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 2009 to April 2010.

**EUROPEAN UNION SELECT COMMITTEE**

**CONTENTS**

CODECISION AND NATIONAL PARLIAMENTARY SCRUTINY ............................................................... 1
CORRESPONDENCE: LATE GOVERNMENT RESPONSES ........................................................................... 5
EUROPEAN EXTERNAL ACTION SERVICE............................................................................................. 5
LISBON TREATY: FINAL CORRIGENDA ...................................................................................................... 6
LISBON TREATY: PARLIAMENTARY IMPLEMENTATION ............................................................................ 7
LISBON TREATY: PREPARING FOR RATIFICATION ..................................................................................... 9
SCRUTINY RESERVE OVERIDES ........................................................................................................................ 9
WESTERN EUROPEAN UNION ........................................................................................................................ 10

**CODECISION AND NATIONAL PARLIAMENTARY SCRUTINY**

Letter from Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

Thank you for your letter of 11 November; please accept my apologies for the delay in replying to you. I understand that your Committee’s clerks are in touch with officials at the Cabinet Office, and at the UK Permanent Representation in Brussels, to resolve some outstanding working issues. Rather than wait further for those points to be clarified, I write now to reassure the Committee on the three main points you raise in your letter.

On your first point, I should reiterate that the Government interprets a ‘significant’ change to be a change that has ‘policy implications’, so I think that we are agreed here. For further clarity, we shall endeavour to remove phrases such as ‘significant’ or ‘substantial’ from the Scrutiny Guidance. Therefore, if any proposed change has ‘policy implications’, then these developments should be the subject of an update to the Committees, either at Ministerial or at official level. This would include changes which arise following a discussion at COREPER. However, as I believe the Committee recognises, the timing between the meetings of COREPER and the Council is often tight, and in many cases the Committee will have been updated in advance on the Government’s expectations for the forthcoming Council, and a further update after the Council would follow in these cases.

On your third point, in stating that the Government would only ‘consider’ requests for updates or supplementary explanatory memoranda, my intention was to provide a small amount of discretion for those rare occasions where either the Government has reasons for not being able to comply with the request, in which case the Government would need to justify fully why it could not comply; or where a more informal update or discussion with Committee clerks is desirable for reasons of time pressure. I agree entirely that departments should always provide additional information promptly when requested by a committee of Parliament.

14 January 2010
Thank you for your letter of 14 January about scrutiny of Codecision - which we must now call the Ordinary Legislative Procedure. My Committee has yet to discuss it.

However a debate on our report has now been arranged for Thursday 28 January, in the House of Lords Chamber starting around 4.30pm. I would be grateful for an update on two of the outstanding issues in time for that debate. These are:

- Publishing the Scrutiny Guidance – According to your response to our report, dated 28 October, you are consulting the Cabinet Office, and we look forward to hearing the outcome. We continue to believe that, in the interests of open, transparent government, this should be done.

- Providing limited documents – According to your response of 28 October you are consulting the Council Legal Service, and again we look forward to hearing the outcome. However, given the evidence we took on this point (including from the Council Legal Service) and the established practice of other governments in giving limited documents to their parliaments, we would be astonished if there were now to be difficulties. In any case this is a matter for the Government and not the Council Legal Service to decide.

In the absence of anything further on these matters, I will raise them in the debate, and will listen carefully to the Minister’s reply.

20 January 2010

As you will be aware, the debate in the House of Lords on my Committee’s report Codecision and national parliamentary scrutiny (Session 2008-09; HL Paper 125) was held on 28 January. Lord Brett replied for the Government and gave two commitments to be delivered by the end of February.

On the first, access to limited documents, he said that the Government was "confident that we can devise handling caveats to address the restrictions and accept the desirability of proactively providing the committee with appropriate limited documents at critical points in negotiations. [Thus,] subject to ministerial approval across government, we hope to be able to begin providing the committee with access to certain limited documents from the end of next month" (HL Deb. 1628). He went on to indicate that a letter on these documents was imminent (HL Deb. 1629).

On the second, making the Cabinet Office’s scrutiny guidance publicly available, he said that "we have no problem making this document publicly available on the Cabinet Office website, and again we hope to be able to implement that within the next month" (HL Deb. 1629).

Given that we are now in March I would be glad of an update on the progress that has been made in realising these two commitments.

