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 June to 30 November 2011

EUROPEAN UNION SELECT COMMITTEE

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EU FINANCIAL FRAMEWORK FROM 2014 REPORT

Letter from Justine Greening MP, Economic Secretary, HM Treasury to the Chairman

EU FINANCIAL FRAMEWORK FROM 2014

I am writing in response to your Committee’s report on the "EU Financial Framework from 2014", for which I am grateful, particularly for the support it provides to the Government’s position. I was pleased to provide evidence when the Committee was preparing this report and will not reiterate these detailed points here. However, I would like to respond on the key challenges of the next Financial Framework, in particular in the context of an imminent proposal from the Commission. It is helpful to have your report ahead of that proposal, so that it can help inform and bolster our arguments on some key areas of the Financial Framework debate.

BUDGET SIZE

I welcome the Committee's support for EU budgetary restraint. This is a top priority for the Government and as the Prime Minister set out with his EU counterparts, the EU Budget must reflect the tough fiscal choices being made domestically by Member States. We need to contain the annual growth of payments in the next Financial Framework to no more than inflation, year-on-year, from a starting point of actual spend in 2013. It is vital that the Financial Framework negotiation is conducted with primary regard to payment ceilings. As you will be aware, it is payments (actual spend) that determine UK contributions. We will get insufficient budgetary certainty from a negotiation conducted only in commitments (planned spend) and we will fail to ensure proper management of the build-up of unspent commitments.

The Commission itself has said that "many Member States need to show more ambition when it comes to fiscal consolidation". We now need the Commission to take action on its own budget and put itself on the right side of the macro-economic debate. The Commission has also stated the need for Member States to work in terms of binding spending ceilings, saying "the introduction of binding
expenditure ceilings and further improvements to budgetary monitoring across all government sub-
sectors would foster fiscal discipline and strengthen the credibility of the medium-term budgetary
strategy.\(^7\) Again, we need the Commission to apply this message to its own budget and work in
payment appropriations.

**EU ADDED VALUE AND EXPENDITURE PRIORITIES**

I welcome the discussion of EU added value in your Committee’s report. The Government agrees
that when it acts, the EU should deploy its most appropriate and effective policy lever — domestic
action, coordination, regulation or spending. We also agree that with the report’s assertion that the
EU should consider where spending is the most appropriate means to achieve the Europe 2020 goals
and whether alternative instruments may be more appropriate and effective. Where spending is the
most effective, it must meet high standards of financial management.

The EU budget can achieve more with less by prioritising its budget better, and the Government will
be advocating the steps necessary to achieve better value for money. Your report states that the
Common Agricultural Policy (CAP) currently offers poor European added value. The Government
believes that very substantial cuts are required to Pillar 1 of the CAP for this reason. We believe that
there is justification for a greater focus of the CAP towards the provision of environmental benefits;
Pillar 2 is the primary mechanism in achieving this, not least because it allows for resources to be
targeted. For this reason, the Government believes that Pillar 2 should be given a proportionately
larger share of a smaller CAP budget.

The Government also believes there is scope for very substantial cuts to the administration budget,
which is currently the same size as the budget for external relations (Heading 4). We also believe
there should be more transparency in the administration budget, and the Government notes with
concern the additional €1.2bn of administration expenditure buried in other headings of the budget.
The Government has introduced 33% savings in all Departments’ administration budgets as part of the
Spending Review. The Commission now needs to show the same ambition in reducing its spend.

The Committee rightly references the Europe 2020 goals. The Government believes that growth and
competitiveness (Heading 1a) as well as external relations (Heading 4) and the climate change
components of these headings are priority areas. While the Government’s overall objective is to
reduce budget size, we consider that these areas should have a proportionately larger share of a
smaller budget. We agree that spending on climate change should be done from within existing budget
headings, rather than through a new one.

The Government believes that structural and cohesion funds (Heading 1b) to richer Member States
should be cut significantly. The share of these funds going to poorer Member States should rise as
part of an overall reduction in the Structural Funds budget. The Government also wants to see
reprioritisation of existing funds within Heading 3 (Freedom, Security, Justice and Citizenship) to
reflect EU priorities in this area. It should not be allocated additional funds.

The Government would like to see more work on the role of project bonds to improve the value for
money of the way in which the EU budget acts. We also agree with the report that major projects
must be costed in a robust manner at the outset and then managed effectively throughout their
lifetime.

**OWN RESOURCES**

I welcome the report’s support for the Government’s position to oppose any proposals for a new EU
tax to fund the EU budget. As your report states, this is a distraction from the key issue of controlling
expenditure.

I also welcome the report’s firm backing for the continuation of the UK abatement, which this
government will protect. The UK abatement remains fully justified due to continuing expenditure
distortions in the EU budget. These distortions mean that the UK has the lowest per capita receipts
from the EU budget. As such, without the abatement, the UK’s net contribution as a percentage of
national income would be the largest across the EU, almost 1.5 times bigger than the contribution of
Germany, and twice as large as those of France and Italy.

As I am sure you are aware, we are at the start of a long negotiation on the Financial Perspective. I
look forward to further engagement with the Committee through this process. In the meantime, if
you have any further questions, I would be very happy to assist.

