In the event the Presidency removed all such references from the MDD text and it will now be dealt with as part of the proposed Regulation and Decision on the New Approach currently under negotiations in the Council of Ministers.

4. **Measures to increase transparency.** The previous blanket block in Article 20 of the Directive on releasing regulatory information to third parties has been qualified. A significant amount of information can now be disclosed including registration information, notifications between member states relating to serious adverse incidents, as well as information concerning the suspension, modification, withdrawal of notified body certificates to manufacturers.

5. **Legal basis for better coordination and communication of market surveillance activities.** The concerns expressed in the 2002 European Commission Review of the Directives regarding the competence, consistency of performance and transparency of notified bodies has been addressed to by the setting up of a Notified Bodies Operation group under the chairmanship of the UK. Consequently, it has not been felt necessary to make revisions in this respect in the Directive.

6. **Clarification regarding medicinal products/medical device provisions.** The role of the European Medicines Agency (EMEA) has been clarified in relation to the assessment of the usefulness of medicinal substances and stable blood derivatives within a device which act ancillary to that device. The notified body retains responsibility for issuing the EC certificate of Conformity for the overall device.

7. **Devices with ancillary human tissue engineered product.** Despite the overlap with the Advanced Therapy Medicinal Products Directive being the biggest issue of contention during the negotiations, the final outcome was that the Medical Device Directive would remain unchanged. This means that medical devices containing viable human tissue and cells will now be regulated under the Advanced Therapy Medicinal Products Regulation. As far as medical devices containing non-viable human tissues and viable animal tissues and cells are concerned the Commission has issued a declaration that they would look at any regulatory gaps once the negotiation of the ATMP Regulation has been concluded.

8. **Custom-made devices.** Agreement was made that the statement of conformity produced by the manufacturer should not be automatically provided to the named patient but be provided on request. The benefits of the original proposal that the handling over of the statement should be mandatory were unclear in terms of public health or transparency are unclear but an acceptable compromise has now been reached.

9. **Amendment of other Directives.** Modifications to the Active implantable Medical devices Directive to bring it into line with the medical devices Directive, and to the biocides Directive to exclude In Vitro Diagnostic medical devices from its scope in line with the other Devices directives were agreed.

10. **Reprocessing.** The European Parliament during the course of first reading insisted upon the inclusion of a provision designed to specifically regulate the reprocessing of medical devices. The UK government, together with virtually all Member States, adopted a position that the Medical Devices Directive only regulates the first placing of the device on the market and putting into service of
medical devices that manufacturers at this stage are required to meet all the essential requirements covering safety and quality of the device and that activities such as the subsequent reprocessing and use of devices intended to be single use should therefore be outside the scope of the Directive and a matter for national law instead. In the end the compromise package which encompasses a provision in the recitals to the Directive identifying the problem, a revised definition of a single use device and provision that requires manufacturers to provide information on known characteristics and technical factors of the device to be reused. In addition the Commission made a declaration to look at the whole area of reprocessing in the near future.

11. Carcinogenic, Mutagens, or toxins to reproduction substances. This was another area of concern raised by the European Parliament especially the public health and safety issues surrounding the use of phthalates in medical devices. The final agreement reached was that products containing such substances should be labelled accordingly and the manufacturer be able to provide specific justification for use of such substances. It was not felt necessary at this stage to ban the use of such substances in medical devices.

The Regulatory Impact Assessment sent to you on 19 December 2006 remains current as no further changes have been made to the Directives which would affect it. I will keep you informed and provide an updated RIA as the process towards implementing the revised Directives into UK law progresses.

14 May 2007

MENTAL HEALTH BILL

Letter from Lord Hunt of Kings Heath, Minister of State for Health, Department of Health to the Chairman

The Mental Health Bill received its Third Reading in the Commons on 19 June, and will return to the Lords for consideration of Commons amendments on 2 July. I wanted to write to you in advance of this to let you know how the Bill has been amended in the Commons, and to set out the Government’s position.

Since the Bill left the Lords in March we have made considerable progress in resolving many of the most contentious issues that were raised in debate.

APPROPRIATE MEDICAL TREATMENT

In particular, the Commons accepted the amendments laid by Chris Bryant MP, which clarifies the definition of treatment for mental disorders under the Act. It provides that the purpose of treatment is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations. The amendments apply to all references to such treatment in the Act, including references to appropriate medical treatment. In formulating his amendments, Chris Bryant spoke to representatives of other parties and to stakeholder organisations, and there was cross-party support for his amendment.

AGE-APPROPRIATE SERVICES FOR CHILDREN AND YOUNG PEOPLE

A major matter of concern in the Lords was the question of age-appropriate mental health care for children and adolescents. I promised the House that we would reflect on this concern, and we have done so. The Commons approved Government amendments placing hospital managers under a duty to ensure that patients under 18 years of age are accommodated in an environment that is suitable for their age (subject to their needs). In determining whether the environment is suitable they must consult a suitable person experienced in child and adolescent mental health services cases.

The amendments also provided that the courts, when dealing with a person aged under 18, may request from a Primary Care Trust (PCT, in England) or a Local Health board (LHB, in Wales) information about the availability of accommodation or facilities designed to be specially suitable for patients under 18. The purpose of this provision is to ensure that the courts do not place a child in a prison setting when a hospital bed would be a more appropriate option. The amendments also place a duty on PCTs and LHBs to advise local social services authorities in their area of hospitals providing accommodation specially suitable for patients under 18.

The Commons has also amended the Bill to ensure that patients aged under 18 are referred to the Mental Health Review Tribunal if one year has passed and they have not applied to the tribunal or otherwise appeared before it. This extends the provision that already applies to under-16-year-olds.
These amendments are once more the result of constructive consultation, in particular with groups representing children and young people, especially Young Minds, 11 Million, and the Office of the Children’s Commissioner. I am grateful to them and to Lord Williamson and Baroness Howarth, both of whom have contributed to our discussions.

Advocacy

Another matter of concern to the Lords was the provision of independent mental health advocacy. Again, I said we would reflect on the concerns raised in the Lords. The Commons passed a Government amendment placing a duty on the appropriate national authority to make arrangements for help to be provided by independent mental health advocates (IMHAs). Qualifying patients will be informed that they are eligible for the services provided by an IMHA as soon as is practicable. The IMHA will meet with the patient at the request of the patient him or herself, the nearest relative, the responsible clinician, or an approved mental health practitioner (AMHP). The IMHA will have the right to see—with the patient’s consent—any hospital or local authority records relating to the patient. The IMHA will also have the right to meet patients in private, and to visit and interview anyone concerned with the patient’s medical treatment.

The Commons also passed Government amendments extending the right of access to Independent Mental Capacity Advocates (IMCA) to anyone who is deprived of their liberty and subject to a standard authorisation under the Mental Capacity Act, or their representative. IMCA support will be available to help them to understand the authorisation, its purpose and effect, and to understand and exercise the review and Court of Protection safeguards. The IMCA will be able to help and support the person or their representative to trigger a review and help and support the person or their representative to make an application to the Court of Protection regarding the authorisation. Again, these changes have been welcomed widely, and I hope the Lords will endorse them.

Supervised Community Treatment (SCT)

Turning to supervised community treatment, we have clarified one aspect which was of concern to some Lords. The Commons passed a Government amendment providing that the patient’s responsible clinician may only specify conditions in a Community Treatment Order (CTO) if he or she thinks they are necessary or appropriate for ensuring that the patient receives medical treatment, and/or to prevent a risk of harm to the patient’s health or safety or for the protection of others. An AMHP must agree to the conditions before they can be made.

Electro-convulsive Therapy (ECT) and other Section 58a Treatment

We have limited the circumstances in which ECT can be given in urgent situations to where it is necessary to save the life of the patient or to prevent a serious deterioration in the patient’s condition. We have further amended the ECT provisions to strengthen the safeguards that apply to children requiring a Second Opinion Appointed Doctor (SOAD) even when a patient under 18 is consenting and extending the ECT safeguards to children who are not detained under the Mental Health Act.

We have introduced amendments to the Supervised Community treatment provisions to remedy a lacuna in the original ECT amendments whereby community patients were not covered by the new ECT safeguards. Whilst we believe it will be rare that ECT will be a form of treatment given to a community patient, it is possible, and therefore we have made clear that a SOAD certificate will be required before ECT is administered to a community patient.

Other Government Amendments

We have made a number of other important amendments, for example the extension of rights of victims of people convicted of sexual or violent offences to receive information and be consulted about the perpetrator’s discharge. Again we have had useful and constructive engagement with key stakeholders, and the provisions had cross-party support. We have taken a power to reduce the maximum period for authorisation for deprivation of liberty under the Mental Capacity Act, if monitoring indicated that the one-year maximum is being used as a norm, with inappropriate consideration of whether a shorter period would be more suitable.
As promised in the Lords, officials from the Department have met representatives of MENCAP to discuss how the code will address the application of the Act to people with Learning Disabilities. We have also consulted other stakeholders—professionals, children’s organisations and others—and will continue to do so as we prepare the Code for publication and formal consultation.

We will use the Code to address some of the key concerns that cannot be addressed through legislation, for example strengthening the guidance on places of safety to make clear that police stations should be used only exceptionally and that assessments should be completed as soon as possible.

I am conscious that there are other areas of concern, and that some of the amendments made in this House were overturned by the Commons. I should like to set out briefly the Government’s position on these.

**Exclusions**

On exclusions, our position is that the detention of people under the Mental Health Act on the basis of their sexual orientation is simply not possible. Similarly we do not believe that the legislation would permit the detention of people on the grounds of religious, political or cultural beliefs. Exclusions for these matters are therefore unnecessary. Including them will achieve nothing except providing scope for misinterpretation.

