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 9 May 2012 – 31 October 2012

EUROPEAN UNION SELECT COMMITTEE

CONTENTS

BALANCE OF COMPETENCES ............................................................................................................................. 2
COMMON PRINCIPLES FOR NATIONAL FISCAL CORRECTION MECHANISMS (13067/12)........... 3
CROATIA: ACCESSION............................................................................................................................ 4
CROATIA: CHAPTER 23 (JUDICIARY AND FUNDAMENTAL RIGHTS) .................................................. 5
CYPRIOT PRESIDENCY PRIORITIES .................................................................................................................... 8
DAVID LIDINGTON EVIDENCE SESSION FOLLOW-UP: EUROPEAN INVESTMENT BANK AND PATENT COURT ............................................................................................................................... 9
DELEGATED AND IMPLEMENTING LEGISLATION ............................................................................... 9
DRAFT PROTOCOLS PUT FORWARD BY THE IRISH AND CZECH GOVERNMENTS ............ 10
GENERAL AFFAIRS COUNCIL: 24 SEPTEMBER 2012 .............................................................................. 11
ISSUES PAPER ON ECONOMIC AND MONETARY UNION ............................................................. 13
“MONTI II” PROPOSAL: YELLOW CARD ...................................................................................................... 16
MULTIANNUAL FINANCIAL FRAMEWORK 2014 – 2020 (9007/12) .................................................. 16
MULTIANNUAL FINANCIAL FRAMEWORK 2014 – 2020: NEGOCIATING BOX (11539/12, 12356/12, 13620/12) .............................................................................................................................. 17
SCRUTINY PROCESS .............................................................................................................................. 19
SCRUTINY RESERVE OVERRIDES: JULY - DECEMBER 2011 ........................................................... 21
UK PRESIDENCY OF THE G6 GROUP OF MINISTERS ........................................................................... 22
Letter from the Rt. Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

I am writing to let you know that the Foreign Secretary has today launched the Government’s review into the Balance of Competences in an oral statement to Parliament. The FCO has, in parallel, published a Command Paper on the review. Both documents can be found here: http://www.fco.gov.uk/eu/balance-of-competences. This fulfils a commitment in the Coalition agreement to “examine the balance of the EU’s existing competences and will, in particular, work to limit the application of the Working Time Directive in the United Kingdom.”

The aim is to undertake a comprehensive, well-informed and analytical review in order to develop a better understanding of the relationship between the EU’s competences, how they are used, and what that means for Britain and the national interest. The exercise will look at whether any particular action is best undertaken at EU or national or global level. This will provide a clearer sense of how our national interests interact with the EU’s roles. But, of course, the exercise is not to consider the UK’s membership of the European Union.

Substantive consultation and reflection by government departments will begin in the autumn of 2012 and reports on areas of competence will be published as the review progresses. A final decision will be taken closer to the time on how to draw together the analysis produced during the review, in the light of the EU’s rapidly changing situation.

Government departments will be given the responsibility to consult Parliament (including the departmental select committees and European scrutiny committees), business, local government and civil society, as part of an in depth review of how the EU’s powers work in particular areas of policy. The Devolved Administrations will also be engaged. The progress of the review, including evidence submitted to it, will be transparent. Our European partners and EU institutions will also be invited to contribute evidence to the review, and it will examine issues that are of interest across the EU, seeking to improve understanding and engagement.

The review will be a major undertaking and to do justice to the complexity of the issues I expect it to continue into 2014.

12 July 2012

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

Thank you for your letter of 12 July about the announcement of a Government review into the balance of competences between the United Kingdom and the European Union.

The Committee gave initial consideration to the review on 24 July and asked me to write to you with four questions.

The accompanying Command paper notes that “Government departments will be tasked with consulting Parliament and its committees”. By what process is it planned that departments will conduct this consultation of Parliament – and more specifically the House of Lords European Union committees, and the House of Lords as a whole?

The Command paper also indicates that different Government departments will lead the examination of competences within their policy areas, so there will in fact be a series of reviews. How is it planned that each review will be conducted? What co-ordination will there be between the different reviews, and by whom? What if any guidance, beyond that in the Command paper, will departments receive?

I would be grateful for a response to each of these four questions by 31 August. I would also be grateful if you could provide the Committee with a copy of any guidance or circulars that are to be sent to departments about how the review is to be conducted.