21 June 2011
Letter from the Chairman to Justine Greening MP

The Committee considered the Government response to the above report at its meeting on Tuesday 28 June. While we are grateful for your comments, we expect a more substantial response to this report from the Treasury, addressing in the usual way each of our key conclusions and recommendations in turn. Given that the Commission's proposals were published yesterday, we would be grateful if these proposals were taken into account in this further response.

More generally, I would like to ask that future Treasury responses to our reports are careful to respond to each conclusion and recommendation by the Committee.

30 June 2011

Letter from Justine Greening MP to the Chairman

Thank you for your letter of 30 June. I am keen to continue a close dialogue with the Committee on the European Financial Perspective and I am pleased to be able to provide further input on the Government's position now that the Commission has issued its proposal. I have provided both an extract from the recently issued Explanatory Memorandum on the FP proposal and more detail on some of the key points in your original report.

As I said in my previous letter, I am grateful for your recent report and the support it provides to the UK position.

We are at the start of a long negotiation, and the Commission has yet to issue its proposals on the detail for each heading, which will allow us to make more comments on specific programmes. I look forward to ongoing communication with the Committee as the Financial Perspective process continues.

25 July 2011

ANNEX

UK GOVERNMENT POSITION ON THE COMMISSION’S FINANCIAL PERSPECTIVE PROPOSAL

1. The UK Government has been clear that, at a time of ongoing economic fragility in Europe and tight constraints on domestic public spending, the Commission’s proposal for the MFF is unrealistic. It is too large; it is not the restrained budget the Commission claims and it is incompatible with the tough decisions being taken in countries across Europe.

Budget Size

2. There are a number of ways of comparing the size of the Commission’s proposals to the current framework. The Commission has used commitment ceilings agreed in 2005 at their highest point, 2013, as their baseline. The UK is disappointed to see that the Commission has also moved a significant amount of spending ‘outside the MFF’. This spend is not included in the Commission’s assessment of the total MFF spend, but it is likely that the majority will translate into actual payments for MS.

3. The analysis that matters for the UK Government is how much extra, actual cash outturn this proposal means. This is what determines the cost to the tax payer. The UK Government has therefore chosen to use actual payments outturn as the basis of our calculations and to include any additional spending the Commission has moved ‘outside the MFF’ in their proposal.

4. The 2011 annual EU budget outturn in payments is €126.5 billion (£114bn). As well as being the most recent agreed EU budget, the level of payments in the 2011 budget measures actual payments made and is likely to be extremely close to the average level of spend over the current MFF. We have therefore used this as our reference point.

5. A real-freeze on €126.5bn (£114bn) would lead to a total budget size of (7 x 126.5) €885.5bn (£799bn) in 2011 prices. The Commission proposal is for €972bn (£877bn) 2014 to 2020 in 2011 prices. When we include the additional €18bn spending the Commission has moved outside the MFF, the total spend across the period equals €990 bn (£894bn). The UK Government therefore estimates the Commission’s proposal to be around €100bn (£90bn) greater in total. This is an average increase of around €15bn (£13.5bn) per year, or over 11% over the period.
6. The UK Government has purposefully laid out the detail underlying its calculations on the budget increases implied by the Commission’s proposal as it is important that the MFF negotiation is conducted with regard to the right baselines and measures.

7. This huge increase in budget size is unrealistic when Governments are trying to control domestic spending. The level of public debt across Member States in 2012 will be 50% more than it was in 2007. The UK Government has taken significant steps to control public expenditure and put UK public finances onto a sustainable footing. We are not alone in this: on average, EU member states are expected to see expenditure as per cent of GDP fall by about 8 per cent over the next 3 years from 2010.

8. The final MFF must respect the October 2010 European Council conclusion that it is essential that “the forthcoming Multi-annual Financial Framework reflect the consolidation efforts being made by Member States to bring deficit and debt onto a more sustainable path”.

9. The Commission’s proposal is also at odds with the clear position on the size of the next MFF set out by the Prime Minister and his European colleagues in his joint December 2011 letter to the Commission, an extract of which is below:

   The next multiannual financial framework will come as Member States make extraordinary efforts to clean up public finances. These efforts are intended to bring down public deficits and public debt to a sustainable level in keeping with an enhanced fiscal and macroeconomic monitoring framework.

   European public spending cannot be exempt from the considerable efforts made by the Member States to bring their public spending under control. The action taken in 2011 to curb annual growth in European payment appropriations should therefore be stepped up progressively over the remaining years of this financial perspective and payment appropriations should increase, at most, by no more than inflation over the next financial perspectives.

Changes to the Own Resources system

10. The UK Government opposes the changes to the Own Resources System proposed by the Commission. The UK Government has two fundamental objections to the Commission’s proposals on this issue.

11. First, the UK Government has made it clear that the UK will protect the abatement. The UK abatement remains fully justified due to continuing expenditure distortions in EU budget, including in the MFF proposed by the Commission. Expenditure distortions mean that the UK currently has the lowest per capita receipts from the EU budget. The temporary lump sum corrections proposed by the Commission would remove the permanency of the UK’s current abatement mechanism and threaten our long-term outcomes.

12. Second, the UK Government strongly opposes any new EU taxes to fund the EU budget and opposes the Commission’s proposal in this area. The UK Government attaches considerable importance to the principle of tax sovereignty, and believes tax policy is primarily a matter for Member States to determine at a national level. The changes the Commission is proposing to the system of financing the EU budget are a distraction from the primary need to restrain its size.

