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

This edition includes correspondence from 1 December 2013 - 3 June 2014

EUROPEAN UNION SELECT COMMITTEE

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BALANCE OF COMPETENCES REVIEW (UNNUMBERED)

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

I am writing to update you on the progress of the Balance of Competences Review. This follows my letter of 21 October 2013, on the launch of Calls for Evidence for semester three reports. The reports for semester two - covering Single Market: Free Movement of Goods, Asylum and non-EU Migration, Trade and Investment, Environment and Climate Change, Transport, Research and Development, Culture, Tourism and Sport, and Civil Judicial co-operation - have today been published at https://www.gov.uk/review-of-the-balance-of-competences. The reports were written by departments leading on these policy areas.

You will be aware that we also expected to publish the Single Market: Free Movement of Persons report this semester. As you know, free movement is a particularly complex area of EU law and practice and given the number of different issues to examine we have decided to spend more time on this report. The considerable commentary on and public interest in free movement also makes it
especially important that the report does justice to the full scope of the debate and takes account of recent developments in this area.

Calls for evidence for second semester reports were launched in May 2013, and were open for three months. As with the first set of reports, we saw a high level of interest and received over 600 contributions from experts and interested groups right across the UK. The reports have undergone rigorous internal challenge to ensure they are balanced, robust and evidence-based. Evidence submitted (subject to the provisions of the Data Protection Act) has been published alongside the reports on the gov.uk website to ensure transparency.

As you know, calls for evidence for semester three reports were launched in October 2013 and closed in January 2014. Reports in this semester cover: Single Market: Services; Single Market: Financial Services and Free Movement of Capital; EU Budget; Cohesion; Social and Employment; Agriculture; Fisheries; Competition and Consumer Policy; Energy; and Fundamental Rights. The final reports are expected to be published in summer 2014. Calls for evidence for semester four reports will launch in spring 2014.

I would like to take this opportunity to thank the European Union Select Committee for submitting its previous relevant work as evidence. I very much hope that the Committee will continue to use its expertise to contribute to the Review. If you would like to receive further updates or to discuss the published reports, I can arrange an informal briefing by officials.

13 February 2014

Letter from David Lidington MP to the Chairman

Further to my letter of 13 February announcing publication of the second set of Balance of Competences reports, I am pleased to be able to inform you of the launch of the fourth and final semester Calls for Evidence.

The Calls for Evidence for the final seven reports will be open until the week of 30th June. This semester again covers a broad array of issues, including: Economic and Monetary Policy; Information Rights; Police & Criminal Justice; Education; Enlargement; Voting, Consular and Statistics; and Subsidiarity and Proportionality. They can be found at www.gov.uk/review-of-the-balance-of-competences.

As you know, I am keen that Parliament uses its expertise to contribute to the review and therefore wanted to take this opportunity, in particular, to provide more detail on the three reports being led by the Foreign and Commonwealth Office. These cover Enlargement, Subsidiarity and Proportionality, and the report on Voting, Consular and Statistics (jointly with the Cabinet Office and UK Statistics Authority).

The Enlargement report will assess the balance of competences between the EU and the UK in the field of enlargement of the European Union, including the impact of enlargement on UK interests, the development and effectiveness of the EU enlargement process and lessons learned from previous enlargements, the role of the Member States and EU Institutions in the process, the use of conditionality and of financial and technical assistance, and future challenges and opportunities that enlargement will bring.

The Subsidiarity and Proportionality report covers the concepts of subsidiarity and proportionality which are fundamental principles to the functioning of the EU. It will address how these are used and applied in practice across EU activity; whether the EU acts only when necessary, and whether action takes place at the lowest level possible, and that the means are proportionate to the end. The report also covers Article 352 which provides the EU with the power to act to achieve any of the objectives laid down in the EU Treaties where no other treaty article provides for this. Unlike other Balance of Competences reports, this report does not cover a distinct area of competence.

The Voting, Consular and Statistics review covers three strands each led by the relevant department: Cabinet Office (voting), the Foreign and Commonwealth Office (consular) and the National Statistician on behalf of the UK Statistics Authority (statistics). The voting strand seeks views on the balance of competences on subjects including how to vote and stand as a candidate at elections, the franchise and EU democratic engagement initiatives (such as the European Citizens’ Initiative). The consular strand will consider the EU’s limited competence in Consular Services, which extends to the coordination of efforts between Member States and the requirement for Member States to treat unrepresented EU citizens, in consular matters, in the same way as they would treat their own nationals. The statistics strand looks at EU competence to require statistical reports, and how that
impacts issues such as data collection, respondent burden and the level of demand for information at a time of resource pressure.