25 July 2012

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

You will have seen William Cash’s letter to me of 17 July asking for an idea of the Government’s timeframe for consulting parliamentary committees on the review of the balance of competences.
As set out in the Command Paper, this will be a rolling programme of work across Whitehall. The Foreign and Commonwealth Office and the Cabinet Office are discussing with other departments the sequencing and timing of the reports on each area of competence. We expect the timetable to be agreed after the summer. Once the timetable is confirmed we envisage that departments and your committee and its sub-committees will want to agree their own arrangements for consultation.

31 July 2012

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

I wrote to you on 12 July at the time of the launch of the Balance of Competences review and have since received your letter of 25 July to which I sent an interim response on 31 July.

The Foreign Secretary has today issued a Written Ministerial Statement providing more information on how the Balance of Competences Review will run. I attach a document showing the breakdown and sequencing of competences that the review will follow. The review will be divided into four “semesters”, each containing 6-10 individual reports. The reports from each semester will be published in a batch at the end of that semester. A Steering Group of senior officials from across Whitehall will have strategic oversight of delivery and will ensure coordination across reviews where necessary. Some central guidance to ensure consistency of approach has been prepared for departments involved in the review. As the Foreign Secretary set out in his oral statement to the House, the reports will be analytical in nature, and will draw on relevant evidence received in response to a “Call for Evidence” which will issue for each review shortly after the start of each semester. The FCO website (http://www.fco.gov.uk/eu/balance-of-competences) will contain up-to-date information on the progress of the review, including which competences are currently under examination and details of how to contribute evidence.

As you know, I am keen that Parliament (including departmental select committees, the European Scrutiny Committees and the Lords EU Select Committees) should have ample opportunity to contribute evidence in its areas of interest and expertise. Seeing the entire timetable for the review now will help parliamentarians and committees ensure that time for the Balance of Competences Review is built into their work planning if they wish to contribute. My officials have also asked government departments to ensure that they contact relevant parliamentary committees and individual parliamentarians whom they know to have an interest directly when they issue their “Call for Evidence” inviting them to contribute.

I know that my officials have already been in discussions with the clerks of your committee on the review and they remain happy to respond to any further questions your committee may have.

You will see that the review into Foreign Policy will take place in the first semester. I expect a Call for Evidence to issue on that review within the next few weeks and it will remain open for 12 weeks. I hope that your committee will submit evidence to the review which would be the poorer in the absence of your expert views. I know that my officials have already been in touch with the clerks of your committee about the mechanics of this and we stand ready to provide further advice should you need it.

23 October 2012

COMMON PRINCIPLES FOR NATIONAL FISCAL CORRECTION MECHANISMS

(13067/12)

Letter from the Chairman to the Rt. Hon Greg Clark MP, Financial Secretary, HM Treasury

I am writing about the Commission Communication on Common Principles for national correction mechanisms, as envisaged in the Treaty on Stability, Co-ordination and Growth.

The UK is not of course a contracting party to the Treaty. However, while the Treaty was being negotiated there was controversy about whether it was appropriate for EU institutions, such as the Commission and the Court of Justice, to carry out functions in connection with a Treaty which did not form part of EU law, and which had not been agreed by all of the EU Member States. In our report The euro area crisis, we concluded that “the lack of clarity about whether it is legitimate for the proposed treaty to confer new functions on institutions of the European Union ... is undesirable” (paragraph 112).
On 31 January the Prime Minister commented “... that we will watch this matter closely and that, if necessary, we will take action, including legal action, if our national interests are threatened by the misuse of the institutions” (HC Debates 31 January 2012, col 678).

It is now over half a year since the Treaty was signed. Do the Government have any concerns about the work that the Commission has undertaken under the Treaty thus far, including this communication, or are the Government content with it? Do the Government have any concerns about work undertaken by any other EU institution in connection with the Treaty? Over the past six months, have the Government changed their view about the use of EU institutions in connection with the Treaty?

In more general terms, what in the Government’s view are the implications for the future position of the United Kingdom within the EU of the implementation of the Treaty?

The Committee is holding the communication under scrutiny, and I look forward to a response to these four questions within 10 working days.

11 October 2012

Letter from the Rt. Hon Greg Clark MP to the Chairman

I am writing in response to your letter of 11 October regarding the Commission Communication on Common Principles for national correction mechanisms, as envisaged in the Treaty on Stability, Coordination and Governance (TSCG).

As you point out in your letter, after the Government reserved its position on the TSCG and its use of the institutions, in particular Article 3 (2), Article 7 and Article 8, the Prime Minister stated that the Government would be watching developments closely and if necessary would take action, including legal action, if the UK’s national interests are threatened by misuse of the institutions by the TSCG. This Commission Communication does not affect or alter the Government position; it is still watching developments closely and will act if the national interest is threatened.