FURTHER INPUT ON THE COMMITTEE’S REPORT ON THE FINANCIAL PERSPECTIVE 2014-20

Numbered below are the key conclusions from the Committee’s Report, with the Government’s position outlined beneath.

To note, the Commission has so far only published its high level budget proposal. More detailed sectoral proposals will follow later in the year, which will better enable the Government to take a specific position on some of the individual funding streams outlined in the Committee’s report.

1) European Added Value

Committee’s comments: “The MFF negotiation provides an opportunity to move EU spending closer to EAV, and this should be the Government’s objective.”

Government Position: The UK Government agrees that the EU should apply the principle of added value to its spending. When it acts, the EU should deploy its most appropriate and effective policy lever – domestic action, coordination, regulation or spending. And when it spends the EU must ensure that all EU spending meets high standards of sound financial management, and that spending is
directed at the areas of highest value. By applying the principle of added value the EU can improve the
value for money of its spend, and focus on priorities, whilst controlling its budget.

2) Research, development and innovation funding

Committee’s comments: “EU R&D funding represents strong EAV and will support the
EU’s economic recovery after the financial crisis.”

Government Position: The UK Government believes spending on growth and competitiveness
underpinned by research and innovation are priority areas for the UK and should have a
proportionally larger share of an EU budget that increases, at most, by no more than inflation.
Spending in this area should be focused towards delivering sustainable growth, competitiveness, world
class research and innovation and to supporting the EU’s focus on big societal challenges including low
carbon.

But the UK Government will maintain its focus on budget discipline. While growth and competitiveness
which are underpinned by research and innovation are a relative priority for the UK Government, the
substantial increase in payments in this area that is likely to result from the commitment level
proposed by the Commission is unrealistic and out of line with the need for greater budgetary
restraint in the next MFF.

The Common Strategic Framework has the potential to provide good European added-value and
support delivery of the Europe 2020 strategy. However, the UK Government will need to engage
with the detail of regulations in this area further to ensure that spending in this area is at the right
level and does not create pressure on the budget overall. We support the aim to simplify funding
significantly and to support research across all stages of the innovation cycle from frontier research to
demonstration.

The proposed Education Europe programme has the potential to bring about a significant
simplification of actions and rules through the elimination of sub-programmes. The UK Government
will want to consider the detail carefully when it is issued.

3) The management of large-scale projects

Committee’s comments: “We strongly regret the delays, cost overruns and
management difficulties which have beset large-scale projects such as Galileo and ITER
since their inception. It is crucial for these types of projects to be costed in a robust
manner at the outset and then managed effectively throughout their lifetime, with a
thorou gh ex post evaluation of the economic and social benefits which result.”

Government Position: The UK welcomes the acknowledgement from the Commission that reform is
necessary to improve the management of large scale projects such as ITER and Galileo. The
Government agrees with the Committee that the Commission should learn from past problems and
improve the cost planning and management and evaluation of large scale projects. The Government
does not believe shifting spending for major projects off budget will be beneficial.

4) Energy, transport and telecommunications infrastructure funding

Committee’s comments: “We agree that the EU should provide funding for cross-
border transport, energy and telecommunications infrastructure projects which are
important to European growth.”

Government Position: The Government agrees that cross-border infrastructure has the potential to
be beneficial and that funds should be focussed where they have greatest added value. However, the
Commission proposals for very substantial increases in this area are completely out of line with the
greater need for budgetary restraint. The overall EU budget must be set at an acceptable size. The
vast majority of investment in infrastructure will need to come from the private sector, and therefore
it is the role of Member States and the Commission to ensure that the right regulatory framework is
created to encourage this investment. Transport forms part of the new ‘Connecting Europe facility’ in
the Commission proposal. The UK Government recognises the important role transport plays in
developing the economy and helping to address climate change but believes transport spend must be
accommodated within an EU budget that increases, at most, by no more than inflation. We will also
review the Commission’s proposals for the Trans-European Transport Networks (TEN-T) when they
are published in September.

5) Sustainable growth: mainstreaming

Committee’s comments: “We agree with the Commission that energy and climate
policies should be taken into account throughout EU funding instruments. As reflected in
Europe 2020, the sustainable development of a low-carbon economy is likely to be key to
the EU’s future economic growth is therefore important that all the funding instruments support that goal.”

Government Position: The Government agrees that spending on climate change should be done from within existing budget headings, rather than through a new one. Mainstreaming allows for funding in all headings of the Budget to be directed towards reducing and mitigating climate change. This both taps into the full range of EU funding streams and avoids expenditure which could make it more difficult to move towards a low carbon economy in the longer term. In the context of the UK’s overall objective to control budget size, we consider that spending on climate change should have a proportionately larger share of a budget that increases, at most, by no more than inflation. The Government agrees that there should be better understanding of what money is spent on climate change and its effectiveness.

The EU has committed to scaling up international climate finance to meet the goal for developed countries to jointly mobilise $100bn dollars per year by 2020. This will come from a combination of public, private and innovative sources. Currently much support is provided bilaterally, and the UK will want to assess the effectiveness of different routes before determining the optimum route for future funding, and the potential role of the EU budget. The UK will in any case remain focussed on ensuring overall EU budget size goals are met.

