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

This edition includes correspondence from 9 May 2013- 30 November 2013

JUSTICE, INSTITUTIONS AND CONSUMER PROTECTION

(SUB-COMMITTEE E)

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Thank you for your letters of 27 March 2013 and 7 May 2013, which were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to clear these matters.

We are grateful for your further explanation as to why the Method could be renewed retrospectively for the period 1 July 2012 to 30 June 2013, although we note that adoption of the proposal to continue the Method would now involve using a legal basis (Annex XI of the Staff Regulations) which has now expired.

We remain unconvinced by your explanations for these proposals being matters of exclusive EU competence. We therefore do not accept this reasoning as grounds for restricting the role of national parliaments in raising subsidiarity concerns in respect of future similar proposals. However, we do not propose to take this matter further given, as we have indicated in previous correspondence, that we do not consider that these particular proposals give rise to substantive subsidiarity concerns.

In clearing the underlying proposal for reform of the Staff Regulations we continue to encourage the Government to achieve radical reform. As you know, we would have preferred to see the abolition of the Method, but the current Council proposal is an acceptable minimum.

We agree the increase in the retirement age, but would like to see a commensurate increase in the minimum age for early retirement and we urge the Government to continue pressing for the simplification and reduction of allowances.

22 May 2013

Letter from the Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

I am writing to provide you with a further update on negotiations on the above document, the subject of an Explanatory Memorandum of 16 January 2012 and cleared by your Committee in a letter to the Financial Secretary to the Treasury dated 22 May 2013.

I am now in a position to update your Committee, following the conclusion of the trilogue between the European Parliament, Council (represented by the Irish Presidency) and the Commission on 18 June and a hastily scheduled Committee of Permanent Representatives (COREPER) vote on 28 June. The haste was the result of the European Parliament’s insistence that there was a connection between the Staff Regulations and the Multiannual Financial Framework (MFF). The compromise that came out
of the trilogue, which I set out below, does contain some useful reforms, but was unacceptable to the 
UK overall, and we voted against it at COREPER. Whilst we did not take this action alone, we were 
not able to secure enough support from other Member States to halt endorsement of the proposals 
at COREPER. The package will now be sent to a Council for agreement, likely in October.

Let me be frank, these proposals do not go nearly as far as we would have liked, and whilst they will 
produce some savings over the seven years of the next MFF, they will not reform the EU Institutions 
to a level acceptable to the UK. The Government will continue to champion this cause at every 
possible opportunity, including in the EU’s annual budget process. We will not, however, be able to 
achieve either the savings or the reforms through the annual budget process that we could have 
achieved through the reform of the Staff Regulations. I deeply regret this state of affairs.

The Commission has provided an initial estimate of the savings it expects to see from the reforms in 
this compromise proposal, which includes a two year salary freeze, as agreed at the February 
European Council. I would suggest that the Committee notes that these are just unofficial estimates at 
this stage. Savings of €2.8bn are envisaged to result from these proposals, although this does not 
include any hypothetical savings from changes to the Salary Adjustment Method or Exception Clause.

I will now take the key areas of the EU staff regulations in turn, and set out the deal provisionally 
endorsed at COREPER. As I set out in my previous letter, the Commission has maintained that its 
original proposal of December 2011 should be adopted, following the February European Council 
Conclusions which did not cut EU administrative spending (Heading 5). The deal compromise deal 
was not the same as the Commission proposal, and did include some important reforms. Nonetheless, it was still not enough for the UK to be in a position to support it when a vote was 
called in COREPER.

Staff Regulations proposal endorsed by COREPER – details of the package

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endorsed at COREPER. As I set out in my previous letter, the Commission has maintained that its 
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was not the same as the Commission proposal, and did include some important reforms. Nonetheless, it was still not enough for the UK to be in a position to support it when a vote was called in COREPER.

Salary Adjustment Method

One of our primary aims was to break the connection between EU salary awards and changes in 
Member State civil services. This would have helped to achieve pay moderation and provided 
significant savings over the long-term. I am afraid to say that the compromise agreement achieves 
neither of these goals. The salary adjustment method remains directly connected to pay progression 
in a number of Member States’ civil services (through a sample taken from the civil services of 
Belgium, Germany, Spain, France, Italy, Luxembourg, Netherlands, Austria, Poland, Sweden and United 
Kingdom – the ‘specific indicator’), and reflects the previous system that has generated an increase of 
over 20% since 2004. The new method does create a limited capping of pay awards by creating a 
corridor (i.e. a margin) of -2% to 2%, within which the ‘specific indicator’ can fluctuate. This is, 
however, a very limited moderation. The ‘specific indicator’ is then multiplied by a ‘joint inflation 
index’ (this combines the HICP (a European Central Bank indicator of inflation, the Harmonised 
Indicator of Consumer Prices) in the case of Belgium and CPI (Consumer Price Index) in the case of 
Luxembourg) to create an update for the pay and pensions of EU officials. The proposal therefore 
only caps half of the pay update, and, moreover, any moderation that was achieved would only be 
defferred until the following year (although it would still be subject to the 2%/-2% corridor). If you 
would like further information on this rather complex formula, I or my officials would be happy to 
write or provide a briefing.

Exception Clause

The current Exception Clause – as the Committee is only too well aware – is ineffectual. In spite of 
the financial crisis, and the difficult economic situation across the EU, the Commission has not seen fit 
to “activate” the Exception Clause and suspend the annual salary adjustment process. The Exception 
Clause endorsed at COREPER would only defer the ‘specific indicator’ of the Salary Adjustment 
Method to the following year if EU GDP growth was negative, and cancel the ‘specific indicator’ if 
GDP growth came in below -3%.

Whilst an Exception Clause which contains a clear activation trigger is to be welcomed, given the 
Commission’s past refusal to apply the Clause, the proposal is too weak to be effective, and, in our 
view, will not contribute towards pay restraint.
Special Levy

The Special Levy – the additional tax paid by EU officials – is reintroduced at 6% for all staff, and at 7% for the most senior officials and Commissioners. Whilst this small tax increase is welcome, the Council’s proposal to limit deductions and include all remuneration (e.g. allowances) in order to maximise receipts was not accepted. Moreover, whilst the Government welcomes the progressivity of the new 7% rate, as it is currently constructed it would only impact on the pay received by around 200 staff and bring in very little revenue.

Pensions

The 28 June compromise increases the retirement age for new staff from 63 to 66, and for existing staff to 65 (with generous transitional measures). The accrual rate would also be decreased for new staff, and early retirement without penalty would be abolished. Whilst these limited changes are useful, they do not, in our view, go far enough in aggressively tackling pension costs, which are on course to make up over 20% of Heading 5 spending before the end of the next MFF in 2020.

Career Structure

On career advancement, the Council had been looking to slow progression (both merit-based and automatic) for all but the most talented staff whilst simultaneously limiting the most senior posts to those EU staff with significant responsibility and management of staff. The 28 June compromise does limit the number of those who can be placed at the highest grades, but does not slow down the career path enough. This is important, not just because of the need of promote meritocracy, but also because career progression has a clear impact on salary and pension costs.

Allowances

This is one of the areas of the Staff Regulations most clearly in need of significant reform, and I am disappointed to tell you that reform in this area has been marginal, at best. We had argued strongly for a rationalisation of the present complex allowances system and a significant reduction in the overall monetary value of the package. The limited reforms focus on travel allowance, but these will not bring significant savings.

Geographic balance

Some helpful language has been endorsed, stating that the EU Institutions ought to take “appropriate measures following the observation of a significant imbalance between nationalities among officials”. The Commission will produce a report in January 2017 outlining its work to date to ameliorate geographic imbalances. This is, however, only a small step, and will not result in any significant changes to EU recruitment practices that would benefit the UK.

Next steps

The Commission will likely need to propose further amendments to the Staff Regulations before the next MFF in 2020. In the meantime, this Government will continue to fight against unnecessary administrative spending at every opportunity; most frequently through the annual budget negotiations. There is, however, a limit to how much this can be expected to achieve given that annual budgets cannot alter the provisions of the Staff Regulations and that those regulations determine spending on pay, pensions and allowances which together comprise 70% of EU administrative spending. Nevertheless, the annual budgets will be an essential tool for ensuring that reforms such as the 5% headcount reduction are being met, and for making certain that the Institutions are not falling behind their own targets for reform.

I hope this letter provides a useful update for your Committee. If it would prove useful to the Committee, my officials would be happy to provide an oral briefing on some of the more technical aspects of this dossier.

24 July 2013

Letter from the Chairman to the Rt. Hon. David Lidington MP

Thank you for your letter of 24 July. We are grateful for the update on the outcome of the trialogue negotiations and the offer of supplemental briefing. Given that we share your objective of radical reform, we do not consider it necessary to take up that offer.

Like you, we are disappointed in the outcome of the trialogue negotiations, particularly in respect of the Method. As you know, we would have preferred to see its abolition, but would accept a double cap on it as an acceptable minimum. We note that the proposal now includes only a single cap on the formula for semi-automatic pay and pension adjustments.
We strongly support your continuing efforts to restrict EU expenditure on staff, to reform the EU career structure and to encourage greater representation of UK nationals at official level in the EU institutions.

We should be grateful for an update on any developments there may be in this matter.

11 September 2013

Letter from the Rt. Hon. David Lidington MP to the Chairman

I am writing to provide you with a further update on the EU staff regulations dossier, which was the subject of an Explanatory Memorandum of 16 January 2012, cleared by your Committee in a letter to the Financial Secretary to the Treasury dated 22 May 2013 and on which you wrote most recently on 11 September 2013.

Further to my letter of 24 July which outlined the content of the compromise text that came out of the trilogue discussions, I can now confirm that, as anticipated, the package was approved at the Transport, Telecommunications and Energy Council on 10 October 2013, despite the UK, the Netherlands, the Czech Republic, Austria and Denmark voting against. After being signed by the President of the European Parliament and the President of the Council, the legislative act will be published in the Official Journal of the European Union.

As I have confirmed before, this package was a disappointment in that it did not go far enough to reform the EU civil service. In light of that, the UK tabled a joint statement with the Netherlands, Czech Republic, Austria and Denmark at the Council. The text of our statement is:

As Council votes on the Staff Regulations today, it is a good opportunity to reflect on the negotiations and the next steps. The delegations which voted against the Presidency compromise want to outline why they did so and their hopes for the future of the EU civil service.

The review of the Staff Regulations was an opportunity to modernise the EU civil service, to rein in administrative spend and to ensure that the EU Institutions will be able to afford their future commitments on pensions and salaries. This is an opportunity that only comes every few years. Unfortunately, after nearly two years of intensive work by all parties, and despite broad agreement for those objectives, our delegations felt that the compromise presented did not match the comprehensive reforms which many Member States are already delivering in their domestic civil services. All of our public services are changing and the EU civil service will be left behind at its peril. A modern, effective and dynamic civil service is vital for the EU to be able to deliver on the important issues which matter to our citizens. We should not under-estimate how strongly the public’s support for the EU is linked to their perception of the EU Civil Service. In the next few years, we will continue to work constructively to ensure that EU citizens have the EU civil service they should expect, one that reflects our 21st century EU and one that the EU can afford to maintain.

The Commission are likely to need to propose further amendments to the Staff Regulations before the next Multiannual Financial Framework in 2021. In the meantime, this Government will continue to fight against unnecessary administrative spending at every opportunity; most frequently through the annual budget negotiations. As the Committee is aware, the Staff Regulations determine spending on pay, pensions and allowances which together comprise 70% of EU administrative spending in MFF Heading 5. Nevertheless, the annual budgets will be an essential tool for ensuring that other areas of administrative spending are restrained, that the reforms agreed as part of the updated Staff Regulations, such as the 5% headcount reduction, are being met, and for making certain that the Institutions are not falling behind their own targets for reform.

I hope this letter provides a useful update for your Committee.

31 October 2013
ACCESSION OF ALBANIA, ANDORRA, ARMENIA, GABON, MOROCCO, THE RUSSIAN FEDERATION, SEYCHELLES AND SINGAPORE TO THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (5218/12, 5306/12 - 5312/12)

Letter from the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

In my letter of 11 December 2012 I explained that the majority of Member States (including the UK) had refused to accept the European Commission’s claims to exclusive external competence in this area. Given the resulting impasse in the negotiation of these proposals I said it was likely that the Commission would refer this matter to the Court of Justice of the European Union.

I can now confirm that the Commission lodged a request for an Opinion on 21 June. This has the reference Opinion 1/13. I also confirm that the UK intends to submit written observations.

I will write to you again when there have been further developments.

18 July 2013

ACTIONS FOR DAMAGES UNDER NATIONAL LAW FOR INFRINGEMENTS OF THE COMPETITION LAW PROVISIONS (11381/13)

Letter from the Chairman to Jo Swinson MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

Thank you for your helpful Explanatory Memorandum of 25 June 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July. We decided to retain this matter under scrutiny.

Like you, we do not consider that this proposal gives rise to any subsidiarity concerns. We also share your support, in principle, for this proposal.

We should be grateful if you would keep us informed of developments in the negotiation of this proposal in due course.

25 July 2013

Letter from Jo Swinson MP to the Chairman

I tabled an Explanatory Memorandum on the above draft Directive in July. In your reply of 25 July, you asked for the Committee to be kept updated as negotiations progressed. The Directive has been a priority for the Lithuanian Presidency and they have followed a swift timetable and may put it to for agreement at the Council meeting on 2 December.

So far the UK has signalled that it is supportive of the intentions of the draft Directive; there are still articles which pose serious problems for other Member States. At present it seems unlikely there are enough Member States in favour of the text to have a qualified majority.

Recently there has been a discussion around the legal base. The proposed Directive had a joint legal base (Articles 103 and 114). As I explained in the Explanatory Memorandum, we agree with this legal base. Others however disagree and consider there should be a single legal base (Article 103). The former would require co-decision with the European Parliament; the latter only consultation. In both cases, Council voting would be by qualified majority. These disagreements on certain parts of the text and on the legal base have not stopped the Presidency indicating it wishes to obtain an agreement on the draft Directive at the Competitiveness Council on Monday 2 December.

Whilst other Member States still have substantive concerns with the Directive, and the legal base is still being discussed, if it is put to an agreement I have, after careful consideration, decided that the UK should vote in favour of the Directive.

The UK has a long-standing principle of being able to claim damages for breach of competition law, and we are pleased to see action being taken at a European level. As well as allowing consumers greater access to redress, an important consequence of this Directive is to deter anti-competitive activity. This in turn encourages competition, which is a key driver of productivity. We have been particularly welcoming of the proposals around the leniency regime, which is an important tool for
national competition authorities. The aim should be to ensure that leniency applicants (who have blown the whistle on cartels) should be no worse off when facing private actions for damages than those who do not apply for leniency, not necessarily to offer them additional protection from making redress to those who have suffered loss. The Commission has struck this balance.

In the Explanatory Memorandum I highlighted two articles where the UK would be seeking amendments: the passing on defence and the quantification of harm. Whilst the UK permits passing-on defence, I do not consider there is a strong case for legislation explicitly addressing the issue. Initially, the Directive required the defence to be permitted, and outlined when it could not be used and I considered this possibly difficult to use in practice. Now Member States will just be required to permit the passing-on defence, allowing flexibility as to how it operates. I am content with this approach.

The Directive introduces a presumption that a cartel caused harm, but there is a principle in UK law that claimants must prove loss. Whilst I'm not in favour of this article, a defendant would have the option to rebut the presumption and a claimant would still need to provide evidence to establish the level of harm.

It is on this basis that the UK has been supportive of the Directive to date, and I believe it serves our wider interest to be proactive in our support of the Directive and to play an important role in negotiating the Directive as it progresses. I hope that you will accept my explanation and apologies for this scrutiny override, and I will write to provide an update on progress after the Council meeting.

29 November 2013

ADDITIONAL ADVOCATES GENERAL AT THE COURT OF JUSTICE OF THE EUROPEAN UNION (5737/13, 7013/13)

Letter from the Chairman to the Rt. Hon. David Lidington MP, Minister for Europe,
Foreign and Commonwealth Office
Thank you for your letter of 8 May 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to retain this matter under scrutiny pending positive resolutions of both Houses of Parliament.

We note your explanation that the decision that will be put to the Council will be whether to appoint three additional Advocates General, and that the financial aspect of these appointments will be discussed during the annual budgetary framework next year.

We do not expect a reply to this letter.

22 May 2013

Letter from the Chairman to the Rt. Hon. David Lidington MP
Following positive resolutions of both Houses of Parliament earlier this week, the Sub-Committee has decided to clear this proposal from scrutiny.

We do not expect a reply to this letter.

20 June 2013

COMMUNITY TRADE MARK (8065/13, 8066/13)

Letter from the Chairman to the Viscount Younger of Leckie, Parliamentary Under
Secretary of State for Business, Innovation and Skills
Thank you for your Explanatory Memorandum of 17 April 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to retain the proposals under scrutiny.

We noted that you raised question marks over the subsidiarity of Articles 41 and 52 of the proposed Directive and Article 123c of the proposed Regulation. We do not, however, consider that these are sufficiently serious to merit the Committee recommending to the House that a subsidiarity reasoned
opinion be issued. We should be grateful, however, for an update as negotiations progress on these matters.

We agree that the provisions enabling the Commission to adopt subordinate legislation need further consideration. We note that you consider that some powers may be outside the delegated legislation procedure found in Article 290 TFEU, and we should be grateful if you would indicate more specifically which they are. You highlight the power of the Commission to fix fees as a matter of particular concern, however, the existing Trade Mark Regulation already provides for the Commission to fix fees using the implementing legislation procedure of Article 291 TFEU. Indeed, some of the other powers given to the Commission appear to be matters of implementation and therefore are more suitable for the implementation legislation procedure rather than the delegated legislation procedure. We should be grateful if you could inform us of your preferred route for fixing fees and what, if any, subordinate legislation powers you consider should be adopted by the procedure prescribed by Article 291 TFEU.

We support your concern that the surplus of the European Trade Mark and Designs Agency should be passed to the EU budget when it has been accrued from fees to businesses for the service of registration or renewal of a trade mark. It would seem fairer and more supportive to business to adjust these fees downwards.

We note that you are consulting stakeholders and should be grateful if you would inform us in due course of the issues they raise with the proposals, particularly any matters on which clarification is required.

We should be grateful for a response to this letter when there is progress on negotiations or if you wish to expand on any of the matters referred to in this letter.

22 May 2013

Letter from the Chairman to the Viscount Younger of Leckie

Further to my letter of 22 May 2013, the Justice, Institutions and Consumer Protection Sub-Committee of the EU Select Committee, has asked the Institute of Trade Mark Attorneys to supply their views on the reform package and has also considered the published views of European Communities Trade Mark Association and the International Trademark Association.

In the light of this further information, we should be grateful if, when providing your further update, you would provide your views on the following specific additional issues:

— Should the name of the Community trade mark become the “European Union trade mark” rather than the “European trade mark”?

— Is it desirable or practical for the proposal to provide greater precision as to what signs and indications, for example smells, should be capable of registration as trade marks?

— Is it desirable that applicants for a trade mark should be able to disclaim exclusive rights in respect of an element of any trade mark for which an application is made?

— Why should it be mandatory for an application for a national trade mark to be refused simply because there are absolute grounds for refusal in another Member State or because the same mark has acquired a reputation in another Member State?

— Should the protection afforded to third country trade marks by Article 5 of the proposed Directive and Article 8 of the proposed amended Regulation be extended to trade marks in use in the EU?

— Should it still be necessary for a trade mark proprietor to show a liability to confusion to obtain protection in double identity cases?

— Should the legal actions available to a trade mark proprietor to prevent the import of counterfeit goods be spelt out in the legislation?

— Is it necessary or desirable for the legislation to state expressly that it is legitimate to use an unregisterable element of another’s trade mark?
— Should the internal regulations governing collective trade marks be published and the requirement of use be satisfied by one subscriber to that mark?

— Would notification of the results of ex officio searches, without adding them to the register, meet the concerns on behalf of SME’s you raise in paragraph 26 of your Explanatory Memorandum in respect of Article 41 of the proposed Directive?

— To what extent should the proposals clarify what constitutes “genuine use” of a trade mark for the purposes of Article 16 of the proposed Directive and Article 15 of the proposed amended Regulation, and in particular the geographical extent of such use?

— Ought there to be greater responsiveness to users in the governance arrangements for the proposed European Union Trade Mark and Design Agency and in the adoption of subordinate legislation by the Commission?

— Should the proposals have stronger provisions encouraging mediation?

In the meantime we continue to hold these proposals under scrutiny.

10 October 2013

CONSUMER DISPUTES: ALTERNATIVE DISPUTE RESOLUTION (17795/11, 17815/11, 17968/11)

Letter from the Chairman to Jo Swinson MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

Thank you for your letter dated 24 April 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May 2013.

Your letter makes clear the Government’s intention to maintain its view that the UK’s opt-in applies to this proposed Directive. This stance raises a number of difficulties which neither your letter nor Written Statement to Parliament address to the Committee’s satisfaction.

The Government maintain their view that the opt-in applies to this proposal despite the fact that you failed to convince the other 26 Member States that a Title V legal basis was necessary. Furthermore, the text agreed by the Council in April makes no reference in its recitals to the fact that as far as the UK is concerned; the opt-in applies, as would ordinarily be the case. This omission could in our view raise transparency issues regarding the agreed text. We are concerned that anyone who reads the text will inevitably deduce that this Directive applies to the UK as a piece of legislation adopted in the usual way without being subject to the UK’s opt-in. If the UK purports to opt in, it may, of course, make no practical difference to the operation of the proposed legislation but given increasing sensitivities regarding legal basis and the operation of the UK’s opt-in the situation is uncomfortable.

The proposed Council Decision regarding the operation of Protocol 31 of the European Economic Area Agreement (Doc 6912/13) was recently scrutinised by Sub-Committee B, which assessed the effects on the Internal Market, Infrastructure and Employment. In that instance, your Explanatory Memorandum stated that the Government “decided not to assert the opt-in post adoption as any decision to opt in would have been subject to approval by the Commission, which would not accept that the opt-in applies in the absence of a [Title V] legal base”. In this case, in contrast to your approach to the ADR Directive, the Government abandoned their position that the opt-in applies and accepted that the UK is bound by the Decision.

We accept that in relation to the ADR Directive there is no practical impact on the Directive’s operation if the UK participates in this matter, because either it has opted in (as you assert) or, as appears to be the position of the institutions and the other Member States, the UK’s opt-in is not engaged. Nevertheless, we are concerned that a piece of EU legislation which in its text gives no indication that the UK’s opt-in applies may stand as an unhelpful precedent in any future case which the Government may wish to litigate. We are also concerned at the apparent lack of consistency in the Government’s approach.

We look forward to considering your reply by 7 June.

22 May 2013
Letter from Jo Swinson MP to the Chairman

Thank you for your letter dated 22 May 2013 regarding the Government’s application of the Opt-in Protocol in which you note a number of perceived difficulties arising from the UK’s approach to this proposal. I will attempt to address these in turn below.

Firstly, you raise concerns about there being no reference to the UK’s decision to opt-in, in the recitals to the ADR Directive. I should like to clarify that while this would ordinarily be the case when there is agreement that the opt-in applies, the same does not apply in instances such as this. As the EU institutions do not share our view that the Opt-in Protocol applies in the absence of a Title V legal base being specifically cited, we cannot expect the legislation to include a reference to our decision to opt in. Nevertheless as the Government’s view is that the opt in applies, we have sent an opt in letter to the Council. Further, to ensure a consistency of approach, it has long been Government policy to lay a Minute Statement asserting our right to opt-in, which we have done prior to the Council vote on this legislation. These steps formally record our decision to opt-in.

Your letter also notes that you consider the Government’s approach in this case to be in contrast with that taken in relation to the recent Council Decision regarding the operation of Protocol 31 of the European Economic Area (EEA) Agreement. I should point out, however, that the circumstances in that case differ from the ADR Directive in so far as the opt-in decision for Protocol 31 was being made post adoption. You will be aware that the Treaty provisions concerning post-adoption opt-ins differ from those made within the usual three month window following publication of a proposal, as they require the Commission to acknowledge the UK’s notification that it wishes to opt-in and confirm our participation. As the Commission disagreed with us that the Protocol applied in that case, the UK did not assert the opt-in on that occasion. The circumstances surrounding Protocol 31 therefore present a quite separate scenario to our decision in relation to the ADR Directive.