The Government does not deem the work of the Commission has undertaken so far as a result of the treaty, to have threatened the UK’s national interest in any way. In particular, there is no impact on the Single Market.

The European Court of Justice, the other institution specifically tasked with carrying out functions in connection with the TSCG, as not thus far undertaken any action under its new role, not least because the Treaty is yet to enter into force.

The decision not to be a signatory to the Treaty nor its implementation will not reduce our influence. The Treaty does not form part of the EU framework, and as such has no effect on the UK’s position within the EU. However, the EU is not a monolithic block and already contains flexible arrangements. The UK is not part of the Single Currency nor part of of the Schengen no borders agreement, yet we have always played a full, committed and influential role in the EU, for example in the single market. We will continue to work hard with our many allies within the EU to advance the national interest. It is advantageous to the UK to continue to have control over our own fiscal policy, and the ability to deal with the very real problems we face in our economy.

25 October 2012

CROATIA: ACCESSION

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

I am writing to inform you that the above recommendation [Council decision authorising the opening of negotiations for the adaption of agreements signed or concluded between the European Union, or the European Union and its Member States, with one or more third countries or international organisations, in view of the accession of the Republic of Croatia to the European Union], went to COREPER II on 20 September and was subsequently adopted at the General Affairs Council on 24 September. While the Council decision was “Limite” and therefore not eligible for scrutiny you will wish to be aware that the decision was adopted.

The Council decision authorises the opening of negotiations to adapt a number of agreements that have been signed or concluded between the European Union, or the EU and its Member States, with
one or more third countries or international organisations in view of the enlargement of the EU to include Croatia, and seeks to ensure that the instruments for the adaptation of these agreements will enter into force on the date of accession of Croatia to the EU, expected on 1 July 2013.

This is in accordance with, and to enable, Article 6 of the Act Concerning the Conditions of Accession of the Republic of Croatia to the EU (Act of Accession), which sets out that Croatia will accede to the agreements concluded or signed by the present Member States and the Union with one or more third countries or with international organisations upon accession.

The European Select Committee provided scrutiny clearance with no comments to a similar Council decision at the Chairman’s Sift 1473 on 3 July 2012 following an Explanatory Memorandum from the Foreign and Commonwealth Office submitted on 22 June 2012. This related to a Council decision authorising the opening of negotiations for the adaptation of the following agreements in view of the enlargement of the EU to Croatia:

— the Agreement on the European Economic Area, the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014;
— the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and the Agreement on Cooperation and Customs Union with San Marino.

The Government agrees that it is appropriate for the Commission to negotiate on behalf of the EU and its Member States to renegotiate the agreements and therefore raised no objections to the decision. The mechanism created by Article 6(2) of the Act of Accession provides a practical and technical solution to ensure the smooth extension of existing EU agreements with third countries and international organisations to Croatia as a new acceding state. Similar measures were employed to facilitate previous accessions. It does not constitute a transfer of power to the EU. Further, the UK is already a party to the agreements and there is no amendment to the substantive content of the agreements.

When the agreements have been renegotiated each agreement will be subject to Parliamentary Scrutiny before it can be concluded.

4 October 2012

CROATIA: CHAPTER 23 (JUDICIARY AND FUNDAMENTAL RIGHTS)

Letter from both the Rt. Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office and the Rt. Hon Kenneth Clarke MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

During the debate on Croatia’s EU accession on 22 November 2011 the House of Commons noted the importance of Croatia being able to demonstrate that it is fully ready to take on the obligations of EU Membership by 1 July 2013, with a particular focus on Chapter 23 (Judiciary and fundamental rights). Accordingly, the Minister for Europe undertook to keep the European Scrutiny Committee updated on Croatia’s progress, to deposit copies of the European Commission’s six-monthly monitoring tables and reports on Chapter 23 (Judiciary and Fundamental Rights) in the Library of the House and also to write to the European Scrutiny Committee to draw its attention to the conclusions. Subsequently we wrote to the Committee on 7 December regarding Croatia’s progress on Chapter 23, enclosing a copy of the relevant monitoring table.

On 24 April 2012, the Commission published its latest Interim Monitoring Report, covering Croatia’s progress against all Chapters of the acquis. The Minister for Europe has written to the Committee accordingly. Further to our letter of 7 December, we are now writing to provide a separate and more detailed update on Croatia’s progress on Chapter 23, enclosing a copy of the latest monitoring table [not printed]. This document is not made public as it is a working document between Croatia and the Commission.

