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 December 2008 to April 2009.

EUROPEAN UNION SELECT COMMITTEE

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CFSP SCRUTINY

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

Thank you for your letter of 23 March 2009 about Scrutiny of CFSP. In your letter you referred to two areas of enquiry, which I will seek to address below; non-legislative documents that alter existent EU Policy towards a particular issue and documents that have cleared scrutiny but are not agreed in Brussels until much later.

You rightly note that non-binding, non-legislative, EU documents are not covered by the Scrutiny Reserve Resolution (draft Council Conclusions fall in to this category). However, we do deposit a number of these documents in the House already, for example, inter-institutional communications such as the Commission’s Annual Work Plan, the Commission’s Common Legislative Work Plan or EU Action Plans for specific countries. We have also deposited White and Green papers, alongside a steady stream of direct correspondence from my office on a range of issues, most recently on Western Balkans. I have been looking at ways in which we can keep the Committee better informed of events in the EU via informal contact, at official level, and improvements in the way we provide documents to the Committee. I would also welcome any practical ideas from the Committee on how we can improve our level of service.

I was concerned to hear that Committee was not kept fully informed of the status of negotiations on the Council Common Position defining Common Rules Governing the Control of Exports of Military Technology and Equipment. We will endeavour to keep the Committee fully informed in the event of such, unusual, circumstances occurring again.

Please rest assured that I do believe that the scrutiny process makes an essential contribution to the level of debate and I am keen to get it right.

6 April 2009
ENHANCED SCRUTINY OF OPT-IN PROPOSALS

Letter from Jacqui Smith MP, Home Secretary, Home Office, to the Chairman

I am writing to confirm Ministerial agreement on the following enhanced arrangements for the scrutiny of proposals for EU legislation based on Title IV of the Treaty establishing the European Union which deals with asylum and immigration and judicial cooperation in civil matters. This reflects our desire to continue to look at ways to improve the scrutiny of European business in conjunction with the Scrutiny Committees in both Houses.

— We will endeavour to include in Explanatory Memoranda a list of factors that we expect will be taken into account when coming to an opt-in decision and where possible, an indication as to whether the Government expects to opt-in.

— We are content to take the views of the Committee into account in the case of Title IV TEC opt-in decisions if they are forthcoming within 8 weeks of the publication of proposals and therefore not to opt-in within that 8 week period unless it is essential. The final decision as to whether to opt-in will continue to rest with Ministers.

— The Government is content to be flexible in principle regarding making time available for debates on policy on which opt-in decisions will need to be made, if the Committees recommend such questions for debate. This will only be possible however, if there is early informal communication with you, the Clerks to the Committees, to forewarn us when a debate might be desirable and on the condition that the 8 week period for giving a view on the opt-in decision cannot be extended even if it proves impossible to hold a debate before that deadline.

20 January 2009

LISBON TREATY: PREPARING FOR IMPLEMENTATION

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

On 24 June 20081 Jim Murphy, my predecessor as Minister for Europe, informed Parliament that our work on the European External Action Service and other Treaty implementation issues had stopped until there was a new suggestion from the French EU Presidency or a way forward suggested by the Irish Government. Following agreement at the December 2008 European Council on such a way forward, based on proposals from the Irish Government, we now believe it is sensible to restart our work preparing for the Lisbon Treaty coming into force, while also continuing to prepare for the possibility that it may not. This will ensure that we are fully prepared to engage in any implementation discussions with EU Partners, should these occur, and to defend the UK’s interests. However, no formal decisions will be taken unless and until all Member States have ratified the Treaty and it enters into force. I attach a response to a written PQ that will be tabled today to inform Parliament of our decision (not published).

As re-affirmed by Jim Murphy in his letter to Lord Grenfell of 22 April 2008, the Government will continue to do its utmost to keep both Houses informed across the full range of Treaty Implementation issues through Ministerial contact before any discussions of these issues at European Council and sectoral EU Ministerial meetings.

28 January 2009

Letter from the Chairman to the Rt Hon Caroline Flint MP

Thank you for your letter dated 28 January 2009 advising the Select Committee that you intend to restart your “work preparing for the Lisbon Treaty coming into force, while also continuing to prepare for the possibility that it may not.” The Select Committee welcomes your commitment to keeping both Houses informed and we look forward to working closely with you on Treaty implementation issues. In the first instance I would be grateful if you could provide details of the process and timetable for implementing the parliamentary aspects of the Lisbon Treaty – principally

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1 Correspondence with Ministers, May to October 2008
the yellow and orange card procedures, procedure for passerelles, and enhanced scrutiny of Eurojust and Europol. Can I also suggest that it may be useful for the Select Committee Clerks to meet with your own officials to discuss how we may wish to work together in taking these issues forward.

6 February 2009

Letter from Caroline Flint MP to the Chairman

Thank you for your letter of 6 February 2009 regarding preparatory work for Lisbon Treaty implementation. Our commitment remains, as my predecessor set out during debates in the House of Commons on the Lisbon Treaty, to ensure that effective systems to operate the parliamentary aspects of the Lisbon Treaty are agreed in both Houses and in place by the time the Treaty enters into force. Procedures will be agreed with Parliament in advance of this happening. Work on the detail required will be done in collaboration with business managers, EU Committees and House authorities in both Houses.

My officials along with colleagues across Whitehall are working on the Government’s proposals in the areas you list in your letter: yellow and orange cards; Eurojust and Europol and general passerelles. When our proposals are ready my officials will be in touch with the EU Select Committee Clerks in both Houses to discuss these in greater detail before we put ideas forward to the Committees and House authorities.