I can assure you that the Government will continue to give close attention to any provisions which could trigger the Opt-in Protocol and take steps to ensure the UK’s position is protected.

4 June 2013

Letter from the Chairman to Jo Swinson MP

Thank you for your letter dated 4 June 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 19 June 2013. We are grateful for your answers to our questions regarding the ramifications of the Government’s decision that the UK’s opt-in applies to this proposal.

We do not expect a reply to this letter.

20 June 2013

COPYRIGHT AND THE MULTI-TERRITORIAL LICENSING OF RIGHTS IN MUSICAL WORKS FOR ONLINE USES IN THE INTERNAL MARKET (12669/12)

Letter from the Viscount Younger of Leckie, Parliamentary Under Secretary of State for Business, Innovation and Skills to the Chairman

Thank you for your letter of 29 November 2012, addressed to my predecessor Lord Marland. As requested I am writing to update the Committee on the progress of the CRM dossier.

The Council Working Group has completed its initial line by line discussions of the draft Directive and has started to consider the Irish Presidency’s compromise proposals, published on 5 April (2012/0180(COD) (Annex A)) [not printed]. The rapporteur for the European Parliament’s Legal Affairs Committee (JURI), Mme Gallo, published a working document on the dossier on 4 March 2013. There will be an exchange of views on her draft report at the next JURI meeting on 29/30 May 2013. We understand that the dossier will be presented as an information point at the Competitiveness Council meeting on 30 May 2013, which Lord Green will attend. The Commission will maintain a reserve on the compromise text during discussions. Timetabling has yet to be confirmed but the European Parliament is pushing for swift negotiation and agreement before the end of its current term. The indicative date for 1st reading is 19 November 2013.
GENERAL PROVISIONS (ARTICLES 1 – 3)

SCOPE

The proposed definition in Article 3(a) of a ‘collecting society’ - based on the collective management of rights on behalf of members and a body that is owned or controlled by its members - has generated considerable debate. The definition, which reflects the classic structure of a collective management organisation, brings into scope most, but not all collecting societies.

There is growing support for modification to the definition so that it captures the realities of the way in which the market works. For example, some member states have indicated that many commercial organisations or agents carry out similar activities in collective rights management in competition with collecting societies. The Commission, the Presidency and the European Parliament are looking at solutions that would keep the level playing field intact. The UK welcomes this approach.

REPRESENTATION OF RIGHT HOLDERS, MEMBERSHIP AND ORGANISATION OF COLLECTIVE MANAGEMENT ORGANISATIONS (ARTICLES 4 – 9)

The Directive includes specific proposals for rules governing the relationship between collecting societies and rights holders. These include measures designed to ensure that rights holders can authorise the collective management organisation of their choice to manage rights and to withdraw such authorisation partially or completely (Article 5). This is essentially a codification of CJEU principles and jurisprudence.

The proposals that collecting societies should act in the best interests both of their right holders and their members, with fair and balanced representation of members in the monitoring of the collective management organisation’s activities and decision making - reflect the general principles required by the UK Government’s minimum standards for collecting societies. We anticipate the more detailed proposals to be without prejudice to, and not interfere with, existing legal forms.

MANAGEMENT OF RIGHTS REVENUE (ARTICLES 10 – 12)

The UK supports the principle of having a framework for the collection and use of rights revenue and investments pending distribution (Article 10), which takes into account the interests of rights holders.

The proposals around the distribution of the amounts due to right holders (Article 12) merit further consideration. Distribution is one of the most important issues for the protection of rights holders’ interests. The suggestion that funds should be distributed on at least an annual basis – or even more frequently if the rapporteur’s suggested six months is taken on board - could be an improvement for EU right holders in terms of recouping monies from collecting societies in the EU that distribute funds less frequently.

The current proposal is that, after three years, decisions about what happens to undistributed funds can be made by the general assembly (broadly speaking the membership) of the collecting society. This means that it might be possible for the funds to be retained by the collecting society, possibly for distribution to its members. This approach differs from the UK’s approach on undistributed funds in other policy areas, where we have steered away from the retention of funds by the collecting society being the default option. Ideally there would be a range of options about how to handle undistributed funds, in accordance with national rules.

RELATIONS WITH USERS (ARTICLE 15)

The proposals for objective, clear and transparent licensing criteria broadly align with the Government’s minimum standards for collecting societies. This requirement, in the UK’s case, is without prejudice to the collecting society’s freedom to propose differential tariffs to commercial users. Should there be a dispute between commercial licensees and collecting societies about the rates, it is open to the licensee to refer the case to the Copyright Tribunal for adjudication.

The proposed amendment to extend the provision of information obligations to users is interesting. This would make more robust provision for collecting societies to receive the information that they need to comply with the Directive. The UK is exploring in discussion whether it would be possible to manage the flow of information between rights holders and collecting societies through contractual obligations alone.
Title III of the Directive establishes the conditions that an authors’ collecting society must respect when providing multi-territorial licensing services for online rights in musical works. These include requirements for the efficient and transparent processing of data. There are also specific safeguards to ensure that the repertoires of all societies can be licensed across borders.

There is some concern on behalf of smaller collecting societies and/or smaller member states that the effect of Title III could be to create a smaller number of licensing hubs – which could incentivise the aggregation of rights and potentially swallow up the smaller repertoires. The rapporteur has highlighted the need to strike a balance between the different objectives of the Directive, in particular that the obligation in Article 29 to represent another collecting society for multi-territorial licensing should take into account the need to maintain cultural diversity.

Insofar as the proposals should result in improvements in databases, invoicing procedures and the like, they should generate efficiencies which could help reduce barriers to entry for business. Only those societies with systems and data that are capable of processing licences quickly and efficiently will be permitted to license these rights. These societies will be obliged to represent other collecting societies’ repertoires if requested (if already offering or granting licenses of the same type).

The proposed derogation for online music rights required for radio and television and broadcasting programmes (Article 33) is of interest insofar as the UK would welcome a provision that is technology neutral in its effect. Given that the line between broadcast and non-broadcast services has become increasingly blurred - as highlighted in the Commission’s recent Green Paper on the online distribution of audio visual works – there is some discussion about whether the proposed derogation fully captures the actual and future scope of broadcast activities.

Better Regulation Priorities

A priority objective for the UK is to seek to reduce overall EU regulatory burdens. The Commission’s proposal to exempt micro-entities from specific requirements in relation to supervision (Article 8.3) and transparency (Article 20.5) is in line with its commitment (which is not unqualified) to include exemptions for micros/lighter treatment for SMEs in existing and new proposals (EC Report November 2011). The European Parliament is united in its opinion that exemptions are not appropriate in this case as the provisions relate to the exercising of rights - a view reflected in proposed amendments to remove both exemptions.

10 May 2013

Letter from the Chairman to the Viscount Younger of Leckie

Thank you for your letter of 10 May which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to retain the matter under scrutiny.

The Committee was grateful for the update in advance of the Competitiveness Council of 30 May.

At this stage we confine ourselves to indicating some initial views on the matters you raise.

We agree that all organisations acting as Collecting Societies should, in principle, be covered by the proposal.

— We are concerned that permitting national rules to apply to the handling of undistributed funds may result in the retention of bad practice in other Member States and therefore disadvantage UK rights holders who may be entitled to undistributed funds.

— We agree that in principle the proposal should be technologically neutral.

— We favour, in principle, alleviating the burden on SMEs.

We do not expect a reply to this letter, but look forward to a further update in due course.

22 May 2013

Letter from the Viscount Younger of Leckie to the Chairman

Further to your letter of 22 May 2013, I am writing as requested to update the Committee on the progress of the CRM dossier.
There have been several developments since I last wrote to you: the dossier was presented as an information point at the Competitiveness Council in May; the Council Working Group completed its discussions of the Irish Presidency compromise text in June; in July the Presidency obtained an exploratory mandate from COREPER; and members of the European Parliament’s Legal Affairs Committee (JURI) Committee gave the rapporteur, Marielle Gallo, a unanimous mandate to begin negotiations with the Council in the autumn.

This update covers the current Presidency compromise proposal and amendments adopted by JURI. There are clear synergies between the two, but they remain subject to debate in informal trilogue discussions between the Council, Commission and Parliament before publication of a final text. Nonetheless, there remains a strong political will to adopt the Directive before the end of the current Parliament in 2014.

SCOPE OF DIRECTIVE

There is general consensus that the term “collecting society” should be replaced by “collective management organisation” throughout the text. This is purely about terminology and has no substantive effect on scope.

There is considerable support for a new provision whereby independent management entities would fall within the scope of the Directive. The aim of this proposal is to address concerns (shared by the UK) over the potential lack of a level playing field were the Directive to apply only to member based, not for profit collective management organisations.

There is also a new provision that allows for (but does not oblige) Member States to apply the same or similar provisions to CMOs established outside the Union but operating within a Member State. Provided this remains a permissive provision, this is unlikely to be an issue.

DISTRIBUTION OF MONIES TO RIGHTSHOLDERS

We note the Committee’s concerns about undistributed funds. There has been some movement on this issue. The amendments adopted by the Legal Affairs Committee and the Presidency compromise proposal move towards the UK’s position that monies that cannot be distributed should not automatically revert to the CMO. The Legal Affairs Committee supported the rapporteur’s proposal that undistributed monies should be managed separately and in an independent way in order to fund cultural, social or educational services. While it would not be optimal to have only a single option, the proposal, if adopted, would mean that undistributed funds would not automatically be retained by the CMO. Moreover, such funds would have to be independently managed. There would be additional controls such as a diligent search for the rights holder and the ability of the missing rights holder to subsequently reclaim their money.

RELATIONS WITH USERS

Both the JURI Committee amendment and the Presidency compromise text include proposals which place obligations on users to comply with CMO deadlines and information requirements. The UK has continued to lobby for further discussion around this proposal to ensure that the right balance is found between a reasonable request made by a CMO and the ability of the user to meet that request.

MULTI-TERRITORIAL LICENSING

In both the compromise amendment adopted by the JURI Committee and the revised Article 29 of the Presidency compromise proposal, a CMO which has agreed to manage the repertoire of another CMO for the purposes of multi-territorial must do so on the same terms as its own repertoire. This should help to alleviate concerns previously expressed by some smaller CMOs and/or smaller Member States about the potential for Title III to have a detrimental effect on smaller repertoires.

BETTER REGULATION PRIORITIES

The UK has raised the apparent dichotomy between the Commission’s proposal to exempt micro-entities from specific requirements in relation to supervision (Article 8.3) and transparency (Article 20.5) and its commitment (which is not unqualified) to include exemptions for micro/lighter treatment for SMEs in existing and new proposals (EC Report November 2011). The JURI Committee remains united in its opinion (as demonstrated by the recently adopted amendments) that exemptions
would not be appropriate in this case as the provisions apply to the exercising of rights. No existing UK CMOs would be affected by the absence of the micro-exemption.

22 July 2013

**Letter from the Chairman to the Viscount Younger of Leckie**

Thank you for your letter of 22 July, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting on 11 September. We decided to retain the matter under scrutiny.

The Committee was grateful for the update in the progress of negotiations and support your general approach to the negotiations.

In principle, it appears to us to be desirable that rules limiting the use of undistributed funds should apply to all collective management organisations, rather than for this to be left as an option for the Member States. This would prevent both the possibility that some organisations could benefit from a windfall and avoid giving them an incentive to avoid distribution. We do, however, accept your point that there should be reasonable flexibility as to the precise use to which these funds could be put.

Whilst we could support explicit provision that the information demands of collective management organisations should not put a disproportionate burden on the users of the copyright works, we consider that this has to be judged against the circumstances of the user (for example whether it is a large commercial organisation or a small non-commercial organisation) and be balanced against the need for the collective management organisations to maintain accurate records for the benefit of rightholders.

We do not expect a reply to this letter, but look forward to a further update in due course.

11 September 2013

**Letter from the Viscount Younger of Leckie to the Chairman**

Further to your letter of 11 September 2013, I am writing, as requested, to update the Committee on the latest developments on the progress of the Collective Rights Management (CRM) dossier.

Although the Council and Parliament negotiators have informally approved the proposals in a final draft Presidency text, this still needs to be adopted formally by Parliament and EU ministers. Ambassadors are due to vote on the text at Coreper on 13 November and the European Parliament’s Legal Affairs Committee (JURI) on 26 November. The JURI Committee has already made a public statement indicating that the final draft text is likely to be acceptable. The dossier therefore appears to be on course to meet the indicative timetable for Plenary First Reading/Single Reading on 3 February 2014. Although the timing has yet to be agreed, we anticipate that Ministers will be asked to vote at Council shortly afterwards.

Overall we believe the final dossier will be a good outcome for the UK as it should address issues with continental collecting societies, who may not have been paying British creators their fair share of licensing revenues, while requiring minimal additional regulation in the UK over the self-regulatory regime currently being put in place by the Government.

The scope of the Directive has been widened in part to capture those entities that behave like and carry out the functions of a CMO. This should create a more level playing field, help prevent distortions in the market and provide a contingency against a CMO trying to change its legal form to escape regulation. This is likely to work in UK rightholders’ interests as they seek to claim monies from CMOs in other Member States.

The distribution of royalties is one of the most important issues for the protection of creators’ interests. The revised text contains several measures designed to safeguard rightholders, particularly in relation to undistributed funds. These include:

— A requirement that CMOs distribute and pay sums due no later than 9 months after the end of the relevant financial year - three months quicker than originally proposed.

— A new requirement that undistributed sums be maintained in a separate account.

— Strengthened transparency requirements, including obligations on CMOs to publish comprehensive information about unidentified material to
rightholders, their representatives and to the general public. This will help reunite creators with rewards from licensing their work.

— A new requirement that CMOs formally declare monies as ‘non-distributable’ amounts after three years.

— A provision whereby the General Assembly of members may decide on the use of such funds, subject to a Member State’s laws on the statute of limitation claims; notwithstanding a right holder’s right to claim such funds retrospectively.

— A new provision allowing Member States to consider a number of options to limit or determine the use of undistributable amounts: including use in a separate and independent way to fund social, cultural and educational activities for the benefit of rightholders.

The provision for Member States to limit or determine the use of non-distributable amounts is an important principle in relation to the protection of non-members interests: for example when a CMO is authorised to operate an extended collective licensing (ECL) scheme or where money is inadvertently collected on behalf of a non-member rights holder in the context of a collective licence. There are no grounds for the CMO or its General Assembly to claim title or decide what should happen with the undistributed amounts that belong to non-members. In the UK, this would be a matter for the Crown after the expiry of the statute of limitation period.

In the round these provisions should make it easier to recoup monies from CMOs elsewhere that distribute funds less frequently and to identity funds that are due. Should there be concerns about the way in which a Member State is handling undistributed funds, the Directive establishes both an expert group (on which the UK will sit) and provision for information exchanges between the relevant competent authorities. This provides a route to curb any ongoing abuses.

In line with UK objectives, the final draft texts in Recital 18a and Article 15a that cover users’ information requirements now strike a reasonable balance between a CMO’s need for timely, relevant information on rights usage on the one hand and the need to avoid imposing disproportionate burdens on users on the other. The information requested must be limited “to what is reasonable, necessary and at the user’s disposal” and must take into account the specific situation of small and medium sized enterprises.

13 November 2013

CREATIVE EUROPE PROGRAMME (17186/11, 17575/11)

Letter from the Chairman to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Culture, Media and Sport

These documents were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting on 17 July 2013.

We understand that MMF figures for these proposals have now been confirmed and an agreement has been reached on the final text. We would like to confirm that these two documents were cleared from scrutiny in May 2012.

18 July 2013

CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS (10880/11)

Letter from Sajid Javid MP, Economic Secretary, HM Treasury, to the Chairman

Following on from the Economic Secretary’s update letter of 3 September 2012 and your clearance from scrutiny of the proposal on 31 October, we are pleased to be able to confirm that on 11 June 2013 the European Parliament agreed the Council’s position at first reading without amendment.

The Regulation was published in the Official Journal on 29 June 2013 as Regulation (EU) No. 608/2013. It will come into force on 1 January 2014.

13 July 2013
Letter from the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

Thank you for your letter dated 25 April 2013. I note that the Justice, Institutions and Consumer Protection Sub-Committee has decided to retain the proposal under scrutiny. You asked for an update as to the progress of the negotiations with the European Parliament and whether in light of them, I would recommend that the UK opts in to the measure once it is adopted. As the negotiations are still ongoing, I am not yet in a position to say what the opt in recommendation will be. However, once the text is adopted I will ensure that the Scrutiny Committees are afforded sufficient time to scrutinise the Government’s decision.

You asked for a response to your letter by 9 May. I am grateful to your clerk for an extension so that now I can include an update on the latest developments on the negotiations. I enclose a copy of the most recent version of the draft Directive, which the Institutions are currently considering as a basis for a First Reading Deal. Negotiations are still on-going, so this draft may be amended. The Presidency hopes to reach a First Reading Deal in early June.

The Sub-Committee remains concerned that the precise boundary of the proposal’s scope in relation to minor offences and deprivation of liberty continues to be difficult to draw. The Sub-Committee has previously sought to clarify this issue by drawing on the example of drink driving offences and the law of the breathalyser. In light of recent modifications to the text you have asked for further clarification with regard to this particular issue.

Although the term “minor offences” is not defined in the Directive, what are now recitals (9) and (10) provide examples of the sorts of offences envisaged. We would not, therefore, consider that drink driving offences are “minor” offences and we do not therefore consider that article 2(4) would have any application in respect of such offences. However, were there to be any doubt about this, article 2(4), as recently amended, is clear that for “minor” offences where deprivation of liberty can be imposed as a sanction or where the person is deprived of liberty in relation to that offence (i.e. he is taken into custody) then the Directive will apply. Given drink driving offences in the UK can attract a custodial sentence then section 2(4) would not carve these offences out of the scope of the Directive.

In respect of administering a breathalyser test, the latest version of the text sets out that the right to access a lawyer should apply before “questioning” by the police or other lawyer enforcement authorities. This latest version is still narrower than the Commission’s proposal which referred to “any questioning” and the recitals still clarify that “questioning” excludes preliminary questioning designed to establish whether or not a criminal offence has been committed in the first place. Questions asked by the police at the road side are still listed as an example of questioning which would be outside of the scope of the Directive. In that respect, we would consider that preliminary questions asked at the road side for the purposes of administering the breathalyser will, in most circumstances not, engage the Directive.

I turn now to other amendments which have been proposed and I have highlighted the most significant ones below.

Scope

A provision has been added to clarify that the Directive also applies to people who are initially interviewed as witnesses but who in the course of questioning by the police or other law enforcement authorities become suspects or accused persons. Recital 15 clarifies that when a person’s status changes the police should either make the person aware of the fact and allow him fully to exercise his rights under the Directive. Alternatively the police may decide to stop the questioning.

As you are aware, and as adverted to above in the discussion about drink driving offences, the provisions regarding minor offences have been further amended. The Directive now provides that “minor offences” where deprivation of liberty “cannot be imposed as a sanction” can be excluded from the scope of the Directive until the matter comes before a criminal court. But the text also now specifies that the Directive shall always apply in respect of minor offences when the suspect or accused person is deprived of liberty. In addition, recital 6a has been added to clarify that proceedings in relation to minor offending which take place within a prison and proceedings in relation to offences committed in a military context which are dealt with by a Commanding Officer should not be considered to be criminal proceedings for the purposes of this Directive.
The General Approach text would have given suspects or accused persons the right to communicate with a lawyer. This provision has been extended to include a right to meet with a lawyer in private. Recital 16c clarifies that the right to meet a lawyer should not prevent Member States from restricting the right to access by telephone. However, this is only in respect of certain minor offences where the suspect or accused person will not be questioned by the police or law enforcement authorities. Although the Directive indicates that it is without prejudice to Member States’ legal aid systems, this provision would nevertheless appear to be compatible with the provision of legally aided advice by telephone in England and Wales. Further, as you are aware, legal aid will be dealt with by a subsequent Commission proposal.

A number of amendments have been made to the provision regarding when it should be possible to derogate from the right to access a lawyer. As I highlighted in my letter to you of 20 December 2012, the Commission’s proposal and the EP’s amendments sought to restrict Member States’ ability to derogate from a suspect’s right to have access to a lawyer to situations where there is an “urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person.” We have been concerned to ensure that the text is reflective of the European Court of Human Right’s case-law which, in the leading case of Salduz, held that access to a lawyer may be restricted in the light of “compelling reasons”, but did not seek to define exactly what they do or do not include. The General Approach text achieved that aim.

The latest version of the text seeks to reach a compromise by specifying the circumstances in which the right to access a lawyer can be temporarily derogated from. In addition to the circumstance specified by the EP it would allow the police or other law enforcement authorities to question a suspect or accused person without a lawyer being present if it would be necessary for the investigating authorities to take “immediate action to prevent a substantial jeopardy to criminal proceedings.” It would also be possible to postpone access to a lawyer following a person’s deprivation of liberty if the geographical remoteness of a suspect or accused person would make it impossible to ensure the right of access to a lawyer without undue delay (although in these circumstances no questioning could take place). These provisions should be read in conjunction with recitals 23 and 23(a) – (c). The text would still allow derogations to be authorised by a senior police officer, rather than a judicial authority (which had been proposed by the Commission and supported by the EP). However, we remain concerned that the derogations are now unduly narrow and would not reflect the derogations available in the Police and Criminal Evidence Act 1984 and its Codes or in Schedule 8 to the Terrorism Act 2000. For example, it would not appear possible to derogate in order to prevent damage to, or allow recovery of, property.

Confidentiality of Communication Between a Lawyer and His Client

The General Approach text would have permitted Member States to derogate from this principle in some very limited exceptional circumstances. This is compatible with the case-law of the ECtHR. However, the EP and some Member States agree with the Commission that confidentiality of communication between a lawyer and a suspect or accused person should be absolute. The current text seeks to reach a compromise by changing the obligation on Member States from “guaranteeing” confidentiality to “respecting” it, but the possibility to derogate has been removed from the text of article 4 itself. The text at recital 24 has been amended to clarify the situations in which Member States are or are not required to respect confidentiality and also clarifies that this obligation does not extend to situations where there is a belief that the communication is being used to further a criminal purpose. Recital 25 provides further clarification about the scope of the Directive in respect of Member States’ national and internal security responsibilities.

The need to respect the principle of confidentiality of communications between a suspect or accused person and his or her lawyer is entrenched in domestic law and it is only possible to derogate from it in very exceptional and limited circumstances. The Government is concerned that the possibility to derogate has been removed from the compromise text. We want to ensure that domestic law enforcement authorities can continue to investigate and prosecute serious crime effectively, and to avert serious threats in the exceptional and compelling circumstances currently permitted in UK law.

The right to have a third person informed of the deprivation of liberty and the right to communicate with third persons and consular authorities

The current text specifies that if a suspect or accused person is under the age of 18, then they have the right to have the holder of parental responsibility, or another appropriate adult, informed if they are deprived of their liberty. In England and Wales, current law and practice only affords this right to detainees under the age of 17. However, following the recent High Court ruling in R on the
application of HC (a child, by his litigation friend CC) v 1. The Secretary of State for the Home Department, 2. The Commissioner of Police of the Metropolis) [2013] EWHC 982 (Admin), on the treatment of 17 year olds in police custody, the Government is considering the next steps that should be taken to implement the necessary changes. This will include amending the Police and Criminal Evidence Act 1984 Code of Practice C which provides guidance on the detention, treatment and questioning of people by police officers.

Article 5(4) has been added to ensure that a third party is always informed if a child is deprived of his liberty, even if it is thought to be necessary not to inform the holder of parental responsibility. In England and Wales, where an individual under the age of 17 is in police custody a person responsible for the child’s welfare or an appropriate adult will always be informed. As set out above, the Government is still considering its policy in relation to 17 year olds in police custody.

The circumstances in which Member States can temporarily postpone informing a third party that a suspect or accused person has been deprived of his liberty have been narrowed in a similar way to the derogations to the right to access a lawyer.