In summary, the Commission’s updated monitoring table underlines the Monitoring Report’s conclusion that, in general, Croatia can be considered broadly on track in its preparations for membership in the field of judiciary and fundamental rights. The table provides evidence of continuous judicial reform throughout the six-month period including, for example, the implementation of the strategy on war crimes; progress on the protection of fundamental rights; and
positive results on anti-corruption efforts. In its report, the Commission reiterates the point that judicial reform requires constant attention, highlighting the need for this in the specific areas of judicial efficiency, enforcement reform, and the practical implementation of new measures relating to the independence and accountability of the judiciary.

Croatia has continued to strengthen the State Judicial Council and State Prosecutorial Council. For the first time both Councils have been allocated benefits from the state budget. In our opinion, this should help to reinforce the capacities of both Councils, enabling them to function more effectively. The table contains evidence that judicial appointments have continued to be made based on the transitional criteria, demonstrating that Croatia is on track to meet the commitment made properly to implement the transitional recruitment procedures. However, the Commission notes that enforcement reform needs to be taken forward as a matter of priority, in particular in view of the postponement of the entry into force of the new system of public bailiffs.

The new system of administrative justice entered into force at the start of this year. We are hopeful that full implementation will contribute to further democratisation of the judicial system in line with international standards of fundamental rights.

The tables note some evidence of developments on domestic war crimes; there have been further arrests, indictments and court rulings, including in priority cases identified at the national and regional level, for example, 24 war crimes cases were transferred during the reporting period to the specialised war crimes chambers. Croatia needs to ensure that appropriate resources are allocated to the specialised chambers in view of the number of cases expected to be dealt with. Law enforcement bodies have continued to apply prosecutorial standards in an improved way as charges under priority cases were filed. Of particular note, state attorneys shall be committed constantly to review the cases underway and shall discontinue proceedings either by withdrawing the prosecution or changing the qualification in cases where they establish that the standards have not been met.

Croatia is on track to meet its commitment to ensure a sustained record on court rulings in organised crime and corruption cases at all levels. The table contains evidence of numerous further investigations that were launched and indictments and court rulings issued, including at high level. The table notes that police appointments and further police reforms will require close attention to ensure depoliticisation and increased professionalism. We will be looking to the new Police Act, which is currently being reviewed by the Commission, to address these issues. Discussion with relevant departments and experts is important for newly drafted legislation. We therefore welcome the inter-service consultation that is underway with the new Police Act.

Croatia has continued to implement measures to increase tolerance in society and reconciliation between ethnic groups, with messages from high level officials and further training for the police on discrimination and hate crimes evident from data contained in the monitoring table. A new educational curriculum covering human rights is also being prepared.

The level or recruitment of minorities remains limited largely due to the low level of recruitment overall. However, the systematic monitoring of progress towards the employment targets is in the process of being established through an e-system. A number of training initiatives have been organised to encourage diversity in the Croatian labour market.

The monitoring table indicates that Croatia has continued to improve the climate for the social and economic reintegration of refugee returnees. In 2011, approximately €4.7million was spent on 38 communal and social infrastructure projects. A further €4million was spent on co-financing 80 projects aiming to improve the climate for social and economic reintegration of returnees. Croatia should continue cooperation with the UNHCR regarding provision of housing care for returnees. Croatia has continued to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY) by fulfilling regular requests for assistance from the ICTY prosecution.

There are many positive signals in the monitoring table of continued reform, and the Commission’s overall conclusion is encouraging. However, our overall assessment, considering the data available, is that Croatia is still behind in a number of important areas, notably the enforcement of court decisions and court efficiency. While we appreciate that the question of how to provide post-conflict closure and help societies move on is difficult to resolve, Croatia needs to continue working with relevant international organisations and NGOs to ensure full clarity on the extent of war crimes and on the number of victims. In addition, it needs to ensure that the mechanisms for resolving backlogs and delays to war crime proceedings are resolved as a matter of urgency.

In the course of the Commission’s reporting period, Croatia held the country’s seventh elections since gaining independence on 4 December 2011. From various Ministerial meetings with the new Croatian Government, it is evident that the new administration is politically committed to continuing
a series of wide-ranging reforms. While it is perhaps inevitable that the reform momentum will briefly decelerate as a new administration settles in, it is important that any hiatus does not impede the reform process or risk a delay on delivering accession commitments. As the report demonstrates, this has not been the case. However, there are a number of areas where more effort could be reasonably expected. We will continue to monitor Croatia’s progress closely as well as continue to provide bilateral support to help with the remaining reforms.

