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 20 December 2010 to 13 May 2011.

EUROPEAN UNION SELECT COMMITTEE

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COMMISSION WORK PROGRAMME

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

Thank you for your Explanatory Memorandum on this document dated 26 November. The Committee considered it on 14 December and cleared it from scrutiny. They asked me to point out that the EM was submitted 7 days late.

I look forward to seeing you with the Committee tomorrow. There is no need to reply to this letter.

20 December 2010

ENHANCED PARLIAMENTARY SCRUTINY OF EUROPEAN UNION BUSINESS

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

The Select Committee on the European Union considered at a meeting on 1 February 2011 the written statement you made to Parliament on 20 January 2011 on Enhanced Parliamentary Scrutiny of European Union Business.

We would have welcomed an opportunity to comment on your statement in draft. We are however glad that the Government will continue to honour the undertakings given by Baroness Ashton of Upholland in June 2008 for the enhanced scrutiny of EU legislation subject to a United Kingdom opt-in. We are also grateful for the additional commitments you have given, in particular the application of these undertakings to Schengen opt-outs, and the undertaking to make written statements, and where appropriate oral statements, on the exercise of the United Kingdom opt-in. I take it that ministers will
continue to write to me to answer specific questions raised by this Committee and its Sub-
Committees when scrutinising draft legislation subject to the opt-in.

We look forward to consultation in due course on the arrangements for Parliamentary scrutiny of the
possible exercise by the Government of the United Kingdom opt-out under Protocol 36.

You have stated that the details of arrangements for debates, and how these will operate during
Parliamentary recesses, will be the subject of further consultation with the Committees. I would
remind you that, in the case of the House of Lords, these matters have already been the subject of
two reports of the Procedure Committee which were agreed by the House on 16 March 2010, and a
Resolution on the scrutiny of opt-in decisions which was agreed on 30 March 2010.

Baroness Ashton undertook that a Code of Practice on the scrutiny of opt-in decisions would
be agreed with the Scrutiny Committees. Your statement makes no mention of this. We have had
prolonged discussions with Government departments, and a draft Code was agreed by this
Committee on 14 December 2010 but remains subject to agreement by others involved. We look
forward to making progress on this.

I am sending copies of this letter to James Brokenshire MP at the Home Office, and to Lord McNally
at the Ministry of Justice. I shall be writing to them separately about the Report to Parliament on the
application of Protocols 19 and 21 which was published on 21 January 2011.

2 February 2011

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

In my written statement to Parliament of 20 January on enhancing Parliament's scrutiny powers in the
area of Justice and Home Affairs, I set out the Government's commitment to facilitating debates on
key opt-in decisions, for example on issues where there was particularly strong Parliamentary interest
and where the proposal could have a substantial impact on the UK's civil or criminal law, security, civil
liberties or immigration policy. I also undertook to consult with Scrutiny Committees and relevant
departmental Select Committees on the detail of how these arrangements will work in practice.

We are now beginning that process of consultation and I would be very interested in your views and
those of your Committee on how the existing arrangements for scrutiny of JHA opt-in decisions in
the House of Lords might be enhanced. As I set out during the Committee stages of the EU Bill in the
House of Commons, it will be important to strike the right balance between clarity and flexibility in
the final arrangements, particularly bearing in mind the fixed 3 month timetable for opt-in decisions
and the need to work around parliamentary recesses.

Officials from the Foreign and Commonwealth Office, the Home Office and the Ministry of Justice will
be in touch with your Committee Clerks in due course to discuss taking forward working level
discussions on this matter.

I very much hope we can make quick progress on these issues and would therefore welcome your
response at the earliest possible opportunity.

07 February 2011

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

Thank you for your letter of 7 February 2011, further to your Written Ministerial Statement on 20
January 2011, suggesting discussions on the detailed arrangements for debating justice and home
affairs matters. Thank you too for the useful meeting we had the following day, at which we discussed
this issue, among others.

As you will have seen from my letter to you of 2 February 2011, I agree with you that working level
discussions would be the best initial step forward, and I have asked the Clerk of the Home Affairs
Sub-Committee of the European Union Committee to take this forward. I understand that he has
already been in touch with officials at the Home Office.