A new provision has been added, Article 5a, which gives suspects or accused persons who are deprived of their liberty the right to communicate with a third person of their choice. We have been keen to ensure that this provision is sufficiently flexible to ensure that Member States are able to protect against interference with criminal proceedings and harm to others, especially victims. The current text is intended to give Member States flexibility to limit or defer the exercise of this right.

A provision has been added to Article 6 which would give suspects or accused persons who are deprived of their liberty the right to converse and correspond with their consular authorities and the right to have legal representation arranged by them. Article 36 of the Vienna Convention gives consular authorities a corresponding right, subject to the suspects or accused persons wishes. The new provision is also subject to the person’s wishes as well as being subject to the agreement of the consular authorities.

EUROPEAN ARREST WARRANT PROCEEDINGS

The EP supports the provisions in the Commission’s proposal which would give a person arrested pursuant to a European Arrest Warrant (EAW) the right of access to a lawyer in the issuing Member State. These provisions had been deleted in the Council’s General Approach. The latest version of the text contains some limited provisions in this regard. The competent authority in the executing Member State would be obliged to inform the requested person that he has a right to appoint a lawyer in the issuing Member State. If the requested person wants to exercise that right, he can request that the executing Member State inform the competent authorities in the issuing Member State. The issuing Member State would then be obliged to provide information to facilitate him in appointing a lawyer. Recital 35(d) clarifies that that information could include providing a list of lawyers. Under the terms of the Directive the suspect or accused person only has the right for a lawyer in the issuing Member State to undertake a limited role, which is restricted to assisting the lawyer in the executing Member State by providing him with information and advice. A number of Member States were keen to ensure that this new obligation does not risk creating delays in the execution of EAWs. Therefore Article 9(6) clarifies that the right of a requested person to appoint a lawyer in the issuing Member is without prejudice to the time limits set out in the EAW Framework Decision.

REMEDIES

Additional text has been added to Article 11 which would oblige Member States to ensure that in the assessment of evidence obtained in breach of a suspect or accused persons right to a lawyer that the rights of the defence and the fairness of the proceedings are respected. This provision is without prejudice to national rules and systems on the admissibility of evidence.

VULNERABLE PERSONS

A new general provision has been added at Article 11a which would require Member States to ensure the particular needs of vulnerable suspects and accused persons are taken into account. The EP had requested a number of more specific amendments regarding vulnerable persons; however, the Commission intends to bring forward a separate measure in this area in late 2013.

I will update the Committee on the outcome of the upcoming negotiations. If a First Reading Deal is reached, the Government will reconsider its initial opt in decision based on the text of the adopted
Directive. As I have set out above, I will ensure that the Committees have sufficient time to scrutinise the decision.

30 May 2013

Letter from the Chairman to the Rt. Hon. Chris Grayling MP

Thank you for your letter dated 30 May 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 26 June 2013.

We have decided to retain the proposal under scrutiny.

It appears from your latest letter that the pattern set for these negotiations, where the contents of the proposal have ebbed and flowed, has continued and we are very grateful to you for your detailed analysis and explanation of the latest text.

In our letter to you dated 8 December 2011 we raised six concerns regarding the proposal as originally brought forward by the Commission:

— The requirement that evidence obtained in breach of the Directive is automatically inadmissible;
— The lack of flexibility in the draft allowing Member State authorities to deny access to a lawyer in exceptional circumstances such as terrorist offences;
— That the individual’s right of access to a lawyer should not apply to non-custodial situations and should only become necessary at the point in time when the suspect’s liberty is curtailed;
— The complete guarantee given to the confidentiality of client/lawyer consultation without the possibility of interference on rare occasions;
— The requirement that prior to waiving the right to a lawyer the suspect must have received legal advice on the consequences of the decision; and
— The potential ramifications of requiring face-to-face access to a lawyer, in particular for the length of time individuals spend in custody.

Whilst your letter is clear that this latest text is still the subject of ongoing negotiation with the European Parliament, we take this opportunity to say that these six points remain our key concerns with this proposal. In light of our concerns we note your description of the permissible derogations in the latest text as “narrow” and your comments regarding the approach to lawyer/client confidentiality.

We look forward to hearing from you in due course on the progress of the ongoing negotiations and, once the Directive is agreed, to considering in detail both the text and the Government’s (re)consideration of the opt-in question.

26 June 2013

Letter from the Rt. Hon. Chris Grayling MP to the Chairman

Thank you for your letter of 26 June. I note that the Justice, Institutions and Consumer Protection Committee has decided to retain this proposal under scrutiny.

Since I last wrote to you a First Reading Deal has been agreed in principle between the negotiating parties. I enclose a copy of the latest version of the text. The text is currently subject to legal-linguist revision and it is expected that the Justice and Home Affairs Council will be asked to adopt it on 7 October, following the expected endorsement of the text by the European Parliament.

I will provide you with a copy of the final text once it has been adopted. No significant amendments have been made to the draft Directive since I last wrote to you summarising the key amendments that had been made to the proposal and enclosing a copy of it.

I would like to thank you once again for the detailed scrutiny that your Committee has conducted on this dossier. I note the Committee’s letter to the Department of 8 December 2011 raised six concerns regarding the proposal as originally brought forward by the Commission and that it was the Committee’s view that the UK should remain outside the Directive if it was not possible to resolve them during negotiations.
The Government is currently considering whether it would be in the UK's interests to apply to opt in to the Directive once it has been adopted. I will write to you again in due course to update the Committee on that decision. If there is any question of a post-adoption opt-in we will seek the Committee's views in accordance with the approach described in the Code of Practice.

9 September 2013

EFFECTIVE ROMA INTEGRATION MEASURES IN THE MEMBER STATES (11738/13), STEPS FORWARD IN IMPLEMENTING NATIONAL ROMA INTEGRATION STRATEGIES (11857/13)

Letter from the Chairman to the Rt. Hon. Don Foster MP, Parliamentary Under-Secretary of State, Department for Communities and Local Government

Thank you for your Explanatory Memorandum of 24 July 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 9 October.

While we share your concerns on some of the measures in the draft Council Recommendation being too prescriptive, we believe that it provides a set of useful guidelines for Member States to consider when implementing their national strategies on Roma integration.

Notwithstanding the above, we support your efforts in seeking a flexible Recommendation that takes into account the varying situation of Member States. We should be grateful for an update, in due course, on the progress of negotiations.

In the meantime, we clear the draft Recommendation from scrutiny.

10 October 2013

ESTABLISHING A UNION ACTION (12558/12)

Letter from the Chairman to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Culture, Media and Sport

Thank you for your letter of 2 May 2013. The Sub-Committee decided to clear the proposal from scrutiny.

We are grateful for your update on negotiations and note the success of your efforts in negotiating what we consider to be sensible amendments to the proposal.

15 May 2014

ENHANCING THE DEMOCRATIC AND EFFICIENT CONDUCT OF THE ELECTIONS TO THE EUROPEAN PARLIAMENT (7648/13, 7650/13)

Letter from the Chairman to the Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

Your Explanatory Memorandum on this Recommendation and the accompanying Communication were considered by the Justice, Institutions and Consumer Protection Sub-Committee on 22 May. We thank you for your account of the Commission’s recommendations and your view of them.

We endorse the motivation underlying the Commission’s ideas. Measures which would address the issues of low voter turnout in European elections and direct voters to the role of the European Parliament should go some way to resolving the democratic deficit which has been identified in EU affairs.

We think the idea that the links between national and European parties should be made plain by those parties to assist voters is welcome, though we agree with you that no change in the law should be made imposing any obligation in this respect. We also endorse the recommendation to parties that they declare support for a particular candidate whom they would like to see proposed for the Presidency of the Commission. While the European Parliament has no power of nomination, it must
elect a candidate and that recommendation would make more transparent one of the roles of the European Parliament and could engage voters.

The idea of a common election day seems unlikely to do much for voter turnout and would run counter to national political cultures in more states than just the UK. We consider that recommendation to be disproportionate to the Commission’s aims and based on the false premises that voters in one state might be influenced by the voters in another state.

Recommendations 5) to 8) concern practicalities. We note your assessment that recommendation 5) is not practicable, but that you acknowledge that the others address real issues. The place to deal with those issues may be in the legislation on the right to vote and stand as candidates or materials, such as guidance notes, associated with that legislation.

We clear both documents from scrutiny and do not expect a reply to this letter.

22 May 2013

EU ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS (10817/10)

Letter from Damian Green MP, Minister for Policing and Criminal Justice, Home Office, to the Chairman

You were recently copied into a letter from the Secretary of State for Justice dated 15th April to the European Scrutiny Committee on the EU’s Accession to the ECHR. I write to inform you that the Commission has now referred the provisionally agreed Accession Agreement to the European Court of Justice for an opinion on the Agreement’s compatibility with the EU Treaties.

We received the English translation of the Commission’s request for an opinion on 1st August. I enclose a copy together with a copy of the negotiation report containing the text of the draft Accession Agreement and Explanatory Report.

Member States are able to intervene in the process to offer their comments on the points raised, or to put before the Court additional points on the Accession Agreement’s compatibility with the EU Treaties. We intend to intervene and would welcome any comments you might wish to make. The deadline for submitting observations to the Court is 15th October.

16 August 2013

Letter from the Chairman to Damian Green MP

Thank you for your letter of 16 August which was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 9 October. We are grateful for your further update on progress and note that the process leading to EU accession will need to await the Opinion of the Court of Justice. We do not propose to comment on the Commission’s Request for an Opinion, but would be interested to see your observations to the Court in due course. When do you estimate that the Court will publish its Opinion?

Please continue to keep us informed of progress in this important matter, in particular when you expect proposals for the EU internal rules consequential on accession to become available.

10 October 2013

Letter from Damian Green MP to the Chairman

Thank you for your letter of 10 October to Damian Green.

The UK lodged observations in the Article 218(11) process on 15 October 2013. We have not yet been notified by the Court of its timetable, we will keep you updated regarding timings of the Court process.

I note that you asked to see the UK’s observations. Since the Court documents are confidential, I regret that I am unable to share them with you until the litigation has concluded.

We continue to press for the Commission to bring forward a proposal on the EU Internal Rules as soon as possible. The Commission has published its 2014 work programme which notes a legislative initiative on the Internal Rules. However we understand that the Commission only intends to present a proposal on the Internal Rules following the receipt of the Court’s Opinion. I understand that the
Commission’s Work Programme will be subject of an Explanatory Memorandum shortly. We do not know whether the Internal Rules will continue to be discussed informally in FREMP in the absence of a legislative proposal.

I will keep you informed of any developments regarding these matters.

4 November 2013

Letter from the Chairman to the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your letter of 4 November which was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 20 November. We are grateful for your further update on progress and your undertaking to continue keeping us updated on this important matter.

21 November 2013

EU CITIZENS: YOUR RIGHTS, YOUR FUTURE (9590/13), ON PROGRESS TOWARD EFFECTIVE EU CITIZENSHIP 2011-2013 (9592/13)

Letter from the Chairman to Mark Hoban MP, Minister for Employment, Department for Work and Pensions

Thank you for your Explanatory Memorandum dated 1 June 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 July 2013.

We have decided to retain the Commission report EU Citizens: your rights, your future under scrutiny and we have decided to clear from scrutiny the accompanying report On Progress toward effective EU Citizenship 2011-1013.

We note that the Commission’s EU Citizens: your rights, your future report covers a wide ranging list of policy areas and includes 12 recommendations for action, nearly all of which are aspirations expressed in general terms. This lack of detail, particularly with regard to how the Commission’s goals will actually be achieved, means inevitably that the Committee’s ability to scrutinise each of the Commission’s 12 recommendations is limited for the time being. For example, the Commission proposes the creation of a mutually recognised EU disability card (recommendation six) which seems to the Committee to be a sensible suggestion. However, as you say in your Explanatory Memorandum, the utility of such a proposal can only be assessed once the actual detail is known and its value can be measured against its cost, feasibility and impact.

We recognise that weighed against this problem is the fact that the vast majority of the Commission’s recommendations will require legislation to bring them into force which in turn, will form the basis of individual scrutiny by the EU Committee. Subject to our comments below regarding recommendations one, 12 and seven, we look forward to considering on an individual basis any legislation brought forward by the Commission to give effect to the recommendations in its report. We do however take this early opportunity to say that we can see that many of the Commission’s recommendations for action as they appear in the report could clearly raise subsidiarity concerns.

In relation to recommendation one and the EU’s rules governing access to unemployment benefits, we recognise that at a time of high youth unemployment the Commission’s proposals have, at least at first sight, attractions. In the case of the unemployed who travel to another Member State to look for work, are the Government satisfied that the EU’s current legislation on the coordination of and the communication between states’ social security systems is sufficiently robust to protect the taxpayer’s interests?

Recommendation 12, addresses EU citizen’s participation in the democratic life of the EU. We note that the Commission recommends proposing “constructive ways to enable EU citizens living in another EU country to fully participate in the democratic life of the EU by maintaining their right to vote in national elections in their country of origin”. In reply, you state that whilst you have no plans to change the current UK 15 year time limit on overseas voting rights you are “content” to consider such proposals as they arise. Unfortunately, in our view, your Explanatory Memorandum lacks detail on this specific recommendation and we ask you for a more detailed explanation of the full ramifications of such a policy change. We also ask whether the Commission’s aim would be better pursued by introducing a right for all lawfully resident EU citizens to vote in the national elections in their host state (where most will be paying tax) rather than in their state of origin.
Finally, recommendation seven regards the proposed legislation addressing vulnerable suspects in criminal proceedings. This legislation has been eagerly awaited by this Committee. It formed part of the Roadmap on Criminal Procedural Rights agreed by the Member States and welcomed by this Committee in 2009 and later formed part of the Committee’s inquiry and subsequent report on the EU’s criminal procedure which was published last year. The publication of this legislation has been anticipated for some time and we note that the Commission now promises it by “the end of 2013”. Does the Government expect the Commission to meet this latest target date?

We look forward to considering your reply by 26 July.

11 July 2013

Letter from Mark Hoban MP to the Chairman

Thank you for your letter of 11 July, clearing the Commission Report “On progress towards effective EU citizenship 2011-13” and asking for further information on some aspects of the “EU Citizenship Report 2013”. As you recognise in your letter further proposals by the Commission will be necessary to implement many of the aspirations in the report. The Government will consider each proposal brought forward to implement the Citizenship Report, and they will be subject to scrutiny in their own right.

Concerning your specific query on recommendation 1 in the EU Citizenship Report 2013, you ask whether the Government is satisfied that the EU’s current regulation on the coordination of and communication between states’ social security systems is sufficiently robust to protect taxpayers’ interests. The Prime Minister, earlier this year, reiterated our commitment to free movement, but made clear that we have concerns about the impact of inactive migrants on welfare systems and public services. We believe that the UK’s rules on access to benefits are fair and in line with EU legislation – they fully support the freedom of workers to look for work within the EU, while making sure there are reasonable restrictions on access to benefits for those who have never worked in the UK and who have no intention of doing so.

As you will be aware, the European Commission is challenging the UK Habitual Residence Test; whereas we consider it can be justified in order to control the burden on the welfare system, by legitimately requiring a minimum degree of connection with and integration into UK society. More broadly, a number of other states share our concerns about the impact of migration on benefits and public services, and we are working with them to identify areas where amending EU Regulations can achieve a fairer balance between rights and responsibilities.

With regards to recommendation 12, you will be aware that British citizens overseas can register to vote in Parliamentary elections in the UK if they were previously registered in the UK within a 15 year time frame. Parliament decided to impose a time limit because it was considered that generally, over time an individual’s connection with the UK is likely to diminish.

The UK Government remains open to discussion about whether the 15 year time limit remains appropriate, but is not minded at present to change the law. As well as the fact that removing the time limit is not current Government policy, there would be practical difficulties as a result of our constituency based system that would need to be carefully considered if it were to be decided that removing the time-limit was appropriate. If any change is proposed Parliament will of course need to re consider the issue.

Regarding the voting rights of EU citizens’ resident in the UK, we believe that it is appropriate that they should be entitled to vote in European and local Government elections as provided for under EU law. However, whilst we are supportive of proposals to raise awareness amongst EU citizens of their existing electoral rights, extending the franchise for UK Parliamentary elections to include EU citizens would be a significant departure from existing arrangements. Citizenship of the country of residence is the normal prerequisite for the right to vote at Parliamentary elections in most democracies, including other EU states.

The UK electoral franchise is not linked with any liability to pay tax and it does not necessarily follow that, because someone pays taxes or has the right to live here, he or she has the right to vote. Many other foreign nationals with no right of enfranchisement also pay taxes in the UK, and some people who are exempt from paying certain taxes – for example those reaching the age of 18 and living with their parents, who do not pay council tax – nevertheless have the right to vote.

On your query regarding recommendation 7, as you noted the Commission has stated that it intends to propose a package of legal instruments to strengthen citizens’ procedural rights when they are suspected or accused in criminal proceedings, taking into account the specific situation of children and
vulnerable citizens, by the end of 2013. The Government has no further information on the likely timing of this proposal, which is a matter for the Commission.

17 July 2013

Letter from the Chairman to Mark Hoban MP

Thank you for your letter dated 17 July 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 11 September 2013.

We have decided to retain the proposal under scrutiny.

We raised three issues of substance with you. First, we sought your assessment of the EU’s legislation on access to unemployment benefits, in particular regarding the mobile unemployed and the protection of the public purse. (For example, the rules contained in Regulation 883/2004 on the coordination of social security systems; and Regulation 987/2009 laying down the procedures for implementing Regulation 883/2004 on the coordination of social security systems.)

Your letter sets out your general concerns with the operation of the EU’s free movement rules and you clearly express your view of the negative impact that migration can potentially have on the public purse. Unfortunately, however, you do not directly address the Committee’s question on the specific operation of the legislation governing the exchange of information and the policing of the rules on access to unemployment benefit at any point. You argue that the “UK’s rules are fair and in line with EU legislation”, but it is only by implication that the Committee is left to conclude that the Government are dissatisfied with the operation of the EU’s current legislation on the mobile unemployed. In addition, your answer also ignores the international nature of the EU’s free movement rule. For example, you do not address the adequacy of the EU’s rules to police the benefits claimed abroad by unemployed UK citizens who travel to other EU Member States to look for work but continue to receive unemployment benefit for up to three months from the UK’s public purse.

In light of the fact that EU law imposes registration and certification requirements on unemployed EU citizens seeking to maintain their claim to unemployment benefit when moving between Member States, could you please inform the Committee:

— How many non-UK EU citizens are currently registered in the UK as a person seeking work under Article 64 of Regulation 883/2004? And,
— How many UK citizens are currently registered with the UK authorities under Article 55 of Regulation 987/2009 as being entitled to benefits under Regulation 883/2004?

Second, on EU citizens’ voting rights, whilst we note your comment that extending the franchise for UK parliamentary elections to include EU citizens lawfully resident in the UK would be a “significant departure from existing arrangements”, we would suggest that your statement that citizenship is the “normal prerequisite” for the right to vote in parliamentary elections “including [in] other EU states” merits further discussion. The UK has its own history of extending parliamentary voting rights to a range of people who are not citizens of this country, including Irish nationals and nationals of some Commonwealth countries. In addition, we understand that some EU Member States have already extended the franchise to lawfully resident EU citizens. Can you advise the Committee which EU Member States have already extended the right to vote to lawfully resident EU citizens? And, in light of all these factors, we also ask you to elucidate on your objections to this reform?

Third, regarding the forthcoming Commission legislation on vulnerable suspects, we note your statement that this is a matter for the Commission and that the Government have no information to supply the Committee.

We look forward to considering your response when this House returns in October.

11 September 2013
Letter from the Chairman to the Rt. Hon. David Lidington, Minister for Europe, Foreign and Commonwealth Office

Thank you for your letter of 16 April, which the Justice, Institutions and Consumer Protection Sub-Committee considered at its first meeting of the new Session on 22 May.

We are pleased to note that the Government's approach to these proposals is close to that of the Committee. We agree that the rules on parties and their funding must maintain a balance between the requirements for independence and those of financial propriety where taxpayers' monies are concerned, and that the process for registration should not be unduly burdensome. We confirm our initial support for these proposals. We are pleased also that the Opinion of the Court of Auditors is actively being considered in discussion of the proposals.

We now clear the Opinion from scrutiny while keeping the two proposals for legislation under scrutiny pending further progress in the negotiations. We should be grateful for an update on progress in due course but, subject to that, do not expect a reply to this letter.

22 May 2013

Letter from the Rt. Hon. Greg Clark MP, Financial Secretary, HM Treasury, to the Chairman

Thank you for your letter of 14 March, in reference to my letter of 24 February and Explanatory Memorandum (EM) on the European Court of Auditors’ (ECA) Opinion (8/2012) on the draft Directive in question. I apologise for the late response to your letter. I also received a letter from the House of Commons European Scrutiny Committee in March, similarly relating to the Draft Directive on the fight against fraud to the Union’s financial interests by means of criminal law (“the PIF Directive”) and wanted to ensure that both Committees were fully informed of the latest position.

In your letter you request an update on how negotiations are progressing on the PIF Directive. The Presidency has said that they would like to agree a General Approach on the Directive at the Justice and Home Affairs (JHA) Council on 6 June. Negotiations are still ongoing at official level and I am not yet in a position to send you a copy of the final text which will form the General Approach, though I will do so when it is issued. I hope the information provided will allow your Committee to clear the draft Directive from scrutiny, so that the Government is able to support the General Approach, in the event that we are satisfied that it is in our interests to do so, as set out below.

With regard to the legal base of the draft Directive, the Government believes that Article 325 of the Treaty on the Functioning of the EU (TFEU) is not the correct legal base for this draft Directive, which is concerned with criminal offences and sanctions, and that the contents instead require an Article 83 legal base. A number of other Member States share this concern and the Council has been working on the basis of Article 83(2) although a final decision on this will only be taken at General Approach stage. We very strongly support the Presidency’s decision to work on the basis of Article 83(2) and it is a priority to ensure that we secure Council agreement and this is confirmed in the General Approach. I should perhaps reiterate that this has been a major negotiating priority and we are pleased the change of legal base has gained support from the Presidency and other Member States. The Government is keen for an Article 83(2) legal base to be endorsed at the Council on 6 June and would ask again that any scrutiny reserves are lifted so this can be achieved.

I should like to reiterate that it has long been Government policy to seek the addition of a Title V legal base to proposals that contain JHA obligations. The advantage of doing so, as the Committee will be aware, is that it puts the application of the opt-in beyond any doubt as all parties, including the European Institutions, recognise that the opt-in applies in such circumstances.

With respect to the inclusion of mandatory minimum sentences in the proposal, we consider that such a provision may violate the principle of proportionality in sentencing and undermine judicial discretion. Such provisions are rare in the UK; we currently provide for minimum terms of imprisonment only in relation to exceptionally serious offending. For example, in England and Wales we currently provide for minimum terms of imprisonment only for a small number offences related to...
third offences of class A drug trafficking and domestic burglary, and to firearms and other dangerous
weapons. These are offences which have raised particular public concerns and all have a provision to
allow the court not to impose the mandatory minimum sentence if such a sentence would be unjust in
all the circumstances of an individual case.

Such broad obligations to impose minimum terms of imprisonment for the range of offences in the
Directive would remove the ability of judges to determine an appropriate criminal sanction having
regard to all the circumstances of a particular case, for these offences. This is a fundamental feature of
sentencing practice across the UK. In Council negotiations on the Directive, a majority of other
Member States have indicated that they share our concerns about the inclusion of minimum terms of
imprisonment in this Directive and we are pleased to report that they have been deleted from the
current version of the Presidency’s text.

Moving on to the extent of legislative changes required by this draft Directive; during the negotiations
we have sought to ensure that the draft Directive is compatible with existing UK law. However, we
note that during Council negotiations to date, Article 4(1) has moved towards becoming a more
specific offence relating to the abuse of the tender process in EU procurement exercises. Negotiations
on this provision are ongoing. We are negotiating with a view to ensuring that this
provision is compatible with existing offences applicable in the UK. In addition, Article 11 of the draft
Directive would require Member States to “establish jurisdiction” over offences committed by their
nationals anywhere in the world. We do not currently take nationality extraterritorial jurisdiction
over the range of offences set out in the draft Directive, with the exception of those relating to
bribery. The provisions relating to jurisdiction have not been amended during Council negotiations.