The UK will await the proposals from the Commission on the detail of climate change spend in the next Financial Perspective to respond on specific projects and the accountability for them.

6) The Common Agricultural Policy

Committee’s comments: “CAP requires reform, and evolutionary change is more likely to succeed than any radical approach. Trade-distorting subsidies must be phased out, and the CAP aligned with the outcome of discussions on agriculture at the World Trade Organisation, conclusion of which must be a political priority for the EU and its Member States.”

Government Position: The Government agrees that it is important to reduce, as far as possible, the distortion of world agricultural markets arising from the CAP and agricultural trade barriers. We want to see a competitive, thriving and sustainable EU agriculture sector, but much of the current CAP hampers the achievement of this objective. The CAP budget should see a very substantial reduction, focussed on Pillar 1. The value for money of remaining CAP expenditure must increase, with a higher share of the CAP spent on improving the productivity and competitiveness of the EU agricultural sector, and addressing important environmental challenges such as climate change mitigation. But whilst the Government supports a greener CAP, it is cautious of proposals to achieve this through Pillar 1. Environmental outcomes are most effectively delivered by longer term, targeted interventions - currently achieved through Pillar 2. It is not clear that a green Pillar 1 would deliver an increase in environmental benefits. It is clear that a green Pillar 1 would be more complex to deliver. Within a smaller CAP budget Pillar 2 should receive an increased share.

7) Structural Funds

a. Committee’s Comments: “Under the new MFF, the ERDF should be concentrated on the least prosperous regions. The ESF, however, can add value throughout the EU, regardless of the wealth of the region, especially in the current economic climate. The European Agricultural Fund for Rural Development should also remain available throughout the EU. We recommend that further reflection is undertaken soon, in preparation for the new MFF, on whether cohesion instruments can be better used to benefit poor regions across the EU.”

Government Position: We believe that both the ERDF and the ESF should be targeted on the least prosperous regions and Member States, with the ESF targeting the most disadvantaged groups, according to labour market need. Wealthier Member States have both the ability and capacity to finance their own regional development policy, including in their less developed regions. Cohesion funding should focus on stimulating economic development in Member States where income per capita is far below the EU average, where EU money can significantly add value to economic development efforts and where there are clear economies of scale with respect to financial and institutional capacity.

b. Committee’s Comments: “We support a Common Strategic Framework for structural funds, so long as it allows flexibility for identification of priorities at the local level.”
Government Position: We believe that a common strategic framework for structural and cohesion funds and the relevant funds of the CAP has the potential to bring significant benefits. The Government has set out a new approach to local growth in England, setting up local enterprise partnerships and shifting power away from central Government to local communities, citizens and independent providers. We will ensure that the implementation of the common strategic framework in the UK takes this into account.

c. Committee’s Comments: “In aligning cohesion policy with Europe 2020, the distinct identity and the fundamental objective of cohesion must be safeguarded.”

Government Position: The Government supports the closer alignment of cohesion policy with the Europe 2020 strategy and SCF policy actions should support interventions that deliver these 2020 objectives. This alignment should, however, be in the context of the fundamental EU-wide political and economic aim of cohesion policy, with its basis in the European Treaty, which sets the objective of ‘reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands’.

d. Committee’s Comments: “In principle we support the concept of a performance reserve.”

Government Position: We are supportive of the Commission’s efforts to improve the management and value for money in the delivery of Structural and Cohesion Funds, but the implementation of a performance reserve is likely to run counter to the spirit of Cohesion Policy and to the objective of focusing SCF on the poorest. It also risks introducing uncertainty to the level of EU funding for Member States, creating difficulties in planning effective operational programmes and uncertainty around the level of national contributions.

e. Committee’s Comments: “We would not favour arrangements which allowed EU funds to be withdrawn to enforce the Stability and Growth Pact.”

Government Position: The Government does not support proposals to apply ‘external’ conditionality to Structural and Cohesion funding.

8) The Budget as guarantee for an EU rescue mechanism

Committee’s Comments: “The forthcoming negotiation on the next MFF should prompt reflection on the long-term contribution that the EU budget could make to add value to efforts by Member States to improve economic governance and stabilise the Eurozone and the whole EU.”

Government Position: The Government agrees that the EU budget should contribute to macro-economic priorities. The most important way for it to do so is to support member states’ efforts to control public expenditure and reduce public debt through an EU budget that is restrained, and at most sees payments increase by no more than inflation through the next Financial Perspective.

9) Citizenship, Freedom, Security and Justice

Committee’s comments: “We consider that the level of activity in the Area of Freedom, Security and Justice in the period of the next MFF should be broadly consistent with the level at the end of the current MFF period.”

Government Position: The Government agrees that Heading 3 should not be allocated additional funds. Any new proposals should be funded from reprioritisation. The UK wants to see greater flexibility in the application of existing funding and the UK would like a greater proportion of existing funds to go to areas of greater EU value, such as migration. The UK will await the proposals from the Commission on the detail of Heading 3 spend in the next Financial Perspective to respond on specific funding streams.

10) External Affairs

Committee’s comments: “We support the role of the EU in addressing global challenges, including poverty, disasters and conflict-affected states. The EU aid budget should rise, with clearer priorities and improvements in effectiveness and outcomes. There should be greater flexibility within the next MFF to respond to changing priorities and unforeseen international crises.”