**Impaired Decision-making**

On impaired decision-making, whilst I do appreciate the thinking behind the Lords amendment, the risk is that a minority of patients would be left free to harm themselves—or more unusually, other. I thought the Royal College of Nursing put this into perspective in their submission to the Commons Committee when they said:

“Nurses are bound by a code of conduct and professional ethics to do all they can to prevent harm. We could not support any legislation that could impede our members in their primary aim of preventing foreseeable harm. We do appreciated the Government’s concern that the amendment relating to the absence of “impaired judgement” could enable service users to take decisions that may have tragic and regrettable consequences for their families and themselves. It is imperative that our members work within a clear and unambiguous legislative framework which will enable them to provide appropriate care and treatment in situations of obvious moral, legal and ethical complexity”.

**Supervised Community Treatment—Criteria for Use**

Whilst we have clarified the purpose of conditions for the use of Supervised Community Treatment (see above) we have not been persuaded that there is a convincing case to tighten further the criteria for the use of SCT. We have already narrowed the criteria to limit the use of SCT to patients who have already been detained for treatment in hospital. This is unlike other jurisdictions, including Scotland, where patients can be placed directly onto Community Treatment Orders. We do not accept that it would be right to limit further the discretion of responsible clinicians to decide what is the most appropriate course for the individual patients in their care. Nor do we accept that it would be right to have to wait until a patient relapses for a second time—with all the attendant stresses and risks involved—before the professionals treating him or her would even have the option of using SCT.

**New Professional Roles**

Finally, the Commons reversed the amendment that would have required renewal of detention to be carried out by a qualified medical practitioner.

One of the purposes of introducing the Bill is to bring the law into line with modern best practice, and one key aspect of modern mental health practice is the use of multi-disciplinary professional teams, which may be led by members of other professions, in particular in community settings. We already have nurse consultants and advanced practitioners working in mental health, and we envisage that it will be these well-qualified and highly experienced professionals who will become responsible clinicians. Regulations, which are already available in draft on the Department of Health web-site, will set out the high degree of competence that will be required.
The Mental Health Coalition, which represents 85% of the professional staff who provide mental health services—nurses, psychologists, social workers and occupational therapists—has welcomed our proposals for new professional roles saying:

“Anyone considered for the responsible clinician role would have to pass several extremely high thresholds: all would be members of a regulated healthcare profession and all would be senior (consultant-level) practitioners with at least six years relevant post-qualification experience. All would also have to meet the standards of competence set out in the Department of Health’s draft guidance . . .

We believe that these safeguards are a balanced measure which reflects multidisciplinary working but also contains sufficient safeguards to support service users and provide reassurance that only professionals who objectively possess the required competencies become responsible clinicians”.

The Government has listened very carefully to the debates on the Bill. The Commons has made a number of amendments that strengthen and clarify the Bill. Many of the changes made have received cross-party support, and members on all sides acknowledged how much has changed.

26 June 2007

NOMINAL QUANTITIES FOR PRE-PACKED PRODUCTS (15570/04, 8680/06)

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

In your letter of 20 October 2006¹⁸ in response to mine of 4 October 2006, you asked that I keep you informed of progress on the Commission’s proposal on pack sizes. In the light of further recent developments this seems an opportune time to do so.

As you know, the UK supports the common position adopted by the Council in November, which would have the effect that pack sizes will be deregulated in their entirety with the exception of wines and spirits, with transitional periods applying to a limited number of products where EU rules already apply.

The most recent development is that last week the Committee on Internal Market and Consumer Protection (IMCO) agreed a report to the Parliament recommending a number of amendments. Most of these are of a relatively minor and uncontroversial nature and are likely to be acceptable to the Council.

However, one of the proposed amendments would provide that the Directive shall not apply to pre-packed bread, but that national rules will continue to apply instead. We do not think this is likely to prove acceptable to the Council.

The next step is for the Parliament to vote on the amendments proposed by IMCO. This is expected to take place some time in May. It will be for the Presidency (currently Germany) to negotiate with the Parliament on behalf of the Council, and seek a basis on which both institutions can agree. It remains our view, as I outlined to you in my letter of 4 October 2006, that early agreement on this dossier would be a valuable achievement, and we will therefore be giving the Presidency our full support to that end.

Your letter of 20 October also suggested that the adoption of this Directive would be an opportunity to promote better labelling in the interests of the visually impaired. Labelling, as such, is not an issue which falls within the scope of this Directive, which is concerned rather with the permissible scope of rules on quantity restrictions. It is not therefore a suitable or possible vehicle for the initiative you suggest. However, the European Commission has recently proposed a review of Directive 2000/13/EC, on the labelling etc. of foodstuffs, and this would appear to be a suitable context to explore these ideas. The Department will pass your suggestions on to the Food Standards Authority, which leads on these issues, and ask them to consider your proposal in formulating a UK response to the Commission’s initiative.

You also asked about the interrelationship of package size restrictions and the exemption of small shops from unit price requirements. I agree with you that deregulation of package sizes should lead to some reconsideration of the current scope of the exemption. I am not sure that it would be right to remove the exemption entirely. A requirement for unit prices clearly does impose some costs on shops, and the benefits would be limited since research shows that few consumers in practice make use of unit price information. In these circumstances, it may be that extending the requirement to smaller shops would not be a proportionate action. But we will certainly look into that question, and consult stakeholders, in the light of any changes to the unit pricing Directive which may emerge from the Commission’s current review of the consumer acquis.

¹⁸ Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 448.
I will continue to keep you informed of developments.

15 May 2007

ORGAN DONATION AND TRANSPLANTATION (9834/07)

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

Your Explanatory Memorandum relating to the above Document was considered by Sub-Committee G at its meeting on 28 June 2007.

We consider that the topic of organ donation and transplantation is an important one where coordinated action across Member States could have added value and lead to significant benefits for EU citizens.

While we recognise that the EU has a legitimate right to act in this area under the terms of Treaty Article 152(4)(a), and that coordinated actions between Member States can potentially play an important role, we agree with you that it will be essential to ensure that final decisions on health services will remain with individual Member States.

We understand that your officials will be participating in Working Group meetings in Brussels to discuss the development of firm proposals for Community action in this area. We understand also that the Commission anticipate that these proposals will not be finalised until next year.

Bearing in mind this timescale, we have decided to carry out an inquiry into the issues raised in the Commission’s Communication. I attach a copy of the Call for Evidence that we are issuing for that inquiry. Our intention is that the evidence we publish in an Inquiry Report, probably during the first part of 2008, will both inform our scrutiny role and make a valuable contribution to the development of the Commission’s proposals for action. We therefore retain this document under scrutiny.

We hope that your officials and, at a later stage, you in person will be willing to attend a Sub-Committee G meeting in order to give us oral evidence for our Inquiry.

Please would you keep us informed about significant developments that arise in your discussion of these issues with the Commission and others.

28 June 2007

PORTABILITY OF PENSION RIGHTS (13686/05)

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


The Committee had asked to be given regular updates on the progress of this Directive. However, given the detailed and technical nature of the negotiations, there has been very little concrete progress to report before now.

The outstanding UK issues of substance have now been resolved, including several points raised by the Committee. This letter sets out the current position of the Presidency proposal and highlights further changes officials would anticipate. The current Presidency would like to reach Council agreement during the Council meeting on 30 May (EPSCO). Given the close timing of this, I would like to seek the Committee’s approval to release this dossier from scrutiny based on the attached summary of the Presidency proposals and contingent on two further changes to be sought during ongoing negotiations. These changes are uncontroversial in nature and would bring the text even more closely in line with UK legislation.

A summary of the current Council proposals is included at Annex A (not printed). A set of notes on the text itself is at Annex B (not printed) and a recent transposition table based on these proposals at Annex C (not printed).
It is worth noting that the UK already complies with these proposals. We have consulted our stakeholders and sought legal advice and we are confident that the final dossier will not require any primary UK legislation to implement. As can be seen from the transposition table, only a few revisions to existing secondary legislation may be required.

**The Directive**

The text aims to facilitate the ability of European Citizens to change employment, either within or between member states, without being impeded by concerns over their occupational pension benefits. The Commission text has been substantially reviewed by the Presidency proposals to include input by representatives and experts from Member States and taking account of evidence provided by a qualified Actuary representing the European Association of Actuarial Associations.

The key proposals in the Presidency text concern:

- The ability of workers to acquire pension rights (Article 4: Conditions Governing Vesting Criteria);
- The preservation of a worker’s pension rights in the scheme of a former employer (Article 5: Preservation of Dormant Rights); and
- The information available to workers who move jobs (Article 7: Information).

It is clear that the proposals do not require employers to provide supplementary pension schemes.

You raised two key questions in your response to our previous correspondence:

- What impact the Directive may have on poorly funded pension schemes; and
- Whether the Directive makes a clear distinction between occupational pensions and stakeholder pensions.

This Directive is now largely in line with UK legislation. This means that schemes will not face any significant new obligations under the Directive and so poorly funded pension schemes will be subject to the same supervised recovery by the Regulator provided for in the Pensions Act 2004.

The definition of supplementary pension scheme has now been amended to state clearly that it only applies to occupational pension schemes. In addition, consultation with the Financial Services Authority and the Association for British Insurers (among other stakeholders) has assured us that stakeholder schemes already comply with the remaining provisions in the Directive, so no additional primary legislation would be required from this perspective to implement the Directive in the UK.

**Further Amendments sought by the UK**

The UK is seeking two changes to the text.