In addition to those set out above, significant changes which have been made to the text by the
Presidency during Council negotiations include the exclusion of VAT from its scope; the clarification
of provisions on freezing and confiscation; and an update on limitation periods for the offences in the
draft Directive, as detailed below.

The Commission’s proposal included VAT revenue within the scope of the draft Directive. The
Government’s view is that the administration of VAT is a matter for Member States within the
framework of the EU VAT system, and that the application of VAT rules (including any civil and
criminal sanctions) should remain solely under the control of the Member State. A majority of other
Member States share this view, and, in the current text of the Presidency’s paper, Article 2 of the
draft Directive is clear that VAT revenue is excluded from the scope of the Directive.

Article 10 of the draft Directive has also recently been amended to make clear that the provision
applies only to those Member States which are participating in the separately proposed ‘Directive on
the Freezing and Confiscation of Proceeds of Crime in the EU’, which is currently subject to
negotiations and to which the UK has chosen not to opt in at the outset. This is a change which has
been made recently. We strongly support this clarification and wish to ensure that it forms part of the
General Approach.

The provisions in Article 12 of the draft Directive, on limitation periods for the proposed offences,
have also been amended during Council negotiations. The text has moved towards linking these to
‘serious’ offences; and towards reflecting this in Article 7 on penalties (which combines Articles 7 and
8 of the Commission’s proposal), whereby a distinction is drawn between offences which are deemed
‘serious’ and those which are not. The text does not stipulate what is meant by ‘serious’; this is left to
Member States to determine. The provisions in Articles 7 and 12 are compatible with existing UK
practice.

The Government views the Commission’s claim to there being a reduction in fraud with great
reservation. National practices of reporting irregularities and suspected fraud vary, particularly with
regards to timeliness and completeness, and so the amount quoted by the Commission could likely be
mere estimates. Most importantly, although there is a definition of ‘suspected fraud’ against the EU
Budget in the Regulations, Member States do not use the term consistently as to what constitutes
‘suspected fraud’ and ‘other irregularities’ due to the different interpretation of criminal risks. As a
result, some communications received by the Commission do not distinguish between the two. This
will affect the Commission’s statistical assessment in providing a true picture of the level of fraud. The
Commission is reviewing the practical modalities for the communication of irregularities in order to
improve the notification system and to clarify, in particular, the concept of ‘fraud’ and ‘irregularity’. It
plans to enter discussion on this with Member States in the Advisory Committee for the
Coordination of Fraud Prevention. The Government will fully engage in these discussions when they
take place.

With regards to the information being given to Member States to allow them to make decisions, the
Government would prefer the Report to provide a more detailed country-by-country analysis per
budget sector so that action at both EU and national level can be better targeted at problematic areas. The Government considers that complex rules and regulations, which govern budget sectors, need to be further simplified. This would help to increase the amount of funds absorbed by Member States, and would result in fewer errors and fraud and hence, improved financial management.

Turning now to the European Court of Auditors’ (ECA) Opinion found in EM 17670/12; the ECA expressed the view that the definition of the “Union’s financial interests” should be expanded to cover all the assets and liabilities managed on behalf of the EU, and all its financial operations, including borrowing and lending activity. The Government notes the ECA’s desire for a broader definition of financial interests but would need to see a stronger justification for the redefinition; at present the Government is not convinced of the necessity to include the listed bodies and activities in the definition. We acknowledge that the ECA’s Opinion expresses the view of the ECA, but does not constitute an official set of recommendations.

Secondly, the ECA recommended redefining “corruption” in the draft Directive to clarify that the corruption of officials who are paid by the EU institutions is automatically contrary to the EU’s financial interests. Currently draft article 4(3) requires the relevant behaviour to damage or be likely to damage the EU’s financial interests. This article remains subject to discussion in Council working groups, and the Government will continue to consider the ECA’s proposed clarification as part of negotiations. The Government will continue to negotiate with a view to ensuring that the definition in the draft Directive is compatible with existing UK legislation, in this case the Bribery Act 2010.

However, in the absence of any proposed precise revisions to the draft Directive during negotiations in consequence of the ECA’s proposals, the Government is not able to accurately predict the extent to which any such revisions would be covered by domestic criminal legislation.

Additionally, we believe there to be a risk that the Union’s financial interests could be deemed to cover own resources, particularly as regards Traditional Own Resources. However, our principal concern in this regard is that the Directive should not cover VAT fraud, due to this matter being a clear Member State competence. We are pleased that the Council text is now clear that VAT is excluded from the scope of the Directive.

24 May 2013

Letter from the Chairman to the Rt. Hon. Greg Clark MP

Thank you for your letter of 24 May. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 12 June. We are grateful for your detailed account of the progress of negotiations and the state of play.

We think your request for clearance from scrutiny before the Council meeting on 6 June was, in the circumstances, unrealistic. It was not practicable for the Committee to consider your letter at its meeting on 5 June, the letter having reached us on 30 May, during the recess. In any event, you indicated that further negotiations were expected and in the absence of a text for consideration, it is unlikely that the Committee would have been in a position to give clearance on the basis of the letter.

We have now seen that a general approach was agreed at the JHA Council meeting last week. Did the UK support that agreement?

We broadly welcome the changes to the original proposal which have been suggested and now, it appears, accepted by the Council. We welcome, in particular, the removal of the provision on mandatory minimum sentences. We hope you will continue to press for the removal of the provision on extra-territorial jurisdiction.

We note that the change in the legal base to Article 83(2) was agreed. Will the Government opt in to the proposal as amended by the Council?

We should like to see the text which was agreed by the Council and your assessment of the discussion in the Council meeting. In the meantime we retain the proposed Directive under scrutiny, but clear the Court of Auditors’ Opinion from scrutiny. We look forward to a reply by 28 June.

13 June 2013

Letter from the Rt. Hon. Greg Clark MP to the Chairman

Thank you for your letter of 13 June, in reference to my letter of 24 May updating your Committee on the progress of negotiations on the draft Directive.
This update is to inform you that the Justice Secretary attended the Justice and Home Affairs Council on 6 June, at which a General Approach was agreed on the draft Directive. The Justice Secretary supported this General Approach since there are a number of elements included in this text which have been objectives for the UK in these negotiations; notably the approach is firmly based on an Article 83(2) legal base, deletes the requirement for minimum terms of imprisonment, and removes VAT from the scope of the draft Directive. The General Approach was supported by the overwhelming majority of Member States. However, the Commission position continues to propose broader criminal offences and an Article 325 legal base.

The text of the General Approach was adopted without a formal vote, although certain delegations, as well as the Commission, signalled that they did not support. The Justice Secretary considered that, in the circumstances, he would not object to the Presidency concluding the General Approach so as to help secure these key positive amendments to the text, in particular the change of legal base which he supported. The dynamics of the negotiation were such that, if Council had opposed the text, it was likely to be delayed into the Lithuanian Presidency and the conditions for securing a positive outcome for the UK from the Council negotiation would not have improved. The Government regrets that this Proposal was not given adequate time to pass through national Parliamentary scrutiny prior to agreement at Council. Please find attached [not printed] a copy of the General Approach text, as requested.

The General Approach includes the following elements, all of which are acceptable to the UK:

— A change in the legal base from Article 325 to Article 83(2);
— The deletion of an article introducing mandatory minimum prison sentences;
— The deletion of VAT from the scope of the Directive;
— The inclusion of language which clarifies that the UK will be exempt from the provisions on freezing and confiscation in the Directive;
— The amendment of provisions on limitation periods to take into consideration serious offences;

The requirement for Member States to “establish jurisdiction” over offences committed by their nationals anywhere in the world remains in the text.

The Presidency, the Commission and European Parliament have now proceeded to trilogue on the basis of the General Approach. The UK will continue to push for the removal of the provision on extra-territorial jurisdiction.

At the June Council, the Council Legal Service also noted their view that agreement of this General Approach triggered the three-month period during which the UK and Ireland must exercise an opt-in decision. The Justice Secretary made a minute statement which noted that the UK reserved its position as to whether the General Approach agreed did in fact trigger the opt-in decision process. With regards to the change in legal base to Article 83(2), the Government is still considering its position in relation to the opt-in and is not in a position to update you further on this point at present.

23 July 2013

Letter from the Chairman to the Rt. Hon. Greg Clark MP

Thank you for your letter of 23 July. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 11 September.

We thank you for your explanation of the Government’s decision to support the General Approach agreed last month although the matter remained under scrutiny.

We welcome the progress that has been made on this proposal. We consider that the draft Directive can now generally be considered satisfactory and we welcome, in particular, the removal of the provision requiring mandatory sentences. We remain of the view that the provision on extra-territorial jurisdiction is inappropriate and we welcome your statement that you will continue to press for its removal.

We note that the Council has agreed to amend the legal base of the draft Directive and that the opt-in arrangements now apply. We hope that you will conclude in favour of opting in to this proposal. The only remaining potential stumbling block in this case is the provision on extra-territorial jurisdiction. Provision for extra-territorial jurisdiction in English criminal law is exceptional, but is found in the Bribery Act 2010 which deals with offences comparable with those in the draft Directive.
You will be aware that, following concerns about the impact of that Act on legitimate business, a consultation is underway on the operation of the relevant provisions of the Act. Do you consider that the draft Directive could give rise to similar concerns? On that basis, we believe the Government should opt in, in order the better to use its influence to have the provision removed and because, given the scope of the proposal, the provision is not inconsistent with developments in UK law.

As the proposal will now be discussed in a trilogue, we ask you to keep us informed of developments and we keep the matter under scrutiny in the meantime. No immediate reply to this letter is expected.

11 September 2013

Letter from Nicky Morgan MP, Economic Secretary to the Treasury, HM Treasury, to the Chairman

Thank you for your letter of 11 September 2013, on the Draft Directive on the fight against fraud to the Union’s financial interests by means of criminal law.

You asked that you be informed of developments on this dossier. The PIF Directive raises complex and unprecedented issues regarding the opt-in process. As previously stated, the Government regrets that we are unable to provide you with much further clarification on the question of the opt-in trigger at present.

I recognise that this makes things difficult as regards the Committee’s consideration of the opt-in, and that this sort of difficulty was not contemplated in the Code Of Practice. Because of these difficulties, I hope it might help the Committee to some extent if I indicate that because the Government has had a number of concerns with the draft PIF proposal from the outset, we would not intend to opt in to the proposal. We would naturally continue to welcome the Committee’s views.

Council negotiations on the Directive have been ongoing for some time and the Government has been working with other Member States to eliminate elements of the proposal we believe are unacceptable. We would consider a post-adoption opt-in if our concerns with the Directive are met. I am happy to commit at this point, in that event, to providing your Committees with an opportunity to opine on this dossier once it has been adopted, if the Government intends to consider a post-adoption opt in.

As regards extra-territorial jurisdiction, we continue to believe that the Directive’s current obligation at Article 11(1)(b) to provide jurisdiction to allow prosecution in the UK of cases of fraud against the EU budget committed overseas by UK nationals, where there is no factual link to the UK, is disproportionate and unnecessary and that jurisdiction to deal with cases committed in whole or in part in the UK by a person of any nationality set out at Article 11(1)(a) is sufficient. As you point out as regards corruption offences in the Directive, our domestic law contained in the Bribery Act 2010 includes extra-territorial jurisdiction, relevant for Article 11 of the Directive, as a result of the particular policy drivers applying in that very specialised area. The current Bribery Act initiative you refer to is a project under the auspices of Red Tape Challenge in which the Ministry of Justice and the Department of Business, Innovation and Skills will be working with industry to help small and medium sized enterprises fully understand the appropriate application of the Bribery Act 2010, and to provide guidance so as not to spend unnecessary time and money on disproportionate bribery prevention measures. This project reflects the specialised nature of the relevant offending and the bribery prevention guidance for commercial organisations published by the Ministry of Justice. We do not believe that the Directive would impact on this area of policy or other areas of criminal law policy, such as fraud, in a manner that would require a similar response.

28 October 2013

Letter from the Chairman to Nicky Morgan MP

Thank you for your letter of 28 October. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 6 November. Thank you for your reply to our question on the possible interaction between this dossier and our domestic bribery legislation. We keep the matter under scrutiny.

We note that the Government do not intend to opt in to the proposal following the change of legal base engaging the opt-in. You mention, as one of the factors leading to that decision, the concern (which we share) about the provision on extra-territoriality but refer also to other unacceptable elements in the proposal. We ask you to set out your remaining concerns.
We ask you to keep us informed of developments in the trilogue procedure.

7 November 2013

**Letter from Nicky Morgan MP to the Chairman**

Thank you for your response to my letter of 28 October 2013 concerning the Draft Directive on the fight against fraud to the Union’s financial interests by means of criminal law and the opinion of the Court of Auditors.

The Committee seeks further information on the Government’s remaining concerns with the PIF Directive. As set out in the previous Financial Secretary’s letter of 23 July 2013, the Government supports the General Approach agreed in July 2013 which secured the removal of most of the elements of the PIF Directive that we did not support, including the proposals on VAT and minimum sentences. However, we remain opposed to the inclusion of the provision on extra-territorial jurisdiction and continue to push for this text to be removed.

You also asked for progress updates on the trilogue procedure. There have been no developments since I wrote to you last month but I will of course provide the requested update in due course.

20 November 2013

**HAGUE SERVICE CONVENTION (10748/13)**

**Letter from the Chairman to the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice**

Thank you for your Explanatory Memorandum of 25 June 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 July. We decided to clear this matter.

In doing so we note the potential dispute as to whether or not the EU has exclusive competence over the subject matter of the Convention.

In relation to the UK opt-in, we support the argument that the UK opt in is engaged in this proposal despite the fact that the UK has already opted into Regulation 1393/2007. We also consider that the effect of the UK not opting in to this proposal would be minimal. We would, therefore, not object to the UK opting in to this proposal. We note that this could give a better platform for a competence challenge, as was the case in respect of the currently stalled proposal on the accession of certain third countries to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

We should be grateful to be kept informed of developments in due course.

11 July 2013

**Letter from the Rt. Hon. Chris Grayling MP to the Chairman**

I am writing to let you know that the UK has opted in to this Proposal and a Written Ministerial Statement to that effect has been laid in Parliament. Sir Jon Cunliffe has communicated the Government’s decision to the Lithuanian Presidency.

As I have made clear in previous correspondence, my officials will continue to press the UK Government’s case on the issues of exclusive external competence and the opt-in Protocol. I will write to the Committee again with an update as negotiations progress.

6 September 2013

**HERCULE III PROGRAMME (18940/11)**

**Letter from the Chairman to the Rt. Hon. Greg Clark MP, Financial Secretary, HM Treasury**

Thank you for your letter of 17 April, which the Justice, Institutions and Consumer Protection Sub-Committee considered at its first meeting of the new Session on 22 May.

We note the current state of play on this proposal within the wider MFF context.
Letter from Helen Grant MP, Parliamentary Under-Secretary of State for Justice, Ministry of Justice, to the Chairman

Following my letter of 9 November 2012, I am writing to update you on the agreed draft text of the Regulation, to highlight the main features of the final version of the text and to seek clearance of this dossier from scrutiny.

13181/12 was considered by the European Union Committee’s 5th Progress of Scrutiny report, Session 2012-13, dated 16 October 2012. Following your letter of 15 October 2012, I wrote to the Committee regarding digital archiving in the European institutions and the voluntary deposit of historical records from the Court of Justice of the European Union and the European Central Bank.

Please find attached at Annex A [not printed] the proposed final text of the Regulation. The changes in the final text compared to the original proposal are relatively insubstantial, with the main aims of the Regulation remaining. The final text means that access to the historical archives of the European institutions, in both paper and digital format, will be available in the future from a single location at the EUI. This will help ensure transparency and accountability for the European institutions.

DIGITAL ARCHIVES

The text addresses the treatment of digital archives by stipulating that the European institutions shall make their archives available by electronic means, including digitised and born-digital archives, and facilitate their consultation on the internet (see article 9(1) and the Annex) [not printed]. The institutions will remain responsible for the permanent preservation of their digital archives and the EUI shall have permanent access to these documents to allow it to make them accessible from a single location and promote their consultation.

COSTS

The UK sought clarification on the cost-sharing arrangements during the negotiations. The Commission clarified that the running costs are unaffected and will still come from the general budget. The costs will be shared between the participating institutions on the basis of their proportional size. These costs will cover expenses for management of the archives but not for the provision of the building and repositories, which are to be financed by the Italian government. The Commission reiterated that Member States will not accrue any additional costs. The final text clarifies the rules and the basis for sharing the costs of managing the historical archives at the EUI between EU institutions (see article 8(8)).

MANAGEMENT STRUCTURE BETWEEN EUROPEAN INSTITUTIONS AND THE EUI

The Regulation indicates that the management structure between the depositing European institutions and the EUI shall be arranged in a framework partnership agreement (see article 9(3)). This will include provisions on the deposit, preservation, access and public consultation of the historical archives. The European Commission will arrange and deliver the partnership agreement with the EUI on behalf of the depositing institutions.

ROLE OF THE DATA PROTECTION SUPERVISOR

The text highlights the applicable data protection rules and, in particular, reaffirms the supervisory role of the European Data Protection Supervisor over European institutions (see articles 8(9) and 8(10)).

EUROPEAN PARLIAMENT

Under the consent procedure, the European Parliament’s Committee on Culture and Education recommended that the European Parliament approve the proposed Regulation on 23 April 2013. The Committee considered that the proposed Regulation provides a more solid legal framework for the cooperation between the European Union and EUI. The Rapporteur pointed to the good inter-
institutional cooperation in the historical archives field. The Rapporteur also regarded the
development of the aspects of the proposed Regulation dealing with financing, data protection and
digitisation as positive. Consent was granted by Parliament in line with this recommendation on 21
May.

**ARTICLE 352 TREATY BASIS**

As the proposed Regulation has been brought forward under article 352, the European Union Act
2011 requires Parliament to approve it in primary legislation in order for the UK to agree to the
measure in Europe. The measure forms part of the EU Approvals Bill in the 2013-14 Parliamentary
session.

3 June 2013

**Letter from the Chairman to Helen Grant MP**

Thank you for your letter of 3 June 2013. This was considered by the Justice, Institutions and
Consumer Protection Sub-Committee at its meeting of 12 June. The Committee were grateful for
your explanation of the proposal as it has evolved and decided to clear the matter.

13 June 2013

**IMPROVING OLAF’S GOVERNANCE AND REINFORCING PROCEDURAL
SAFEGUARDS IN INVESTIGATIONS (12554/13)**

**Letter from the Chairman to the Rt. Hon. Greg Clark MP, Financial Secretary, HM
Treasury**

Thank you for your Explanatory Memorandum on this Communication. It was considered by the
Justice, Institutions and Consumer Protection Sub-Committee on 11 September.

We note that the Communication forms part of the package of documents published by the
Commission in July which includes draft legislation for the reform of Eurojust and the establishment of
a European Public Prosecutors Office (EPPO). We will take account of the role of OLAF in
considering the other elements of the package. However, we have considered the Communication
separately from the rest of the package since its implementation would not depend on decisions on
the proposals concerning Eurojust or the EPPO. We note that a further legislative proposal would be
needed for such implementation.

We are sceptical of the need for the further changes in the governance of OLAF suggested by the
Commission. We agree with you that the creation of a Controller of procedural safeguards is an
unnecessary addition to bureaucracy. The work of OLAF is already overseen by the Supervisory
Committee and, as you have noted, may be reviewed by other agencies including the courts. If the
Committee’s monitoring were thought to be inadequate, a more appropriate remedy would seem to
lie in addressing the powers of the Supervisory Committee and its relationship with OLAF’s officials.
As you know, we commented on that relationship and its apparently dysfunctional nature at present,
in our Report on The Fight Against Fraud on the EU’s Finances.

While, at first sight, the additional safeguards for those subject to investigation by OLAF might appear
worth at least further consideration, we are not persuaded that they are necessary. OLAP’s functions
are confined to administrative investigations. Requiring them to seek an opinion or authorisation
seems unnecessary (and if the proposal for a Controller is rejected, there would be no obvious
person to consult). Responsibility should rest with the Director General. Moreover, we see no
justification for the distinction which the Commission proposes to draw between officials and
members of the EU Institutions for this purpose; the principle of equality before the law leads to the
conclusion that status should have no place in the determining of safeguards.

We should be interested to have your view on the safeguards proposed by the Commission and
whether you think the ideas put forward in the Communication are likely to attract support in other
Member States. We will keep the matter under scrutiny and look forward to hearing from you by 30
September.

11 September 2013
Letter from the Rt. Hon. Greg Clark MP to the Chairman


The Government shares the concerns you raised. The Government sees no reason why the Commission should be proposing new safeguards given that the strengthening of procedural guarantees (i.e. respect of fundamental rights) for any person under investigation by OLAF, was one of the key reasons behind the recent review and revision to the OLAF Regulation.

The revised OLAF Regulation clarifies the role of the supervisory committee in carrying out analysis on OLAF’s work, including monitoring procedures related to fundamental rights. The Controller of Procedural Safeguards (CPS) would duplicate this. As such, the Government does not believe there is a strong rationale in the Commission’s proposal.

We understand the reasons for the Commission’s delicacy in proposing a distinction in treatment between staff of the EU and members of its institutions, since staff are subject to the Staff Regulations, whereas the members of the institutions are subject to of the Treaties. However, in our view there is nothing in the Treaties or in the privileges and immunities granted to members of the institutions requiring the Commission to propose such differential treatment.

The Government will be engaging with other Member States to develop a common position, in particular those Member States that supported us in rejecting the creation of a “Review Adviser” in the recent OLAF negotiations. We will continue to monitor this situation closely.

21 September 2013

Letter from the Chairman to the Rt. Hon. Greg Clark MP

Thank you for your letter of 21 September. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 16 October.

Clearly, the views of this Committee and the Government on these suggestions for the Commission are very close. We have no further comment on the Communication but keep it under scrutiny for the present and would like to know the positions of the other Member States once they become clear. Subject to that, no immediate reply to this letter is expected.

17 October 2013

INSOLVENCY PROCEEDINGS (17881/12, 17883/12)

Letter from Jo Swinson MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills, to the Chairman

Further to my letter of 15 April confirming that the UK has opted in to the proposed Regulation, I am writing to provide an update on the progress of negotiations.

The working group, attended by officials from the Insolvency Service, has now completed a first read through of the proposed Regulation. The proposals have been generally well received by all Member States, though many are still conducting their own consultation exercises, with many delegations putting forward amendments to refine the draft text. I am pleased to say that none of the amendments put forward in negotiations represent any threat to the UK’s position. It is worth noting that the Commission has emphasised that the process of nominating procedures for inclusion in the Annex would be at the discretion of Member States, giving the example that the UK would not wish to nominate Schemes of Arrangement as a reason for this discretion.

The Presidency has requested written comments from delegations on all articles and the UK delegation has submitted suggested amendments to articles where the Commission had not proposed any change. Officials are preparing a further submission to the group to summarise all comments and interventions in writing. We anticipate that a revised text of the Regulation will be available in June.

The Irish Presidency of the EU will end in June, with Lithuania’s term beginning on 1 July. I understand that the Presidency will be seeking an orientation debate on suggested guidelines for future work on the key themes of the draft Regulation, being the broadening of the scope; the continued use of the
COMI concept; establishing interconnected insolvency registers; and developing provisions to improve co-operation in dealing with the insolvencies of groups of companies.

Officials from the UK Permanent Representation in Brussels have met with attachés from the Lithuanian Presidency, who have confirmed that they see the discussions on the proposals to be very positive and that this dossier will be a priority to progress during their term. They envisage monthly meetings of the Working Group throughout the term of their presidency.

Given that the UK has now opted in to the proposals and the positive progress of the draft Regulation, I trust that your committee is content to clear the document from scrutiny so that the Government may participate fully in the negotiations with the support of Parliament.

27 May 2013

Letter from the Chairman to Jo Swinson MP

Thank you for your letter of 27 May 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 February. As this proposal is still in the early stages of its legislative procedure we decided to retain this matter under scrutiny.