As I reiterated in my recent letter, I am grateful for the continued engagement of your committee and I know departments have found the material provided to the first three semesters a valuable contribution to their evidence base. As the Committee is aware, 14 of the 32 reports have now been published and reveal a variety of views and perspectives on the broad range of issues covered. Much of the evidence substantiates HMG’s arguments on the need for the EU to reform to deliver greater growth and prosperity. The Review is essential to ensuring that our national debate about our relationship with Europe is grounded in evidence and I’m pleased that many organisations are starting to draw on the reports and evidence to inform their own views.

I will provide a further update on progress at publication of the semester three reports due this summer, and of course would be happy to arrange for further briefings as desired.

27 March 2014

Letter from the Chairman to David Lidington MP

Thank you for your letter of 13 February 2014 regarding the publication of the second semester reports under the Balance of Competences Review.

We note that the Report on “Single Market: Free Movement of Persons”, for which the Home Office is responsible, still remains outstanding. In your recent letter of 28 April you attributed the delay to the complex nature of this area of EU law and practice. You assure us that the Report will be published as soon as it is complete but, in our letter of 9 April, we asked when publication is expected. We would welcome greater clarity from you in respect of the timing of publication. Furthermore, we do not accept that there is unique complexity in this policy area compared to others and would appreciate an explanation which more clearly justifies the continued delay. You also drew our attention to the publication of the launch of the fourth and final semester Calls for Evidence. As you will be aware, the Committee decided that we were not in a position to respond formally to each of the Review’s individual Calls for Evidence. Instead, in letters to you of 19 December 2012 and 10 September 2013, we drew your attention to the numerous reports that we have published since session 2007-08 until the present, as well as scrutiny correspondence, which concern the majority of the competences covered by the Review.

An update to the Annexes which were enclosed with those letters is attached containing a list of the reports and enhanced scrutiny correspondence that have been published or sent since 10 September 2013.

As before, we would be grateful if each department could take account of the content of all the Committee’s past and future reports and scrutiny correspondence with respect to each remaining competence that is reviewed, especially during their analysis of the evidence received in response to each of their Calls for Evidence.

In the light of the topics that you highlight in your letter as falling within the competence of the Foreign and Commonwealth Office, we would draw particular attention to the reports that we have published on Enlargement1 and on the Role of National Parliaments2. These relate to the Calls for Evidence on Enlargement and on Subsidiarity and Proportionality.

In our letter to you of 10 September 2013, we set out some general observations on the first semester reports. With regard to the second semester reports, which we have now had a chance to consider, we would like to make the following general observations:

— We commend the structure of each Report and the clear articulation of the salient issues within complex policy areas.

— We are also pleased to note that, as was the case for the first semester, the tone and content of the second semester reports are generally in line with the mandate to produce balanced and evidence-based reports, which inform the public’s understanding of the EU without making specific policy recommendations.

— There is a generally diverse range of stakeholder contributions received for each report, with evidence systematically collected through workshops in

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1 The future of EU enlargement (10th Report of Session 2012-13, HL 129)
2 The Role of National Parliaments in the European Union (9th Report of Session 2013-14, HL 151)
addition to written contributions. It is disappointing, though, that the range of evidence received across the topics continues to demonstrate a lack of significant interest beyond the UK in this exercise among public authorities, civil society, academia and the private sector. We consider that some of the topics covered in the fourth semester should in principle attract particular interest beyond the UK and we would re-iterate the need for engagement with other Member States.

We would also like to make the following specific comments about individual reports:

— There is fair acknowledgement and reference to relevant reports produced by the Committee where such reports are available. Across the topics, though, the approach remains inconsistent. The Transport report makes no reference to our work in this area, notably our 2011 report on completion of the European rail market. While the Environment and Climate Change report makes frequent reference to our report on EU freshwater policy, it does not refer to the substantial content on climate change included in our recent report on EU energy policy. We were surprised that our report on Research and Innovation was referenced only once in the Research and Development report (paragraph 3.26) despite the relevance of our conclusions to various aspects covered in your review. There was a reference to the “UK Parliament European Scrutiny Committee” at paragraph 2.71 of the Environment and Climate Change report. This is a regrettable inaccuracy which will not, we trust, be repeated. Three of our reports are mentioned in the report on Civil Judicial Cooperation, but only in passing in the form of footnotes. This is disappointing, particularly given our detailed scrutiny of the workload of the ECJ and the relevance of our conclusions to the Government’s report. We hope that the third and fourth semester reports prove more assiduous in reflecting, accurately, any of our work that is salient to their content.

— While the tone and content of the reports are generally balanced and impartial, we observed one exception. The Culture, Media and Sport report arguably gave undue prominence to the warning, by five contributors out of 52, of the need for vigilance against extension of EU competence in these areas. We assume this to be the basis for the warning at paragraph 3.35 of the report about the threat of “competence creep”.