First, the UK would like to see Article 5 amended to make clear that the provisions on fair treatment allow the UK to continue its practice of capping revaluation of dormant rights. The current draft of the text does not clearly allow for this important control. Officials have discussed this issue in Council and have broad support for the intent, but the exact wording to achieve this intent is still the subject of negotiations.

Second, it is important that the information provisions are looked at again in order to ensure they do not create an undue burden on schemes. The information requirements currently included in the text could cause excessive administrative burden for schemes and we are seeking revision on this point.

These points are not particularly contentious within the Council, but further discussions are needed over the details.

I believe the UK has achieved it’s principal aims for negotiations on this Directive and I would like to support the Presidency’s proposals (subject to the details mentioned earlier) when it comes to EPSCO in May. In order to give the UK’s full support to the Presidency, I would like to seek a release of the Parliamentary scrutiny reserve on this text, contingent on negotiating for the two edits to the text discussed above. The European Parliament is expected to vote on their compromise amendments in the May plenary and indications are that they will support the principles of the Council text. However, should the position in the Parliament change I will notify the Committee at the earliest opportunity.

*1 May 2007*
Letter from the Chairman to James Plaskitt MP

Your letter of 1 May relating to the above Document was considered by Sub-Committee G at its meeting of 10 May 2007.

The letter and the attached Annexes provide a full and clear account of the issues relating to this proposed Directive, and we note your view that all the major issues arising from the original text have been resolved.

We support your aim of securing two further changes to the text in advance of the May Council meeting which would: allow the UK to continue its practice of capping revaluation of “dormant rights”; and ensure that the Directive does not impose an excessive administrative burden.

We therefore clear this document from scrutiny. Please let us know the outcome of the May 30 Council meeting.

10 May 2007

Letter from James Plaskitt MP to the Chairman

In your letter of 10 May 2007, your Committee agreed to release this dossier from scrutiny. I am now writing to update you on its progress.

On 30 May 2007 the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council met and discussed this dossier. On this occasion, agreement was reached with all delegations except for the Dutch representation. Netherlands informed the Council that the Dutch Parliament had taken a vote directing them not to agree to this Directive. They felt that the directive has become too weakened in impact and narrow in scope, especially given the large number of derogations that had been inserted into the text at late stages in the negotiations.

The European Parliament have also met and voted on their amendments, which fall broadly in line with the (un-adopted) Council text.

However, without the unanimous support of the Council, the hoped-for first reading deal could not be struck. The Parliament has returned its amendments to the Commission and the Commission has taken on board the response of the Council too. The Commission now intend to produce a new draft dossier in September to submit to the Council and Parliament for second reading.

I will write again in due course to keep the Committee updated on the progress of this dossier and to submit the next iteration once it is published by the Commission.

19 July 2007

POSTING OF WORKERS TO ANOTHER MEMBER STATE: GUARANTEEING THE PROTECTION OF WORKERS (11052/07)

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

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee G at its meeting of 19 July 2007.

We understand that the Posted Workers Directive lays down (in Article 3) that Member States shall ensure that workers posted to their territory enjoy the same terms and conditions of employment (relating to those matters listed in the Directive) which are enjoyed by permanent residents.

We are less clear, and we ask for your advice, on what employment protection is enjoyed by UK resident workers who are posted to other EU Member States. Is this limited to the protection offered by the Directive (ie the employment protection provided to workers resident in the country to which the posting is made); or do the UK resident workers benefit (where relevant) from further employment protection equivalent to the protection they had when working in the UK?

We support the broad thrust of the Commission Communication on this matter and consider that, as a basic principle, it is important for the smooth functioning of the European Union that Community legislation is applied in conformity with the Treaty and relevant case law.

We note that the UK has exchanged correspondence with the Commission over the last year on the compatibility of the UK’s employment law regime with the Directive. We would be grateful for information on the outcome of that correspondence.
We wait your reply on these issues and, in the meantime, we are content to release the Communication from scrutiny.

20 July 2007

Letter from Pat McFadden MP to the Chairman

Thank you for your letter of 20 July, which clears from scrutiny the above Communication. Your letter also asks for advice on the rights of UK workers posted to another Member State and on the outcome of the correspondence the UK has had with the European Commission on the compatibility of the UK’s employment law regime with the Posted Workers Directive.

The Directive requires all Member States to ensure that all workers posted to their territory, including UK workers posted to another Member State, are guaranteed terms and conditions (relating to a core nucleus of employment rights) laid down in the law of that member state or by universally applicable collective agreements.

The Directive does not provide that other employment protection shall be conferred on posted workers (and therefore no further obligations on foreign service providers) save that Member States may provide additional rights in the context of public policy provisions (a term which is undefined in statute but which has a narrow meaning in Community law). Consequently, workers posted from the UK should not expect any additional protections under the rules of the host state.

UK workers posted overseas may, depending on the nature of their posting, continue to benefit from UK employment law and subsequently would be able to continue to assert rights under UK employment law in the Employment Tribunal. For example, there is case law on the applicability of the UK’s right to protection from unfair dismissal for employees sent temporarily from their usual place of work.

In respect of your second point, the correspondence with the Commission has focused on the arrangements in the UK for workers posted from other Member States to enforce rights against their employer in the UK’s courts and tribunals; and on the application of UK employment law beyond the core nucleus of provisions specified in the posted workers directive.

The correspondence regarding access to courts and Employment Tribunals is closed as we have informed the Commission that there are provisions for access.

On the other point, we have informed the Commission that UK employment law applies without distinction to all employees in the UK, and therefore to workers posted here from other Member States. We recognise that this implementation goes beyond the requirements of the posted workers directive and is, in effect, an “over-implementation”. However, since we are unlikely to be able to make a compelling argument on the grounds of public policy provisions, our arrangements are technically incompatible with the Directive. We have undertaken to scrutinise the full range of our employment law to identify what goes beyond the provisions of the directive.

7 August 2007

PROMOTION OF HEALTHY DIETS AND PHYSICAL EXERCISE (9838/07)

Letter from the Chairman to Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health

The EM dated 18 June which was sent to us by Caroline Flint, and the accompanying Impact Assessment, were considered by Sub-Committee G at its meeting held on 5 July 2007.

We accept the overwhelming public health case which is set out in the Commission’s White Paper for the implementation of policies aimed at combating obesity and overweight through dietary improvement and greater physical activity. We note with approval, therefore, that in the UK the Government already has in place policies designed to address these issues.

What we do not understand, and the Explanatory Memorandum (EM) has not really helped us with this at all, is why action at EU level is needed and what added value such action will bring. Moreover, we are concerned that there will be expenditure from the Community budget on this action, for which we can see no obvious need, to the detriment of the funding of projects by the Commission in other areas where action at EU level might be effective.
Our strong view is that, for the most part, the only way of making progress in this area is for action to be taken at national level. The only exception is that we do see a role at EU level for harmonising and consolidating research and information in the areas labelled in the Commission’s White Paper as “Developing the evidence base to support policy making” and “Developing monitoring systems”.

We would welcome your views on why the broad programme of EU-level actions envisaged in the White Paper, with the exception of the two areas mentioned in the previous paragraph, is needed at all; and what added value such a programme can have in Member States like the UK where, as you say, all these actions are already being carried forward under existing policies.

We would welcome also your views on our contention that the Community budget could be better spent on other areas where action at EU-level might be more effective.

Finally, we note from the EM that policies to address the challenges of obesity and overweight are in place in all three of the countries of the UK with devolved administrations, as well as in England. In your role as lead UK minister on public health issues, please would you let us know the views of the Scottish, Welsh and Northern Ireland administrations on the need for the actions at EU-level set out in the Commission’s White Paper.

We will retain this document under scrutiny pending further information from you on these issues.

11 July 2007

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter of 11 July, seeking clarification on a number of issues relating to the above White Paper and the Explanatory Memorandum.

You ask why European Union level action is needed. The White Paper is set against a background of rising obesity rates across the EU, and the EU has a responsibility to promote and protect the health of all EU citizens. The Commission has correctly recognised that this area of protecting its citizens is not appropriate for regulation and has sought means of ensuring that National Governments stimulate appropriate action, in much the same way as has occurred in the UK. Securing strong political agreement for action among the major stakeholders (not least National Governments) is therefore vital if substantive progress is to be achieved. The White Paper, and the High Level Group that it proposes, will be a powerful tool in helping to achieve this.

EU-wide action also offers significant practical benefits. Although (as the White Paper makes clear) delivery of the type of actions envisaged by the Paper will be predominantly at the national and local level, delivery will be greatly accelerated by EU-wide activity to promote, facilitate and co-ordinate action. Examples include the Commission’s proposals for information sharing networks, co-ordinated initiatives to promote product reformulation and physical activity; and the Commission’s model for National Platforms that will provide the necessary support for activity within Member States. Moreover, the White Paper is an opportunity for the Commission to co-ordinate a “health in all policies” approach to tackling obesity across the various Directorates.

You also asked what added value will derive for the UK from EU-wide action. The UK is seen by many as leading the way in its work to tackle obesity and other diet related diseases. We have developed many national best practice models, consumer information, and front of pack signpost labelling. UK consumers, as well as businesses, will benefit where these initiatives are replicated more widely across the EU.

There are trans-national aspects to improving nutrition and physical activity levels within Member States and a strong internal market dimension to the issue such as in the cross border sale of agricultural and manufactured goods. As far as trans-national aspects are concerned, food manufacturers have reduced the level of nutrients such as salt in products for some Member States but not for others. The result is that in some countries a basket of manufactured goods will be a higher risk for hypertension (high blood pressure) and stroke than the same basket in another country. Action at the EU level can avoid intra-EU inefficiencies by creating a level playing field for food manufacturers and retailers. Major economies of scale are likely to arise from an EU-led dialogue with these actors, rather than separate MS-dialogues.