We would be grateful for the following additional information when it becomes available:

— Sight of the anticipated revised text with the substantive changes from the original proposal highlighted and explained. If necessary this text can be handled in accordance with the agreement between the Government and the Committee on the handling of "Limité" documents, in order to preserve any confidentiality attaching to it.

— The Government's view on the outstanding issues which are going to be the subject of the forthcoming orientation debate in the Council.

— The outcome of consultation with stakeholders on the proposal.

13 June 2013

JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (12974/13)

Letter from the Chairman to the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your Explanatory Memorandum of 15 August 2013. This was considered by the Justice, Institutions and Consumer protection Sub-Committee at its meeting of 16 October. We decided to retain the matter under scrutiny.

We agree that no subsidiarity concerns arise in respect of this proposal.

Given the benefit to business from the patents package, and the fact that London is an intended location of a section of the central division of the Unified Patents Court, we consider that the UK should opt-in to this proposal.

However, we have some initial reservations with regard to the provision giving the Unified Patent Court and the Benelux Court residual jurisdiction over defendants domiciled in third countries, particularly because we have consistently opposed harmonisation at EU level of the rules on jurisdiction in cases involving third country domiciled defendants during the recast of the Brussels I Regulation. We should be grateful for your views on this provision.

We also have concerns about some obscure drafting in the proposal, in particular new Article 71b(2) and 71b(3).

We should be grateful for a reply to this letter by 31 October.

17 October 2013

Letter from Chris Grayling MP to the Chairman

Thank you for your letter of 17 October on the above proposal, which is intended to establish the jurisdiction of the new Universal Patent Court (UPC) by amending the 'Brussels I Regulation.
The Committee has expressed some concerns about the amendments, namely the proposed rules in Article 71b(2) and Article 71b(3). These would confer international jurisdiction under the Brussels I Regulation on the UPC (and the Benelux Court, which the proposal also covers) in respect of defendants domiciled in third countries. These concerns reflect the fact that, during the negotiations on the recast Brussels I Regulation, the UK had consistently, and successfully, opposed the harmonisation of jurisdiction in respect of such defendants.

The UK remains opposed to such harmonisation in general, and accordingly supports the retention of the national rules of jurisdiction which currently fall outside the scope of the Regulation. However, we consider that in this particular, limited instance harmonisation of jurisdiction in relation to defendants domiciled outside the EU is justified. This is on the basis that uniform rules of jurisdiction would be appropriate in relation to the future common patent court, whose purpose includes the enforcement of uniform legal rights established by the Agreement on the UPC. Stakeholders in the patents field support this position, and I consider that, in this special context, such a development would not constitute a worrying precedent for any general extension of jurisdiction in civil and commercial matters.

The Committee has also expressed some concerns about the obscure drafting of Articles 71b(2) and Article 71b(3). I have asked my officials to be in touch with yours on the precise drafting points, where we share some concerns and where we are negotiating for improvements to the proposal.

I hope this explanation is helpful to the Committee.

4 November 2013

Letter from the Chairman to Chris Grayling MP

Thank you for your letter of 4 November 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 20 November.

The Committee were grateful for your explanation concerning the harmonisation of the rules of jurisdiction of the Unified Patent Court.

In the light of this, and of the helpful explanations from your officials of the steps envisaged to resolve the drafting obscurities in the proposal, we decided to clear this matter.

21 November 2013

JUSTICE AND HOME AFFAIRS (JHA) COUNCIL AND EASTERN PARTNERSHIP MINISTERIAL MEETING, 7 AND 8 OCTOBER 2013

Letter from James Brokenshire MP, Security Minister, Home Office, to the Chairman

I am writing to inform you about the agendas for the main meeting of the Justice and Home Affairs (JHA) Council and the Eastern Partnership Ministerial Meeting which will take place in Luxembourg on 7 and 8 June. The Justice Secretary, Chris Grayling MP, and I will attend on behalf of the UK.

The Justice day will begin with an orientation debate on the application of the “one-stop shop” in the draft Data Protection Regulation. The purpose is to reach consensus in Council on whether a “one-stop shop” data protection supervisory regime for businesses operating in more than one Member State can also ensure individuals to have effective access to redress. The European Commission remains keen for the data protection package (Regulation and Directive) to be adopted before the European Parliament elections next year.

The Presidency has also indicated that it may add the Counterfeiting Directive to the agenda with a view to reaching a possible general approach. This proposal has been cleared from scrutiny in the House of Commons but not in the House of Lords. The UK has not opted into this proposal but has participated in the negotiations and can opt-in to this measure post-adoption if appropriate.

There will then be a presentation from the Commission and an orientation debate on the proposals to reform Eurojust and create a European Public Prosecutor’s Office (EPPO). Member States will be invited to give first impressions of the proposals and there will be an exchange of views.

You are aware that the UK will not take part in the EPPO. Following publication of the proposal, the UK will want to challenge the Commission’s case for establishing it. The UK has yet to make a decision on whether to opt in to the new Eurojust Regulation. Whilst we value the current Eurojust
arrangements the new proposal does raise concerns, not least in granting additional powers to National Members of Eurojust and in its links to the EPPO.

Over lunch, we expect there will be a discussion about the Snowden allegations. This will take place in the context of ongoing EU-US discussions about data protection as well as a European Parliament inquiry into the mass surveillance of EU citizens.

The Justice session of the Eastern Partnership meeting will discuss: justice reform; judicial cooperation and recent (legislative and policy) developments in the area of justice.

The Interior session of the Eastern Partnership will discuss: the fight against corruption; the fight against organised and transitional crime; cybercrime and migration and mobility.

The Interior session of the main JHA Council meeting will begin with a presentation on the provisional arrangements to host the EU Police College, CEPOL. Italy, Ireland, Spain, the Netherlands, Greece, Hungary and Finland have submitted bids to temporarily host CEPOL. The UK’s preference would be for a permanent solution to be found quickly as this would be the least cost for Member States and the better solution for CEPOL.

There will be a short update by the Commission on the interim report on the issues related to the free movement abuse, commissioned at the June JHA Council. The final report will be presented at the December JHA Council. The UK has provided a written contribution to the evidence base which is drawn from existing published and publicly available statistics on sham marriage and other types of abuses and are exploring what further material the UK provide over the coming months.

There will be a discussion on the protection of refugees from Syria. The Commission is likely to encourage Member States to agree to offer resettlement places to Syrians. The UK will reiterate the view that the focus should be on protection in the region and will stress support for the planned Regional Development and Protection Programme (RDPP) for Syrians, encouraging other Member States to also pledge their support.

The Commission will provide information on the first Annual Relocation Forum, held on 25 September. This forum provides a platform for Member States to discuss issues relating to the relocation of refugees and the opportunity to make voluntary relocation pledges. The UK does not support the concept of relocation, believing that this simply moves the problem around Europe rather than dealing with it at source, and that can encourage more irregular migration. As such, the UK has no plans to undertake any relocation at this time.

1 October 2013

JUSTICE PRIORITIES FOR THE LITHUANIAN PRESIDENCY OVER THE NEXT SIX MONTHS

Letter from the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

Lithuania will take over the rotating European Union Presidency on 1 July 2013. I am writing to provide an overview of the Presidency’s priorities in the areas of justice on which the Ministry of Justice leads. I hope that this will help in the planning of the scrutiny of dossiers that are likely to be considered by the Justice and Home Affairs (JHA) Council during this period.

The Lithuanian Presidency is planning to host the following JHA Councils:

- 18 – 19 July (Informal Council) in Vilnius, Lithuania
- 7 - 8 October in Luxembourg
- 6 - 7 December in Brussels

This is Lithuania’s first EU Presidency, where they will prioritise measures which aim to promote economic activity and growth. With this in mind, the Presidency will work to achieve progress on the Data Protection proposals, the European Account Preservation Order (EAPO), the Directive on Counterfeiting the Euro and other currencies, the EU Accession to the European Convention on Human Rights (ECHR) the Multiannual Financial Framework (MFF), and the Common European Sales Law (CESL).

Achieving progress on the proposed Regulation for the general EU data protection framework and the proposed Directive for personal data processing in the field of police and judicial cooperation will
be a key priority for the Lithuanians. The Presidency will likely focus the negotiations on the proposed Regulation but will work to keep the proposals as a package. Both the proposed Regulation and the proposed Directive remain under Parliamentary scrutiny and I will keep you updated on the progress of the negotiations.

It is likely that the Presidency try to conclude negotiations on the European Account Preservation Order as they see it as a useful tool in strengthening the single market. The UK did not opt in to this proposal because of concerns about the lack of safeguards for defendants. Negotiations are continuing and we continue to work with others to improve the text to enable consideration of a post-adoption opt in. We will, naturally, consult Parliament on any decision to opt-in post adoption.

The Government on 20th April decided not to opt in to the proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law. The Government agrees that a proportionate criminal justice response to counterfeiting requires robust national laws and effective international cooperation at the operational level. The Government's view is, however, that the Directive would have very little if any positive impact on UK enforcement or international operational cooperation and intelligence sharing, whilst presenting unwelcome legislative consequences for the UK.

The Lithuanian presidency have not highlighted that they will prioritise the proposal for EU accession to the European Convention on Human Rights (ECHR) at present. We shall keep you informed of developments in this area. We expect the Presidency to take forward discussions on any proposals the Commission decides to bring forward following the independent external evaluation of the Fundamental Rights Agency.

The Presidency will also seek to reach an agreement on the MFF 2014-2020 package. It is unlikely that final agreement on individual programmes will be reached until the MFF is adopted. Under the MFF 2014-2020 package, the Ministry of Justice has the lead on two funding programmes, the Justice Programme and the Rights, Citizenship and Equality programme. As you may recall, the Government chose not to opt-in initially to the Justice programme.

Since the agreement of the Partial General Approach in June 2012, discussions have been continuing between the Presidency, the Commission and the European Parliament (trilogue). The programmes are due to start in 2014. However, agreement to finalise these funding programmes must await the resolution of the current budget negotiations. Once the Justice programme has been finalised, the Government will need to take a decision about whether to opt-in post adoption and will, of course, give you the opportunity to express your views on the issue.

The Government continues to oppose the proposal for a Common European Sales Law as set out in the Government Response to the UK's Call for Evidence, published in November 2012. The dossier is progressing extremely slowly in Council and we continue to work with like-minded Member States in our position.

During the Lithuanian Presidency we expect the Commission to adopt two proposals as part of the Criminal Procedural Rights Roadmap; a draft Directive on safeguards in criminal procedures for suspected or accused persons who are vulnerable, including children; and an initiative regarding legal aid in criminal proceedings. The UK’s opt in will apply to legislative proposals in this area.

27 June 2013

MANAGEMENT OF CONFLICT OF INTEREST IN EU DECENTRALISED AGENCIES (UN-NUMBERED)

Letter from the Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

Further to your letter of 19 December 2012, I am writing to provide you with an update on how the European Aviation Safety Agency (EASA), European Chemicals Agency (ECHA), European Food Safety Agency (EFSA) and the European Medicines Agency (EMA) prevent conflict of interest.

In the absence of any specific central rules on dealing with conflict of interest, each agency has developed its own rules and procedures. Over the years this has led to a situation where different agencies have set up different rules and procedures with no uniform approach.
One important point to note is that although the special report “Management of conflict of interest in selected EU agencies” (No.15.2012) was released in October 2012, policies and procedures implemented after the report’s evaluation team completed its audit work (October 2011) were not evaluated. Some of the agencies had already begun to take action to prevent conflict of interest before the publication of the report. What follows below is a brief overview of the situation as it stands now.

The EASA Management Board has agreed a detailed policy on conflict of interest in which all Members are required to submit annual declarations of interest. The agency has also updated the code of conduct for its staff to ensure a high degree of independence and impartiality of EASA decisions. This includes a requirement for staff holding a sensitive position to complete an annual declaration of interests. The agency will create an Ethical Committee which will define the assessment criteria on interests, provide support in reviewing the declarations of interest and develop rules on how to deal with other matters related to the code of conduct. Rules relating to gifts have been improved and all staff members will undergo mandatory training on the prevention and mitigation of conflict of interest.

The ECHA has implemented many of the recommendations in the special report by striking a balance between having staff members with expertise and experience and, at the same time, strictly avoiding potential conflict of interest. Everyone working in or for the ECHA makes an annual declaration of interest (which is updated on a regular basis). Anyone with a declared interest in an issue will then not participate in decision or opinion making on that matter. The ECHA also has a conflict of interest advisory committee to support the Director in ensuring independence of decision making.

The EFSA has adopted a new Code of Conduct upholding core principles and values such as integrity, objectivity and serving in the public interest while providing guidance on standards. The EFSA requires all of its experts to comply in a three-step process as a prerequisite for their membership of a Panel or a Working Group. This involves an annual declaration of interests; a specific declaration of interests concerning particular subjects being worked on by the Panel or Working Group; and an oral declaration of interests at the beginning of each meeting. In cases where there is a conflict of interest appropriate measures such as the exclusion of the expert from the scientific group in question or from specific agenda items at meetings, to her or his exclusion from some or all of the EFSA’s activities are taken. Staff members leaving the EFSA are required to advise the Authority on future employment for a two-year period following their departure, including any subsequent change in their circumstances, so that the Authority can consider whether that may lead to a conflict of interest.

The EFSA’s Regulation allows for four members of the Board who are from organisations “representing consumers and other interests in the food chain”. However, the Government is concerned that the presence of industry figures on EFSA’s Management Board may continue to lead to a conflict of interest.

In February 2012, the Management Board of the EMA introduced updated rules on how it would handle potential conflict of interest of staff members. The EMA has a policy on the handling of conflict of interest for its scientific experts, including committee members. This was last updated and endorsed by the EMA’s Management Board in March 2012 along with a revised policy on the handling of conflict of interest for Management Board members.

The EMA takes a proactive approach to identifying potential conflict of interest and searching for alternative experts where necessary. To help achieve this, all experts who are involved in the agency’s activities and Management Board members must complete a declaration of interests form every year. Each expert is assigned a risk level. After assigning a risk level, the EMA uses the information provide to determine if an expert’s involvement should be restricted or excluded in the EMA’s specific activities, such as the evaluation of a particular medicine. The EMA’s Management Board has also endorsed a breach-of-trust procedure setting out how the EMA would deal with incorrect or incomplete declarations of interests.

OTHER AGENCIES

It is important to note that the four selected agencies are not the only agencies to have reviewed their conflict of interest policies in light of the special report.

The European Environmental Agency recently adopted a new policy aimed at ensuring all staff comply with the obligations laid down by the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Community.
The European Union Agency for Fundamental Rights (FRA) has considered a draft document looking at rules governing conflict of interest for its Management Board members, which is in line with the recommendations from the special report, and expects to adopt it later this year.

The Board at the European Agency for Safety and Health at Work (EU-OSHA) is currently looking at proposals that ensure that the agency is transparent, this includes making the interests of decision makers visible and taking actions such as publishing key documents, including collecting and publishing the declarations of interest of members of the governing board on the agency website as requested by the European Parliament. These actions would complement other policies already in place. The new policy will also develop criteria for assessing interests, process for detecting and checking conflict of interest and possible consequences for breaching the policy.

The European Global Navigation Satellite System Agency (GSA) is also introducing a general policy on conflicts of interest. This seeks to avoid situations where the conflict of interest of an individual working or engaged within the agency could influence the performance of their duties. The policy will define and identify situations which have a potential to put the agency’s integrity at risk and will create procedures for effectively avoiding conflict of interest issues. The Government wants to ensure a transparent and effective system that identifies and manages any conflicts of interest that arise.

THE COMMON APPROACH AND ROADMAP

The Common Approach acknowledges the importance of conflict of interest by noting that the Commission should examine, together with agencies, whether there is scope for a harmonised approach to managing conflict of interest. In response to the special report, the Commission indicated that it would consider the potential need to develop an EU regulatory framework in the context of the implementation of the Common Approach. This was a welcome development. However, instead of a fully-fledged EU regulatory framework, the Commission are now talking to agencies to map existing rules and standards, and develop guidelines and best practices as laid down in the Roadmap. The Commission has also said that many of the main points from the special report will be taken into account. This work should be complete by the end of 2013.

Following the release of the special report the Directors of EU agencies within the EU Agencies Network, which is a forum for exchanging best practice and experience across all EU agencies, looked at the issue of prevention of conflict of interest. The ECHA was mandated by the EU Agencies Network to produce a paper on the prevention of conflict of interest which looked at risk assessment, governance and a checklist of the basic elements needed for the prevention of conflict of interest. The Network is currently considering this issue and looking at ways in which best practice could be shared.

THE GOVERNMENT’S POSITION

The Government welcomes the Commission’s approach in treating the issue of conflict of interest as a priority for 2013. Our preference would however have been for an EU regulatory framework, which would have had uniform application across all EU agencies. We will support and follow the Commission’s work in this area closely and will push for an EU regulatory framework if the new guidelines and best practice, currently being developed, are not sufficiently strong.

As the Committee is aware, we are conducting a wide-ranging review of the performance of the EU decentralised agencies, in light of the Common Approach and Roadmap, which were referred to in my Explanatory Memorandum of 31 January 2013. I apologise that I have not yet been able to give the Committee the update it requested; this is a complex exercise and my officials are still co-ordinating the material it has gathered from across Whitehall. As soon as I am in a position to update the Committee further, I will of course do so.

11 July 2013

Letter from the Chairman to the Rt. Hon. David Lidington MP

Thank you for your letter dated 11 July 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July.

The work that some agencies are carrying out to prevent conflict of interest appear sound. However, like you, we are concerned at the presence of industry representatives on the European Food Safety Agency’s Management Board.
As you know, the Committee favours a comprehensive EU regulatory framework dedicated to conflict of interest as it would best ensure comparable minimum requirements on independence and transparency applicable to all EU agencies and all key players that influence strategy, operations and decision-making. However, we will follow with interest the work that the Commission is carrying out in developing new guidelines and best practice in this area. We should be grateful if you could update the Sub-Committee when the Commission publishes the guidelines and provide us with your assessment of them.

We also look forward to receiving the results of your review of the performance of the EU decentralised agencies.

In the meantime, the Committee retains the Common Approach and Roadmap under scrutiny and looks forward to your reply in due course.

25 July 2013

PREPARING FOR A FULLY CONVERGED AUDIOVISUAL WORLD: GROWTH, CREATION AND VALUES (8934/13)

Letter from the Chairman to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Culture, Media and Sport

Thank you for your Explanatory Memorandum of 15 May 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 19 June.

The Commission’s consultation raises issues that are clearly very important. In the Green Paper the Commission states that the consultation may lead to reform of the Audiovisual Media Services Directive and/or new legislation and other policy responses in the longer term. We understand that the Government and Ofcom will prepare a full response to the Green Paper and we look forward to receiving a copy of the response in due course.

In the meantime, however, we are very disappointed with the content of your explanatory memorandum. We would have expected it to include a summary of background information on the UK regulatory framework in this area; an explanation of the Government’s policy and your preliminary views on the questions raised in the Green Paper; and details on the possible effects on existing legislation or potential proposals that may be brought forward. In addition, we are interested to know the views expressed by other Member States on the Green Paper. Without this information it is very difficult for us to carry out our scrutiny functions effectively.

You say in your EM that the Green Paper was due for discussion at the Contact Committee on 30 May. We would be interested to know the outcome of that discussion.

We note that you are not consulting on the contents of the Green Paper at this stage and therefore question how the views of consumers and stakeholders would feed into your and Ofcom’s formal reply to the Green Paper.

We retain this document under scrutiny and look forward to your reply by 4 July.

20 June 2013

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter with regards to the Green Paper and the explanatory memorandum provided by my Department.

I am sorry that you found the explanatory memorandum to be lacking substance. I can assure you that I and my department take our responsibility to your sub-committee and the issues raised in the European Commission’s Green paper very seriously indeed. In the letter you raised four key areas where the information provided failed to meet your needs and expectations: background to the UK regulatory framework, the Government’s preliminary views on the paper, the possible impact of the paper on existing legislation and the views of other member states. Below I have provided as much information on these issues as I am able, at this point in time. Where, for whatever reason, I have not been able to provide more detail I have set out why this is the case.
BACKGROUND INFORMATION ON THE UK REGULATORY FRAMEWORK

I have provided a detailed background note setting out the UK Regulatory framework in relation to the issues raised in the European Green Paper at Annex A (not printed). The key piece of European legislation in this area is the Audiovisual Media Services (AVMS) Directive which the UK has implemented. The implementation of this Directive involved many regulations that amended existing UK legislation, key amongst which are the Communications Act 2003 and the Broadcasting Acts 1990 or 1996.

PRELIMINARY VIEWS

You may be aware that we are soon to publish a paper that will set out our approach to digital connectivity, content and consumers. This covers many of the topics that the Green Paper covers, and will inform our response to the Green Paper. Because this piece of work is not yet public we were unable to provide you with more information in the explanatory memorandum at the time it was requested and the same is true today. My officials will be happy to send this through to you at the time of its publication.

I am, however, able to give you a preliminary view as to how we intend to respond to the European Green Paper. The paper itself is not setting out detailed proposals; instead it provides a discussion of a range of issues related to the challenges of media convergence. Given the wide ranging nature of the paper we plan to respond thematically, setting out in the clearest possible terms those matters on which we would welcome further consideration at the European level and those where we would resist any move away from domestic legislation. Stakeholders are planning to respond independently to the paper and we are working closely with the key organisations such as Ofcom and the BBC to ensure a coherent UK response.

POSSIBLE EFFECTS ON EXISTING LEGISLATION

Whilst it is likely that the Commission will look to amend or replace the AVMS Directive, we do not envisage that this will happen at any great pace. The upcoming European elections mean that any action will have to be taken in the new Parliament and the question of how, when or whether a revision of the AVMS takes place will depend on this outcome.

The Green Paper, and responses to it, will feed into this process, however at this stage, the paper is not a proposal; it is simply a paper to seek views. These views will form the body of evidence from which any approach to new legislation will be decided. As such there is a significant process to be worked through before an amended or new Directive is considered directly. That is why we are intending to respond to the Commission along the lines described above. In a way that, as explained above, sets our priorities and key concerns for any change to legislation at a European level.

VIEWS OF OTHER MEMBER STATES

A DCMS official represented the UK at the Contact Committee in Brussels, 30th May 2013 when the Green Paper was discussed as an agenda item. However, little was shared by member states in terms of how they were intending to respond to the Green Paper. Most said that they were considering the paper, accepted that convergence was happening and would respond in full by the deadline.

The caution shown by other nations was likely a result of the wide ranging scope of the paper and the lack of clear direction. Without clear proposals to support or propose, most members chose to remain silent. Whilst a few members, for example the French, made clear their appetite for further regulation there was no sense of broad support for this position. The discussion was extremely limited and did not assist in providing the UK with significantly more information.

CONSULTATION

Your letter also asked about the process that my Department will be undertaking to ensure the views of consumers and stakeholders are able to feed into our formal reply. The Department has, over the past two years, taken views from a wide range of stakeholders and consumers relating to issues across the telecoms and media sector with seminars and discussion papers looking at issues relating to connectivity, content and consumers. This work has informed the development of policy in this area. We will be setting out our approach to this sector at a national level shortly, and we will draw on this work in responding to the Commission’s Green Paper.
My Department will continue to give this work serious attention and I hope that this additional information will allow the Committee to fully scrutinise this paper. Officials in the Department are available should you require any further information.

9 July 2013

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 9 July 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 17 July.

You say in your letter that you expect to publish soon “a paper” which will set out the Government’s approach to digital connectivity, content and consumers. Could you please let us know the nature of this paper and the likely publication date. You also state how you plan to respond to the Green Paper but say little on the likely content of your response. We look forward to receiving a copy of your response in due course.

We note that the annex [not printed] does not provide any information on the regulatory framework for on-demand services and how that differs from the regulatory framework for linear services. Perhaps you could provide us some background information on this area.

You may wish to know that Ofcom are giving a briefing to the Sub-Committee on Wednesday 24 July on the Green Paper. After which the Sub-Committee will consider whether to conduct further oral evidence sessions.

We retain this document under scrutiny and look forward to your reply.

18 July 2013

Letter from the Chairman to Ed Vaizey MP

Thank you for the copy of the Government’s response to the Green Paper. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 6 November.

We have decided to clear the document from scrutiny. We look forward to scrutinising any proposals to amend existing legislation or to create new legal instruments as and when they arise.