— Despite the overall success in reflecting a wide range of views, it was apparent that Small and Medium sized Enterprises were under-represented in the Research and Development review.

We would be grateful if these comments could be taken into account during the preparation of the third and fourth semester reports. In the meantime we will continue to take an interest in the process of the Review as a whole, and we would be grateful if you could continue to keep us informed of its progress, particularly as the third batch of reports nears the publication stage, and as the fourth semester progresses.

7 May 2014

Letter from David Lidington MP to the Chairman

Thank you for your letter of 7 May regarding the second semester reports of the Balance of Competences Review.

I am grateful for your observations on this set of reports and I am pleased that, once again, you found the reports to be in line with the Review’s remit. I share your view that the reports do well to set out clearly the salient issues in, as you rightly state, complex policy areas. Overall I think we are well on our way to having build up a uniquely broad survey of our relationship with the EU and can be proud of the quality of that survey.

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3 Tunnel vision? Completing the European rail market (24th Report of Session 2010-12, HL 229)
4 An Indispensable Resource: EU Freshwater Policy (33rd Report of Session 2010-12, HL 296)
5 No Country is an Energy Island: Securing Investment for the EU’s Future (14th Report of Session 2012-13, HL 161)
6 The Effectiveness of EU Research and Innovation Proposals (15th Report of Session 2012-13, HL 162)
I also agree with you that the reports incorporate a diverse range of stakeholder contributions. On your points about the need for engagement with other Member States I hope I can reassure you that we continue to discuss the review regularly with our EU partners and that outreach events, for example, are also held outside of the UK. Some Member States and organisations in other Member States have contributed as you know, and lead Departments are actively seeking contributions to semester four calls for evidence from a wide range of organisations at home and in Europe. That said, this review is ultimately about the UK’s relationship with the EU and so I am not disheartened that the majority of the evidence received is from within the UK.

I am pleased to say that Departments are on track with the third set of reports covering Single Market: Services, Financial Services and the Free Movement of Capital; EU Budget; Cohesion; Social and Employment; Fundamental Rights; Agriculture; Fisheries; Competition and Consumer policy; and Energy, due to be published this summer.

We are intending to publish the delayed Free Movement of Persons report, which you also asked about, alongside these third semester reports.

Your letter has been circulated to officials in the appropriate semester two Departments for them to consider your views on their individual reports. Similarly, the details of the Committee’s reports relevant to semester four have been passed on to the lead Departments and we will continue to encourage them to take the Committee’s evidence into account appropriately. I am grateful in particular for the flagging of Committee products relevant to FCO reports.

I would, again, like to take the opportunity to thank the EU Select Committee for its continued interest in the review and hope you will find the upcoming semester three reports of interest.

22 May 2014

COMITOLGY – ADAPTATION OF THE REGULATORY PROCEDURE WITH SCRUTINY (12539/13, 12730/13, 15882/13)

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

Thank you for your letters of 17 October and 12 November 2013. These were considered by the Committee at its meeting of 3 December.

We were grateful for your correction of the date of the opt-in deadline and your apology for the administrative error which delayed your response.

We decided to retain this matter under scrutiny.

We note the possibility that the Justice proposal may not proceed. We would have no objection to the subordinate legislation provisions in the parent measures concerned being reviewed on an individual basis. If, however, it does go ahead (and we understand that the time limit for opting in has started to run) your acknowledgement of the practical difficulties that would ensue if the UK did not opt-in reinforces our previously expressed view that the UK should do so.

We note that you are not, at the moment, able to assess the efficacy of the Commission’s undertaking to consult Member State experts on proposals for delegated legislation. However we infer from the desire of other Member States to preserve Commission consultation with expert Committees that the position is not regarded as satisfactory.

We should be grateful for an update in due course, which should include your assessment whether any powers conferred by parent legislation on the Commission to adopted delegated legislation need amendment in order to comply with the Treaty requirement that such powers should explicitly define their objectives, content and scope.

5 December 2013

Letter from the Chairman to David Lidington MP

Thank you for your Explanatory Memorandum of 9 December 2013. This was considered by the Committee at its meeting of 28 January. We decided to retain this matter under scrutiny.
As we have previously indicated, we agree there is considerable overlap between the delegated legislation procedure and the implementing legislative procedure and we support the Government’s case by case approach to the conversion of the pre-Lisbon regulatory procedure with scrutiny.