One example is the White Paper proposal (work on which has already begun) to establish an EU-wide salt reduction initiative, along the lines of the successful work underway in the UK. Action across Europe is likely to increase the number of lower salt products available to consumers in the UK, as a greater range of multinational food businesses become engaged in this work. Meanwhile, UK based businesses with a presence in markets throughout the EU will benefit from the establishment of clear and consistent priorities for action throughout those markets, and a more level playing field between UK and overseas businesses will reduce the risk of trade issues impeding further progress on reformulation.
It is therefore consistent for the UK to take forward policy actions at a national level, whilst the Commission with its public health competency seeks to galvanise action across the EU by replicating successful initiatives that tackle the root causes of poor diet and lifestyle diseases. A comprehensive EU wide strategy was considered versus a more limited regulatory approach. The EU wide strategy relies largely on voluntary regulation as supported by the UK, as having fewer cost implications and being achievable in a shorter timescale.

The work outlined in the White Paper is covered by the Commission’s existing public health programme budget. The Commission has also been very clear that it expects voluntary industry action to be the cornerstone of delivery, which will mean that calls on EU funds are likely to be minimal.

23 August 2007

Letter from Rt Hon Dawn Primarolo MP to the Chairman

I am writing further to my letter of 23 August 2007, to provide additional information in response to your letter of 11 July regarding the above White Paper and the Explanatory Memorandum.

I said I would forward the views from the Devolved Administrations. Although a request was made to all three devolved administrations (N. Ireland, Wales and Scotland), we only received a response from the Scottish Executive as follows:

“The view of the Scottish Executive, supported by the Food Standards Agency Scotland, is that the recommendations of this EU White Paper are necessary and appropriate. The European Commission has a legitimate strategic role in this subject area, reflecting its duty to promote health and the Europe-wide nature of the problem of obesity. The Commission also has a legitimate role in matters such as food labelling as these relate to the operation of a single market.

The White Paper is consistent with the UK response; to which the Scottish Executive contributed, to the consultation on the Commission’s Green Paper ‘Promoting healthy diets and physical activity: a European dimension for the prevention of overweight, obesity and chronic disease’. The White Paper has no legislative implications or financial implications for Scotland. Scotland is already pursuing and exceeding many of the practical activities recommended by the White Paper through policies such as our physical activity strategy ‘Let’s make Scotland more active’ (2003) ‘the Scottish Diet Action Plan and Eating for health: meeting the challenge’ (2004), and the schools (Nutrition and Health Promotion) Act (Scotland) (2007), so it will not require us to introduce new measures.

A key theme of the White Paper is the coordination and sharing of best practice and evidence. Scotland will have a role to play in sharing the example of actions we have undertaken on healthy eating and physical activity. Scotland may potentially benefit from the proposals for information sharing and Europe-wide data collection and research.

Action is already being undertaken in Scotland in relation to nutritional content labelling, salt and fat levels in processed food and the marketing of foods to children. However, we feel there is still value in the White Paper co-ordinating and facilitating action on these issues across member states as this will provide incentive to all food manufacturers operating within the European Community to achieve high standards, with health benefits for consumers in Scotland.”

I hope this additional information is helpful and sufficient to enable your Committee to lift scrutiny of the proposal.

11 October 2007

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Your letter dated 23 August was considered by Sub-Committee G at its meeting held on 11 October 2007; and your follow up letter dated 11 October, with information about the devolved administration in Scotland, was received subsequently.

We acknowledge the arguments you set out in favour of the UK’s participation in the development of the joint EU programme of action set out in the Commission’s White Paper on nutrition, obesity and related health matters. We would be grateful if you write to us setting out the roles that the Food Standards Agency in the UK and the European Food Safety Authority play in this domain.

In particular, we understand the tangible benefits that can be gained, both for UK citizens and UK businesses, from the introduction of better and more uniform standards across the EU for the reduction of the salt content of manufactured foods.
We are now content to clear this document from scrutiny, and look forward to receiving your further information.

16 October 2007

SCHOOLS FOR THE 21ST CENTURY (11808/07)

Letter from the Chairman to Jim Knight MP, Minister of State for Schools and Learners, Department for Children, Schools and Families

Your Explanatory Memorandum (EM) on the above Working Document was considered by Sub-Committee G at its meeting of 18 October 2007.

We were surprised to note your view that the Staff Working Document has “no status under the EC Treaty”. We query whether some of the questions posed by the Commission in their Working Document might go beyond the competence of the Community as set out in Articles 149 and 150 of the Treaty. Whilst we are aware that the document is not legislative, we would nevertheless be grateful if you could provide us with your analysis as to how each of the questions is directed at achieving clear Community competences.

In the light of the above, we do welcome and support your intention to ensure that the Commission does not use this consultation exercise to extend its role in the area of school education beyond that provided for in Articles 149 and 150, EC.

As regards the potential impact upon the education systems, we would strongly oppose a project to be undertaken that might divert crucial resources away from Member States education systems.

We note that the deadline for sending consultation responses to the Commission was 15 October and we would therefore be grateful if you could send the Committee a copy of the Government’s response.

We shall retain the Working Document under scrutiny pending your response on the above points.

23 October 2007

SOCIAL SECURITY SYSTEMS (5896/06)

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

Thank you for your letter of 25 April 2007 on the above Proposal. Your letter was considered by Sub-Committee G at its meeting of 17 May 2007.

We are encouraged by your response on child-raising but we are far from clear what has actually been agreed. We would therefore be grateful if you could send us a copy of the text of the article that you have successfully negotiated.

Your confirmation that the provisions for self-employed people are identical to that of employed persons and are effective in practice is welcome.

We note with some concern, however, your comments with regard to potential inconsistencies between the Social Security Regulations and the forthcoming Cross-Border Health Services legislative instrument. As you may be aware, the Committee has taken a strong interest in the evolving debate over patient mobility. We support the Government’s aim of achieving consistency and coherence on the issue of patient mobility within the EU and we would be grateful if you could keep us abreast of developments with particular regard to this aspect of the Proposal.

In the meantime, we shall maintain the Proposal under scrutiny.

17 May 2007

STATISTICS ON EDUCATION AND LIFELONG LEARNING (13184/07)

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

I attach the text of amendments to the proposed Regulation on education statistics following the outcome of a first reading deal between the European Parliament and the Council. The original document 15615/05 was cleared by your Committee 20.7.06. Amendments to the original text are shown in italics.

19 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 459.
The revised text is acceptable to the UK. You shared my concerns about the ill-defined and potentially open-ended coverage of statistical topics in the first draft of the Regulation, which could have led to new and burdensome data collections. I am pleased to say that the recent negotiations have again averted that danger, which had resurfaced in earlier versions of the EP’s amendments.

The text on “Domain 3” now explicitly refers to existing Community statistical sources only (paragraph 2 under Domain 3 on page 19), and leaves no loophole open for the Commission to introduce new collections or expansions to existing 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. In the Annex, paragraph 3 under Domain 1 (page 16) sets out a list of statistical topics; I can confirm that the UK already supplies data on these topics.

You were keen that the Regulation should safeguard Member States’ responsibility for the organisation of national education systems. Paragraph 6 of the Regulation (on page 6) contains an amendment stating 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.”

16 October 2007

STATISTICS ON PUBLIC HEALTH AND HEALTH AND SAFETY AT WORK (6622/07)

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

I write to update you regarding the proposed regulation on Community statistics on public health and health and safety at work, and to invite your committee to review its position on the proposal.

You said in your letter of 29 March to my predecessor John Healey MP:

We will hold the Proposal under scrutiny pending your views on the impact in this case of the new comitology procedure, the outcome of your legal advice [on the issue of subsidiarity] and receipt of the Commission’s “analysis of the consequences”.

I am now reassured regarding the new comitology procedure. This proposed regulation specifies the “regulatory with scrutiny” comitology procedure as the means of introducing the subsequent implementing Commission regulations. This procedure requires a positive decision by qualified majority voting (QMV) in the relevant committee, which in this case would be the Statistical Programme Committee, followed by a scrutiny period of three months during which either the European Parliament or the Council may raise an objection. There would therefore be an opportunity to prevent the adoption of an implementing regulation which was not acceptable to the UK, provided the same view was held by the necessary number of Member States counted according to the QMV procedure.

The issue regarding subsidiarity has been resolved. The Commission stated in its explanatory memorandum to the proposal that “This Article [285 of the Treaty] implies that measures for the production of statistics are of exclusive competence at Community level”. The Government’s response to this cited a previous agreement between the Commission and the Council on the interpretation of art. 285, which established that Community statistics constitute an area of shared competence. Consequently, the text of the proposal was amended to indicate that the subject is a matter of shared competence and that subsidiarity does apply. The Commission recognised in the discussions on this proposal at the Council Working Party on Statistics that the provision of health services and the regulation of health and safety at work are matters of national competence.

The Commission’s “analysis of consequences” was copied to you under cover of John Healey’s letter of 18 April. It has been agreed in the Council Working Party on Statistics that while it is not feasible to quantify the impact of the framework regulation in any detail, a full Regulatory Impact Assessment will be carried out in respect of each subsequent proposal for an implementing regulation, taking account of burdens on all types of respondents (individuals, businesses and public sector organisations).