16 February 2011

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

Thank you for your letters of 2 and 16 February on the Government's plans for enhancing
Parliamentary scrutiny of Justice and Home Affairs opt-in decisions, as set out in my written statement
to Parliament of 20 January.
I was interested in our meeting to hear your view that in the Lords the current scrutiny arrangements for opt-ins already work well. I fully appreciate, as you state in your letter, that your Committee already has a specific scrutiny Resolution for opt-in decisions. Under the new arrangements, Parliament will have far greater powers to influence the eventual opt-in decision. I very much hope that the new commitments will enhance the ability of both Houses to hold the Government to account and retain the best elements of the current system, including the Committees’ detailed scrutiny of new proposals. The Committees’ views will continue to be extremely influential, for example in signalling whether the level of parliamentary interest in a decision means that it should be subject to a debate on Government time.

You also raise the issue of the Code of Practice, promised as part of the Ashton undertakings. I share your concern that we need to make progress on the Code, which is an important part of ensuring full transparency in the scrutiny processes. Equally, I believe it is essential that the enhanced arrangements set out in my statement are reflected in the Code. I am committed to making progress on the new arrangements as quickly as possible but it is also important that we take the time necessary to get the new processes right, including through full consultation.

Finally, you mention in your letter your intention to write to the Parliamentary Under Secretary at the Home Office, James Brokenshire MP, and the Minister of State at Ministry of Justice, Lord McNally, on the Report to Parliament on the opt-in. I understand that arrangements are now in train for this debate to take place before the Easter recess.

03 March 2011
Letter from the Rt. Hon. David Lidington MP, Minister of State for Europe and NATO, Foreign and Commonwealth Office, to the Chairman

I would like to apologise for the delay in sending this Explanatory Memorandum to you. As you know, I have the highest respect for Parliament’s need to scrutinise documents from the European Union, and I am aware that this delay has caused your Committee considerable inconvenience.

Since my appointment as Minister for Europe, I have worked to improve the FCO’s scrutiny performance. We have made progress – I am pleased with the way that my officials are working closely with your clerks to make the process run smoothly. As with any system, there is room for improvement, and I look forward to discussing progress with you after Christmas.

21 December 2010

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

Your Explanatory Memorandum of 21 December 2010 was considered by the Select Committee on 25 January. We are grateful for your account of the changes made in the latest Framework Agreement.

Like you, we are concerned lest some of the new provisions of the Agreement may seek to confer on the European Parliament greater powers than those provided by the EU Treaties. To those which you mention, we would add the provisions on the Parliament’s involvement in the resignation of a Commissioner, in the allocation of Commission portfolios and in the appointment of Executive Directors of Agencies. We agree that the provisions in question risk upsetting the institutional balance established by the Treaties and we welcome the Declaration made by the Council and its intention to monitor the operation of the Agreement.

We clear this document from scrutiny but ask you to inform the Committee if there is further discussion in the Council of the practical operation of the Agreement, in particular if consideration is given to the possibility of a legal challenge.

26 January 2011

EUROPEAN STABILITY MECHANISM

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

On 16 December, the European Council agreed that the EU Treaties should be amended in order for the European Stability Mechanism (ESM) to be established by the Member States of the euro area to safeguard the financial stability of the euro area. I write to notify the European Union Select Committee as to how the Government intends to seek Parliament’s agreement to the UK adopting the European Council’s Draft Decision at the Spring European Council scheduled for 24/25 March 2011.

I enclose for your information the Conclusions of the 16-17 December 2010 European Council that set out the rationale for the decision to establish the ESM using the Simplified Revision Procedure (SRP) provided for in Article 48(6) TEU.

As the Prime Minister outlined in his statement to the House on 20 December, we want to see financial stability return to the euro area since it is clearly in the UK’s national interest that the euro area is stable and prosperous. We are therefore prepared, subject to approval by Parliament, to amend the Treaties to make it clear that euro area Member States can establish a permanent European Stability Mechanism.

However we are clear that if the Treaty is to be amended, then it must be explicit that this will not have any impact on the UK. We have therefore ensured that, in line with the promise made by the Coalition Government, there is no transfer of competence or power from the UK to the EU and the UK is not liable for assisting the euro area, once the new mechanism to be established by the Member States of the euro area is in place.