Government Position: The UK Government considers that Heading 4 expenditure is a priority area and, while the UK’s overall objective is budgetary restraint, this area should have a proportionately
larger share of an EU budget that increases, at most, by no more than inflation. It also considers that climate change related spending in this Heading should be prioritised, in particular to meet the EU’s international commitments. The UK Government set out plans at the Spending Review to hit the 0.7% ODA (Official Development Assistance)/GNI (Gross National Income) target from 2013, and EU expenditure contributes towards this goal. The UK Government believes that EU external spending can add value to UK interests. But at this time of budget negotiations we will drive the hardest possible bargain for taxpayers and the Commission proposals for very substantial increases in this area are completely out of line with the greater need for budgetary restraint.

There is much in the Commission’s proposals with which the UK Government agrees, including the better differentiation between poor and better off countries, the stated intention to focus on EU value added, concentrate on results and increased efficiency. The UK Government will need to consider in greater detail the proposed new Partnership Instrument, which would provide ad hoc support for co-operation with non-developing and developing third countries, with a specific focus on emerging economies. Key to its success will be addressing in a coherent way the EU’s cooperation with these strategic partners, in order to secure economic growth and stability.

11) Administration

Committee’s comments: “Like any administration, the Commission should be subject to regular review. We commend Commissioner Lewandowski’s recent initiative to challenge his colleagues to make savings. Expenditure on the EU courts should rise. Abolition of Strasbourg sittings of the European Parliament is desirable.”

Government Position: The UK believes that EU institutions should not be immune from savings and is targeting very substantial savings in administration spending. EU institutions cannot expect to avoid the impact of the current financial circumstances. The UK has delivered 33% savings in administration in all Government departments and expects the EU institutions to show ambition. The UK notes with concern the additional €1.2bn of administration expenditure currently buried in other headings of the budget. The European Parliament itself made clear in its recent SURE report that ‘significant savings’ could be made if the Parliament were to have a single seat. The UK strongly supports all opportunities to deliver a less costly, more rational service for citizens.

12) The Europe 2020 Strategy

Committee’s comments: “Achieving the Europe 2020 strategy should be among the objectives of the next MFF. But this should be balanced with the need to fund other EU priorities (including development aid, protection of the environment and biodiversity, and the area of Freedom, Security and Justice) so as to respond clearly and collectively to the principal challenges facing the EU today. EU budgetary action in support of Europe 2020 should aim to complement that of the Member States in preparing their national reform programmes. In negotiating the MFF, the Government and the EU should consider where EU spending is the most appropriate means to achieve the Europe 2020 goals. Alternative EU policy instruments, such as voluntary guidelines, the coordination of national policies, and legislation, may be more appropriate tools, depending on the goal in question.”

Government Position: The Government agrees that supporting the Europe 2020 strategy should be among the objectives of the MFF. The EU budget must also deliver other objectives, including contributing to member states efforts to control public expenditure. The Government agrees that external action and climate change are other areas of potential value. As set out, in the context of the UK’s overall objective to control budget size, we consider that spending on these areas should have a proportionately larger share of a budget that at most increases by no more than inflation. The Government agrees that the EU should deploy its most appropriate and effective policy lever: domestic action, coordination, regulation or spending.

13) Leveraging within the structure of the current MFF

Committee’s comments: “We do not believe that an increasing use of leveraging can be accommodated successfully within an MFF of similar structure to the present one. The European Investment Bank has built up significant expertise in funding large-scale projects. We recommend that it should be involved in all large-scale projects in which the Commission intends to leverage private investment. The use of innovative financial instruments and other means of leveraging private investment should be explored with caution.”

Government Position: The UK is in favour of exploring innovative financial instruments such as those proposed in the EU Project Bonds Initiative to leverage spending in the EU Budget and deliver a
smaller budget overall. They should be explored with a view to improve the involvement of the private sector and drive value for money. It is important that Project Bond funding replaces existing EU funding, rather than being in addition to existing funding. The focus should be first on richer MS, but should also be extended to middle income countries. We agree that the concept should be explored with caution and we think the concept needs to be developed further before we can put an exact number to the potential value of project bonds.

14) Flexibility

Committee’s comments: “We recommend that the next MFF make it easier for funds to be re-prioritised and reallocated between and within headings to allow for a more effective adaptation to changing circumstances.”

Government Position: The Government recognises the need for a measure of flexibility in the EU budget, in order to effectively prioritise activity and, in exceptional circumstances, to accommodate unforeseen spending pressures. We are open to proposals to ease redeployment of funds within EU budget headings. However, such flexibility must not increase costs to the UK; indeed greater flexibility should be a means to bring down the budget. The Government opposes new flexibility mechanisms that operate outside and above the MFF ceilings, which undermines budgetary discipline and increases the UK’s cost exposure to the EU budget.

15) Length of budget

Committee’s comments: “We recommend that the new MFF should run for five years.”

Government Position: The Government wants to ensure that the duration of the Financial Perspective helps protect Member States’ contributions and improves the EU budget’s ability to adapt to a changing Europe. The Government is willing to consider the merits and demerits of any proposal on length of the FP if it can support further budget restraint.

16) Size of budget

Committee’s comments: “In the straitened economic circumstances being experienced by many Member States at present, we agree with the Government that there should be no increase in the absolute quantum of the EU Budget in real terms over the next MFF.”