20 October 2007

20 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 460.
21 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 460.
Letter from the Chairman to Angela Eagle MP

Mr John Healey’s letter of 18 April 2007 (accompanied by the Commission’s Analysis of Consequences) and your letter of 20 October were considered by Sub-Committee G at its meeting held on 25 October 2007.

We welcome your reassurance that the “regulatory with scrutiny” procedure will provide safeguards so that Members States and the European Parliament will have the opportunity to prevent the adoption of any future proposal made under the framework which would impose an unacceptable burden on business.

We also note that the Commission has recognised that Treaty Article 285 provides that Community statistics constitute an area of shared competence, and that the provision of health services and the regulation of health and safety at work are matters of national competence.

We now clear this Communication from scrutiny but request that you write to us following the European Parliament’s first reading of the Commission’s proposals on 13 November, setting out the final form which the proposed Regulation is likely to take and when this will be due to achieve political agreement.

25 October 2007

TACKLING THE PAY GAP BETWEEN WOMEN AND MEN (12169/07)

Letter from the Chairman to Rt Hon Hazel Blears MP, Secretary of State for Communities and Local Government, Department for Communities and Local Government

Your Explanatory Memorandum dated 9 October 2007 was considered by Sub-Committee G at their meeting held on 25 October.

We welcome the Commission’s Communication on this most important area in which there has been an increasing recognition in recent years of the need for action.

We recognise that the specific proposals for legislative change in the field of equal pay, which you state in your Explanatory Memorandum may be put forward by the Commission in 2008, will require our close scrutiny and we look forward to hearing from you when the details of these are known.

While the relevant statistics are not quoted in your Explanatory Memorandum, a table in the Commission’s Communication (page 19) shows that the pay gap in the UK in 2005 stood at 20%, compared with the EU average of 15%. Moreover, these measures do vary from year to year and a more robust comparison might be between the UK average pay gap over the three years 2003–05 of 21.3% against the EU average over the same period of 15.0%.

We would be interested if you could write to us with your assessment of the implications for UK policy of the relatively worse pay gap position in the UK compared with the EU average.

We will look forward to receiving your thoughts on this issue and, in the meantime, we are content to clear the Commission Communication from scrutiny.

25 October 2007

TRANSPORT RATES AND HYGIENE OF FOODSTUFFS (7371/07)

Letter from the Chairman to Caroline Flint MP, Minister of State for Public Health, Department of Health

Your Explanatory Memorandum on the above Document was considered by Sub-Committee G at its meeting of 10 May 2007.

We note the element of the proposed amending Regulation which relates to Regulation 11 of June 1960—concerning the abolition of discrimination in transport rates and conditions. We agree that this has no significant policy implications and we are content to release that part of the proposal from scrutiny.

In the case of the element of the proposal amending Regulation (EC) no 852/2004—relating to the hygiene of foodstuffs—we share the Government’s concerns that the good intentions of the Commission, to reduce the administrative burden on small businesses, could have unintended detrimental consequences for food safety. Our view is that the present form of the proposal is unacceptable, since this would represent a significant retrograde step for food safety.

22 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 460.
We welcome the preparation of a Regulatory Impact Assessment (RIA) and the conduct of wide public consultation in the UK. It is essential that these exercises should provide the opportunity for negotiated changes to be made to the proposal designed to remove its present problems.

We will retain the element of the proposal relating to the amendment of Regulation (EC) no 852/2004—hygiene of foodstuffs—under scrutiny; and we will consider the matter further when you have sent us the RIA and have let us know the outcome of the further work your Department is carrying out to secure the necessary changes to the proposed Regulation.

10 May 2007

Letter from the Chairman to Caroline Flint MP

The Supplementary Explanatory Memorandum and the draft Regulatory Impact Assessment (RIA) relating to the above document were considered by Sub-Committee G at its meeting on 14 June 2007.

As we indicated in previous correspondence, we strongly support the intention of the Commission to reduce the burden of regulation on small businesses. In this case, however, we share the widely held concern that the proposal could have unintended detrimental consequences for food safety. Moreover, we take the view that the RIA provides clear evidence that the costs of accepting the Commission’s proposal are likely to outweigh the benefits. In particular, we recognise the serious consequences that can result from an outbreak of food poisoning such as those detailed in Annex E to the RIA.

We recognise also that there appears to be little, perhaps no, support for the Commission’s proposal either domestically or across EU Member States. We would, nevertheless, be interested to see the outcome of the Government’s consultation on this issue and we ask you to write to us about this when the exercise is complete.

We encourage you to continue to argue the case in Council for either the abandonment or acceptable modification of the proposal, and ask you to let us know as soon as possible about further developments in this regard.

We now clear this document from scrutiny.

14 June 2007

WHITE PAPER ON SPORT (11811/07)

Letter from the Chairman to Gerry Sutcliffe MP, Minister for Sport, Department for Culture, Media and Sport

Your Explanatory Memorandum dated 30 July 2007 was considered by Sub-Committee G at their meeting held on 11 October.

We note that, while it has reservations about some of the specific suggestions put forward by the Commission, the Government welcomes the White Paper as a useful basis upon which to consider many issues confronting sport and sporting organisations. Despite our dismay at the lack of clarity of the language used in the White Paper, we agree with this view.

We support your view that many of the challenges raised by the Commission in the White Paper should be addressed by sport itself, and we welcome your intention to consult widely with stakeholders on the White Paper proposals.

We will hold the White Paper under scrutiny pending your report to us on the outcome of your stakeholder consultation and on the position which the Government, in consequence, plans to take in reacting to the Commission’s proposals.

16 October 2007

WORKING TIME DIRECTIVE (9554/05)

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

I am writing to update your Committee on a request from the Commission that the UK produce a National Report on the “Practical Implementation of Directive 2003/88/EC concerning certain aspects of the Working Time Directive”.
This is a routine request, issued to all Member States and in line with a requirement in the existing Working Time Directive for the Commission to produce a report on Member States implementation of the Directive every five years. However, given the high level of interest in the dossier, I was sure that the Committee would wish to be informed.

The Commission has requested that Member States report in a common format which is attached (not printed). The questions cover information on the following:

- Legal instruments used to transpose the Directive and any subsequent amendments, including court decisions;
- The derogation for doctors in training;
- How the implementation of the Directive is monitored and the effectiveness of the transposing measures;
- Priorities for taking the subject area forward, and suggestions for adapting and amending the Directive, and;
- Positive and negative aspects of the implementation of the current Directive.

The original Directive stipulates “Member States shall report to the Commission every five years on the practical implementation of the Directive, indicating the viewpoints of the two sides of industry”. The UK intends to respond setting out the facts, making our position clear on how the dossier and subject should be taken forward, and indicating the views of social partners.

On a separate note, although it is far from certain, the next Presidency (Portugal) has stated that they may take the dossier forward if they can see a clear solution.

30 May 2007

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


This was a routine request, issued to all Member States and in line with a requirement in the existing Working Time Directive for the Commission to produce a report on Member States’ implementation of the Directive every five years.

I am now writing to inform the Committee that we have now submitted the UK report to the Commission and I enclose a copy for the committee’s information. As outlined in Jim Fitzpatrick’s letter, our response sets out the facts regarding UK implementation and makes our position clear on how the matters should be taken forward.

On a separate note, it remains unclear as to whether the current EU Presidency (Portugal) will take the dossier forward. They have tentatively added it to the agenda for the December Employment Council but have made it known that they will only table the dossier for discussion if they can see a clear way forward.

4 September 2007

Annex A

UK Response (June 2007)


1. Introduction

Please state how the report has been produced
List the Social Partners consulted and describe the methods used for consultation
State the method used to record the positions expressed by the social partners (specifically on each point, or generally in an annex, etc.)


and so responsibility for implementing the Directive in Northern Ireland falls to the Northern Ireland Assembly and the Department for Employment and Learning Northern Ireland (DELNI) who have contributed to the compilation of this report. The GB legislation has been substantively replicated in Northern Ireland.

As requested, we have asked UK social partners for their views on the practical implementation of the Working Time Directive. Given the importance of the issue, it was decided to conduct a relatively formal consultation process, which involved writing to a number of key UK social partners, enclosing the Commission questionnaire. The TUC committed to consult their member trade unions if and where appropriate. Other Government Departments, with sectoral or specific interest, were also asked to write to their key social partners. A full list of those contacted with regard to this report is attached as an Annex. Social Partner positions will be accurately reflected throughout this report, with a summary of views recorded under the relevant questions.

2. Legal Situation

Please annex a comprehensive list of all transposing legal instruments presently in force, indicating (where applicable) the relative legal hierarchy of different instruments. If a measure applies only at regional or sectoral level, please indicate its exact scope. If transposition is by a legal code, please confirm which are the relevant provisions.

If transposition is in part by collective agreements, please indicate the relative legal hierarchy of collective agreements and legal provisions. Please also indicate how transposition is assured, regarding those workers who are not covered by collective agreement. In the remainder of the report, please indicate what is the provision under the main applicable collective agreements.

If significant changes have been made during the last five years to the transposing legislation, please indicate what are the main changes.

The Working Time Directive 2003/88/EC is implemented in Great Britain by the Working Time Regulations 1998 (S.I. 1998/1833). The Regulations have subsequently been amended by:

- The Working Time (Amendment) (No.2) Regulations 2006, 2006/2389.

In Northern Ireland, the Working Time Directive is implemented by the Working Time Regulations (Northern Ireland) 1998 (S.R. 1998 No. 386). The Regulations have subsequently been amended by:

— The Working Time (Amendment) Regulations (Northern Ireland) 2006—S.R. 2006 No. 135.and

Where appropriate, corresponding changes have also been made to the Guidance on the Working Time Regulations. This Guidance is produced to explain the Working Time Regulations to workers and employers and to indicate further sources of advice, including the routes to resolve disputes.