1 March 2010


The Government has recently agreed to provide Limited documents to your Committee on an “in confidence” basis. In providing these documents the Government is seeking to enhance existing scrutiny arrangements and improve the ability of the Committee to reach fully informed decisions, particularly on the passage of legislation through the Brussels machinery.

The Government proposes to send EU documents with the ‘Limited’ classification to the Committees on the following basis and with the following handling caveats, to help the Committee in its scrutiny of legislation and where in particular the document may be helpful in updating the Committee on the progress of legislation.

The Government will provide Limited documents where:

- Limited documents requested by the Committees fall within the bounds of the Scrutiny Reserve Resolution;

- Limited documents requested by the Committees relate to documents currently under Scrutiny and;
— _Limité_ documents are requested by the Committee, and where the Government agrees to provide them.

The above will not apply to Council Legal Service Opinions where such documents contain legal advice protected under Article 4(2) of regulation (EC) No.1049/2001 of the EP and of the Council dated 30 March 2001. This is consistent with the handling of internal Government legal advice. Government Departments will determine whether a document can, or should, be released to the Committees.

In receiving these documents on an 'in confidence' basis we would ask that the Committee agrees that:

a. These documents cannot be deposited or become subject to the Scrutiny Reserve Resolution;

b. These documents should not be copied or distributed beyond the Committee members;

c. The Committee will respect the information contained within the documents and not draw on content substantively in reports or correspondence in a way that might prejudice the information within them;

d. These documents should not be placed in the public domain.

I hope the Committee can agree to this approach as a pragmatic way of using these documents to help the Committee as part of a wider effort to keep the Committee fully informed on EU issues, but which protects the content of the documents. I look forward to hearing from you with your agreement to this approach.

The Cabinet Office Guidance has yet to issue. This is because of the ongoing review of the Scrutiny Reserve Resolution and the Committees Term of Reference. I propose that the Guidance issue once the House has adopted the new Resolution, which can then form the basis for amended guidance. I hope that the Committee can understand this delay.

23 March 2010

Letter from the Chairman to Chris Bryant MP

Thank you for your letter of 23 March about supply of _limité_ documents and publication of the Cabinet Office Scrutiny Guidance. The Select Committee considered it on 6 April.

**HISTORY: LORD BRETT'S UNDERTAKINGS**

You say your letter is a response to mine of 20 January. I would remind you that the House of Lords debated our report on Codecision on 28 January, and in replying to that debate for HMG Lord Brett addressed both these issues.

On the first, access to _limité_ documents, he said that the Government was "confident that we can devise handling caveats to address the restrictions and accept the desirability of proactively providing the committee with appropriate _limité_ documents at critical points in negotiations. Subject to ministerial approval across government, we hope to be able to begin providing the committee with access to certain _limité_ documents from the end of next month" (HL Deb. 1628). He went on to indicate that a letter on these documents was imminent (HL Deb. 1629).

On the second, making the Cabinet Office's scrutiny guidance publicly available, he said that "we have no problem making this document publicly available on the Cabinet Office website, and again we hope to be able to implement that within the next month" (HL Deb. 1629).

When February had ended and nothing had happened, I wrote to you on 1 March to ask for an update. I am content to take your latest letter as your reply to that letter. I am however concerned that what Lord Brett told the House appears not to have been taken seriously in the department.

**LIMITÉ DOCUMENTS**

We are prepared to accept your proposals regarding _limité_ documents in the context of what Lord Brett told the House, and in particular his use of the word "proactive". Taken literally, your proposals would mean that HMG would supply such documents only on request from us. This would not fulfil our recommendation, which was that HMG should "provide relevant documents to the Committee even if they are marked _limité_"; it would not fulfil Lord Brett's undertaking; and indeed it would be no advance on the status quo. However we take you to mean that it will be for departments to use the scope they now have under this arrangement to judge when particular documents with this marking
can help the Committees, and the Government, in moving scrutiny forward. We expect this to be made clear in guidance for departments.

Secondly, we take it that your three conditions for supply of limité documents are alternatives – in other words that by “and” you mean “or”. Taken cumulatively, they would be too restrictive. Indeed, since no limité document can be deposited as such, they would arguably amount to nothing at all.

Finally, we take it that, in stipulating that circulation is restricted to Committee members, you include staff.

Please confirm that our understanding of your intention in these three respects is correct.