7 November 2013

PROGRAMMING OF HUMAN AND FINANCIAL RESOURCES FOR DECENTRALISED AGENCIES 2014-20 (12421/13)

Letter from the Chairman to the Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for your explanatory memorandum dated 2 August 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 9 October.

Although the planned 5% staff reduction is welcomed, like you, we consider the Commission’s justification for the increase in the overall decentralised agencies budget insufficient. We support your efforts in seeking a fuller explanation and would be grateful for an update on the Commission’s response.

Perhaps you could also let us know whether the Commission has now published the guidelines and best practice in preventing conflict of interest and provide us with your assessment of them. We also look forward to receiving the results of your review of the performance of the EU decentralised agencies.

In the meantime, the Committee retains the Communication under scrutiny and looks forward to your reply in due course.

10 October 2013
Letter from the Chairman to the Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum of 3 June which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 12 June. We decided to retain this matter under scrutiny.

When the Committee previously responded to the Commission’s Green Paper on this subject it saw merit in mutual co-operation and standard multilingual forms, but was concerned that a practical need should be demonstrated for all formalities to be abolished; and that there might be documents with such a high risk of fraud that proof of authenticity would continue to be required.

We note however that the Commission, in its Impact Statement, has produced an estimate of the financial benefits to individuals and businesses of the proposal and provided practical examples of how it would provide benefits.

We should therefore be grateful if you could provide, by 28 June, the following information:

— Do you agree with the figures brought forward by the Commission?
— Which, if any, documents subject to this proposal do you consider present too great a risk of fraud (after taking account of the administrative co-operation provisions in the proposal) for formalities to be abolished, or for standard multilingual forms to be available?

In the light of the information presently available we decided that a subsidiarity reasoned opinion should not be issued in respect of this proposal.

We also look forward to receiving your further assessment of the implications and costs of implementation of this proposal together with an update on the progress of negotiations, including the legal basis for this proposal.

13 June 2013

Letter from the Rt. Hon. David Lidington MP to the Chairman

Thank you for your letter of 13 June in response to my Explanatory Memorandum of 3 June on the above proposal. You decided to retain this matter under scrutiny and asked for further information.

The Committee noted that the Commission in its Impact Statement has produced an estimate of the financial benefits to individuals and businesses of the proposal and provided practical examples of how it would provide benefits, and asked whether we agree with the figures brought forward by the Commission.

The Impact Statement acknowledges that “an exact quantification of the public documents needed by EU citizens and businesses moving and doing business within the EU and affected by the identified administrative formalities is not feasible” as there are so many variables affecting why citizens may require legalisation of documents. However it estimates that a minimum of 1.4m documents per year are currently legalised for use in another EU country, as well as a similar number of certified translations and copies, and bases its estimates for cost savings on that.

We assess that projections appear reasonable. However, it is worth noting that EU citizens would still incur costs and delays in legalising any documents which are not covered by the proposal (court documents, official letters, educational certificates etc) for use within the EU, and on any documents for use outside the EU. There would therefore be some reduction in cost and inconvenience, but the proposal would not remove these altogether.

The examples provided to demonstrate how the proposal would provide benefits are compelling. However, we would also note that some of the difficulties encountered by the individuals and companies in the case studies quoted are the result of a lack of understanding of the documentary requirements of the national authority concerned, albeit compounded by the delay and cost implied by the requirement for legalisation.

We will continue to press for further information from the Commission, including on the likely costs to Member States if they are required, for example, to introduce new central authorities to deal with
queries about authenticity of documents, or to set up new IT systems to offer common format civil status documents in parallel to national documents.

The Committee also requested further information on which if any documents subject to this proposal we consider to present too great a risk of fraud for formalities to be abolished, or for standard multilingual forms to be available, after taking account of the administrative co-operation provisions in the proposal. The Government has not carried out an assessment of which particular documents subject to this proposal might be more or less susceptible to fraud. However as the proposal proceeds, we would want to ensure that any new structures or processes do not make fraud with regard to the documents in question easier or more likely.

I hope that this additional information is useful in the Committee’s consideration of clearing this document from scrutiny.

28 June 2013

Letter from the Chairman to the Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for your letter of 27 June 2013, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 10 July. The Committee decided to retain this matter under scrutiny.

We are grateful for your confirmation that the Commission’s assessment of the benefits to be gained from this proposal appear reasonable and we look forward, in due course, to your assessment of the implications and costs of implementing this proposal together with an update on negotiations. Could you please ensure your assessment includes whether there are any specific documents which you consider to be too sensitive to be subject to the simplification envisaged by this proposal.

11 July 2014

PROTECTION OF THE EU’S FINANCIAL INTERESTS – FIGHT AGAINST FRAUD 2012 ANNUAL REPORT (12772/13)

Letter from the Chairman to Sajid Javid MP, Economic Secretary, HM Treasury

Thank you for your Explanatory Memorandum dated 26 August 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 9 October 2013. We have decided to retain the Commission’s report under scrutiny.

As you will be aware, this Committee has taken a keen interest in the many issues raised by fraud on the EU’s budget both during its recent inquiry into fraud and as part of its scrutiny of the many legislative proposals brought forward by the Commission in 2013 which address this problem.

The Commission’s report raises trends and draws conclusions with which we are familiar, including the on-going discrepancies between the Member States regarding their commitment to detect and prosecute fraud against the EU’s budget, and the related lack of enthusiasm in some Member States for reporting fraud to the Commission when it is discovered. We note that in relation to these twin problems, the Commission says in its report that “some Member states deploy significant resources to counter fraud [while] others prefer to apply financial corrections without further investigation of the potential criminal offence”.

In addition, we take this opportunity to welcome the Commission’s recommendation inviting the individual Member States to establish an Anti-Fraud Coordination Service (Recommendation one). This echoes the conclusion in our Fraud Report calling on the UK to establish a single point of contact for OLAF. How are the UK’s attempts to establish such a body progressing?

There are two issues of substance that we wish to pursue with you. The first issue concerns your oft-repeated view that the fight against EU fraud is best pursued through a preventative approach” including a simplification of the relevant regulations. Indeed, in your Explanatory Memorandum, you say that your opposition to the proposed European Public Prosecutor’s Office (EPPO) is based, in part, on your view that the EPPO “would move attention from prevention to reaction after the crimes have ... been committed”. The Commission, on the other hand, says in its report that administrative controls only uncovered half of the frauds reported to it by the Member States and the other half were detected during criminal investigations. Leaving to one side the discussion of the
merits of the EPPO proposal, the Committee would welcome your view of the Commission’s findings, in particular, given your argument that prevention and strict administrative controls are the most effective tools in the fight against fraud on the EU’s budget.

The second issue of substance regards the Commission’s claim in its 2011 fraud report that the UK continues to report low levels of agricultural fraud. This subject was pursued during our inquiry into fraud on the EU’s budget and, in our subsequent Report, we noted that the issue appeared to have been resolved to both parties’ satisfaction (paragraph 36). We note that the Commission’s report for 2012 addresses this matter in general terms but, in its formal response to our inquiry, the Commission has reopened the issue. In light of the Commission’s response the Committee wanted to offer you the opportunity to reply to the Commission’s claim.

We look forward to considering your response by 24 October 2013.

10 October 2013

Letter from Nicky Morgan MP, Economic Secretary to the Treasury, HM Treasury, to the Chairman

Thank you for your letter, of 10 October on the Commission’s Fight against Fraud 2012 annual Report.

You asked for an update on the process of all Member States establishing a contact point for the European Anti-Fraud Office. The Government is currently considering this matter and hope to conclude this process shortly.

Moving on to your question on the Commission’s findings that Member States’ administrative controls “only uncovered half of the frauds reported to it”, the Commission in this instance is referring to suspected fraud. It is through subsequent criminal proceedings that any suspected fraud can be determined as fraud. These figures must therefore be used cautiously when making such comparisons. The Government continues to believe that intensified administrative checks are needed to pick up cases of suspected fraud or irregularity.

With regards to the Commission’s claim that the UK continues to report low levels of agricultural fraud, the Government reiterates the seriousness in which it takes and implements its reporting obligation, and we are confident that UK management and control systems are robust, adequate and able to pick up irregularities. Any previous technical problems associated with reporting irregularities in the past have been resolved and reporting is now up to date. The low number of suspected fraud cases in the UK is due to the continuous improvement of both UK controls and the Commission services, who work together to ensure that any deficiencies are remedied and systems strengthened. In addition, anti-fraud measures are included as part of management verifications and audit controls in both Structural and Agricultural Funds in the UK.

31 October 2013

Letter from the Chairman to Nicky Morgan MP

Thank you for your letter dated 31 October. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 20 November 2013.

We have decided to retain the Commission’s report under scrutiny.

Our letter of 10 October raised two issues of substance. The first concerned the creation in the UK of an Anti-Fraud Coordination Service (AFCOS). As you are aware, the creation of such a body was one of the conclusions in the Committee’s own fraud report published in April this year. (The Fight Against Fraud on the EU’s Finances, 12th Report of Session 2012-13, HL Paper 158; paragraphs 117 - 118.)

This conclusion was based, in part, on evidence given to us on 23 November 2012 by Commissioner Leppard of the City of London Police. The Commissioner told us that the lack of a single point of contact in the UK caused problems for the EU’s anti-fraud office (OLAF). He said that his force was currently in discussion with the Home Office with a view to establishing the City of London Police as OLAF’s single point of contact and that the Home Office was, at that time, considering the impact on resources of this reform. Nearly a year later, having been asked for an update on the UK’s progress in this regard, your response adds little more, and we therefore offer you a second opportunity, in light of Commissioner Leppard’s evidence, to update the Committee on the progress of these discussions.
The second issue we raised concerned the Commission’s conclusion that administrative controls only revealed half the frauds on EU expenditure reported by the Member States. You are right to urge caution when dealing with the official figures on EU fraud. Indeed, this was one of the key themes that emerged from our own report looking at fraud on the EU’s budget. You are also correct to point out that an element of the figures cited in the Commission’s report dealt with suspected frauds which remain subject to criminal proceedings. However, the figures cited by the Commission are based entirely on information supplied by the individual Member States where they have concluded that there is at least a suspicion that criminal fraud is involved in the irregularity against EU funds.

It appears from the Commission’s figures that administrative controls will only expose some of the frauds committed against the EU’s budget whether they be suspected or confirmed as crimes. If you accept the Commission’s argument, then exposing/discovering the rest requires some form of criminal investigation. In this context, the Committee sought your view of the Commission’s findings “given [the Government’s] argument that prevention and strict administrative controls are the most effective tools in the fight against fraud on the EU’s budget”. Unfortunately, your restatement of the Government’s belief that “intensified administrative checks are needed to pick up cases of suspected fraud or irregularity” misses the point of our question.

We attempted to offer you an opportunity to explain how the Government would seek to deal with those frauds committed against the EU’s budget that are only uncovered following some form of external investigation. From the Commission’s statistics on EU fraud supplied by the Member States, it seems that some form of transnational policing/investigation is required. Are the Government happy that existing arrangements through OLAF, Europol and Eurojust operate effectively to counter EU fraud? If not what would be the Government’s preferred approach? You will be aware, of course, that on the Committee’s recommendation, the House issued a reasoned opinion challenging the Commission’s preferred solution to this problem (the proposed European Public Prosecutor’s Office) on the grounds of subsidiarity.

Finally, the Committee notes your reply to the Commission’s assertion that the UK continues to report low levels of agricultural fraud.

We look forward to considering your response to this letter by 6 December 2013.

21 November 2013

PROTECTION OF THE EURO AND OTHER CURRENCIES AGAINST COUNTERFEITING BY CRIMINAL LAW (6152/13, 10518/13)

Letter from the Chairman to the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your letters of 8 April and 8 May 2013. These were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 22 May. We decided to retain the proposal under scrutiny.

We remain disappointed with the information you have provided in respect of the UK opt-in. We can understand that the Government may not have been in a position to make a decision on whether or not to exercise the UK opt-in at the time of the Explanatory Memorandum. Nevertheless, the Government’s commitments to support Parliamentary scrutiny of JHA measures extend to providing information on the factors affecting the opt-in decision, where the Government is in a position to do so. We do not consider that you have met this commitment. In addition to the assessment of the policy implications of the proposal, which is standard in all Explanatory Memoranda, we would have expected a preliminary assessment of the prospects of negotiating away the concerns identified; some assessment of the implications of non-participation (for example whether it would be practical to continue operating under the existing Framework Decision); and some indication as to whether UK investigation and prosecution authorities would be hampered by non-participation.

Our main concern with this proposal is the provision of minimum sentences without any judicial discretion to account for exceptional circumstances. However, the Commission’s Impact Assessment reveals that a significant number of other Member States do not have minimum sentences for counterfeiting and are therefore potential allies in addressing this issue.

We therefore encourage the Government to remain engaged with the proposal with a view to achieving a negotiated outcome to which the UK could opt-in when the measure is adopted.
We should be grateful for an update in due course on the progress of negotiations.

22 May 2013

**Letter from the Chairman to the Rt. Hon. Chris Grayling MP**

Thank you for your Explanatory Memorandum of 10 July 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July. We decided to clear the Opinion from scrutiny.

In doing, so we generally support your approach to the matters raised by the European Central Bank. In particular, we remain opposed to minimum sentences. However, we see no objection to clarifying in the proposal how the value of non-euro counterfeit notes and coins is to be converted to euros for the purposes of applying the penalty thresholds, and that samples of counterfeit notes and coins held back from analysis because they are needed for prosecution should be sent for analysis (if that has not already taken place) once the prosecution has ended.

We do not expect a reply to this letter.

29 July 2013

**Letter from the Rt. Hon. Chris Grayling MP to the Chairman**

I write to update you on the progress of the proposed Directive on the protection of the Euro and other currencies against counterfeiting by criminal law. As indicated by your letter of 22 May, your committee currently retain this proposal under scrutiny.

At the Justice and Home Affairs Council meeting on 7 and 8 October in Brussels the Council agreed a general approach on the proposal. This followed negotiation of the draft Directive a series of working group meetings in which the United Kingdom participated, addressing the points made in our Explanatory Memorandum and in my letters of 8 April and 8 May.

As regards the agreed General Approach text of the draft Directive, of particular note is the absence of obligations in respect of minimum penalties, which were included in the European Commission’s original proposal. As reference in previous correspondence we shared your concern about such provision and are pleased that the draft Directive will not set an unhelpful EU legislative precedent in this regard. The relevant provision as agreed in the General Approach instead relies on minimum maximum sanction provision. Another proposal included in the original Commission text but which is absent in the General Approach text as result of the negotiations is the proposed obligation on Member States to accede or remain parties to the Geneva Convention on Counterfeiting. The majority of Member States took the view that this obligation was beyond the scope of the legal base relied on by the Commission.

The remainder of the text includes some amendments, often reflected in changes to the recitals, but does not depart significantly from the principle objectives of the original Commission text. In particular Article 8(1) dealing with jurisdiction is agreed in its original form. The Government remains convinced that this provision requiring jurisdiction for counterfeiting overseas by UK nationals is unnecessary and disproportionate.

The General Approach text of the draft Directive will, once the European Parliament has agreed its approach, proceed into the trilogue discussions between the EU Council, the Parliament and the Commission as the next phase in the co-decision process with a view to achieving a first reading agreement.

22 November 2013

**RAILWAY ROLLING STOCK (11140/13)**

**Letter from the Rt. Hon. Simon Burns MP, Minister of State, Department for Transport, to the Chairman**

Please find enclosed an Explanatory Memorandum [not printed] on the above proposal.

As you will see, the proposal has a Title V legal base and therefore, we consider, engages the UK’s opt-in (although we note that the Commission do not take this view). I apologise to the Committee that the legal base and its implications were not spotted earlier so that the EM could be submitted
within the timescale laid out in the Ashton undertaking. This is of particular concern because the proposal has emerged so close to Parliamentary recess, and the time available to your Committee for consideration of its opinion on the opt-in was therefore already likely to be limited.

The EM notes that we have contacted the Council Secretariat to seek confirmation of the date of publication of the last language version of the proposal. That confirmation has not yet been received, but the worst case scenario is that the date of the last language version was 12 June 2013. If that is the case I am afraid that the deadline for Parliament’s opinion on the opt-in would be 6 August. I will of course confirm the deadline as soon as we receive confirmation from the Council Secretariat.

I would like to assure your Committee that I am committed to the effective scrutiny of proposals that engage the UK’s opt-in. To help avoid similar timing problems with future proposals I have asked officials in the International Co-operation team in my department to check the legal base of every proposal as soon as it is published, regardless of whether or not it seems likely to involve a Title V legal base.

10 July 2013

Letter from the Chairman to the Rt. Hon. Simon Burns MP

Thank you for your Explanatory Memorandum and letter of 10 July. These were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July.

We are grateful for the steps you are putting in place to ensure timely submission of Explanatory Memoranda in future.

We agree with you that the proposal raises no subsidiarity issues.

We commend the transparency concerning the respective roles of the EU and the Member States through a declaration of competence.

We agree that the UK opt-in applies. As this is a mixed agreement in which the UK will participate in its own right in addition to the EU, it is not a matter of practical significance whether the opt-in is exercised. However, whether or not the UK opts in, it is important that the recitals of the Decision and the declaration of competence properly reflect the position.

We are therefore retaining this matter under scrutiny pending resolution of the opt-in issue and would be grateful if you would update us in due course.

25 July 2013

Letter from the Baroness Kramer, Minister of State, Department for Transport, to the Chairman

Thank you for your letter of 25 July following the Justice, Institutions and Consumer Protection Sub-Committee’s consideration of this Proposal. I note that the Committee has decided to retain this Proposal under scrutiny.

I am writing to let you know that the UK has opted in to this Proposal and a Written Ministerial Statement to that effect will be laid in Parliament.

I agree with the Sub-Committee’s view that it is important that the recitals of the Decision and the declaration of competence properly reflect the position on the opt-in. We are seeking an amendment to the relevant wording to press the UK Government’s right to opt in. The first working group meeting to discuss the Protocol took place on 20 September. At that meeting we raised our concerns about the wording of recital 11. Five Member States indicated that they were opposed to the UK point. Further discussions on the proposal are scheduled to take place on 29 October.

I will, of course, keep your Committee informed about further developments, and will write again with an update as negotiations progress.

23 October 2013

Letter from Baroness Kramer to the Chairman

I am writing further to my letter of 23 October in which I advised you that the UK had opted in to this Proposal and a Written Ministerial Statement to that effect would be laid in Parliament. I also promised to keep your Committee informed about further developments, and to write again with an update as negotiations progress.
As you may recall from the original Explanatory Memorandum on this proposal, the Government took the view that the Protocol would be advantageous to the UK and European rail industry, would provide greater security for the leasing companies of rolling stock, and would be beneficial both to borrowers, by stimulating increased flows of capital at lower cost, and to equipment suppliers. We did however have a concern, which your Committee shared, about the Commission’s wording in recital 11 (that because the UK and Ireland have opted into the relevant internal EU legislation on which external EU competence is based it is automatically bound by this Decision).

I am pleased to say that compromise text has recently been negotiated on recital 11 (in what is now recital 12) that instead simply records that the United Kingdom and Ireland are taking part in the adoption and application of this decision.

There remains a difference of opinion between Member States as to whether the opt-in applies in situations like this where there is external competence. However, as you know the Government believes that the UK’s opt-in is engaged and our objective has been to achieve wording which protects the UK’s right to assert its opt-in in similar circumstances in the future. We believe that the wording we have secured meets that objective.

Following the conclusion of negotiations, the proposal is now due to be finally agreed as an “A” Point at the Justice and Home Affairs Council 5-6 December and the Government would like to take part in the adoption of this Decision. I would therefore be most grateful if your Committee could clear the proposal from scrutiny ahead of this date.

27 November 2013

PROPOSAL TO REFORM EUROJUST AND A PROPOSAL TO ESTABLISH A EUROPEAN PUBLIC PROSECUTOR’S OFFICE (12566/13)

Letter from the Chairman to James Brokenshire MP, Security Minister, Home Office

I wanted to inform you that we are expecting the European Commission to publish their draft proposals to reform Eurojust and create a European Public Prosecutor’s Office (EPPO) imminently, potentially on Wednesday 17 July.

Both proposals will trigger an opt-in decision, although the Government has already confirmed that it will not participate in the EPPO in the Coalition Agreement. We anticipate debates in both Houses on the Eurojust opt-in decision.

That said, I am conscious that the House of Lords will rise for recess at the end of the month. The three month deadline by which the opt-in decision will need to be made will be determined by the date the last language version of the Eurojust proposal is published. This means that much of the three month window for deciding UK participation is likely to fall during the summer recess. I have asked my officials to keep yours informed as soon as we know more to support the scrutiny process.

Once the proposals are published, they will, of course, be deposited for scrutiny in the usual way.

16 July 2013

Letter from James Brokenshire MP, Security Minister, Home Office, to the Chairman

I am writing to inform you of the Government’s proposed position on the opt-in decision triggered by the European Commission’s draft Regulation to reform Eurojust.

Pending the views of Parliament, the Government’s view is that the UK should not opt in to the new Eurojust proposal at the outset of negotiations (i.e. pre-adoption) but should actively consider opting in post-adoption following a thorough review of the final agreed text. As always Parliament will be consulted on any post-adoption opt-in decision.

The new Eurojust proposal would have substantial implications for criminal justice system arrangements within the UK, not least as a result of the extension of the powers of Eurojust National Members and due to the proposal to create a “special relationship” between Eurojust and the Commission’s parallel proposal to establish a European Public Prosecutor’s Office (EPPO).

The Government does value our participation in the current Eurojust arrangements, where Eurojust’s role in respect of the UK is about support and co-ordination in cross border cases. That is why we have said we will seek to rejoin the current Eurojust measures as part of the 2014 decision. But the
new proposal would have significant implications for the UK’s systems of law that we judge mean we should not opt in to it at the start of negotiations.

You will also be aware of the Government’s longstanding position in the Coalition Agreement that we will not participate in the establishment of the EPPO.

POWERS OF EUROJUST NATIONAL MEMBERS

The draft Eurojust Regulation would extend the mandatory powers of Eurojust National Members. In doing so, it would remove the discretion afforded by the current Council Decisions for Member States not to apply certain powers to their National Members where to do so would be contrary to fundamental aspects of their criminal justice systems. The UK currently exercises this discretion by not granting its National Member powers to order investigative measures, for example. However, the new proposal would extend the mandatory powers of National Members and remove any discretion. In particular, Articles 8(2) and 8(3) would require National Members to be given the power to order investigative measures (such as orders for search warrants, production orders, directed surveillance, intrusive surveillance, or property interference) and authorise and co-ordinate controlled deliveries either “in agreement” with competent authorities or without prior agreement in urgent cases. Additionally, Article 8(1) would require all National Members to be given the powers to issue and execute mutual legal assistance or mutual recognition requests themselves. This mandatory set of powers would cut across the separation of powers between police and prosecutors in England, Wales and Northern Ireland. For example, the UK National Member is from a prosecution background (which we believe is best suited to the role), but the responsibility for ordering investigative measures (including making an application to court) and authorising and coordinating controlled deliveries is the responsibility of law enforcement officials. The proposed new mandatory powers for Eurojust National Members would also conflict with the role of the Lord Advocate in Scotland, who has the sole ultimate responsibility for determining investigative action in Scotland. This would be undermined by the proposed powers in urgent cases. Moreover, such powers would conflict with the principle that operational decisions are best made as close to the operational level as possible.

RELATIONSHIP WITH THE EPPO

Article 86 of the Treaty on the Functioning of the European Union (TFEU) describes the EPPO being established “from Eurojust”. The Commission have interpreted this by creating operational, management and administrative links between the two bodies. This includes the following:

— The ability of the EPPO to request Eurojust or its competent National Members to use their powers under Union or national law regarding acts of investigation that may fall outside the EPPO’s scope of competence and/or to support the transmission of EPPO requests or decisions for Mutual Legal Assistance;
— The ability for the EPPO to attend Eurojust College and Executive Board meetings;
— Eurojust treating any requests for support from the EPPO as if they had been received from a national competent authority;
— Exchanging information, including personal data;
— Automatic cross-checking of data held by Eurojust and the EPPO;
— A role for Eurojust in “facilitating agreement” between the EPPO and Member States that participate in the EPPO over the EPPO’s competence on “ancillary offences” – i.e. offences linked to offences against the EU’s financial interests; and
— Use by the EPPO of elements of Eurojust’s administration and infrastructure.