In accordance with the Working Time Directive, the UK’s Working Time Regulations allow certain provisions to be varied by collective agreement (night working limits, extensions of the reference period, rights to rest breaks and rest periods as long as compensatory rest is provided immediately).

3. RECENT TRANSPPOSITION

If you have transposed the Directive for the first time within the last five years please:
— Describe the legal situation regarding working time before the Directive was transposed.
— Explain precisely how transposition changed the previous legal situation regarding working time.
— Describe any specific difficulties encountered during the transposition of the directive into the national legal order, and any measures taken in response to those difficulties.
— Describe what action was taken to disseminate information about the transposing measures.
— Describe any flanking measures adopted to facilitate the practical implementation of the Directive.

Not relevant to the UK.

4. PREVIOUSLY EXCLUDED SECTORS

If you transposed Directive 93/104/EC for the first time before 2002, then no reply to question 3 is necessary. However, as regards the scope of the former Directive 2000/34/EC (the “excluded sectors directive”), please reply as follows:
— Please indicate how Directives 2000/34/EC and 2003/88/EC have been transposed, as regards Doctors in training.
— Describe the previous legal situation regarding the working time of Doctors in training. Explain precisely how transposition changed the previous legal situation regarding Working Time.
— Describe any specific difficulties encountered during this aspect of transposition into the national legal order, and any measures taken in response to those difficulties.
— Provide an assessment of any further action taken or planned.


The UK Government has supported the implementation of the European Working Time Directive (WTD) as part of its commitment to improving the working lives of National Health Service (NHS) staff. The safety of patients and staff is paramount.
Union representatives for the health sector welcomed the implementation of the Working Time Directive for doctors in training, which reinforced existing UK Government policy and partnership working to reduce the working hours of junior doctors. Unions highlighted the additional protections in the “New Deal” agreement with the UK Government to prevent employers from issuing contracts to junior doctors for working arrangements of more than 56 hours of work per week and the implementation of financial penalties for employers that allow doctors to work over these limits.

Industry representatives for the health sector consider that the Working Time Directive has been a useful addition to the health and safety of workers but that the measures have been expensive to put into operation and therefore costly to the NHS.

The NHS fully implemented the Working Time Directive requirements for doctors in training by recruiting thousands of extra doctors and adopting innovative working practices. The Government worked with NHS employers and health professionals and invested in a range of pilot projects to support implementation. For example, about half of acute hospitals (i.e., hospitals that take emergency admissions and are able to perform unplanned operations) have implemented “Hospital @ Night” multi-disciplinary teams to provide the range of care patients need at night and replaced demarcated medical teams.

Union representatives for the health sector welcomed the UK’s implementation of the reduction in hours for junior doctors, and participated fully with the Governments’ implementation of the provisions. With the full involvement of Union representatives, similar working groups have been set up to prepare for the next stage of implementation in 2009.

The Government continues to work with health professionals and sponsors new ways of working in the NHS to comply with these provisions and to improve services. The Government commissioned a team (National Workforce Projects) to support the implementation of the 2009 measures across the NHS and this team is overseeing a programme of over 20 Working Time Directive pilots, including helping to extend “Hospital @ Night” services throughout the entire day.

Whilst parts of the NHS have benefited from Working Time Directive compliance, by reinforcing progress already being made in the UK to reduce the working hours of doctors in training, there have also been significant costs to doctors in training which have resulted from the interaction of the SiMAP/Jaeger judgments and the provisions. SiMAP/Jaeger interpretations have been fully implemented, although the Judgments made this more difficult in some services that do not lend themselves easily to NHS initiatives put in place to comply with the Directive. In addition, maintaining good quality medical education and improving patient care is made more difficult in parts of the NHS by the restrictions on working patterns from the European Court of Justice SiMAP and Jaeger Judgments.

These rulings significantly increased shift working by defining all residential on-call time as work and requiring compensatory rest to be taken immediately after a period of work finishes. Increased shift working has reduced the amount of (better quality) daytime training opportunities for doctors, particularly in the craft specialties such as surgeons. Before SiMAP/Jaeger, the contract for surgeons enabled them to receive up to 56 hours daytime training. Evidence from the medical professions indicated that the operating experience of trainee surgeons reduced by about a fifth following compliance with the SiMAP/Jaeger rulings.

Union representatives highlighted difficulties for medical training caused by a combination of some poorly planned shifts and compliance with the Working Time Directive and the ECJ Judgments and voiced concerns that training had suffered as a result, particularly in some specialties such as surgery. They believe that some trainees are not receiving adequate exposure to daytime training. They point to the fact that the drive to bring down total hours has led to increasing proportions of night shift working, with little opportunity for training to be delivered by senior staff.

Industry representatives highlighted that the Jaeger (compensatory rest) ruling made the Directive more difficult to implement in practice and consequently may affect patient care as the immediate compensatory rest requirement can very occasionally result in patient care being withdrawn if it is not possible to arrange cover to replace staff taking immediate compensatory rest. They went on to suggest that if compensatory rest could be taken within a reasonable period of time it would support continuity of patient care and reduce disruption to doctors’ training.
Industry representatives commented that the SIMAP/Jaeger rulings had increased costs and that the NHS had recruited thousands of extra staff to prevent gaps in patient services at a large cost without improving productivity. They added that the move to shift working from resident on-call rotas meant that many doctors in training now spent time working less productive night shifts and therefore treat fewer patients.

5. Monitoring of Implementation

Please state which bodies are responsible for monitoring the implementation of the transposing measures. Are any reports published on this monitoring?

Describe the methods used for monitoring.

Describe any problems encountered in monitoring implementation of the transposing measures, and any measure taken to address these.

The UK has a comprehensive system concerned with monitoring the implementation of the Working Time Regulations. The various bodies concerned and their remits are outlined below. As the vast majority of UK workers are in the formal economy, we do not experience the same problems as some other Member States who have large “grey” economies where many workers are not protected from being forced to work long hours, do not get rest breaks and paid annual leave, are not covered by health and safety legislation—resulting in difficulty monitoring them.24

It is also our view that a 12-month reference period for weekly working hours would not only provide welcome additional flexibility to both employee and employer, but would also greatly enhance the ability to monitor the effectiveness of the regulations and ability to compare implementation between Member States, given the limited and localised use of UK collective agreements to extend the reference period to 12 months (from the current 17-week default).

All workers who rely on their rights under the Working Time Regulations are protected from dismissal or detriment through a well established and widely understood enforcement package. The Employment Rights Act 1996 is a key source of employment rights in GB and confers an express right of redress through complaint to an Employment Tribunal for workers whose employer fails to follow the Working Time Regulations.

Section 45A of the Employment Rights Act/Article 68A of the Employment Rights (Northern Ireland Order 1996) protect workers from suffering detriment for refusing to exceed the working time limit; refusal to work when entitled to a rest period; refusal to sign a workforce or other agreement; for acting as a workforce representative or for bringing proceedings to enforce rights granted under the regulations. For the purpose of the regulations, detriment can cover a wide range of discriminatory actions, such as denial of promotion, facilities or training opportunities.

Section 101A of the Employment Rights Act / Article 132A of the Employment Rights (Northern Ireland Order 1996) provide a remedy for any worker dismissed or selected for redundancy because of a refusal to work in excess of the weekly working time limits or when entitled to a rest break period. In these circumstances a worker would be entitled to pursue a claim through an Employment Tribunal (or an Industrial Tribunal if in Northern Ireland). As illustrated in the answer to Question 6, the rights granted under the Employment Act/ Employment (Northern Ireland) Order and the Working Time Regulations are effectively enforced through the Employment Tribunals (the Industrial Tribunals in Northern Ireland).

The UK Government collects data concerning the number of claims and cases taken to the Employment Tribunal Service. To understand the figures below, it is necessary to bear in mind that claims may be registered as “group actions” whereby a large number of workers in a particular company each register an individual claim against an employer and although they are registered as multiple claims, it is heard as a single claim against a single employer. In addition, these cases can be registered more than once leading to multiple claims relating to a single issue (the majority of cases in 2005/6 refer to the same issue in the same company).

Only a minority of cases are decided by the tribunal. Others are withdrawn, or settled privately or with help from ACAS (the UK Government’s advisory and arbitration service)—official statistics do not record the outcome. The statistics relating to all claims and cases for the working time jurisdiction are in Table 1 below.

24 The Greek grey economy is estimated at over 20% of GDP, the Italian at 16–17%. This compares with an estimated 2% of GDP in the UK. Source: The European Commission, May 2004.
Table 1

Employment Tribunal Statistics for the Working Time Jurisdiction

<table>
<thead>
<tr>
<th>Year</th>
<th>Claims Registered</th>
<th>Cases Successful at Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999–2000</td>
<td>5,595</td>
<td>119</td>
</tr>
<tr>
<td>2000–01</td>
<td>6,389</td>
<td>167</td>
</tr>
<tr>
<td>2001–02</td>
<td>4,980</td>
<td>521</td>
</tr>
<tr>
<td>2002–03</td>
<td>6,436</td>
<td>106</td>
</tr>
<tr>
<td>2003–04</td>
<td>16,869</td>
<td>171</td>
</tr>
<tr>
<td>2004–05</td>
<td>3,223</td>
<td>9,249(1)</td>
</tr>
<tr>
<td>2005–06</td>
<td>35,474(2)</td>
<td>1,374</td>
</tr>
</tbody>
</table>


(1) This figure includes claims registered from the previous year.