It is important that the Commission’s Comprehensive Monitoring Report in the Autumn is able to reflect significant further progress, demonstrating that Croatia will be in full compliance with all EU acquis chapters by the time of its accession. The April Interim Report and the accompanying monitoring table on Chapter 23 shows that progress is being made in this key area, and usefully identifies the areas Croatia must focus on in the coming months.

9 May 2012

Letter from the Chairman to the Rt. Hon David Lidington MP and the Rt. Hon Kenneth Clarke MP

I write to thank you for your letter of 9 May providing a further update on Croatia’s progress on Chapter 23 prior to accession on 1 July 2013, and enclosing the latest monitoring table in relation to this Chapter. The Committee has considered your letter in conjunction with the Commission’s Interim Monitoring Report and the Government EM provided. The Interim Monitoring Report was cleared from scrutiny at the sift on 15 May.

We note that Croatia’s progress has been largely good, but that you have specific concerns in a number of areas, including the enforcement of court decisions, court efficiency, and the impact of reforms on the prosecution of war crimes. We agree with your assessment that taking steps to ensure that backlogs and other delays of war crime proceedings are resolved will be of the highest priority over the coming months. We welcome the Government’s continued commitment to support Croatia in concluding the remaining reforms.

We await the Commission’s Comprehensive Monitoring Report in the autumn. However, we would be grateful if you would update the Committee in due course should there be any significant developments over the coming months, particularly with regard to Croatia’s cooperation with the ICTY and human rights and the application of existing legal provisions.

24 May 2012

Letter from both the Rt. Hon David Lidington MP and the Rt. Hon Kenneth Clarke MP, to the Chairman

Thank you for your letter of 24 May in which you asked to be informed of any significant developments in Croatia which are relevant to the EU accession process. We write today to update you on both Croatia’s cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and recent progress on human rights and domestic war crimes prosecutions.

On 7 June the ICTY President presented the Tribunal’s most recent six-month report to the UN Security Council. This report included the latest information on the tribunal’s progress in fulfilling its completion strategy, and it is attached for your reference. The report mirrored the European Commission’s assessment of Croatia’s cooperation with the ICTY, stating that the Croatian authorities have given timely and adequate responses to requests for information and have provided access to witnesses and evidence as required. We expect Croatia to continue to cooperate with the ICTY and to respect any future judgments passed by the ICTY, including in the appeal of the Croatian generals Ante Gotovina and Mladen Markac, convicted by the ICTY on 15 April 2011 of war crimes and crimes against humanity.

The ICTY report stated that the proposed law (initiated by the previous Croatian administration) declaring some legal acts of the former Socialist Federal Republic of Yugoslavia, former Yugoslav People’s Army and the Republic of Serbia null and void, is currently under review by the Croatian Constitutional Court. On 16 March the Government proposed that a decision be adopted establishing non-constitutionality of the Law and that the Law be abolished in its entirety, a move we strongly support.

During the period from May 2011 to May 2012, a considerable number of new domestic war crimes prosecutions have been opened in Croatian courts, with ten indictments; four at national and six at
regional level. During the same period, 19 non-final judgments were rendered, of which 11 were made at the specialised war crimes courts.

Croatia is working to strengthen the regional legal framework for judicial cooperation in the area of fighting corruption and organised crimes, as well as resolving war crimes, with agreements on extradition with Bosnia and Herzegovina; judicial cooperation in criminal matters with Kosovo; and continued negotiations with Montenegro on legal assistance in civil and criminal matters. The Croatian authorities have also expressed their desire to find a model of cooperation with Serbia.

The Croatian Government displayed a clear message of support for the second Split Gay Pride March held in early June. This is a welcome distinction from the intolerance that surrounded last year’s event and is a demonstration of progress made towards LGBT anti-discrimination.

These developments are a signal that the Croatian Government is continuing the reform process. We will continue to keep you informed of further movements as requested in your letter.

28 June 2012

Letter from the Chairman to the Rt. Hon David Lidington MP and the Rt. Hon Kenneth Clarke MP

Thank you for your response of 28 June, updating the Committee on Croatia’s cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and recent progress on human rights and domestic war crimes prosecutions. We noted with great interest the ICTY’s most recent report, and would be grateful if you could keep the Committee informed when the next report is published. We hope that the ICTY will be able to complete all trials (excepting those of Ratko Mladić, Goran Hadžić, and Radovan Karadžić) by the end of this year as anticipated, as this will represent a significant step forward.