PUBLISHING THE CABINET OFFICE SCRUTINY GUIDANCE

I am afraid we cannot accept your proposal that publication of the Guidance be deferred pending amendment. The Cabinet Office has initiated a review. This is indeed necessary, and our staff are cooperating, but it will take time. The previous review took over a year. This one will have to take account not only of the new Lords Scrutiny Reserve Resolution, which was agreed on 30 March; but also of the new Terms of Reference, which will not be in place until the new Session, the equivalent Commons texts which have not been agreed, the resolution of HM Government’s ongoing argument with the Commons Committee over the definitions of “legislative”, “non-legislative” and “legal” acts, and the new Code of Conduct on opt-in scrutiny which is under discussion at official level, to say nothing of the issue of limité documents and the new language of the Lisbon Treaty. The exercise itself will no doubt throw up additional issues. A new text will not be agreed until June at the earliest, and possibly later.

The House should not have to wait that long for fulfilment of Lord Brett’s undertaking. In our view the April 2009 text should be placed online at once, with minimal editing (to remove certain sensitive sentences and personal contact details) and a note that it is under review.

The April 2009 text is of particular importance, since it embodies the pre-Lisbon deposit regime and you have undertaken that anything deposited under that regime will continue to be deposited. Putting it where everyone can see it will make it easier to monitor that undertaking, as well as fulfilling Lord Brett’s.

SUBSIDIARITY SCRUTINY AND THE COUNCIL OF MINISTERS

We take this opportunity to remind you of a third undertaking, namely that “we will propose to other Council Members that the Council would not, under normal circumstances, place a qualifying proposal [that is, one subject to the new procedures for subsidiarity scrutiny] on its agenda for eight weeks, plus the four weeks of August where they fall within that eight week period, after the adoption of the proposal by the Commission”. This one was given by you in a letter to me dated 3 December 2009. It persuaded us to accept that no special procedures would be put in place for the issue of a Reasoned Opinion during a long summer recess. It was passed on to the Lords Procedure Committee by the Leader of the House, and is incorporated in the 2nd Report of that Committee, to which the House agreed on 16 March.

As far as we know this undertaking has yet to be fulfilled. I would be grateful for an update.

I would be grateful for a reply within the usual 10 working days, ie by 20 April.

Since this letter concerns the fulfilment of undertakings given by Ministers to the House, I am copying it to the Leader of the House.

7 April 2010

Letter from the Chairman to Baroness Royall of Blaison, Leader of the House of Lords

I enclose a copy of a letter to Chris Bryant MP, Minister for Europe. It concerns fulfilment of undertakings by Ministers: two given by Lord Brett to the House on 28 January, and a third given by Mr Bryant himself on 3 December.

I am copying this to you first because as Leader you are, I know, concerned with the general issue of the approach of departments to this House and to Lords Ministers; and secondly in the hope that you may be able to see that the outstanding matters are resolved in this Parliament if possible, or at any rate early in the next.

6 April 2010
Letter from Baroness Royall of Blaison, Leader of the House of Lords, to the Chairman

Thank you for your letter of 6 April enclosing a copy of your letter to the Minister for Europe relating to the fulfilment of undertakings given by Ministers in relation to access to limited documents; making publicly available the Cabinet Office’s scrutiny guidance; and subsidiarity scrutiny and the Council of Ministers.

As Leader of the House, I am, of course, determined to ensure that we as a Government comply with the commitments we have given to Parliament. I therefore very much hope that the Minister for Europe, to whom I am copying this letter, will be able to respond swiftly and substantively to the various points you have raised.

I am grateful to you for drawing this to my attention.

8 April 2010

CORRESPONDENCE: LATE GOVERNMENT RESPONSES

Letter from the Chairman to Baroness Royall of Blaison, Leader of the House of Lords

The length of time Ministers take to respond to correspondence from the EU Committee was raised in our meeting on 2 March. The Government’s commitment is to reply to letters within ten working days, counting between the dates on the letters. The Committee has agreed that it should pay closer attention to how often this commitment is met. To that end we have improved our record keeping concerning correspondence and I will, where appropriate, clearly state in letters by when I expect a response. If a department is in any doubt or difficulty in any particular case, they should contact the relevant Clerk.

This letter requires no response; but I would be grateful if its contents could be drawn to the attention of departments.

4 March 2010

Letter from Baroness Royall of Blaison to the Chairman

Thank you very much for your letter of 4 March, in which you raise the issue of the length of time Ministers take to respond to correspondence from the EU Committee.