Government Position: The Government welcomes the Committee’s support for EU budgetary restraint. This is a top priority for the UK and as the Prime Minister has set out, jointly with his EU counterparts, the EU Budget must reflect the tough fiscal choices being made domestically by member states. We need to contain the annual growth of payments in the next Financial Framework to no more than inflation, year-on-year, from a starting point of actual spend in 2013. It is vital that the Financial Framework negotiation is conducted with primary regard to payment ceilings. As you will be aware, it is payments (actual spend) that determine UK contributions. We will get insufficient budgetary certainty from a negotiation conducted only in commitments (planned spend) and we will fail to ensure proper management of the build up of unspent commitments.

As set out above, the UK Government has been clear that, at a time of ongoing economic fragility in Europe and tight constraints on domestic public spending, the Commission’s proposal for the MFF is unrealistic. It is too large; it is not the restrained budget the Commission claims and it is incompatible with the tough decisions being taken in countries across Europe.

17) Own Resources / Corrections

Committee’s comments: “We agree with the Government that new own resources are an “unfortunate distraction”. We share the Government’s concern that losing the VAT-based resource should not compromise the UK abatement. The UK abatement is justified and will stay, until the CAP is reformed and the rebate, as a residual, fades away.”

Government position: The Government welcomes the Committee’s position on own resources. The UK Government strongly opposes any new EU taxes to fund the EU budget and opposes the Commission’s proposal in this area. The UK Government attaches considerable importance to the principle of tax sovereignty, and believes tax policy is primarily a matter for Member States to determine at a national level. As the Committee says taxation proposals are a distraction from the main priority of reducing expenditure.

Similarly the Government welcomes the Committee’s support for the abatement. The UK Government has made it clear that the UK will protect the abatement. The UK abatement remains fully justified due to continuing expenditure distortions in EU budget, including in the MFF proposed by the Commission. Expenditure distortions mean that the UK currently has the lowest per capita
receipts from the EU budget. The temporary lump sum corrections proposed by the Commission would remove the permanency of the UK’s current abatement mechanism and threaten our long-term outcomes, and the UK opposes this proposal.

GUIDING PRINCIPLES FOR EU LEGISLATION

Letter from the Chairman to Mark Prisk MP, Minister of State for Business and Enterprise, Department for Business, Innovation and Skills

I am writing in response to your letter of 22 July about the Government’s new Guiding Principles for EU Legislation, which the European Union Committee considered at its meeting on 11 October.

The Committee noted that Parliament is not being invited to endorse the principles, but we can see that in certain cases it may well prove sensible to provide analyses earlier in the negotiating progress, even if these analyses contain less detail than would a comprehensive Impact Assessment.

The Committee agreed that it would monitor the future production of Impact Assessments and that I should write to you again if it becomes clear that the change is inhibiting effective Parliamentary scrutiny of EU proposals.

I would also like to note the importance to the effective functioning of our scrutiny system of departments always responding promptly and fully to requests by the scrutiny committees for further information. This will be even more important now that less information will be provided up front in certain cases. As you know, scrutiny clearance will normally be delayed until after the relevant Sub-Committee has all the information it needs properly to understand and assess a proposal.

I would be grateful if you could provide an answer to one specific question. Your letter explains that “the more significant the potential economic impact and the more developed the proposals being considered, the more detail will be expected”. Will there be any guidance to departments about what constitutes a significant impact which should therefore be analysed in some depth, or will the definition of ‘significance’ be left to each department to consider on a case-by-case basis? We have some concerns that, if this is left to be determined on a case-by-case basis, there will be a marked variation in the quality of, and detail in, Impact Assessments, even between proposals where a similar level of economic impact is expected.

10 October 2011

Letter from Mark Prisk MP to the Chairman

Thank you for your letter of 10 October in reply to my letter of 22 July on the Government’s ‘Guiding Principles for EU Legislation’. You asked whether there would be any guidance for departments on what constitutes a “significant” impact and should therefore be analysed in some depth.

The Government published updated guidance for departments on producing impact assessments for all types of proposals – domestic, EU and international – in August. This contains pointers to help them gauge the appropriate level of resources to invest in gathering and analysing data for different impact assessments. It states that key factors include:

— The level of interest and sensitivity surrounding the policy
— The degree to which the policy is novel, contentious or irreversible
— The stage of policy development
— The scale, duration and distribution of expected impact
— The level of uncertainty around likely impacts
— The data already available and resources required to gather further data
— The time available for policy development

It also states that the “scale, duration and distribution of a policy’s likely impacts should be one of the key determinants of what level of analysis is proportionate.” Clearly, departments will need to use their discretion as to the level of information which it is appropriate to provide for each EU proposal. The guidance makes clear that such decisions should be guided by the intention of enabling “Ministers and Parliament to understand potential impacts and take an informed view”. In some cases,
departments will have little time to conduct analysis and will need to weigh up whether it is better to provide less detailed analysis more promptly or more detail at a later stage. I welcome your intention to inform me if you feel departments fail to strike the right balance in this regard on a consistent basis in future.

As you rightly point out, where Parliamentary committees are not satisfied that sufficient analysis has been provided for them to understand and assess a proposal effectively, they will continue to request further information on a case-by-case basis as they have done to date.