(2) The majority of these claims relate to a specific company where a large number of claims were made in relation to paid annual leave and the claims were re-registered a number of times.

In addition to individual enforcement before an Employment Tribunal (Industrial Tribunals in Northern Ireland), the Working Time regulations are also enforced by the Health and Safety Commission, through the Health and Safety Executive (HSE), or local authority Environmental Health Departments. The HSE is responsible for enforcing the working time limits and entitlements to health assessments in factories, building sites, mines, farms, fairgrounds, quarries, chemical plants, nuclear installations, schools and hospitals. Local authorities ensure that the regulations are followed in shops and retailing, offices, hotels and catering, sports leisure and consumer services. HSE Northern Ireland monitors enforcement of the relevant provisions in Northern Ireland. If any of the various bodies are provided with information that enables them to do so, they will investigate specific individual complaints about enforcement of the Working Time Regulations. Where there is evidence of non-compliance, enforcement action will be considered (the HSE has begun investigations on over 160 Working Time cases since 2004).

Some union representatives believe that the UK’s working time enforcement regime should be strengthened with more resource to prevent abuse. Industry representatives are satisfied with the existing regime, believing that it is an effective and robust model, focusing resource where there is cause for concern.

More widely, the UK has recently launched a Vulnerable Worker Enforcement Forum to look specifically at workers who work in an environment where there is a high risk of them being denied employment rights and who do not have the capacity or means to protect themselves from potential abuse. The forum will bring together experts from unions, business, enforcement and advice bodies to look at the best way to protect the vulnerable in the workforce. The enforcement of employment legislation, including of the Working Time Regulations will form part of the Forum’s scope.

6. Judicial Interpretation

Please indicate whether there have been court decisions at national level interpreting or applying the Directive on any significant issues, and what were the key legal points in issue

There have been a number of court decisions at national level interpreting or applying the Directive on significant issues since the UK last submitted a National Report on the practical implementation of the Working Time Directive. The key legal decisions are:

— Commissioners of Inland Revenue v Ainsworth, [2005] EWCA Civ 441.
— Gallagher v Alpha Catering Services Ltd (t/a Alpha Flight Services) [2004] EWCA Civ 1559.
— Anderson v Jarvis Hotels PLC, EAT/0062/05.
— Plumbing Services Ltd v Miller [2005] All ER (D) 89 (Jun) EAT.
— Wainwright v MSA (Britain) Ltd [2003] EWCA Civ 196.
— Clarke v Frank Staddon Ltd, ET 2203683/01.

Details of the key legal points in issue are set out below.
Commissioners of Inland Revenue v Ainsworth, [2005] EWCA Civ 441—Key issue was rights pursuant to Article 7 of those on long-term sick leave

The Court of Appeal held that a worker on long-term sick leave was not entitled under regulation 13 of the 1998 Regulations to four weeks' annual leave in a year when he had not been able to attend for work, nor was he entitled to compensation under regulation 14 of the Regulations upon the termination of his employment during such a year. The courts ruled that the Regulations were made in the context of health and safety. They provided for release from the pressures of daily work. An employee who was not in any event required to work during the period in question stood to gain no benefit to his health by taking leave.

This decision was appealed to the House of Lords who have referred the matter to the European Court of Justice pursuant to Article 234 EC Treaty: Stringer C-520/06.

Gallagher v Alpha Catering Services Ltd (t/a Alpha Flight Services) [2004] EWCA Civ 1559—Key issue was rights pursuant to Article 4

The Employment Appeal Tribunal held that periods where workers are not actually performing the functions of their jobs but are expected to remain at their employer’s disposal (“downtime”) could not amount to a rest break. The essence of a rest break is that the worker knows at the start of it that he or she has twenty minutes of uninterrupted rest. A rest break cannot retrospectively become a rest break only because it can be seen after it is over that it was an uninterrupted period of 20 minutes.

MacCartney v Oversley House Management, [2006] ICR 510—Key issues were the true construction of “working time” in Article 2; cross sectoral enforcement of ECJ rulings on SiMAP and Jaeger and their application to on-call time when the place of work is the primary residence

The claimant was employed as a resident manager of sheltered accommodation. Her contract of employment specified her hours of work as “four days per week of 24 hours on site cover”. The EAT held that the claimant was working throughout the 24-hour period when she was on call. Having regard to the principles laid down by the European Court of Justice in Landeshaupstadt Kiel v Jaeger and SiMAP v Conselleria de Sanidad y Consumo de la Generalidad Valenciana, the whole period when the claimant was on call constituted working time.

Anderson v Jarvis Hotels PLC, EAT/0062/05—Key issues were the true construction of “working time” in Article 2; cross sectoral enforcement of ECJ rulings on SiMAP and Jaeger and their application to on-call time

The claimant was a Guest Care Manager in the employment of a hotel company who was required to “sleep-over” in the hotel several nights each week. The Employment Appeal Tribunal held that time spent by the claimant, at the respondents’ disposal during sleep-overs, was working-time.

Plumbing Services Ltd v Miller [2005] All ER (D) 89 (Jun) EAT—Key issue was who is a worker for the purposes of the regulations

The appellant company provided plumbing services to the building industry. The respondents were not employees and had no contractual documentation but worked exclusively for the company for three years on a number of different projects. The respondents claimed that they were entitled to holiday pay under the Working Time Regulations 1998. The EAT held that while the respondents were not employees of the company they were nevertheless workers within the meaning of the 1998 Regulations because they did not carry on a business undertaking, were required to perform their work personally and were accordingly entitled to holiday pay.
Wainwright v MSA (Britain) Ltd [2003] EWCA Civ 19—Key issue was the right to protection from dismissal or detriment for workers seeking rights granted under the Working Time Directive

The employee had been employed by the employer as a travelling field service engineer. Following an incident where the employee refused to make an additional visit to a customer to one already scheduled, he was dismissed for gross misconduct. The employee issued proceedings against the employer on grounds that amounted to (i) automatic unfair dismissal, contrary to sections 101A and 104 of the Act, on the basis that the real reason he had been dismissed was that he had made complaints to his union that the employer’s system of work was contrary to the Working Time Regulations 1998 and; (ii) breach of contract, relating to the requirement under his contract of employment that he work whenever required, which led to his working hours exceeding the requirements of the 1998 Regulations. The employment tribunal found that the employee had been fairly dismissed for a reason relating to his conduct and therefore dismissed his claim. The employee appealed and the Court of Appeal ruled that the employment tribunal had made a number of errors of law including failure to give sufficient reasons relating to the employee’s claims in respect of the 1998 Regulations. All lower courts must now follow these principles.

Clarke v Frank Staddon Ltd, ET 2203683/01—Key issue was prohibition on “Rolled Up Holiday pay”

Following a decision from the ECJ (C-131/04 and C-257/04) the ET held that holiday pay required by Article 7(1) of the Directive is intended to enable the worker actually to take the leave to which he is entitled. The term “paid annual leave” means that for the duration of annual leave, remuneration must be maintained.

7. Assessment of Effectiveness

Describe the data used to assess the effectiveness of the transposing measures

The UK Government commissions and uses a wide array of surveys and other supporting information to assess the effectiveness and impact of the Working Time Regulations (for example the UK Labour Force Survey, the UK Workplace Employment Relations Survey, the UK Employment Relations Research Series and the European Working Conditions Survey).

There does, however, exist some difficulty when attempting to compare the effectiveness of the transposing measures from Member State to Member State as it is not always a case of comparing like with like. There are large variations across the EU in terms of how the Working Time Directive has been implemented and, specifically, how the various derogations in the Directive that allow longer hours working have been interpreted (such as the derogation for autonomous workers, the use of collective agreements to allow flexible interpretations, and the “per contract” implementation). Whilst this does not impact on the UK’s ability to assess our own transposing measures, it does impact on our ability to effectively benchmark ourselves against other Member States. Moreover, those who are clear and precise about how the directive has been implemented are penalised and suffer the threat of legal uncertainty. Member States that are vague do not have the same threat and their workers remain unprotected.

An analysis of the various surveys and reports concerning UK implementation shows a positive picture:

— Over 80% of workers are aware of their rights to minimum rest breaks and holiday entitlement.
— Approximately 7 out of 10 long-hours workers would not want a cut in hours if it meant a cut in pay.
— Long hours working is falling across the board. Government figures show that in spring 2006, 17.2% of full-time employees usually worked more than 48 hours, compared with 22.8% in spring 1997.
— Job security is high. In the EU27, an estimated 14% feared losing their jobs within 6 months. In the UK it is only 7%.
— Average usual working hours ranged from 33 hours per week in the Netherlands to 46.4 hours in Romania. The UK was second lowest with 34.8 hours, well below the EU average of 38.6 hours. These figures tally well with the European labour Force Survey rankings (Eurostat 2006).
— 85% of UK workers said their working hours fit “well” or “very well” with their family and social commitments (4th European Working Conditions Survey 2007).
— 9.5 million workers in the UK choose to make use of flexible working patterns.
— Continue to have one of the EU’s best health and safety records. Fewer UK workers reported that their work affected their health than in any other EU country and the UK is second in the EU in terms of the number of days per worker lost due to accidents in the workplace.
8. Evaluation

Please list the positive and negative aspects of the practical implementation of the legislation

Please indicate whether you have experienced problems of interpretation regarding any aspects of the Directive, and whether there are any points on which you would like clarification

Positive Aspects

The Government welcomed the protections offered by the Directive that have granted workers the right to paid annual leave, rest breaks and protection from being forced to work long hours. The Government has supported and gone further than some of the measures in the existing Working Time Directive, creating a general culture shift in the UK shown by a continuous fall in working hours, the commitment to deliver extra annual leave entitlement (above that required by the Directive) and the new employment right to request flexible working conditions.