I am grateful to you for letting me know of the steps your Committee is taking to assist Departments in improving their performance. A clear statement in correspondence of the date by when the Committee expects a response will, I am sure, be a valuable reminder to Departments of their obligations.

I will, of course, also ensure that the contents of your letter are drawn to their attention.

15 March 2010

EUROPEAN EXTERNAL ACTION SERVICE

Letter from the chairman to Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for the evidence you gave to the House of Lords Select Committee on the European Union on 6 April 2010, which we found helpful in our consideration of the following documents:

1) Draft Council Decision Establishing the Organisation and Functioning of the European External Action Service;


3) Regulation of the European Parliament and of the Council Amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities.

In light of the forthcoming dissolution of Parliament, we have decided to hold these documents under scrutiny but to waive the scrutiny reserve under art. 5(b) of the House of Lords Scrutiny Reserve
Resolution so far as necessary to allow the Government to agree the proposals in the Council of Ministers at any time until the first meeting of the EU Sub-Committee on foreign affairs, defence and development (or its successor) in the new Parliament. At that point, if anything remains to be agreed, the scrutiny reserve will resume as normal.

The Committee supports the draft proposals and the Government’s position, but we continue to be concerned about several issues.

First, we are concerned about the length of time that seconded national diplomats will spend in the External Action Service (EAS). If the UK aspires to be represented at the top echelons of the Service, it is essential that seconded diplomats from the UK be given the opportunity to compete for posts at that level. However, they will be at a disadvantage in comparison to permanent staff from the Council and Commission if they can spend only limited time in the Service. We therefore recommend that British diplomats be given the option of spending more time in the Service if they so wish, and we would be grateful for your view.

Second, there is the question of who could deputise for the High Representative. We understand that the Foreign Affairs Council and meetings of Defence Ministers would be chaired by a minister from the Member State holding the EU’s rotating Presidency in Baroness Ashton’s absence. However, there may be other occasions, such as meetings with foreign ministers of third countries, where it would be necessary for a member of the External Action Service to stand in for the High Representative if she could not attend. We believe that this role could only be fulfilled by a person of a certain experience and stature who commanded the trust of the Member State governments. It is important that the EAS organisation chart and recruitment procedures reflect this; we would be grateful for your view.

Thirdly, Baroness Ashton’s Explanatory Memorandum accompanying her draft Council Decision refers on page 6 to the Consultative Committee on Appointment, which will be the selection panel for senior appointments to the EAS. We are concerned by the proposal that senior appointments will be made on the basis of a shortlist “to which the Commission has agreed, given in particular the role of Heads of Delegation in the management of financial assistance programmes”. This would give the Commission a veto over the shortlist of candidates. While we recognise that the Commission is responsible for the proper use of EU funds and believe that propriety and management skills should be included as selection criteria for senior staff, this does not justify giving the Commission a veto. The Government should resist this proposal and suggest an alternative method; we would be grateful for your view.

Finally we would be grateful if you could provide us with the list of directorates and units that are currently part of the Commission or the Council secretariat and which will be transferred to the EAS, when it becomes available. The annex to the draft Council Decision, which will list these, is currently blank. The draft Council Decision, page 12, also refers to several agencies in respect of which the High Representative will exercise “the responsibilities provided for in their respective founding acts”. Is this list of agencies likely to change over the course of the negotiations?

We look forward to hearing from you within the standard 10 working days.

7 April 2010

LISBON TREATY: FINAL CORRIGENDA

Letter from Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

I am writing to inform the House of Lords Select Committee on the European Union that the European Union’s Council Legal Service (CLS) is expected to publish the final set of 5 corrigenda to the Lisbon Treaty on 22 March in the Official Journal of the European Union and Europa website. The CLS has previously published 50 other corrigenda in this manner.

As you know, using corrigenda to correct a treaty mistake is a technical process and not uncommon. The procedure does require the consent of all Member States.

The Foreign and Commonwealth Office will therefore take the opportunity to lay a corrigenda to the Treaty of Lisbon Command paper (Cm 7294) with all these changes on 25 March, in accordance with normal practice.
The CLS intends to publish a ratified version of the Treaty, with all the corrections incorporated, in April. The FCO will therefore also publish and lay a corrected version of the Treaty, now that it has entered into force for the United Kingdom, in the Treaty Series on the same timing.

18 March 2010

Letter from the Chairman to Chris Bryant MP

Thank you for your letter of 18 March. We look forward to the final version of the Treaty being published and would be grateful if you could arrange for copies of the corrected version to be made available to the EU Committee.