We would be grateful for an update in due course on the progress of negotiation, which should include your assessment of -

— Whether any powers conferred by parent legislation on the Commission to adopt delegated legislation need amendment in order to comply with the Treaty requirement that such powers should explicitly define their objectives, content and scope, and

— Whether any powers conferred by parent legislation on the Commission to adopt delegated implementing legislation need amendment in order to remove language more suitable to the choice of the delegated legislation procedure.

29 January 2014

COMMISSION WORK PROGRAMME 2014 (UNNUMBERED)

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

I write to the Committee to clarify an error in paragraph 21 of the Explanatory Memorandum dated 15 November 2013, relating to the Labour Mobility Package (which aims to revise coordination of unemployment and long-term care benefits). The EM stated that long-term care benefits fall under social assistance which is not covered by EU rules on social security coordination. However, long-term care benefits do fall within the scope of Regulation 883/2004 on social security coordination. Article 3 of this Regulation provides that long-term care benefits are covered by the coordination rules. I apologise for this error.

The Government’s policy position remains the same: our preferred option is no change in the current provision for both sets of benefits. We will consider the Commission’s impact assessment, which we expect to receive this month, carefully.

16 January 2014

DAVID LIDINGTON FOLLOW UP LETTER AFTER APPEARANCE AT EVIDENCE SESSION – 8 APRIL (UNNUMBERED)

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

I am writing to you following my appearance before the Committee at the evidence session on Tuesday 8 April. Thank you also for your letter of 9 April outlining the Members’ questions we were unable to cover due to the session being cut short. These focus on: The Eastern Partnership; Gibraltar; the Single Resolution Mechanism; Energy and Climate Change and the Balance of Competences review.

THE EASTERN PARTNERSHIP

You ask about the impact of the situation in Ukraine on other Eastern Partnership (EaP) countries and how EU engagement in the region should be structured.

The UK remains committed to the EaP and to supporting economic and political reform in partner countries. Helping partners to develop their economies and build stable, secure, and long lasting democratic societies is in the EU, and the UK’s interest. We are also clear that we need to look at how the EaP works in the light of Russia’s current behaviour to ensure that political, economic and other support is properly targeted. In my view this also means ensuring that EU support is suitably differentiated – reflecting the needs and circumstances of each partner country. A one-size fits all approach will not work.
The impact of recent events on our eastern partners varies across the five remaining countries (Armenia, Azerbaijan, Belarus, Georgia and Moldova) given their different relations with both Russia and the EU. It is important that the EU does all it can to support these countries. We see the Association Agreements, with Deep and Comprehensive Free Trade Areas, as a key element of the EU approach to the region. These Agreements form a binding commitment from both the EU and partner countries to deep and comprehensive reform, political co-operation and enhanced economic co-operation and trade. They will be brought to the House in due course for ratification and I hope that Members from all sides of the Committee will feel able to support them.

Ukraine has been most affected by recent events, and I have written separately with more detail on our approach.

We are concerned about the read across of events to Georgia and it was clear that the Georgians felt this keenly themselves when I visited earlier this month. Events in Ukraine have highlighted the need for strong leadership and cross-party cooperation in Georgia, and we have been making this point to the Georgian government. The international community needs to show support for Georgia and its EU and NATO integration. The EU is doing this by bringing forward the signature of the EU/Georgia Association Agreement to June.

Turning to Moldova, we are alarmed about the hardening rhetoric from Moscow about the Moldovan breakaway region of Transnistria, as well as the rhetoric from the Transnistrians themselves. We are keeping a close watch on this and, along with our international partners, are urging all sides to maintain calm. We continue to encourage the Moldovan government to accelerate its reform programme and, as in the case of Georgia, have agreed that the forward signature of the EU/Moldova Association Agreement should be brought forward to June.

We recognise that Armenia and Azerbaijan have a difficult balancing act to manage, in terms of their relations with Russia and the West, as well as their interests in respect of Nagorno-Karabakh. Although neither country has committed to such close association with the EU as Georgia, Moldova and Ukraine, they remain important partners for the EU. The EU will continue to work with them to improve our relationship and to help them deliver economic and political reforms. Belarus has the closest ties with Russia and is a Member of the Eurasian Customs Union. Its human rights situation makes closer cooperation difficult, but we remain committed to supporting the work of civil society in Belarus and in encouraging political reform.

More broadly, the UK has been instrumental in securing changes to ensure that the EU’s approach is adjusted to meet the needs of individual countries, their commitment to reforms, and delivery of their reform agenda. The new European Neighbourhood Instrument for 2014 – 2020, has been designed to facilitate this. It enables the Eastern Partnership to:

- Become faster and more flexible, reducing the complexity and length of the programming process so the relevance of the assistance is not undermined;
- Be increasingly policy-driven based on the key policy objectives agreed with partners, mainly in the European Neighbourhood Policy bilateral action plans;
- Allow for greater differentiation so the EU allocates a greater proportion of funds where aid can have the highest impact;
- Aim for mutual accountability so it takes greater account of human rights, democracy and good governance when it comes to allocating assistance and
- Offer incentives for best performers through the more-for-more approach. Allocations can increase or decrease by up to 10% according to subsequent progress on reform. Further funds are allocated as ‘top ups’ to the best performers on reform.