In the meantime I will continue to keep Parliament and the Committees fully informed on developments on the Lisbon Treaty.

I look forward to taking this work forward with the EU Select Committees in both Houses.

26 February 2009

STAFF REGULATIONS COMMITTEE (14460/08)

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

I am writing to request that urgent consideration is given to the Government’s Explanatory Memorandum regarding the Staff Regulations Committee.

It has come to my attention that this EM did not reach noble Lords in time for it to be considered at yesterdays sift. I would like to explain why this has happened come to you at such short notice. The Council Secretariat initially presented this proposal in late October. The measure was then prepared for scrutiny in the normal way, being submitted to committees on 13 January 2008. Unfortunately the Council Secretariat decided to add this document to the agenda for the upcoming Agriculture and Fisheries Council on Monday 19 January. This was done at very short notice. My officials in Brussels have registered the UK’s displeasure and have received an undertaking that this will not happen again. Nonetheless, the item remains on the Agriculture and Fisheries Council agenda for a vote by Qualified Majority. I am sure you understand that because of the nature of Qualified Majority Voting the UK is unable to halt the progress of this document utilising our Parliamentary reserve, which is still in effect.

I would therefore request that you consider this item exceptionally outside of the normal Scrutiny timetable, and that Sub-Committee E, which I understand meets on Wednesday, can agree with our EM that this issue has no policy implications for the UK.

13 January 2009

Letter from the Chairman to the Rt Hon Caroline Flint MP

I am writing in response to what appears to have been a breach of the scrutiny guidelines, regarding the above-mentioned document and Explanatory Memorandum.

On 13 January, you wrote to me requesting that the documents be considered in advance of our next sift, as the matter was due to be considered at Council on 19 January. I did so, and cleared them from scrutiny.

While I appreciate that the timetable for consideration of the documents was constrained by the item’s extremely late addition to the Council agenda, I note that the original document is dated 17 October 2008, and would presumably have reached the Government by the end of October. The document was deposited, and the EM submitted, on 13 January.
I understand that the EM was delayed while further information was sought from the Commission. This, along with the Christmas recess, goes some way towards explaining the length of the delay.

More importantly, there seems to be no reason for the delayed deposit of the original document. I understand that there was initially some doubt as to whether the document was in fact depositable. However, by 5 December a scrutiny reserve was in place with the Council Secretariat, and this ought to have prompted the deposit, albeit late, of the document. There appears to have been an oversight in regard to this. Had the deposit of the original document been carried out in a timely fashion the change to the Council agenda would most likely not have presented a problem.

Therefore, I should be very grateful if you could provide me with explanations for the delayed arrival of both documents.

5 February 2009

Letter from the Rt Hon Caroline Flint MP to the Chairman

I am writing in response to your letter of 5 February. Firstly may I thank you for clearing the document in question from scrutiny so quickly.

As you rightly say in your letter, the Government’s Explanatory Memorandum (EM) was delayed as we sought more information on the proposal from the Commission. This information was needed so that we could satisfy ourselves of the intentions and implications of the proposal, and thus ensure that the information given to Parliament in our EM was accurate. Unfortunately, not all of the information required to complete the EM was forthcoming in time to be scrutinised ahead of the Christmas recess.

You are also right that there was clearly an oversight in ensuring that the original document was deposited with the committees in good time. We should have deposited the document more promptly, and I apologise that this did not happen.

In my letter of 5 March I set out the renewed commitment of the Foreign and Commonwealth Office to “upstream scrutiny”. I hope that the steps that we plan to deliver this should help us to avoid situations like this in the future.

9 March 2009

UPSTREAM SCRUTINY

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

I am writing to inform you of the following commitments made during my evidence session with the House of Commons European Scrutiny Committee of 4 February 2009, in particular on how we can provide the Scrutiny Committees in the House of Commons and the House of Lords with more “upstream scrutiny” of legislative EU documents.

The FCO remains committed to “upstream scrutiny” and in 2008 we submitted over 135 documents to the Committee ahead of agreement at Council. We have also committed to submitting an Explanatory Memorandum on the Common Legislative Work Programme of the Commission, which lays out upcoming work-streams at the Commission. We are also committed to an annual debate on the Commission’s annual policy strategy. Added to this we are looking at other EU documents to see if we can provide more information to the Committee about upcoming work scheduled at the Working Groups in Brussels. Finally, we will continue to seek early drafts of legislative documents from the Council Secretariat so that we can give the Committee more time to scrutinise them. In my view these efforts, plus the large number of Explanatory Memoranda already submitted, represent a high level of commitment on behalf of the FCO to “upstream scrutiny”.

In addition to the measures above I have asked my officials to increase their level of informal contact with the Committee Clerks. This might include more regular meetings, increased working contact (for example the hand delivery of my correspondence to the Committee), and roundtables with the Committee Clerks and FCO policy desk officers (aimed at increasing awareness in lead policy departments about the importance of scrutiny). I have undertaken to reiterate to officials across the FCO and in UKRep the importance which I attach to parliamentary scrutiny, asking senior officials to take a more proactive role in our internal process.

All of these measures are designed to improve a system that already works well. As I expressed to the House of Commons European Scrutiny Committee at the evidence session, CFSP issues are
numerous, complex and fast moving, and it will not always be possible to meet the Committees’ expectations. We will, however, always strive to meet our scrutiny commitments under the Scrutiny Reserve Resolution.

5 March 2009