22 March 2010

LISBON TREATY: PARLIAMENTARY IMPLEMENTATION

Letter from Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

Thank you for your letter of 25 November.

I am mindful that you are awaiting a response on your proposed changes to the Scrutiny Reserve Resolution, further to your letter of 16 July. I can confirm that I am engaged in reviewing the implications for HMG of your suggestions. However, I do believe that there are two clear areas to address: 1) Those provisions that need to be reviewed as a direct consequence of the entry into force the Lisbon Treaty and; 2) The more general changes to the Scrutiny Reserve Resolution, not directly connected to the entry into force of the Lisbon Treaty, that you propose. The second area of suggested change will require considerable thought and wide consultation across Whitehall, which can be done in slower time. This would be done with the assurance that we are committed to continue Scrutiny at current levels until a new Resolution is agreed.

I start, therefore, with the points, raised in your letter, on the Government’s proposals for the new powers for Parliament in the Lisbon Treaty, following our helpful meeting on 20 November.

I am pleased that we have reached agreement on the majority of the points in my 16 November letter. I note your suggestion that a motion inviting the House to submit a reasoned opinion could be moved by any appropriate member of the EU Committee or its Sub-Committees on the Committee’s behalf, not just by the Chairman of the Select Committee (paragraph 1B). We would be content with this approach, although ultimately it will be a matter for the Procedure Committee and the House to decide.

Further, I can confirm that HMG accepts the recommendation in the Committee’s report of 2005 on the timing of Government analysis of the subsidiarity principle (paragraph 1D). The Government will endeavour to meet its 10 working day deadline for the preparation of Explanatory Memoranda, including an assessment of subsidiarity compliance. I consider this an important element in helping the Committees and both Houses exercise their new subsidiarity powers.

In relation to your points on the summer recess and ‘stopping the clock’ of the Council of Ministers (paragraph 1F), the Council does not meet in August, except in exceptional circumstances.

The European Parliament also does not meet from the end of July to the end of August. So the chances of the two legislative bodies making rapid progress on dossiers tabled in June or July is low. However, we will propose to other Council Members that the Council would not, under normal circumstances, place a qualifying proposal on its agenda for eight weeks, plus the four weeks of August where they fall within that eight week period, after the adoption of the proposal by the Commission.

I am happy to reconfirm the HMG position that the Government should not support a proposal in the Council which has been the subject of a subsidiarity yellow card in either House without first further communicating to Parliament the reasons for doing so (paragraph 1G).

I note your suggestion for the Committee scrutinising any proposed use of a passerelle (paragraph 2). I welcome the idea of the Committee helping to inform the House before a decision on whether or not to agree a proposal to use a listed passerelle. Save in exceptional circumstances, I anticipate that there would be sufficient ‘lead-in’ time for the Committee to have the opportunity to make its views known before the House is asked to make a decision on a proposal to use a listed passerelle. I therefore do not think it would be necessary to codify this process further in the way you propose.

With regard to your suggestions on the Government’s undertakings on scrutiny of JHA opt-ins (paragraph 3), I am happy to accept the commitment to place the Explanatory Memorandum before
Parliament no later than 10 working days after publication of the proposal. I can also confirm that the Government’s undertakings will be reflected in a Code of Practice, as proposed by Baroness Ashton on 9 June 2008.

However, I cannot agree to your proposal that the 8 weeks during which the Government will await the Committee’s views should be extended if the Committee has made a report to the House and that report has not yet been debated.

Your letter suggests that there is no penalty for taking the opt-in decision at the last minute, allowing for an extension of the 8-week period into the final month of the 3-month period. In practice, there could be a penalty if the UK urgently wishes to opt in but is barred from doing so pending a debate in the House, as we would be unable to engage fully in Council negotiations (e.g. participating in a qualified majority or a blocking minority), which could work significantly against the national interest. For this reason, we cannot give the undertaking you are seeking.

At the same time, we cannot guarantee that we would always be able to facilitate a debate within the 8-week period, as the practicability of doing so would hinge on how early in the 8-week period the Committee produced its report, and whether the 8-week period was curtailed by a Parliamentary recess.

You suggest that there would be “no point in a debate if an opt-in decision had already been taken”. I can reassure you that in the vast majority of cases, opt-in decisions are not taken at the eight-week point. Instead, the first eight weeks are used to conduct consultations across Government, the devolved administrations, and with external stakeholders, as well as the EU Committees of each House, in order to inform the advice that is put to Ministers.