Whilst it will take time for these changes to embed, we expect that in the longer term, this approach will deliver more effective EU support and longer lasting, sustainable reforms in the region.

GIBRALTAR

You ask about the steps the Government is taking to ensure Gibraltar is included in passenger rights legislation and the consequences of the recent vote by the European Parliament.

This Government has a clear view: Gibraltar Airport should be included in EU aviation legislation. Gibraltarians, and other EU citizens who pass through Gibraltar airport, should benefit fully from the rights accorded elsewhere in the EU. We believe the EU Treaties are clear on this point, and we have made our position on this clear to the European Commission and the Spanish Government.
As the Committee will know, the Air Passenger Rights (APR) legislation is considered in parallel by both the European Parliament and the European Council in the process of co-decision. The European Parliament has reached a first reading position in plenary which extends the application of the APR regulation to Gibraltar. As we approach the Transport Council on 5 June, where the Council will express its view on this legislation, we continue to push for Gibraltar’s inclusion in the APR in the Council’s position. We will continue to press the case when this dossier reaches its conclusion in trilogue, which may be the fourth quarter of this year.

We remain vigilant to Spanish attempts to seek Gibraltar’s suspension from the EU aviation acquis and we will continue to work hard to counteract those attempts, working with other Member States and institutions.

**SINGLE RESOLUTION MECHANISM**

You ask whether the recent deal on the Single Resolution Mechanism (SRM) might restore confidence to the EU banking sector.

As the Chancellor and the German Finance Minister wrote in their recent joint article in the Financial Times, the Eurozone has achieved major changes and a stable euro is good for the global and European economy. The agreement of the SRM represents a significant step forward in setting up a workable Eurozone Banking Union to break the link between sovereigns and banks. The SRM will ensure a supra-national framework exists for dealing with failing banks across participating Member States. This is part of a wider package on Banking Union, including the new supervisory arrangements outlined in the Single Supervisory Mechanism, due to start later this year and also building on the rules that will apply at national level across all Member States under the Bank Resolution and Recovery Directive.

It is in the UK’s interests, and those of the EU as a whole, for the Eurozone to put in place measures to ensure stability for its currency. We have recognised that the Eurozone may want to go further to centralise its policies and improve the cohesion of the single currency. The European Council has repeatedly stated that if they do so, the Single Market must be protected and equality of treatment of participating and non-participating Member States must be maintained. This was supported by the German Finance Minister in his joint article with the Chancellor.

All resolution decisions are by their nature complex – they involve the exercise of extraordinary powers which can have profound economic, political, and social impacts. Whilst the decision making process under the SRM may appear complex, our view is that it is far from unworkable and, as a result of UK input, appropriate accountability mechanisms are provided for in the Regulation.

**ENERGY AND CLIMATE CHANGE**

You ask what the UK Government is doing to boost interconnection and whether there are further proposals we would like to see from the Commission.

Let me reassure you that the UK Government strongly backs development of more cross border infrastructure across Europe. In December, the Government published a statement, “More interconnection: improving energy security and lowering bills”, which sets out the concrete steps underway to deliver such projects. We will carefully consider any further Commission proposals in this area.

We also must recognise that energy security has taken on a renewed urgency as a consequence of the crisis in Ukraine: Improving interconnections is an important part of the EU’s energy diversification strategy, but it is just one part. Completing the internal market, diversifying supply routes, reducing demand for energy through energy efficiency and facilitating indigenous production (e.g. shale), are also essential parts of strengthening Europe’s energy security. The March European Council conclusions strongly reflected UK thinking, and called on the Commission to “conduct an in-depth study of EU energy security and to present by June 2014 a comprehensive plan for the reduction of EU energy dependence”.

Meanwhile, we are engaging with other G7 countries, particularly the US, ahead of an energy summit in May. We will also be leading preparations for the June European Council to mobilise political support for reducing energy dependence. And we must go further than just within the EU: energy security means helping Ukraine and neighborhood countries to liberalize their energy markets, increase energy efficiency and ensure more resilient energy supplies.
Finally, you asked about the free movement of persons (FMoP) report within the Balance of Competence Review.

The priority with the Balance of Competences FMoP report, as with all the reports, is to ensure that the final report does justice to the full scope of the debate in that area. As the Committee know, free movement is a particularly complex area of EU law and practice and the Government decided to spend more time on the FMoP report to ensure that it did justice to the complexity of the issues involved.