Given our longstanding position not to participate in the establishment of an EPPO, the Government believes that participating in the Eurojust proposal at the outset of negotiations would, given the proposed interrelationship between the two bodies, risk undermining our decision not to participate in the EPPO. We cannot, at this time, know how this relationship will be defined at the end of negotiations and we would want to be sure that we would not fall under obligations in respect of the EPPO, such as to exchange data, as a consequence of participating in Eurojust.
WIDER PRIORITIES

Irrespective of whether or not the UK opts in to the new Eurojust Regulation, we will take an active part in the negotiations to protect the national interest, as we will also on the EPPO. In addition to the abovementioned concerns, we will also want to continue to challenge the Commission’s evidence base and justification for bringing forward the Eurojust proposal at this time. Furthermore, we will want to oppose any changes that would have the effect of reducing the influence of Member State representatives over the functioning of Eurojust, such as through the creation of an Executive Board, as contemplated in the Commission’s proposal, and seek confirmation that the opinions of Eurojust acting as a College are non-binding on Member States.

21 October 2013

Letter from the Chairman to James Brokenshire MP, Security Minister, Home Office

Thank you for your Explanatory Memorandum dated 7 August and your letters dated 16 July and 21 October respectively. They were all considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 20 November.

We have decided to retain the proposed Regulation on Eurojust (12566/13) under scrutiny, but take this opportunity to clear from scrutiny the accompanying Communication (12551/13).

As you are no doubt aware, European and parliamentary events of the past fortnight have had a significant impact on this proposed Regulation seeking to reform Eurojust and could, potentially, continue to do so. The issuing of a yellow-card by a sufficient number of national parliaments to force the Commission to review the proposed European Public Prosecutor’s Office (EPPO) could significantly change many aspects of this proposal, including the envisaged interweaving of the management and operational capability of Eurojust with the EPPO. The extent of this impact however will not be measurable until the Commission has published the results of its review.

Additionally, your letter on 21 October indicated your intention, subject to the views of Parliament, not to opt in to the negotiation of this proposal. We note that you also undertake to review this decision post-adoption. The Committee remains unhappy with the way the events surrounding the debate on 4 November transpired but we understand that this matter is being pursued elsewhere. We intend to correspond with the Government separately on the wider issues pertaining to the opt-in which arose on the day.

Aside from these significant events, the Committee now has the opportunity to begin its full scrutiny of this proposal.

GOVERNMENT’S CONCERNS

Your Explanatory Memorandum (EM) raised a number of concerns with the proposal and we have already acknowledged their validity in our opt-in report. However, we also take this opportunity at the beginning of our scrutiny correspondence to note the aspects of the proposal which in your words “have significant implications for the UK’s systems of law”. Your letter of 21 October highlighted your main concerns in this regard as:

— The removal of the Member States’ discretion not to apply certain powers to their national Members including the power to order investigative measures, and the power to authorise controlled deliveries; and,
— The provisions governing Eurojust’s relationship with the EPPO.

We point out though that the issuing of a yellow-card by a sufficient number of national parliaments to force the Commission to review the proposed EPPO might well mean that the significance of the latter concern might well disappear, or at the very least, be significantly diminished once the Commission concludes its review of the proposed EPPO.

The level of objection to the EPPO expressed by national parliaments proves, as we anticipated in our report on the opt-in, that the UK Government will not be alone in its opposition to the EPPO. Furthermore, the yellow-card means that essentially, the only difficulty standing in the way of your participation in the negotiation of this proposal is the removal of the Member States’ discretion to decide which powers to confer on its national representatives in Eurojust. With this in mind, what do the Government believe the impact of the issuing of a yellow-card by national parliaments will be on this proposal? And, how optimistic are you that this difficulty can be addressed to the UK’s
satisfaction during the negotiations? What do the other Member States think of the proposal? How was it received by the other Member States at the Commission’s presentation in October?

On the subject of the ongoing negotiations, can the Government tell us how far they have progressed and what the future schedule is likely to be? In addition, does the Government anticipate any impact on the progress of these negotiations caused by the imminent change to the Commission and the forthcoming European Parliamentary elections?

Your EM also raised a number of more technical points with the text which we now note (The numbers in paragraphs relate to the relevant paragraphs of your EM.) These concerns include:

— The Operational functions of Eurojust (32-34);
— Changes to Eurojust’s legal personality and capacity (35);
— The data protection rules (46-48);
— Provisions dealing with the exchange of information within Eurojust and with Member States (49);
— The lack of an impact assessment (50); and,
— The financial implications of the proposal (51).

We look forward to monitoring their development during the course of the negotiations.

DEVOLVED ADMINISTRATIONS

With the devolved administrations in mind, the Committee notes that your letter of 21 October talks in terms of the proposal’s impact on the UK’s systems of law and you also warn of the potential ramifications of the mandatory investigative and controlled delivery powers for the role of the Lord Advocate in Scotland. Your EM confirms, as would be expected, that the devolved administrations have been consulted on this proposal and, at paragraph 12, offers a little more detail on the potential impact the mandatory powers could have on all the UK’s jurisdictions. Are you able to confer on the Committee more detail on the specifics of your consultation with the devolved administrations prior to deciding not to opt in to this proposal; in particular, given the Lord Advocate’s clear evidence to our Protocol 36 inquiry of the benefits of Eurojust to the Scottish Government and his concern that the UK should not leave the agency. You might wish to be aware that the Committee has written separately to the Lord Advocate and the Northern Ireland Minister for Justice seeking their views on this proposal generally and on the opt-in question.

EUROJUST’S CURRENT OPERATING FRAMEWORK

Further to our questions about the negotiation of this proposal, we also have some questions about the current role of Eurojust and how it operates within the UK and the wider EU:

— How does the UK member of Eurojust, and Eurojust itself, cope with the different criminal law jurisdictions in the UK?
— How do the powers of the UK Member of Eurojust compare with those of the other national members now and with the powers for all Eurojust Members in the proposal?

Protocol 36: coherence

Finally, during the course of our two recent inquiries into the Government’s 2014 Protocol 36 decision, we heard evidence on the importance attached by the Commission to the coherence of the measures which the Government will seek to rejoin (Article 10(5) of Protocol 36). The first of our reports (EU police and criminal justice measures: The UK’s 2014 opt-out decisions, 13th Report of Session 2012-13, HL Paper 159) highlighted at paragraph 225 the central role Eurojust fulfils in relation to Joint Investigation Teams (JITS), European Arrest Warrants (EAWs), freezing and asset recovery orders, and the transfer of criminal proceedings. Alongside this list the report also mentioned the close relationship between Eurojust and Europol.

The evidence taken during our inquiries highlighted the breadth of Eurojust’s role to the EU and its centrality to the coherence of Justice and Home Affairs (JHA) matters. The current Decisions governing Eurojust fall within the JHA legislation covered by the Protocol 36 decision and you have already signalled your intention to seek to opt back in to them. In light of your decision not to opt in to the negotiation of this proposal, is there a danger to the coherence of the measures that the UK are seeking to rejoin in 2014 if a text should emerge from these negotiations and you remain of the
view that it is in the UK’s interest not to opt-in? If so, where will this development leave the UK’s participation in the significant EU measures identified above?

We look forward to considering your reply by 6 December.

21 November 2013

RETURN OF CULTURAL OBJECTS UNLAWFULLY REMOVED FROM THE TERRITORY OF A MEMBER STATE (10469/13, 10471/13)

Letter from the Chairman to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Culture, Media and Sport

Thank you for your detailed Explanatory Memorandum (EM) on the draft Directive and the Commission’s Report. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 10 July. We decided to clear the Report from Scrutiny but retain the draft Directive under scrutiny.

We are a little surprised at your generally lukewarm initial position on the proposal. It seems to us that the changes would make the kinds of helpful improvement suggested by national authorities at the time of the last Commission Report and endorsed by the working group which reported to the Commission. As such, we should have thought the proposal was uncontroversial.

While endorsing the need for an effective means of cooperation between Member States and welcoming the proposed use of the Internal Market Information System for this purpose, you comment on possible adverse effects of the other suggested changes. But is the risk of frivolous applications if the deadlines were extended a real one? What level of increase in requests for returns does the Government envisage and what would be the cost to the authorities of having to handle the increase? Will the Government’s concerns lead you actively to oppose the proposal?

We agree with you that no subsidiarity issues arise on the proposal for an amending Directive. However, we were concerned that, had we wished to consider a Reasoned Opinion on subsidiarity grounds, our time for doing so was curtailed by the late deposit of the documents and the EM. What caused the delays?

We look forward to hearing from you by 25 July. If it were possible for you to reply in time for our last meeting before the summer recess, on 24 July, that would be very helpful.

11 July 2013

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter of 11 July in response to my Explanatory Memorandum of 26 June on the European Commission’s proposal and report.

We consider that Directive 93/7/EEC offers useful safeguards for the protection of national treasures and therefore contributes to the fight against illicit trade. While the UK has not made use of the Directive to date and in general return proceedings under the Directive are rarely applied, we consider that the proposed changes would make it easier to make requests under the Directive in future if required. A key principle in our consideration of the proposed changes is the importance of striking the right balance between protecting cultural objects and allowing rightful owners the freedom to enjoy their property.

The reference to potential “frivolous use” of the Directive if the deadlines for return proceedings were extended was mentioned in the Explanatory Memorandum as an example of the sort of concerns that have been raised previously by the UK. Whilst we recognise that the majority of the members of the working group which reported to the European Commission were in favour of extending deadlines, our current view is that the existing deadlines should offer sufficient time for appropriate and responsible use of the provisions. The Directive was set up in order to protect national treasures and our view is that it should be possible to bring return proceedings within one year of becoming aware of the location of such important objects.

The Commission envisages an increase in the use of the Directive if the changes are made, but they have made no assessment of the level of increases. The Government agrees that the widening of scope would likely lead to an increase in the use of the Directive, but as the current provisions are so rarely applied, it is difficult to quantify the likely level of increase in use and any associated handling
costs. While the impact is difficult to quantify, we consider that is likely to be small. The initial view is that any concerns we have identified would be unlikely to lead to the UK Government opposing the proposal in general.

I am sorry you felt that the Committee's time to consider a Reasoned Opinion on subsidiarity grounds would have been curtailed should it have wished to do so. The Explanatory Memorandum was submitted within the deadline set by the Cabinet Office after the documents were received from the European Council Secretariat and deposited, but there appears to have been an unusual delay between the Commission proposal being adopted and it being communicated by the Council which was outside my control. We tried to inform you in a speedy manner and apologise if there were apparent delays in the process.

24 July 2013

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 24 July. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 11 September.

This is not the most important proposal that the Committee has under scrutiny. The current Directive is not much used and the proposed changes are unlikely to bring about a major increase in its use. Nevertheless, on the principle that "every little helps", we recommend that the Government give the proposal their support. We note that you appear to be content with most of the changes – on simplification of the provisions on scope; improved cooperation between the Member States' authorities; and clarification of the rules on compensation for those who acquire illicitly-traded goods in good faith. We acknowledge your point that extending the period for bringing proceedings may not maintain the right balance between protecting the cultural heritage and ensuring that owners can enjoy property which is rightfully theirs.

We now clear this proposal from scrutiny.

11 September 2013

REVIEW OF THE BALANCE OF COMPETENCES

Letter from the Rt. Hon. Maria Miller MP, Secretary of State for Culture, Media and Sport and Minister for Women and Equalities, Department for Culture, Media and Sport, to the Chairman

I am writing to you regarding the Review of the Balance of Competences launched by the Foreign Secretary in July 2012. As part of the commitment in the Government's Coalition Agreement to examine the balance of competences between the United Kingdom and the European Union, the Department for Culture, Media, and Sport (DCMS) is leading a review of the sectors of Tourism, Culture, and Sport.

We are launching a Call for Evidence on 16 May 2013 and interested parties are invited to provide evidence by the end of July. Please find attached [not printed] the Call for Evidence document which sets out the scope of the report and includes a series of questions on which we ask contributors to focus.

Our report will be published by the end of 2013 and will be a comprehensive, thorough and detailed analysis of EU competence in the sectors of Tourism, Culture, and Sport. It will aid our understanding of the nature of our EU membership; and it will provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU.

We are also inviting stakeholders to consider the effects of non sector-specific EU legislation on their sectors: such as e.g. competition law on the Sports sector, and Employment law on the Tourism Sector. In such cases we will feed in to the lead Whitehall Department responsible for these cross-cutting issues. Other sectors within the DCMS portfolio, notably the creative industries and media, will feed in to the BIS-led review on the Internal Market in Services which is due to take place later in the autumn of 2013.
We would be particularly interested to receive the views of the Committee, or individual Members. Please also feel free to bring it to the attention of your contacts in the sector.

15 May 2013

Letter from the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

I am writing to you regarding the Review of the Balance of Competences launched by the Foreign Secretary in July 2012. As part of the commitment in the Government’s Coalition Agreement to examine the balance of competences between the United Kingdom and the European Union, the Ministry of Justice is leading a review on civil judicial cooperation (which includes family justice).

The Department launched a Call for Evidence today. Interested parties are invited to submit evidence with regard to the scope and nature of the EU’s power to act on matters of Civil Judicial Cooperation, as they affect the UK’s national interest. Please find attached [not printed] the Call for Evidence document which sets out the scope of the report and includes a series of broad questions on which we ask contributors to focus. The deadline for submissions will be 5 August 2013.

The Civil Judicial Cooperation report will be completed by December 2013 and is an audit of how EU law and its operation and enforcement affect the UK. It is intended to develop a comprehensive and detailed analysis of how civil judicial cooperation impacts on the operation of the internal market, and consider the impact of any future enlargement of the EU. It will aid our understanding of the nature of our EU membership; and it will provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU.

16 May 2013

Letter from the Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

I am writing concerning the Rights, Equality and Citizenship funding programme (2014-2020). In November 2011, the European Commission brought forward a number of new funding programmes under the heading of justice and rights. This included a proposal for a new Rights and Citizenship programme (which has since been renamed the Rights, Equality and Citizenship programme) which would bring together the current Fundamental Rights and Citizenship programme, the current Daphne III programme (concerning combating violence against women) and elements of the Programme for Employment and Social Solidarity (PROGRESS).

This programme would aim to fund actions such as the collection of data, developing guides and educational material and training and support for Member States and others under a number of themes including antidiscrimination, the rights of the child and preventing violence against women. My predecessor wrote to you in May 2012 to set out the Government’s position and provide an update on negotiations. He also sought a scrutiny waiver for the partial general approach to be agreed in June 2012, however your letter of 24 May indicated that your Committee had cleared the proposal from scrutiny.

Following negotiations with the European Parliament, the proposal is now scheduled to be agreed by Council in the next few weeks. I wanted to update you on how the programme has developed since your Committee last saw it.

The version to be put to JHA Council differs from that seen by your Committee in June last year in a number of respects. Firstly, following lengthy discussions with the European Parliament, limits on the allocation of funding between objectives within the programme have been included with the provision to use delegated acts to revise the proportions allocated to each group if necessary. This has been achieved by organising the objectives for the programme into two groups; one focussing generally on the equality objectives and the other objectives placed in a second group. The regulation allocates a proportion of the total budget has then been allocated to each group of objectives. Provision has been made for some flexibility to these levels, with the Commission able to vary them by 5%. However, any further variation - up to a limit of 10% from the proportion allocated in the regulation - is possible only through a delegated act. Recital 15a, articles 7 and 9 and the Annex to the regulation
set out the details. The Government considers that this provides greater clarity on how funding will be allocated within the Programme. It will not affect the total budget for this programme nor the multiannual framework (MFF) generally and the Government is therefore content to support these arrangements.

The second issue relates to the budget for the Programme. The Rights, Equality and Citizenship programme falls within Heading 3: Security and Citizenship. As part of the broader MFF negotiations, which delivered a real-terms cut on the overall budget ceilings, the Prime Minister agreed a budget for Heading 3 of 15.7 billion euros, representing a cut of about 16% from the Commission’s proposal. Within that heading the Commission has provisionally allocated 439 million euro to the Rights, Equality and Citizenship Programme. This will not be finalised until the MFF is formally adopted. In the context of that agreement, and recognising that the budget for this programme must remain consistent with the budget for the Heading and for the overall MFF, the Government intends to accept the proposed budget envelope for this programme. A number of further changes have been made to the recitals. These include expanding the recitals relating to combating violence against women (recital 7), Roma issues (recital 5a) and citizens rights (recital 3). There are also additional recitals relating to racism (recital 5x), gender identity and reassignment (recital 7b), equality between men and women (recitals 5b and 5y) and on a number of administrative elements of the programme (entry into force, mid programme review and effectiveness of implementation).

Finally a number of smaller drafting changes have been made, which do not substantively change the nature of the regulation.

Having considered these amendments the Government intends to support the proposal when it is discussed at Council in the next few weeks.

20 November 2013

SIX MONTHLY UPDATE TO THE JOINT MINISTRY OF JUSTICE-HOME OFFICE ANNUAL REPORT TO PARLIAMENT ON THE JHA OPT-IN (UNNUMBERED)

Letter from Lord McNally, Minister of State, Ministry of Justice, to the Chairman

I am writing on behalf of James Brokenshire and myself. The Government has committed to provide the Parliamentary Scrutiny Committees with a regular six-monthly update to the list of opt-in decisions which were annexed to the joint Home Office and Ministry of Justice annual report to Parliament on the JHA Opt-in. The third annual report, which was published on 25 April this year, included decisions taken between 1 December 2011 and 30 November 2012. The updated annex [not printed], which I enclose, lists decisions taken in the period between 1 December 2012 and 31 May 2013.

During this six-month period, nine decisions were made under the JHA Opt-in Protocol and none was made under the Schengen Opt-out Protocol. The UK opted in on six occasions and did not opt in on three occasions. For the Ministry of Justice, this included the decision under the JHA Opt-in Protocol to opt in to the Council Decision amending annexes II and III of Council Decision 9 June 2011 which approved, on behalf of the European Union, the 2007 Hague Maintenance Convention. The Government has also decided to not opt in to the Directive on the protection of the euro and other currencies against counterfeiting by criminal law. On the Home Office side, the Government opted in to the proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC, Decision No 575/2007/EC and Council Decision 2007/435/EC with a view to increasing the co-financing rate of the European Refugee Fund, the European Return Fund and the European Fund. The Government decided not to opt into Council Decisions concerning the conclusion of readmission agreements with Cape Verde and Armenia.

Since 31 May the Government has taken a further three opt-in decisions. We have opted in to a Council Decision concluding, on behalf of the EU, a UN Firearms Protocol. We have not opted in to the new Europol Regulation and a Directive on the admission of third country nationals for the purposes of scientific research, studies, pupil exchange, unremunerated training or voluntary service. These decisions will be reflected on the next end of year report. In addition, the Government is currently considering an opt-in decision on the EU-Ukraine Association Agreement.

In the coming months the Ministry of Justice and Home Office are expecting further opt-in decisions on the following proposals:
— Proposal to reform Eurojust (HO)
— Proposal on a European Public Prosecutor (HO)
— Proposal for criminal law measures on fighting money laundering (HO)
— Proposal on special safeguards in criminal procedures for suspected or accused persons who are vulnerable (MoJ)
— Initiative regarding legal aid in criminal proceedings (MoJ)
— Information exchange, risk-assessment and control of new psychoactive substances
— EU-Canada Passenger Name Records (signature and conclusion) (HO)
— Extension of IT Agency to Associated States (signature and conclusion) (HO)
— Extension of European Asylum Support Office to Associated States (signature and conclusion of international agreement) (HO)
— Proposal for a legislative instrument on e-justice (MoJ)
— Proposal to amend the current EC Regulation No 593/2008 on the law applicable to contractual obligations (Rome I) (MoJ)
— Proposal to amend the current EC Regulation No 864/2007 on the law applicable to non-contractual obligations (Rome II) (MoJ)

The proposals on Eurojust, money laundering and psychoactive substances measures will repeal measures from the 2014 JHA opt-out decision list should we choose to opt in, although our assumption is that none will be adopted before December 2014, when the opt-out decision takes effect. The existing measures will therefore remain within the scope of the 2014 decision.

In addition, it is likely that further opt-in decisions will be required on the following proposals on which other Government departments will lead:

— Minimal rules on sanctions and their enforcement in commercial road transport (DfT)
— Protocol to World Health Organisation Framework Convention on Tobacco Control (HMRC)
— Possible recast of Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (HMRC)
— Legal and technical framework for a European Terrorist Finance Tracking System (HMT)
— EU-Canada Free Trade Agreement (BIS)
— EU-Singapore Free Trade Agreement (BIS)
— Kazakhstan accession to WTO (BIS)

It is also possible that other wide ranging EU international agreements will require an opt-in decision.

I trust that the Committee will find this update useful and look forward to working with you on justice and home affairs matters in the coming months. I will arrange for a copy of this letter to be placed in the House library.

17 July 2013

STATUTE FOR A EUROPEAN FOUNDATION (FE) (6580/12)

Letter from Nick Hurd MP, Minister for Civil Society, Cabinet Office to the Chairman

Following your letter to me of 29 May 2012 I am now in a position to update you and the Committee on progress in negotiations on the European Commission’s proposed Statute for a European Foundation (“FE”), and to provide some feedback on the views of stakeholders and Member States.
**STAKEHOLDER VIEWS**

We have not been lobbied by the voluntary sector in the UK in support of this measure, which has led us to question the proportionality of the proposal. Where the voluntary sector has expressed a view it has been supportive in principal, but without considering the detailed implications of the proposal – in particular our concerns that the proposal could give rise to a two-tier system of charities: one based on our national definitions and rules, and another based on the European FE definition and rules. We do not think that the voluntary sector has given detailed thought to the significant problems that could arise from such a two-tier system.

The proposal has been strongly supported by the European Foundation Centre (EFC), and Donors and Foundations in Europe (DAFNE), two Brussels-based representative bodies for the foundation sector across Europe. But we have not seen significant support for the measure from UK-based representative bodies. The Society of Trusts and Estates Practitioners (STEP), a UK-based professional association for family inheritance and succession planning, including cross-border philanthropic giving, gave a presentation to the European Parliament’s Legal Affairs Committee in November 2012, which was supportive of the FE proposal in principle but highlighted some key concerns (that we share). STEP’s concerns included the lack of consensus on what constitutes a public benefit purpose, and that “a pan-European definition would have to reflect the ‘lowest common denominator’ amongst the purposes recognised across the EU if the European Foundation is to be properly utilised”. STEP also shared our concern about the inclusion of taxation in the proposal: “We do not consider that including ‘common denominator’ tax provisions in the Statute itself – that is, tax reliefs which are common to all member states – would be an appropriate approach considering the great variety of approaches across borders”.

**PROGRESS OF NEGOTIATIONS AND MEMBER STATES’ VIEWS**

You will remember that our main reservations related to the inclusion of any tax elements in the proposal, and that where action on taxation is appropriate at the EU level, this should be done under a tax legal base using unanimity voting, with decisions on EU level taxation measures being made by Finance Ministers at ECOFIN. This is a view shared by many other Member States.

The diversity of what can be recognised as a public benefit foundation under national laws also gives rise to significant concern from many Member States. The concern is that the FE could result in a two-tier system under which organisations could qualify under the FE definition that would not qualify under national laws (or vice versa). A lowest common denominator approach, whereby an FE would qualify only if it would be accepted under all Member States’ national laws would be workable, but unduly restrictive and therefore of questionable benefit. But without such an approach Member States’ national laws would inevitably be undermined in some way.

Perhaps unsurprisingly, given the difficult issues being discussed and the diversity of approaches under national laws, Working Party negotiations on this measure have made little progress. It is very hard to see unanimous agreement being reached on the proposal in anything like its current form.

Many Member States have also questioned the proportionality of creating a new pan-European structure for foundations, particularly when there appears to be little evidence of real demand from existing foundations.