There is then further consultation at Cabinet committee level over several weeks before a collective Government decision is reached. The views of the House as expressed in a debate or a motion could therefore still influence Ministers’ collective decision, even where the debate takes place after the eight-week period.

Ultimately, however, opt-in decisions must remain a matter for Ministers, and I cannot agree to an arrangement which would see us barred from opting in to a JHA proposal until the House had expressed its view in a debate. This would give an inappropriate power of filibuster whereby refusal to hold a debate would prevent a decision. This is neither within the letter nor within the spirit of Baroness Ashton of Upholland’s undertakings.

On reference to the ECJ, Article 8 allows considerable discretion as to how it is implemented in each Member State and you are right that HMG’s position was, and remains, that Article 8 does not oblige the Government to initiate proceedings in all circumstances. However you are also right that we have sought to take account of Parliament’s views by agreeing to take forward any case at the request of either House.

As you note the conduct of litigation before the ECJ is carried out by the UK Agents to the Court, based in the Treasury Solicitor’s Department, who act under the authority and oversight of the Attorney General. The UK Agents have a general responsibility to ensure that litigation is conducted as effectively and efficiently as possible and that the wider reputation and interests of the United Kingdom are upheld. While final decisions on instructions and arguments in all ECJ litigation therefore rest with them, they would work closely with the House’s representatives and seek to reach agreement on all points. In the unlikely event of a disagreement that cannot be resolved, we also propose that the House representatives should be able to refer these directly to the Attorney General who has ultimate responsibility for all litigation conducted on behalf of the United Kingdom. However as you indicate we would only anticipate such disagreement where there was real policy or reputational risk to the United Kingdom.

I agree that these points can best be addressed by our lawyers meeting to draft an informal memorandum setting out the agreed arrangements. In relation to the cost of taking a case to the ECJ (paragraph 4C), I can confirm that the House would only be liable for the costs of the UK action and that awards for costs against losing parties are not implemented in practice. I understand that the figures which you quote are based on an assessment provided to your legal adviser by our EU Litigation team.

3 December 2009

Letter from Chris Bryant MP to the Chairman

As you are aware, one of the priorities of the Spanish Presidency will be the effective implementation of the Lisbon Treaty, following entry into force of the Treaty on 1 December. To this end, I am writing to the Committee with the attached recent note from the Spanish Presidency (not printed), setting out their programme of work in respect of Lisbon Treaty implementation.
My colleagues and I will of course continue to provide updates to you and your Committee on the specific issues outlined as progress is made on these in the coming weeks.

20 January 2010

**LISBON TREATY: PREPARING FOR RATIFICATION**

**Letter from Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman**

The Lisbon Treaty provides for the allocation of extra MEPs to 12 Member States, including the UK which gains 1 extra MEP. It also reduces the number of MEPs from Germany by 3. This year’s European Parliament elections were held under the provisions of the Nice Treaty. To allow the extra MEPs provided for under the Lisbon Treaty to be elected into the current 2009 – 2014 European Parliament without 3 current MEPs who have just been elected having to stand down, transitional arrangements would need to be adopted to enable the number of MEPs to temporarily exceed the limit of 750 plus the President which is laid down in Article 14(2) of the Treaty.

The December 2008 European Council Conclusions therefore set out that: “In the event that the Treaty of Lisbon enters into force after the European elections of June 2009, transitional measures will be adopted as soon as possible, in accordance with the necessary legal procedures, in order to increase, until the end of the 2009-2014 legislative period, in conformity with the numbers provided for in the framework of the IGC which approved the Treaty of Lisbon, the number of MEPs of the twelve Member States for which the number of MEPs was set to increase. Therefore, the total number of MEPs will rise from 736 to 754 until the end of the 2009-2014 legislative period. The objective is that this modification should enter into force, if possible, during the year 2010.”

The June 2009 European Council Conclusions confirmed that the European Council: “recalls its Declaration of December 2008 on transitional measures concerning the composition of the European Parliament. Once the condition set in its Declaration of December 2008 is met, the necessary steps to implement these measures will be taken by the Presidency.”