The Home Office has not reopened the call for evidence but we understand that the report will seek to make use of information published following the lifting of transitional controls to ensure the report is up-to-date. This report will be published as soon as it is complete and, as I mentioned in the session, we expect the Semester three reports to be issued in the summer.

28 April 2014

DUTCH SUBSIDIARITY UPDATE (UNNUMBERED)

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

Following my letter dated 2 December with regard to the Dutch subsidiarity review, I am writing to update you on recent developments.

As you will recall, the subsidiarity review was published last June. The review includes nine principles about the EU legislative process, and fifty four recommendations on specific legislation. The review is framed by the principle that action should be taken “at European level when necessary, at national level wherever possible”. The report and accompanying explanatory notes can be found at http://www.government.nl/news/2013/06/21/european-where-necessary-national-where-possible.html.

As per my previous correspondence, the review was presented at the General Affairs Council (GAC) on 19 November when many Member States made interventions welcoming it. Following this, the Netherlands Institute for International Relations Clingendael held a seminar in The Hague on 23 January entitled ‘Is subsidiarity relevant for better EU governance?’. Participants at this seminar included officials from Member States, EU institutions, academics and think tanks. You can access a paper summarising the discussions at http://www.clingendael.nl/sites/default/files/Clingendael%20CEPS%20From%20Subsidiarity%20to%20Better%20EU%20Governance.pdf.

The review was further discussed over lunch at the 19 March GAC. I spoke in support, saying that this was a crucial debate at the right time given the upcoming institutional refresh. You will recall the update provided to Parliament on this discussion in the post- GAC Written Ministerial Statement: http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140324/wmnstrtext/140324m0001.htm

The Government will continue to support the Dutch initiative and we expect discussions to continue at the European Council.

I also wanted to take this opportunity to say thank you for the copies of your Committee’s report on the role of national parliaments. We are carefully considering the interesting analysis and recommendations and will formally respond in due course.

4 April 2014
Letter from David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

Thank you for your Committee's scrutiny clearance of the UK's position on the European Commission's Annual Enlargement Strategy 2013-14 as set out in my Explanatory Memorandum of 28 October. I am writing to provide an update on developments to the UK's position following that Memorandum and following the 17 December General Affairs Council (GAC) conclusions (a copy is attached [not printed] at Annex A). The House of Commons' European Scrutiny Committee has considered but has not yet cleared from scrutiny the UK's position set out in that Explanatory Memorandum, requesting further information. I have written separately to Bill Cash, the Chairman of that Committee, and wish to provide your Committee with a similar update. I hope that you will find this further detail useful.

The GAC discussed the Commission's Annual Enlargement Package, published on 16 October, and agreed conclusions on the enlargement strategy and the Western Balkans, Turkey and Iceland. The conclusions closely match our own approach, with enlargement proceeding on the basis of strict, but fair conditionality and countries moving forward on merit as they meet the conditions. The conclusions also welcome Croatia as the EU's 28th Member State from 1 July 2013 and the historic agreement between Serbia and Kosovo on 19 April 2013. The conclusions reiterate the EU's commitment to enlargement and the need for continued momentum for all countries of the western Balkans and Turkey towards EU membership in coming years, with the door remaining open for Iceland should they choose to return to their negotiations.

The conclusions also recognise the importance of the EU learning the lessons of the past and ensuring that the enlargement process focuses on addressing the "fundamentals first", particularly reaffirming the importance of candidate countries tackling the rule of law upfront in the accession process under the "new approach" to enlargement. The UK has been consistently clear that countries need as much time as possible to develop robust track records on issues such as organised crime and corruption. The accession process is a key lever and incentive for these reforms, and success in these areas helps ensure the continued robustness of the enlargement process and can also help to build the necessary political and public support for further and deeper reforms in the candidate countries. This year's conclusions also support the Commission's call for a renewed focus in the enlargement process on helping strengthen economic governance and competitiveness in the enlargement countries, as well as ensuring that funding under the Instrument for Pre-accession Assistance (IPA) is more strategic, results-focused and tied to the objectives of the enlargement strategy. We welcome these moves.

In addition, I introduced at the GAC the Government's thinking, in the context of future enlargement, on the need for a debate on how to return the concept of free movement to a more sensible basis. While I emphasised that the UK's long-standing, strong support for further conditions-based enlargement has not changed, I highlighted the need for a debate on the transitional arrangements for future accession countries.

On the detail of the country conclusions, we were pleased that the GAC adopted the general EU position on Serbia's accession negotiations, including the negotiating framework. This will allow accession negotiations with Serbia to open formally, with the first intergovernmental conference taking place in January 2014. The European Council on 19/20 December endorsed these decisions.