26 October 2011

JHA OPT-IN

Letter from the Rt. Hon. Theresa May MP, Home Secretary, Home Office, to the Chairman

I am writing on behalf of the Justice Secretary and myself to set out the Government's approach to the interpretation of the JHA Opt-in Protocol – specifically, in what circumstances we consider that the opt-in is available.

This complex issue has been the subject of considerable Parliamentary interest, as has been demonstrated through correspondence with, and appearances in front of, your Committees.

In answer to some of your letters and questions we said that we were reviewing the UK approach in this area. This review has now been completed, and I am therefore writing to explain our position.

We believe it is vital for UK interests that the Opt-in Protocol is applied in a consistent manner. In the majority of proposals presented by the Commission and eventually adopted by the Council and European Parliament the availability of the opt-in is clear. However, there have been a number of cases in recent months of measures which include JHA content, but not as their primary purpose. This content has varied from provisions imposing legally binding obligations to provisions reflecting political commitments or containing declaratory statements. Where these provisions are part of a larger measure which concerns non JHA matters, and the JHA provisions can be regarded as ancillary, the position of the Commission is generally that a JHA legal base need not be cited due to the “predominant purpose test”; this is the general rule that a measure need only cite the legal base which corresponds to the “predominant purpose” of the measure in question.

In our view, however, content which imposes JHA obligations is different because of the need to ensure that the right of the UK and Ireland to decide whether or not to opt in is respected as set out in our Protocol, which has equal status to the Treaty. On this basis our view is that a JHA obligation in a measure should never be regarded as ancillary for the purpose of the predominant purpose test and will always justify the citation of a JHA legal base. It is clear that in such circumstances we consider that the UK is not bound by a measure which creates JHA obligations unless we have opted in pursuant to the Protocol. Furthermore, we consider that this is the case irrespective of whether a JHA legal base has been cited. On this basis, if we are unsuccessful in arguing that a JHA legal base should be cited in a measure we would nonetheless assert that the opt-in applies where the measure creates obligations in the JHA field.

Conversely, we do not consider that the opt-in is available, nor would we press for the insertion of a JHA legal base, if a proposed measure contains political commitments or declaratory statements which impose no JHA obligations.

We have also reviewed the UK position on the issue of exclusive external competence, and have decided to depart from the policy we inherited from the previous Government. We consider that the opt-in does apply to all measures containing JHA obligations, even where the EU has exclusive external competence in relation to those obligations based on the adoption of internal JHA rules that bind the UK. This means that if an internal EU rule, to which the UK previously opted in, was subsequently extended to a third country we would consider that the opt-in applies to the extension of that measure and would reserve the right to decide whether or not to participate in the new agreement, even if the EU was exercising exclusive external competence.

We are aware that the Parliamentary Committees have argued that the opt-in is only available if a JHA legal base has been cited. Despite this, we believe that the approach I have outlined best protects the interests of the UK in seeking to retain the widest possible freedom of choice in relation to EU measures containing JHA obligations. We also believe that it reflects the wording and purpose of the
JHA Opt-in Protocol, which makes clear that if a measure is “pursuant” to Title V then the opt-in is available and the UK can choose whether or not to participate.

I hope you are satisfied with this explanation of our policy, but I would of course be very happy to answer any further questions you might have on this matter.

In the meantime I would like to take this opportunity to assure you that we will continue work with the EU Institutions to increase understanding of the operation of the JHA Opt-in Protocol and acceptance of the position of the UK on this matter. Through these efforts we hope to avoid unnecessary friction over these difficult issues.

Finally, I would like to thank you and your fellow Committee Members for your detailed consideration of EU JHA affairs. While we will not always agree, you play a crucial role in helping us explore some of these very complex and important issues.

3 November 2011

OPTING-IN TO INTERNATIONAL AGREEMENTS

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

I am writing further to the recent report of the House of Commons European Scrutiny Committee on opting into international agreements and enhanced Parliamentary scrutiny of opt-in decisions (30th Report, Session 2010-12).

As that report explains, the Government consider that the opt-in Protocol is engaged whenever an EU international agreement covers a matter that falls within Title V, even if the measure does not cite a Title V legal base.

In its report the Commons Committee sets out the numerous problems arising from this, including legal uncertainty and the risk of litigation; the possible knock-on effects on Ireland and Denmark; the fact that the Commission and Ireland disagree with the Government’s approach; and that the approach may set an unhelpful precedent for other Member States who might wish to take unilateral views about unpalatable Treaty obligations. The Commons Committee concludes by asking “the Government to reconsider its policy on the application of Title V to EU international agreements” (paragraph 35).

As you know, the Lords European Union Committee has consistently disagreed with the Government’s approach to Title V and opting-in to international agreements as set out in the report. The Committee has made this view clear in letters on, for example, the EU-Korea Free Trade Agreement (my letters of 27 July and 19 October 2010 to Edward Davey MP, Department of Business, Innovation and Skills); on amendments concerning social security to the EEA Agreement (my letter of 10 December 2010 to Chris Grayling MP, Department of Work and Pensions); and on the Partnership and Cooperation Agreement with Mongolia (my letter to you of 4 May 2011). In other cases, we have recognised that, where it is not possible to secure the citation of a Title V base, it is satisfactory to include text in the recitals which reflects the basis of the UK’s participation (or non-participation) in the measure (for example, my letter to you of 5 May 2011 on the Partnership and Cooperation Agreement with Iraq).