It is clear in the Council Conclusions and in the Draft Decision to amend the Treaty, attached to the Conclusions at Annex I, that this will be a “stability mechanism for Member States whose currency is the euro” and clearly a mechanism established by euro area countries for euro area countries. The UK will not be part of the new mechanism.
In addition, it is agreed that the ESM will replace the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM). Both the Conclusions and the recitals to the Draft Decision that introduces the Treaty change are clear that Article 122 (2) TFEU will no longer be used for safeguarding the financial stability of the euro area as a whole. It is therefore in the UK’s national interest that the ESM is in place by the target date of 1 January 2013.

Section 6 of the European Union (Amendment) Act 2008 requires that when a decision under the Simplified Revision Procedure (Article 48(6) TEU) is proposed a Minister must introduce a motion and have it passed by both Houses of Parliament without amendment before the Prime Minister can signal his agreement to the adoption of the draft decision at a subsequent European Council. The Conclusions set a target date for adoption of the decision as March 2011 (i.e. the European Council on 24/25 March). I am keen to allow the Lords’ European Union Committee, and the European Scrutiny Committee of the House of Commons, adequate time to consider this proposal in advance of the Government moving a Motion to approve it. I trust that my sending the text of the Draft Decision now will allow sufficient time for your Committee to consider it and look forward to any views they may express.

I will deposit the official and numbered version of the Draft European Council Decision for scrutiny, under cover of an Explanatory Memorandum, as soon as I receive it. In addition, as required by the Simplified Revision Procedure, the Presidency will consult the European Parliament, European Commission and the European Central Bank on the Draft Decision to amend the Treaty. I will also deposit this correspondence with you in line with normal scrutiny procedures.

I should also like to take this opportunity to reaffirm our commitment that if the European Council subsequently agrees to a Treaty amendment using the Simplified Revision Procedure, we will bring forward a Bill to allow full Parliamentary debate and decision before the UK can finally approve that Treaty change in line with the provisions of the EU Bill.

22 December 2010

EUROPEAN UNION BILL

Letter from the Rt. Hon Lord Howell of Guildford, Minister of State, Foreign and Commonwealth Office, to the Chairman

As I am sure you will be aware, the European Union Bill received its Third Reading in the House of Commons yesterday, and the Bill will be brought from the House of Commons today for First Reading in the House of Lords.

The European Union Bill is being introduced to fulfil a commitment in the UK Coalition Government’s Programme for Government when we entered office in May last year. That programme set out our firm commitment that Britain should continue to play a strong, positive and active role in an enlarged European Union. We want an open, external market, and we support the negotiation of new EU Free Trade Agreements. We want to strengthen and expand the single market, including the energy market, in order to deliver growth. We want to promote a resource efficient, low carbon EU economy. And we want to work through the EU to achieve our international objectives. In order to deliver this, we are engaging effectively and constructively with the EU and with our European partners.

However, many people in Britain feel disconnected with how the EU has developed and the decisions that have been taken in their name. By rolling out control of these decisions to the people, this Coalition Government believes that we can help rebuild trust and reconnect people with these EU decisions.

The Coalition Government therefore introduced the European Union Bill to the House of Commons on 11 November 2010. The Bill and the Explanatory Notes to the Bill as brought from the Commons is available to download from the Parliament website, or through the FCO website at www.fco.gov.uk/leubill.

The Government has already been clear that there should be no further transfer of power or competence from the UK to the EU over the life of the current Parliament. This Bill ensures that if in the future there is a change to the EU Treaties that moves a power or an area of policy or competence from the UK to the EU, then the Government will have to have the British people’s consent in a national referendum before it can be agreed.

Any Treaty change, whether using the Ordinary or Simplified Legislative Procedure, will need to be approved by an Act of Parliament, even if it does not transfer competence or power from the UK to the EU, before the UK can ratify that new Treaty or decision. But any change which would not
The Coalition Government has also examined the case for a United Kingdom Sovereignty Bill in accordance with the Programme for Government, to make clear that ultimate authority remains with Parliament. Following that examination, we have decided to include a clause which makes clear that it is only by virtue of primary legislation passed by the UK Parliament that directly applicable or directly effective EU law falls to be recognised and available in law in the United Kingdom.

There will be an open meeting for all Lords about the EU Bill on Tuesday 15 March, further details of which will be sent to you shortly. I hope you will be able to attend. I would also be pleased to meet with you at your convenience to discuss the Bill and its provisions.