There has been further progress in Serbia's relations with Kosovo since June. The EU-facilitated Dialogue enabled deals to be reached on energy and telecoms. There was also progress on integration of northern Kosovo Serbs into the Kosovo police. Importantly, local elections took place under Kosovo law in the Serb-majority municipalities in north Kosovo for the first time. There remains more to do, notably bringing northern Kosovo's judicial structures into the Kosovo system. However we judged that steps taken included sufficiently tough and public actions to provide the evidence of solid progress that we required before Serbia opened accession negotiations.

This progress must continue, with Serbia fully normalising relations with Kosovo before accession. To this end, we were pleased to secure strong language in the negotiating framework requiring 'comprehensive normalisation of relations between Serbia and Kosovo'. This must be achieved in the form of a 'legally binding agreement' by the end of Serbia's accession negotiations. We are confident that this framework will ensure that progress must be maintained throughout Serbia's accession.

Serbia's negotiating framework also mirrors the 'new approach' of tackling the rule of law related acquis chapters (chapters 23 and 24) at the start of negotiations, which was first introduced for
Montenegro. This will ensure that Serbia will be locked into a long and rigorous process of rule of law reforms, where building track records of effective implementation and enforcement will be key.

In parallel, the GAC called on Kosovo to focus on the implementation of reforms to meet its obligations under the proposed Stabilisation and Association Agreement. These include reforming its legal framework, tackling organised crime and corruption, pursuing judicial and public administration reforms, ensuring the protection of human and rights and increasing efforts on economic reform. Negotiations on the Stabilisation and Association Agreement with Kosovo are continuing.

The GAC also considered the Commission’s recommendation to grant Albania EU Candidate Status. Many Member States supported the recommendation. However, the Council concluded that it would return to this issue in June 2014. The Council highlighted several areas for short term action on organised crime and corruption issues. Any consideration of granting Candidate Status in June will be informed by progress in these areas, including through a further Commission Report on the continued implementation of anti-corruption and judicial reform strategies as well as a continued trend of pro-active investigations and prosecutions.

The Government welcomes the efforts of Albania’s new government in tackling organised crime and promoting the rule of law since it took office in September. We agree with the Council’s conclusion that more time is needed to demonstrate sustained and concrete delivery. Since my October Explanatory Memorandum, Albania has continued to make progress in arresting and prosecution corrupt officials and businessmen, and taken action against organised criminal groups. The Government looks forward to Albania continuing in her efforts and will review further progress in due course.

On Macedonia, the GAC was again unable to reach a unanimous decision to open accession negotiations. The Council promised to revert to the issue in 2014 on the basis of an update by the Commission on further progress on the High Level Accession Dialogue, implementation of the 1 March agreement (which resolved the Macedonian parliamentary crisis of early 2013), and on tangible steps taken towards solving the name issue. Prospects for accession negotiations in 2014 depend largely on whether sufficiently tangible steps can be taken on the name issue to reach unanimity in Council.

On Bosnia and Herzegovina (BiH) we secured clear and tough GAC conclusions, highlighting a lack of political will from BiH’s leadership as the primary reason for the country stalling on its EU path. The Council noted that BiH’s failure to implement required reforms had led to the loss of funding from the EU’s Instrument for Pre-Accession Assistance. The conclusions expressed concern also at the recent release of several BiH war criminals.

On Turkey, broadly positive Council conclusions were agreed, emphasising the need for the EU to remain the anchor for reforms in Turkey. Momentum for 2014 will be assisted by the signing of the EU/Turkey Readmission Agreement in the margins of the GAC, praise for Turkey’s efforts to find a solution to the Kurdish issue and the important humanitarian support being provided on the Syrian border. Positive developments on human rights in response to the protest of summer 2013 were highlighted, in particular the creation of a Human Rights Ombudsman. However, it was noted that further sustained efforts, in line with European standards, were needed before Turkey would meet fully the Copenhagen political criteria. The need for accession efforts to be underpinned by progress in the areas of rule of law and fundamental rights was reiterated throughout the conclusions. The importance attached to this by most Member States was also borne out in negotiations leading up to the GAC. In 2014, progress on EU Accession for Turkey depends largely on Turkey’s response in the area of rule of law and fundamental rights.

24 January 2014

FOLLOW-UP TO EVIDENCE SESSION ON NATIONAL PARLIAMENTS AND DECEMBER EUROPEAN COUNCIL (UNNUMBERED)

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

I would like to thank the Committee for the informative evidence session last week for your inquiry on the role of national parliaments. During the session you asked for an update on discussions with other Member States on strengthening the role of national parliaments.
As the Committee is aware, addressing the lack of democratic accountability in the EU is a top priority for the Government. And we see strengthening the role of national parliaments in the EU’s functioning as key to this.