The Irish Presidency has proposed a compromise text in an attempt to move the negotiations forward. I attach [not printed], for the Committee to consider in confidence, a copy of the compromise text. The text is marked “Limite” and therefore is not publicly available and should be handled accordingly in confidence. The main change is considered to be the insertion of a new article, Article 51a, which would enable Member States to impose more stringent non-discriminatory conditions under national laws than would otherwise be allowed by the Regulation, but only in a very limited number of specific situations. The very narrow limitation on the situations in which there would be discretion for Member States to impose more rigorous non-discriminatory conditions represents a very minor concession, and more importantly this change does nothing to address the fundamental concerns we (and others) have over the inclusion of tax at all.

Furthermore, the compromise text adds several new provisions to the Regulation that we find problematic. We understand that some of these changes may have been introduced following the recent reports on the proposal of the Legal Affairs (JURI) and Culture and Education (CULT) committees of the European Parliament. For example, the compromise text includes a requirement for FEs to spend 70% of each year’s income within four years of its receipt (amendments to article 7). We believe that such a measure would be unduly bureaucratic for foundations, particularly in terms of monitoring and reporting, and would be almost impossible for regulators to police.
We will continue to engage constructively in negotiations, but hold little hope for much progress on the measure in its current form. I will write again to keep the Committee informed as negotiations continue.

12 June 2013

Letter from the Chairman to Nick Hurd MP

Thank you for your letter of 12 June. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 26 June.

We are grateful for your account of the state of play in the negotiations on this proposal and note the serious difficulties in reaching agreement on the fundamental issue of defining “public benefit”. We share your concerns about the inclusion of tax provisions in this proposal.

We note that you do not expect the proposal to make progress in its current form. We will keep it under scrutiny and look forward to a further update if and when any significant progress is made. Subject to that, we do not expect a reply to this letter.

26 June 2013

THIRTEENTH REPORT OF THE EUROPEAN ANTI-FRAUD OFFICE 1 JANUARY TO 31 DECEMBER 2012 (UNNUMBERED)

Letter from the Chairman to the Rt. Hon. Greg Clark MP, Financial Secretary, HM Treasury

Thank you for your Explanatory Memorandum dated 24 June 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 July 2013.

The Committee decided to retain the report under scrutiny.

As the Minister knows, this Committee recently published a Report which considered fraud on the EU’s budget (The Fight Against Fraud on the EU’s Finances, 12th Report of Session 2012-13, HL Paper 158.) We received the Government’s response dated 8 July, which we note was due on 17 June.

Given this Committee’s recent interest in EU fraud, we found OLAF’s Thirteenth Annual Report interesting. We note that their report covers a number of areas which were either discussed directly, or are of direct relevance, to a number of the conclusions and recommendations we made. In particular, we note the increase in OLAF’s caseload; the Director-General’s emphasis in his foreword on the positive impact of OLAF’s internal reorganisation; the focus of OLAF investigations in structural and cohesion funds; the significant increase in incoming information from Member State authorities (113%); and the coverage of OLAF’s work in preparing the forthcoming proposal for a European Public Prosecutor’s Office.

We also note the interesting statistic that of the 465 cases closed in 2012, 100 resulted in a recommendation for action. This figure indicates that about one in five OLAF investigations ends in a formal recommendation for action.

Unfortunately, there are only three brief paragraphs in your Explanatory Memorandum which set out the Government’s views on OLAF’s annual report. The first paragraph states your view that the Government take EU fraud seriously and support the work of OLAF. The second paragraph notes the “modest” improvements reported by OLAF and cites two examples of the agency’s work that the Government welcome: (i) the reduction in the length of OLAF cases and, (ii) the increase in incoming information into OLAF. The third paragraph briefly repeats your wider policy in this field; namely, your desire to continue to push both the Commission and the Member States towards a “greater focus” on fraud prevention and a simplification of the relevant systems and regulations.

Throughout your evidence to this Committee as part of its inquiry into fraud on the EU’s budget and in your response to our Report, you repeatedly stated that the Government take fraud on the EU’s budget seriously. In addition, in your Explanatory Memorandum on this matter you say that you take the “management of EU funds seriously”, however, we would suggest that these three brief paragraphs offer us very limited information upon which we can base our scrutiny of this report and the Government’s views thereon.
There are three matters of substance relating to OLAF’s annual report that we would have expected to see addressed in greater detail in your Explanatory Memorandum and which we now wish to pursue with you by correspondence.

First, you are right to note the marked increase in incoming information into OLAF. But, beyond welcoming this fact in your Explanatory Memorandum, you do not engage with this information as an issue and neither does your response to our Report. The Explanatory Memorandum says nothing about the significant increase in information emanating from the Member States’ authorities neither do you discuss the apparent discrepancies between the individual Member States (for example, Germany made 38 referrals to OLAF but France made none). As you know, one of the key problems in quantifying and combating fraud on the EU’s budget identified by our Report was a lack of enthusiasm by the Member States’ authorities for reporting fraud to the relevant EU agencies. Given this finding, we were struck by a reported increase of 113% in the level of information to OLAF emanating from the Member States’ authorities. Can the Government explain this sudden dramatic jump in incoming information? What has changed to provoke such a dramatic increase? How would you explain the discrepancies between the numbers of referrals to OLAF made by the individual Member States?

Second, we have already noted the statistic that of the 465 cases closed in 2012, 100 resulted in a recommendation for action; a rate of about one in five. What is the Government’s view of this statistic? What does it say about OLAF? Does it indicate success or failure? How would the Government measure OLAF’s success?

Third, we note that your Explanatory Memorandum calls for more time to assess the efficacy of OLAF’s internal reorganisation and that you welcome the modest improvements highlighted by OLAF’s annual report. In the section of your response to our Report dealing with the Government’s rejection of the European Public Prosecutor’s Office, you say that the EU’s current anti-fraud system is not perfect, but it works and is improving. In relation to OLAF, how has the Government reached this conclusion, and what factors influenced your conclusion?

We look forward to considering your response when this House returns in October after summer recess.

25 July 2013

Letter from Greg Clark MP to the Chairman

Thank you for your letter of 25 July 2013, on an unnumbered Explanatory Memorandum (EM) on the European Anti-Fraud Office’s thirteenth report.

You asked for an explanation for the sudden increase in incoming information concerning irregularities from Member States’ authorities in 2012. I note that this is a significant increase compared to 2011, which had a relatively low amount of reported irregularities by Member States’ authorities compared with previous years. I agree that this increase deserves further explanation.

The OLAF report states that an increase in the number of reported irregularities could at least in part be a result of increased visibility of OLAF as an independent investigative office, or a demonstration of improved reporting and control systems, leading not to higher irregularities but higher detection of irregularities. OLAF gives a number of reasons for this increase in its report, which are summarised in paragraph 5 of the EM.

On the issue of discrepancies between the number of referrals to OLAF made by different Member States, the Government agrees more clarity is needed. As such, the Government has raised the need for OLAF and the Commission to conduct investigations to understand what problems there might be in this area or to provide assurance that the reporting and control systems in place in Member States are sufficient and effective. If there are problems with using the reporting system, such as experienced by the UK in the past, the Commission should strive to speedily resolve the issue with the relevant authorities or take enforcement actions including suspending payments if necessary.

With regard to the number of cases closed in 2012 with a recommendation for action (100 out of 465 closed), the Government shares your interest in this statistic.

The Government notes that the OLAF report refers to its recent reorganisation as a key reason for a high number of cases being closed without recommendation. It is important for OLAF to ensure all instances of fraud are tackled. Clearly OLAF’s work relies on information provided by third parties, including individual Member States. The Government would therefore like to see all parties, both public and private, playing a constructive role in supporting OLAF in this work. There must be a
renewed focus on the quality and timeliness of information provided to OLAF to ensure sufficient investigation and ultimately, where necessary, recommendations for further action.

The Government believes OLAF is broadly effective within its current budget, as evidenced by the findings in the 2012 report that its performance is gradually improving. Its success however relies on effective cooperation with partners in Member States, third countries, international organisations and other EU Institutions. According to OLAF’s 2012 report, since its creation in 1999, more than 3,500 cases have been opened, with 335 individuals receiving prison sentences totalling 900 years, and with over €1.1 billion of EU money recovered. In the Government’s opinion, these indicate a positive level of success, although all parties concerned should continue to strive for better results and should of course in no way be complacent. In this respect, the Government is encouraged by the fact that OLAF’s 2012 report notes an increase in Member States’ engagement, as I am sure you do too.

2 August 2013

Letter from the Chairman to the Rt. Hon. Greg Clark MP

Thank you for your letter dated 2 August 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 9 October 2013. The Committee decided to clear OLAF’s report from scrutiny.

We are grateful to you for your answers to our questions which shed more light on the Government’s views of OLAF’s work and its thirteenth annual Report.

We do not expect a reply to this letter.

10 October 2013

TOWARDS A EUROPEAN HORIZONTAL FRAMEWORK FOR COLLECTIVE REDRESS (11499/13), COMMON PRINCIPLES FOR INJUNCTIVE AND COMPENSATORY COLLECTIVE REDRESS MECHANISMS IN THE MEMBER STATES CONCERNING VIOLATIONS OF RIGHTS GRANTED UNDER UNION LAW (C(2013) 3539/3)

Letter from the Chairman to Jo Swinson MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

Your Explanatory Memorandum on these documents was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its first meeting after the summer recess, on 9 October. We thank you for your analysis of the Commission’s approach to collective redress and your detailed comments.

We note that the Recommendation, if adopted, would not be legally binding on the Member States but, of course, it should be treated as significant since it would carry some weight as a form of “soft law”.

These are advantages in having a facility for collective redress in the procedures of legal systems dealing with civil claims when used appropriately and as long as the possibilities for abuse or “gaming” the procedure are minimised. The principal benefit is in “procedural economy” – dealing with a large of number of similar claims in a single set of proceedings with resulting saving in costs for the parties and court administration. The procedure is also more effective for small claims. As you have pointed out, these benefits are already recognised in the UK’s legal systems.

The principles set out in the draft Recommendation seem to us, in general terms, sensible. You indicate that they are broadly consistent with UK procedures (or at least those in England, Wales and Scotland). What is the position in relation to Northern Ireland? Do any of the proposed principles give you particular cause for concern as potentially posing difficulties for any of the UK jurisdictions?

We note that you consider that neither the opt-in nor the opt-out principle should be universally applicable. The Recommendation (article 21) would permit exceptions where justified. Do you consider that this provision for exceptions would provide sufficient leeway to enable our systems to use the most appropriate model for different kinds of dispute?

We have some sympathy with your concerns about the wide scope of application of the principles, and we are not at present persuaded that an across-the-board approach would be suitable. However, would you not agree that there is a place for collective redress in relation to consumer disputes and environmental cases?
We note that you are consulting other Departments in view of the wide scope of the Recommendation in terms of the subject matter of proceedings. With that in mind, we are keeping the documents under scrutiny and look forward to learning the outcome of those discussions. We would also be interested in the reactions of other Member States to the Commission’s Communication and draft recommendation.

We should be grateful for a response to this letter by 11 November.

10 October 2013

Letter from Jo Swinson MP to the Chairman

Thank you for your letter of 10 October following consideration of the above Explanatory Memorandum. I have noted that the Committee has retained the documents under scrutiny.

You raise a number of points in relation to the principles set out in the Commission’s Recommendation and whether they pose any potential difficulties for the UK jurisdictions, in particular whether they are broadly consistent with the position in Northern Ireland. I can confirm that in Northern Ireland, although there are no specific rules on Group Litigation Orders as in the Civil Procedural Rules, where numerous persons have the same interest in proceedings, the proceedings may be brought by, or against one, as representative of all. A number of the Commission’s general principles could be accommodated within existing court procedures. The detail of any future legislative proposal in this area however, would need to be carefully considered to identify the need to make legislative or administrative changes.

Scotland does not, at present, have a special procedure for actions that seek collective redress but this is currently under consideration and is an evolving area of practice and procedure within this jurisdiction. As part of these considerations on how such a procedure may work, the Commission’s principles do not appear to cause any difficulties with the exception of the principle prohibiting contingency fees. At present contingency fee agreements are unenforceable in Scotland. However, a recent review of expenses and funding of civil litigation carried out in September of this year, recommended that such agreements should be made enforceable and more specifically, that they should be available for use in multi-party actions (actions for collective redress). The Scottish Government has yet to formally respond but it is likely that it will accept this recommendation unless compelling reasons are given for it not to do so.

You share my concerns about the wide scope of application and suitability of an across-the-board approach. Since you wrote officials across Government have given further consideration to the implications of a general system for collective redress in different sectors. An effective means of redress is important in environmental cases however, I do not believe the best way to achieve this is through the principles set out in the Commission’s recommendation. As mentioned in the Explanatory Memorandum, this will be looked at in more detail through a separate proposal for an access to justice directive in environmental matters which is expected from the Commission soon.

Although there are advantages to having a mechanism for collective redress in some sectors, we believe that in others such a system is neither appropriate nor is there sufficient evidence to suggest it is necessary. In the energy sector, as in others where groups of consumers collectively pursue a case through the Courts, this can be costly, lengthy and result in a proportion of any redress being paid to cover legal expenses. In addition, where these are awarded, legal costs recovered from energy companies can be passed on to all consumers.

The draft Consumer Rights Bill will introduce greater flexibility for public enforcers to deal with breaches of consumer law in the most appropriate way. For example, businesses that breach the law might not only have to pay redress to consumers and/or make a contribution to a consumer charity, but could also have to put in place a compliance officer or advertise their breach (and the action they have taken to address it) in the press. This should result in more redress being paid to consumers when they have been victims of breaches of consumer law. Rather than businesses being fined in the criminal courts and that money going into the exchequer, they could be ordered to pay redress in the civil courts which will go into the pockets of consumers instead.

In relation to infringements of other EU rights, in company law for example, the use of collective redress has not been considered at all and significant work and consultation on the implications and the likely costs and benefits would need to be undertaken. The Government also has significant reservations in relation to a collective redress mechanism for infringements of rights in employment law. UK employment law is based around providing individual rights for employees and workers and applying an individual redress mechanism (Employment Tribunal) in which they can enforce these rights. Employment Tribunals are designed to be more informal and less expensive than courts. They
are based around the principle that individuals can pursue their claim without legal representation if they choose to do so. The Government would not look to promote collective redress over this principle.

You also asked for my view on whether the permitted exceptions to the application of an ‘opt-in’ principle are sufficient. As indicated in the Explanatory Memorandum, one of the key areas where we would want to ensure the ability to adopt ‘opt-out’ is for infringements of competition law. Although proposing to introduce an ‘opt-out’ regime through the draft Consumer Rights Bill, it is also worth noting that the Government is maintaining the ‘opt-in’ model already in place. There has however been extensive research carried out by the Office of Fair Trading and the Civil Justice Council, which supports that a more effective means to redress for parties affected by an infringement of competition law comes through an ‘opt-out’ approach. This is backed up by evidence gathered through the Government’s own Impact Assessment and consultation on the draft Bill. An efficient means to redress within a competition regime is essential for making markets work. The Government believes this does provide the necessary justification “on grounds of sound administration of justice” and therefore, sufficient leeway to take advantage of the Commission’s exception.

Other Member States have so far remained relatively silent on whether they plan to implement the principles set out in the recommendation. I can report however that the Netherlands and Portugal already have ‘opt-out’ models in place. Sweden applies ‘opt-in’, but certain conditions mean they are seldom used. Finland has an ‘opt-in’ model and France is progressing an ‘opt-in’ system through legislation which should pass shortly. The Commission itself acknowledges that the recommendation as drafted was the result of many years of trying to find a solution which was complementary to the different legal systems of the Member States. More extensive discussions on implementation will take place between Member States and the Commission at a high-level meeting in Spring 2014. I will write to this Committee again once the intention of Member States with regards to implementation is clearer.

9 November 2013

UPDATE ON THE EUROPEAN INVESTIGATION ORDER (9145/10, 18918/11, 18919/11)

Letter from Mark Harper MP, Minister of State for Immigration, Home Office, to the Chairman

In my letter of 22 January I undertook to update you on developments on the European Investigation Order (EIO).

Starting on 26 March, four trilogues took place under the Irish Presidency, the most recent on 11 June. These discussions were generally favourable to the UK position. Although a full, consolidated text has not yet been published, the following Articles have been agreed in principle (the draft revised text of these Articles is attached) [not printed]:

— Article 4 (Types of procedure for which the EIO can be issued)
— Article 5 (Content and form of the EIO)
— Article 6 (Transmission of the EIO)
— Article 7 (EIO related to an earlier EIO)
— Article 8 (Recognition and execution)
— Article 11 (Deadlines for recognition or execution)
— Article 14 (Grounds for postponement of recognition or execution)
— Article 16 (Criminal liability regarding officials)
— Article 17 (Civil liability regarding officials)

Most of these are non-contentious clauses and we were content with the agreed General Approach text. Discussions have also taken place on Articles 2, 5a, 9 and 10, to which my letter of 22 January also referred:

— Article 2 (Definitions of Executing/Issuing authorities) -There were concerns about the approach the European Parliament was taking in terms of defining an ‘executing authority’. However, the definition now looks likely to cover
the UK’s system of using a “central authority” to receive, accede to, and ensure the execution of EIOs.

— Article 5a (Conditions for Issuing and Transferring an EIO) - It also appears likely that there will be a mechanism that will allow an executing authority to return an EIO that it considers disproportionate, so that the issuing authority can consider withdrawing the request.

— Article 9 & Article 10 (Recourse to different types of investigative measure / Grounds for non-recognition or non-execution) – The European Parliament is in favour of a ground for refusal on human/fundamental rights grounds and a clause that ensures that Member States are not obliged to carry out search and seizure where this is not possible in a comparable domestic case. We are supportive of a human/fundamental rights refusal ground and are considering proposals regarding search and seizure. However, negotiations on these clauses remain challenging.

Overall, progress was made under the Irish Presidency. Difficult discussions on grounds for refusal remain, but I am optimistic that negotiations will be concluded during the Lithuanian Presidency. I will keep you updated on developments during these negotiations.

5 July 2013

Letter from the Chairman to Mark Harper MP

Thank you for your recent letter which we received on 5 July. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 17 July. We are grateful for this further progress report and your comments on the main issues which have been under discussion. The amendments under discussion, in particular, those on proportionality and dual criminality seem to be those which the Committee, like you, would support.

We keep the matter under scrutiny and look forward to a further update as the negotiations develop. We remind you that we wish to consider the text of the draft Directive as agreed in the trilogue.

18 July 2013

Letter from Mark Harper MP to the Chairman

I last updated you on progress of the European Investigation Order on 5 July. Since then there have been four trilogue meetings under the Lithuanian Presidency (one in July, two in September and one in October, so far). These discussions have focused on the clauses relating to the transfer of evidence (Article 12), legal remedies (Article 13), temporary transfer of prisoners (Articles 19/20) and video/telephone conferences (Articles 21/22) and data protection (Article 18). Progress in these discussions has not been as swift as I had hoped and there is not, at present, additional agreed text. However, agreement on most of these Articles appears close and I expect to share this text with you soon.

Moreover, there now appears to be a genuine attempt to find compromise on Articles 9 and 10. I attach the latest compromise text produced by the Presidency on these two Articles; it is likely this drafting will be close to the final agreed version. You will note that, despite our best efforts the ‘list approach’ to dual criminality remains (Article 10(1)(h)). The ‘list approach’ now appears to be an entrenched position and Member States simply do not want to step ‘backward’ from this. It will mean we will be unable to apply a full dual criminality check to ‘search and seizure’ (as we currently can under the MLA system). However, overall Articles 9 and 10 have been improved and represents a good package for the UK, for instance:

— Explicit reference to ‘search and seizure’ has been removed from Articles 10, this leaves scope to apply exactly the same conditions for search and seizure as we would in a similar domestic case (i.e. we could apply the conditions in section 16 of Crime (International Co-operation) Act 2003, except full dual criminality);

— Ne bis in idem is retained as a ground for refusal (Article 10(1)(e) with caveats placed in a recital rather than in the substantive text;

— The extraterritoriality ground (Article 10(1)(f)) has been expanded so that an EIO can be refused if the conduct under investigation occurred wholly or partially in the UK. This will mean that UK residents involved in conduct in
the UK which is lawful here, but is unlawful in another Member State cannot be subject to an investigative measure under the EIO;

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There is agreement in principal to a fundamental (human) rights ground for refusal, this will provide additional protection to UK residents.

Agreement on Article 9 and 10 is likely to lead to significant agreement on other parts of the dossier and I therefore remain optimistic that negotiations will be concluded during the Lithuanian Presidency. I will keep you updated on developments during these negotiations.

11 November 2013

WIPO COPYRIGHT TREATY FOR VISUALLY IMPAIRED PEOPLE (UNNUMBERED)

Letter from the Viscount Younger of Leckie, Parliamentary Under-Secretary of State for Business, Innovation and Skills, to the Chairman

I am writing to you to let you know that the UK has been actively involved in international negotiations at the World Intellectual Property Organization (WIPO) on improving access to copyright works for visually impaired people. Significant progress has been made on the text in recent months, resulting in a draft Treaty. A Diplomatic Conference will be held on 17-28 April in Marrakesh, where further negotiations will take place with the aim of agreeing the Treaty text.

BACKGROUND

UK copyright law allows accessible copies of copyright works (for example, Braille versions of books) to be made for visually impaired people without infringing copyright in the original work. However, many countries’ copyright laws do not allow this. Even where national copyright laws do allow the making of accessible copies, international copyright laws do not permit them to be exchanged across borders. This means that a Braille copy of a book produced in the UK by the RNIB cannot be sent to their sister organisation in Australia – instead, they must pay to make their own copy.

The World Blind Union estimates that in the UK less than 5% of books are available in an accessible format, with less than 1% available in the developing world. The UK has long been a strong advocate for the need for international action to address this “book famine”.

WIPO has been hosting international discussions with the aim of agreeing a copyright Treaty that would require Member States to have an exception for the making of accessible copies for visually impaired people and to permit the transfer of accessible copies across national borders.

The UK wants to achieve a Treaty that will improve access to copyright works for visually impaired people whilst maintaining the important incentives that copyright provides for rights owners.

The Treaty concerns matters of national and EU competence, so it is being negotiated as a mixed agreement. The UK has ensured that the EU Commission’s negotiating mandate in relation to this Treaty includes our key objectives in the negotiations, and only allows the Commission to negotiate on matters of exclusive EU competence.

NEXT STEPS

There are still several outstanding issues that will be taken to the Diplomatic Conference. It is clear that a significant amount of focussed work will be needed, and that all parties will need to be flexible, if we are to successfully conclude the Treaty.

As mentioned above, the Treaty will be negotiated as mixed agreement. If a text is agreed it will be open to the UK, other Member States and the EU to sign the Treaty. At the Diplomatic Conference, the UK will be negotiating in line with the Government’s agreed position on this issue. I will write again following the Diplomatic Conference to inform you of the latest developments and any new text. Should the UK decide to sign the Treaty I will of course arrange for the text to be laid before Parliament as a Command Paper with an Explanatory Memorandum in the usual way.

We have carried out an initial assessment of UK laws and are of the view that, if the UK signs the Treaty, minor amendment of UK copyright exceptions for visually impaired people in the area of cross-border exchange of accessible copies of works could be required. Further analysis will be required following the Diplomatic Conference.
If, following the Diplomatic Conference, the EU seeks permission from the Council to sign the Treaty on matters of EU competence; I will provide you with the necessary explanatory memorandum which will be submitted for Parliamentary scrutiny.

I attach the current draft text [not printed] of the Treaty for your information.

13 June 2013

Letter from the Chairman to the Viscount Younger of Leckie

Thank you for your letter of 13 June which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 3 July.

The Committee was grateful for the information on the progress of negotiations. We understand agreement was in fact reached on the text of a Treaty on 26 June. We look forward to scrutinising any proposal brought forward by the Commission for the EU to sign it.

As you will recall from correspondence relating to the Beijing Treaty, the Committee is concerned that the respective competences of the EU and the Member States should be transparent, especially for the other states participating in it. Ideally, this should be done by provision for a declaration of competence in the Treaty itself.

We should therefore be grateful if you would let us know what steps have been taken to include provision for the respective competences of the EU and its Member States to be made transparent.

4 July 2013