09 March 2011

HUNGARIAN PRESIDENCY PROGRAMME

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

In line with our commitment to proper scrutiny of EU business, the Government is committed to keeping Parliament informed on issues relating to each EU Presidency programme. I apologise that we have not been able to provide you with this information earlier. This is because of the later-than-usual publication of the finalised Hungarian Presidency programme.

I attach an analysis of the Hungarian Strategic Framework (Presidency priorities) and a programme for the Hungarian Presidency. I have also placed a copy of the Strategic Framework and programme in the library of the House, in the interest of informing all members. I very much look forward to hearing your views and engaging with you on these issues.

We seek to steer the discussion towards emphasising the need to bring forward policies which promote growth, noting the UK’s ambitions for the EU in this area.

I have decided to end the practice of publishing a separate “Command Paper” on the EU Presidency. This glossy publication duplicated the strategic content of this note, albeit with somewhat more detail, and was judged unnecessary at a time when we are bearing down on publishing costs across government.

I will of course be happy to provide your Committee with more information on any of these issues.

15 February 2011

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

Thank you for your letter of 15 February, enclosing the Government’s analysis of the Hungarian Strategic Framework. This was discussed by the EU Select Committee on 8 March. We note that the analysis is not available on the internet, and would like to ask what is being done to make it publicly available.

9 March 2011

SUBSIDIARITY PROTOCOL TO THE TREATIES OF THE EUROPEAN UNION

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

I am writing to you concerning the establishment of procedures to deal with Parliament’s new powers deriving from the subsidiarity protocol, particularly with regards to Article 8, commonly referred to as the ‘Red Card’ (attached). As you are aware, this article allows the Government to challenge EU laws on the grounds of the subsidiarity principle being violated, on behalf of either House of Parliament. If Parliament were to put forward a challenge, it would be for the Government to represent the United Kingdom in the European Court of Justice, and so we need to establish a
procedure agreeable to all sides to make this work. I understand that officials have been in close contact with the lawyers of both Committees to outline a draft Memorandum of Understanding on how such challenges shall be dealt with.

Before we proceed with the Memorandum, I would like to have a meeting early in the New Year, along with Bill Cash to discuss this issue in more depth. This will also be an opportunity to discuss scrutiny of EU dossiers more generally.

21 December 2010

UN GENERAL ASSEMBLY: WORK OF THE UNITED NATIONS

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

I am writing to update your Committee on the United Nations General Assembly (UNGA) Resolution on “Participation of the European Union in the Work of the United Nations”. The resolution was adopted on 3 May in the UN General Assembly by a vote of 180 in favour with none against and 2 abstentions, Syria and Zimbabwe.

As the Deputy Prime Minister said in his address to the UN General Assembly in September 2010, it is important that the vital role of the EU in promoting development and prosperity can be adequately represented in the General Assembly.

The 3 May result achieves this, while preserving our other interests on how EU Member States are represented externally. Throughout the negotiation of this resolution, the UK has consistently supported a consensual approach to address the concerns of other UNGA members.

The resolution (text attached) allows technical and procedural changes to ensure the EU can continue to be represented as effectively as it was before the new Presidency arrangements as a result of the Lisbon Treaty. Before the resolution, the EU’s rotating Presidency or another EU Member State represented the EU agreed position in the UNGA. This UN resolution now allows that, while remaining an observer, the EU itself can represent common agreed positions of Member States in the UNGA. EU representatives – including the President of the European Council or Baroness Ashton – can now be inscribed on the list of speakers among representatives of major groups in order to make early interventions and may be invited to participate in the general debate of the UNGA, subject to the limits set out in the resolution text. It remains, however, the case that the EU representatives can only do this if the UK and other member states authorise them to do so. Furthermore, EU representatives speak and act on behalf of the 27 Member States with their authorisation, not in addition to them.

The resolution underlines the intergovernmental nature of the UNGA, whose membership is limited to UN member States. It does not affect the UK’s sovereignty; nor does it affect the UK’s ability to act independently in the UN or internationally. The rights of individual EU Member States are not curtailed. Moreover, the resolution makes very clear that the EU will remain an observer. Its status in the UNGA is unchanged.

The effect of the resolution is limited to the UNGA (including Committees, working groups, international meetings and UN conferences). It does not affect the rights or status of the EU or Member States in any other UN body or international organisation. The UK’s position in the UN Security Council is not affected.

13 May 2011