This issue is therefore one which the Foreign Secretary and I raise with our counterparts from across the EU in every conversation we have on EU reform. The same is true at official level. This is an ongoing conversation: the Government is setting out those proposals which we think would make a concrete difference, and we are open to all suggestions from other Member States.

I set out in my written evidence the proposals which we are discussing. We want to make more effective use of the existing yellow and orange cards and identify earlier Commission proposals which raise subsidiarity concerns. In addition, we want to make it easier for national parliaments to challenge EU legislation. For example, strengthening the existing yellow card process (giving parliaments more time, lowering the threshold of the number of parliaments required to trigger a yellow card, and extending the scope of the card, for example to cover proportionality). And we are discussing proposals to give national parliaments working together the power to force the Commission to withdraw a proposal (a “red card” procedure).

During discussions with other Member States we have also been exploring whether such cards might be issued at any point during the legislative process and indeed whether they could be exercised in relation to existing legislation. The Government would also support a number of COSAC’s recommendations, including that the Commission should make a political commitment that it will respond to opinions or requests issued by more than a third of chambers. And others have made interesting proposals too. For example, the Dutch Tweede Kamer has suggested a new “green card” and a “late card”.

Our discussions have shown that the democratic deficit is a genuine concern across Member States and within the EU institutions. I have seen a real change in the attention given to the issue over the past year – for example it has been addressed on several occasions at the General Affairs Council. I myself have raised it on multiple occasions and when I intervened at the December Council to highlight the Commission’s inadequate response to the yellow card issued by national parliaments on its proposal to establish a European Public Prosecutor’s Office, a number of Member States intervened in support.

The lesson I draw from these conversations is that many agree on the importance of giving national parliaments a greater and more effective role in the EU’s functioning. Dutch Foreign Minister, Frans Timmermans, for example, has called for national parliaments to be given a red card.

At the same time, this is the beginning of a process and it will take time to move forward. National parliaments themselves have a crucial role to play in this process. We will be able to move further and faster the more that national parliaments themselves vocally call for a strengthened role. I am happy to keep the Committee updated on further developments.

I should also record, as mentioned to you yesterday, that I took the occasion of my visit to Brussels this week to deliver on my promise to highlight to President Barroso’s team your, and our, unhappiness at the refusal of Commissioner Reding to appear before your Committee despite repeated requests.

On a separate matter, and in respect of our discussions on the December European Council, you asked whether financial assistance on contractual arrangements would be in the form of cheap loans. I wish to clarify that the exact nature of the arrangements is yet to be decided. The December 2013 European Council conclusions state that work will be carried forward to further explore all options including loans, grants and guarantees, with the aim of reaching overall agreement at the October 2014 European Council. This therefore suggests the arrangements may not necessarily be in the form of cheap loans.

27 January 2014
Letter from David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman


The UK intervened before the General Court in Council v Access Info Europe in support of the Council’s decision to withhold the names of the Member States identified in the document relevant to the request and to oppose unredacted disclosure. Following the ruling of the General Court that the document should be disclosed in full this intervention was then carried forward to the Court of Justice of the European Union (CJEU), although we chose not to make further representations. The CJEU subsequently upheld the ruling of the General Court in full.

In summary, the CJEU found that the identities of Member States making particular points or proposals during legislative negotiations will not automatically be so sensitive that they should be withheld under the first indent of Article 4(1) of Regulation 1049/2001 on the basis of resultant harm to the decision making process. The CJEU points out that such information does not form part of a category of documents which the Regulation specifically recognises as meriting a heightened level of protection, such as legal opinions.

However the CJEU did not rule out the future use of Article 4(1) altogether to protect such proposals, and makes clear that its use may be legitimate on a case by case basis where a significant risk of harm exists. It is also clear that other exceptions from disclosure in the Regulation, e.g. commercial interests or public security, also continue to be available where appropriate on the same case-by-case basis. We understand that the Council Secretariat propose to continue to disclose records of discussions about legislative files as required under the Regulation, as interpreted by the judgment in Council v Access Info Europe. As above, a decision as to whether to disclose will be taken on the facts of each case and in light of the sensitivity of the material in question.

There are a variety of reasons why a Council Secretariat official marks a document recording legislative discussions limité. Given the judgment recognises that such information may be sensitive and merit protection in individual cases, the universal withdrawal of the limité marking would be a disproportionate reaction and, significantly, would remove the limité protection from a much a wider variety of document than was covered by this particular ruling. We understand that the Council do not currently plan to alter the way in which the limité document marking system is used.

24 February 2014