I am therefore writing to you to support the analysis of the Commons European Scrutiny Committee. It is our Committee’s view that where proposals are made containing provisions which are, in the Government’s view, substantively based in Title V, the Government should press for the citation of an appropriate Title V legal base or, failing that, text reflecting the UK’s position.

14 June 2011

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

I am writing in response to your letter of 14 June concerning the Government’s policy on opting in to international agreements.

I agree with you that where an international agreement contains justice and home affairs (JHA) provisions, we should be pushing for a Title V legal base to be cited in the Council Decisions to sign and conclude. As you rightly highlight, the citation of a Title V legal base helps to create legal certainty, reduces the risk of litigation, and could protect our relationship with other Member States,
particularly Ireland and Denmark, which have their own protocols. I want to assure you that, where an international agreement contains JHA provisions or an internal measure contains JHA content, we lobby strongly, through our Permanent Representation in Brussels in particular, for a Title V legal base to be cited. For example, the original Council Decision to sign the EU-Philippines Partnership and Cooperation Agreement did not cite a Title V legal base. But as a result in part of UK lobbying, the original Council Decision was amended to include this citation.

However, it is unfortunately the case that the Commission proposals with JHA content do not consistently cite Title V as a legal base. International agreements (and partnership and cooperation agreements in particular) tend to be very broad. Up to now, the Commission has taken the view that the legal bases cited should refer to the predominant purpose of the measure. In practical terms, this has meant that the Commission has been unwilling to cite a Title V legal base for international agreements which impose concrete JHA obligations on Member States, where those provisions are not considered the predominant focus of the agreement.

In my view, it is not in keeping with the purpose of the JHA opt-in protocol that the UK should be bound by specific JHA provisions when we have not had the freedom to decide whether to participate as part of the EU. I have set out my reasons for this view in previous correspondence and in my evidence session before the European Scrutiny Committee on 27 April. I have therefore asked my officials for further advice on this issue, and will write again in due course.

29 June 2011

POLISH PRESIDENCY PRIORITIES

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 regularly informs Parliament about issues relating to each EU Presidency programme.

I attach the Polish Presidency priorities paper [not printed] along with our analysis. I have also placed a copy of the Presidency priorities paper in the library of the House in the interest of keeping the entire House informed. I look forward to hearing your views on these issues.

20 July 2011

PROTOCOL ON THE CONCERNS OF THE IRISH PEOPLE ON THE TREATY OF LISBON AND A PROTOCOL ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS 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 inform you of the proposals that have been made by the Irish and Czech Governments for the amendment of the EU Treaties using the ordinary revision procedure (Art 48(2) TEU), concerning the addition of a Protocol on the concerns of the Irish people on the Treaty of Lisbon and a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic.

The Irish have submitted to the Council a proposal to amend the Treaties to add a Protocol on the concerns of the Irish people on the Treaty of Lisbon. The Heads of State or Government of the 27 EU Member States agreed, within the European Council on 18-19 June 2009, a Decision legally binding in international law with the same substantive content as this Protocol in relation to the right to life, family and education; taxation; and security and defence. The Heads of State or Government also declared that this content would be set out in a Protocol to be attached to the Treaties at the time of the next Accession Treaty.

The Czechs have also submitted to the Council a proposal to amend the Treaties to add a Protocol to the Treaties, which will have the effect of adding the Czech Republic to the UK Protocol concerning the application of the Charter of Fundamental Rights of the European Union. The Heads of State or Government also agreed within the European Council on 29-30 October 2009 that this would be done at the time of the next Accession Treaty.
There are no substantive differences in the proposed Protocols from what was agreed at the time of the June and October 2009 European Councils. However, both Protocols do now allow the inclusion of an aspirational date for their entry into force, and a footnote to the Czech protocol suggests that, in respect of the Czech Protocol, this should be the date of entry into force of the Croatia Accession Treaty, for which the target is currently 1 July 2013. We will ensure that such a date remains aspirational as we cannot bind our own Parliament.

Neither Protocol affects the UK nor, as was made clear at the time, do they affect the substance or application of the EU Treaties. They are clarifications. As we made clear during the passage of the EU Act 2011 through Parliament, the Protocols will not trigger a referendum under that Act, as they do not transfer power or competence from the UK to the EU. UK ratification of the Protocols will be dealt with in accordance with the EU Act 2011, so this will require us to make a full competence assessment of the provisions of the Protocols which can be tested in the Courts and in Parliament. An Act of Parliament would be needed for the UK to ratify the protocols. However, the content of both Protocols is not unhelpful to the UK in that they confirm our interpretations of the Treaties.

The European Affairs Committee have given clearance for Her Majesty’s Government to indicate its agreement at the next General Affairs Council on 11 October, that the President of the Council can in accordance with Article 48(2) TEU submit these proposals to the President of the European Council and National Parliaments. I expect the President of the European Council to seek the consent of the October European Council to formally consult the European Commission and the European Parliament about these amendments before the European Council takes a decision at a later stage as to whether to examine these proposed amendments. At that point, in line with the Scrutiny Reserve Resolution, I will submit the inter-institutional documents to you under cover of an Explanatory Memorandum.

6 October 2011