Union representatives singled out the Government’s commitment to the annual leave entitlement which had given two million workers in the UK more holiday as a particularly positive aspect. Industry representatives praised the UK’s implementation of the opt out, protecting workers from being forced to work longer than 48 hours but allowing those that wish to work longer to retain their right to determine a working pattern that met their needs, and giving them the legal right to take rest breaks and paid annual leave. Social partners in the health sector had welcomed the Directive, with union representatives adding that rest breaks and working time limits benefit doctors and their patients. One industry representative also mentioned that the measures increased the protection for younger workers allowing them more frequent rest breaks.

All of the these rights and entitlements in the Working Time Directive are only conferred on workers in the formal economy and the UK would strongly oppose any measure that would force workers wanting to earn extra money by working overtime into the grey economy where they would lose these protections.

Negative aspects

It is the UK Government’s firm belief that the ECJ judgments on SiMAP and Jaeger interpreted the Directive in a way that was never intended, introducing over-burdensome requirements and increased levels of uncertainty over the potential for future legal judgments to cause problems for accepted working practices and labour market traditions. These concerns are shared by both sides of industry and were a common complaint in the replies from social partners.

In the UK health sector, SiMAP/Jaeger has distorted medical training and required substantial funding to be focused on filling rotas rather than improving patient care or medical training. The judgments are also causing difficulties for community and social care services. For example, a cornerstone of UK healthcare strategy is to move more care out of hospitals and closer to people’s homes as improvements in technology mean, for example, that more severely disabled patients can be cared for at home to improve their quality of life. The relationship between staff and patients with long term care needs is central to effective care delivery but SiMAP/Jaeger means that 24 hour care needs to be shared amongst much bigger teams of staff which can be impractical and expensive. However, many social partners in various sectors—not just the healthcare sector—have been severely impacted by these ECJ judgments.

A number of industry representatives highlighted the burden and bureaucracy of record keeping as negative aspects, especially for SMEs. One singled out the complexity of the law as disproportionate to the impact, citing the difficulty in achieving a collective agreement to extend the reference period to 12 months. Another felt that the derogations in Article 17 were not clear. The CBI felt the Directive has gone beyond the original intention to provide minimum health and safety protections and that the different methods of implementing the Directive in the EU and the complexity of the regulations have had a negative impact, particularly on SMEs.

One union representative and one industry representative supported change to introduce a ban on signing the opt out at the same time as the employment contract, to offer workers more protection to make a free choice to refuse to opt out. The TUC felt that the opt out from the 48 hour working week had weakened the Directive.

In the health sector, both sides of industry voiced concerns that the Directive and subsequent move to shift working is having a negative impact on Doctors’ training and may impact patient care. Industry representatives also singled out the ECJ rulings on SiMAP and Jaeger for reducing flexibility and one highlighted the negative impact of the ECJ rulings on the provision of social care via live-in wardens in residential care homes.
Problems of Interpretation

The Government has not experienced any major issues in interpreting the original Directive. However, since the original Directive was agreed, there have been a number of court cases interpreting the Directive in a way that we consider the Council of Ministers never intended and this has created some implementation issues. For example, the court judgment in relation to “rolled up holiday pay”—a practice where a payment is made in addition to the daily rate of pay to take account of statutory paid holiday entitlement. Generally most workers receive payment for annual leave when they take it. However, for certain small groups (e.g., agency workers who work for more than one agency on a regular basis and can work for as little as half a day at a time thus accruing the right to a proportion of four weeks leave—18 minutes per half day’s work) it is a practical way of ensuring they receive payment for their holidays which they can take at a later date.

Given that the courts tend to interpret the Directive restrictively, we would resist a new Directive that contained imprecise measures and lacked legal certainty. The UK Government would also like to see more Member State autonomy in how the Directive is implemented in individual Member States to reflect differing national circumstances.

Social partners raised a small number of areas where they or their members have experienced issues in interpretation. The most commonly referenced were the derogations in Article 17 and the entitlement to paid annual leave. Most mentioned the issue of the ECJ rulings on inactive on-call time and compensatory rest. The CBI also added a request for clarity on whether the regulations apply per worker or per contract.

Priorities going forward

As stated below in Question 9, the Government is keen to see a solution to the problems caused by the ECJ judgments of SiMAP and Jaeger, in an overall package that includes the retention of the individual right to opt out from the 48 hour working week. However, if Member States cannot agree such a package, the absolute priority of the Commission must be to resolve the problems caused by the ECJ rulings to Europe’s health and emergency services.

The overriding priority of industry representatives is to retain the existing right to opt out of the working time limits. It was also suggested that, given the lack of progress on revising the Directive and the “stress” on national health systems, the Commission should look to find a solution on on-call time and debate the other issues separately. Two Union representatives called for the opt out to be phased out with interim measures to tackle abuse, with one requesting a stronger Working Time Directive with more safeguards if the opt out was not phased out. In the health sector, the priority for union representatives was to ensure the Directive was implemented and enforced properly in all Member States to create a level playing field for all medical workers across the EU in terms of flexibility in the definition of working time and clarity over compensatory rest. They also call for no delay to the full implementation of the Directive for junior doctors, due in 2009.

9. Outlook

Please indicate any priorities in this subject area
Suggest any adaptations or amendments to the Directive, stating the reasons
Indicate any changes which are considered necessary to technical progress
Suggest any flanking measures at EU level that could be useful

The UK has consistently underlined the need for precision and legal certainty over the laws regarding working time. We firmly believe that the UK has fully implemented the Working Time Directive through the Working Time Regulations 1998, as amended, and that the UK is fully compliant with working time law. Our priorities for this dossier remain the same: the retention of the individual opt-out, free from unnecessary burdens that could render it effectively unworkable; and a solution to the problems caused by the ECJ rulings on SiMAP and Jaeger.

If Member States are unable to agree a way forward on all aspects of working time legislation as a package, the UK believes that the EU should aim to make progress step by step. The Commission should not allow difficulties on certain aspects of the Directive to delay finding a resolution to the problems caused by SiMAP and Jaeger. In certain countries these judgements are putting the health and security of EU citizens at risk and action to combat this should be a top priority.

The UK firmly believes that Member States should be subjected to a reasonable level of scrutiny regarding the health and safety of all workers who work excessive hours. The UK is aware that some Member States use a number of different methods to allow longer hours working, such as implementing the limits of the Working...
Time Directive per contract or exempting entire categories of workers, rather than implement the opt out. We would oppose the imposition of a single approach upon Member States that have different traditions—a variety of approaches can be equally valid providing there is adequate protection against coercion and measures to guarantee health and safety. There is a strong argument for subsidiarity—Member States should be given more autonomy to implement working time legislation in accordance with their own practices and traditions rather than be forced to comply to a "one size fits all" approach, which is clearly impractical given the different labour market traditions of Member States.

The social partners also raised a number of often competing areas where they believed the Directive could be changed to make technical progress. A majority of industry representatives want the Directive amended to solve the problems caused by on-call time being defined as work in the SiMAP ECJ case. A number also wanted the rigidity with which daily and weekly rest must be taken to be reduced as the lack of flexibility is causing problems for both businesses and public services. The introduction of a 12 month reference period without the requirement to agree it via a collective agreement or via a workforce agreement would allow greater flexibility for employers and workers.

Although not a change to the Directive, industry representatives added their voices to the need to retain the opt-out. One also made a number of suggestions to protect worker choice such as preventing the opt out from being signed at the same time as the employment contract or from being part of the employment contract itself, and for information regarding a workers’ right to withdraw their opt out to be part of the written opt out agreement itself.

One industry representative called for the current Directive to be replaced with simple principles, clear wording and flexibility, given the lack of a prospect of agreement and the complexity of the current legislation.

There is little appetite amongst UK social partners for any flanking measures at EU level. Of the few who responded on this question, it was felt that flanking measures would simply add to the already over complex legislation. Only Union representatives in the health sector thought that flanking measures could be useful (to provide clarification and guidance on aspects of the directive).

**List of UK Social Partners Asked to Contribute Views**

ALVA (Association of Leading Visitor Attractions).
Association of Train Operating Companies (ATOC).
British Chamber of Commerce (BCC).
British Holiday and Home Parks Association.
British Hospitality Association (BHA).
British Medical Association (BMA).
British Retail Consortium.
Broadcasting Entertainment Cinematography and Cinema Union (BECTU).
Chamber of Shipping.
Chemical Industry Association.
Chief Fire Officers Association.
Civil Aviation Authority.
Confederation of British Industry (CBI).
CBI (Northern Ireland).
CBI (Scotland).
Construction Industry Federation (CIF).
Engineering Employers Federation.
European Centre of Enterprises with Public Participation (CEEP).
Federation of Small Businesses.
Forum of Private Business.
Hospitality Association.
Institute of Directors (IOD).
Local Government Employers (LGE).
National Health Service Employers.
Nautilus UK.
Oil and Gas UK.
Royal College of Nursing (RCN).
Recruitment and Employment Confederation.
Scottish Chambers of Commerce.
Scottish Trades Union Congress (STUC).
The Chief Fire Officers’ Association (CFOA).
The Confederation of Passenger Transport.
The Freight Transport Association.
The Northern Ireland Committee of the Irish Congress of Trade Unions.
(NICICTU).
The Road Haulage Association.
Trade Union Congress (TUC).
UNITE Trade Union.
United Road Transport Union.