Although this is would be a transitional measure, as it would require a temporary change to the total number of MEPs laid out in the Treaty, it would require a Protocol and therefore the opening of a limited Intergovernmental Conference (IGC). In order to take this process forward, the Spanish government has submitted a proposal to the President of the Council to launch a consultation with the European Commission and European Parliament before taking a decision to convene an IGC. One option is to hold the IGC without a Convention beforehand given the limited scope of the provisions under discussion. This will be discussed in the coming days.

The Presidency will shortly be notifying you of this proposal by the Spanish Government. The Spanish plan to make arrangements to hold the limited IGC during their Presidency.

Our aim in negotiations would be to ensure the draft Protocol reflects the agreements at the December 2008 and June 2009 European Councils. I will, of course, keep Parliament fully informed of developments and would welcome any views you may have.

In addition, any amendment to the EU Treaties can only be ratified by this country if it is approved by Act of Parliament. This is set out in section 5 of the European Union (Amendment) Act 2008. Parliament would therefore need to pass primary legislation before any Protocol could be ratified by the UK. Only once this is done, could the changes enter into force.

14 December 2009

**SCRUTINY RESERVE OVERRIDES**

**Letter from Jon Cunliffe to the Chairman**

I am writing to provide the latest list of scrutiny overrides which was agreed recently in advance with your Clerk.

It is disappointing that numbers have again increased from the low total we reported for the first half of 2009 and also when compared against the corresponding period in 2008 and from the low total we reported for the first half of 2009.

The European & Global Issues Secretariat continues to emphasise to departments the importance of managing business effectively and responding promptly to your correspondence with Ministers and
issues arising from your reports. In response to the positive engagement of your committee with FCO and DEFRA I understand that Ministers in those departments have taken action to improve their internal processes. More recently my officials have alerted all departments to your Committee’s useful initiative, contained in the Committee’s 2009 Annual Report, to raise the profile of scrutiny overrides. The management of overrides was also one of the subjects discussed at the networking workshop hosted by your team for the staff of the two Scrutiny Committees and departmental scrutiny coordinators in January. I hope that these actions will contribute to improved scrutiny handling by all government departments and better relationships between Whitehall officials and Parliamentary staff.

Practically, it is likely that the number of overrides will increase over the period when Parliament has been dissolved in the run-up to the General Election. In order to mitigate the impact of this, my officials have been encouraging departments to review all outstanding scrutiny business. And, with a view to improving performance in the future, I have asked my officials here to monitor more frequently Whitehall performance on scrutiny overrides. In particular, I have asked to be notified of serious or regular handling errors by departments in order to raise them directly with relevant departments.

31 March 2010

WESTERN EUROPEAN UNION

Letter from David Miliband MP, Secretary of State, Foreign and Commonwealth Office, to the Chairman

As you know, I have been considering the UK’s membership of the Western European Union. Though the WEU has done valuable work over the years, I do not believe that it is now an effective organisation. It divides ten EU Member States from the other seventeen, and many of its functions have been transferred to the EU. Its mutual defence role has been overtaken given that all its full members are members of NATO.

I have met and discussed this with the British Parliamentary delegation to the WEU, who are proposing reform of the WEU. I do not believe that this is the answer; indeed, it would be more difficult than starting afresh. Reform, including changes to the cost structure, would require a lengthy negotiating process, with no guarantee of success. There does not appear to be any appetite amongst the seventeen EU states who are not members to join.

A majority of Member States privately agree that the organisation should be closed. However, consensual negotiation, involving the parliaments of all ten WEU members is likely to result in a lengthy, drawn out negotiation. I believe it would be better to take a more inclusive approach and start afresh by involving all 27 EU Member States in the debate on the future of cross-European parliamentary scrutiny.

I have therefore decided to that the UK should withdraw from the WEU in the coming days. I plan to announce this in the coming days. I strongly believe that the Common Foreign and Security Policy and the Common Security and Defence Policy (CSDP) must remain intergovernmental. I would like to see parliamentary scrutiny remain at the national level, informed by greater contacts between parliamentarians from other EU Member States and NATO allies.

We are working with our WEU partners to agree on next steps. Our intention is to engage them in a debate on the future of cross-European Parliamentary scrutiny during the final twelve months of our membership of the WEU.

Our thinking will be set out in our Parliamentary statement; that national parliaments should retain the key scrutiny role for CSDP; and that there is no reason for the European Parliament to expand its competence in the oversight of European defence issues. We will also seek to ensure that non-EU European NATO allies are fully consulted through this debate and that Parliamentarians from those countries will continue to have the opportunity to engage with their EU counterparts.

20 March 2010