The Committee is also pleased to hear your positive account of Croatia’s cooperation with the ICTY, and of the Croatian government’s proposal to abolish the law declaring some acts of the former Socialist Federal Republic of Yugoslavia, former Yugoslav People’s Army, and the Republic of Serbia null and void. We hope that you will continue to support the Croatian government’s progress in working to resolve war crimes, to find a model of cooperation with Serbia, and to increase social tolerance and respect for human rights.

In addition, the Committee hopes that the continuing monitoring process will be used to encourage and support Croatia in further strengthening the regional legal framework for judicial cooperation in fighting corruption and organised crime. It is important that progress is made in this area well before Croatia’s accession date.

No response to this letter is required. We look forward to receiving further updates from you in due course.

11 July 2012

CYPRIOT PRESIDENCY PRIORITIES

Letter from the Rt. Hon David Lidington MP, Minister for Europe, 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 attach a summary and analysis of the Cypriot EU Presidency priorities, as well as a copy of the Cypriot’s own Presidency priorities paper, the official calendar of key events and a list of key Cypriot personnel for the Presidency. I have also placed a copy of the summary and priorities strategy 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.

Whilst there are areas of both convergence and difference we will work closely with the Cypriots to ensure any conclusions to the Multiannual Financial Framework reflect our position. We will also continue to seek to encourage the Presidency to emphasise the need for policies promoting growth, in line with the UK’s strong ambitions for the EU in this area.

I will of course be happy to provide your Committee with more information on any of these issues.
Letter from the Rt. Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

At the EU Select Committee evidence session on 3 July I said I would write to you with further information in response to the Committee’s questions.

Lord Hannay asked about the Parliamentary procedures for increasing the UK’s contribution to the European Investment Bank (EIB). At the June European Council the UK agreed in principle to a capital increase. Formally the EIB Board of Governors decides by unanimity any capital increase. As the UK Governor of the EIB, the Chancellor’s approval would be needed for a capital increase to proceed. As an EU obligation, the necessary parliamentary authority for making the payment is provided by Section 2(3) European Communities Act 1972.

In response to your questions on the patent court, I promised to expand further on the judiciary split between London, Paris and Munich. First, I want to emphasise that even though the courts are located in three different cities, together they make up the central division, and collectively they will have jurisdiction over the new unitary patents and current European patents.

Furthermore, the court is a unified one in that it will deal with disputes relating to both the future unitary patents and the existing European bundle patents. It will consist of a court of first instance and a court of appeal. The court of first instance is made up of local (or regional) divisions located in the participating states which want one, and a central division. The local or regional divisions will be the first port of call for infringement actions, whereas the central division will deal mainly with the revocation of patents. Given the technical nature of patents, the split of the central division by subject matter is manageable. For infringement actions, the local and regional divisions will deal with all technical subjects, but each panel can ask for an extra technical judge if necessary in a particular case.

Finally, I also said I will give you an update on the challenges to the patent court which Spain and Italy have made through the European Court of Justice (ECJ). These cases are still under review by the ECJ and there is no indication of when a decision will be made. I will keep you updated when there is progress.

DELEGATED AND IMPLEMENTING LEGISLATION

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

Welcome you to your new role. I look forward to working with you.

I am responding to your predecessor’s letter of 26 April 2012 about scrutiny arrangements for delegated and implementing legislation.

Last summer I envisaged this topic being one of the issues in the wider scrutiny review. However, Parliament will set its own pace on the review and in the meantime I can see much merit in the arguments Lord Roper made. Consequently I would be happy to consider this issue separate from the review, if committees wished.

In addition, I echo Lord Roper’s concern about the workloads of both the scrutiny committees and departments. Clearly any decision to widen the scrutiny process would increase workloads. So I would suggest that we take this opportunity to look wider than just the question of an additional heading in Explanatory Memorandums and the consultation arrangements you propose for delegated and implementing acts. In particular, we might look at what scope there is to streamline existing processes to reduce the burdens on both whilst still remaining fit for purpose. For example:

— We might consider the classes of document for which EMs are provided, to make sure they are still appropriate;
We might consider whether a simplified form of EM might be appropriate for certain classes of document, whilst still preserving the right of committees to call for more;

We might consider whether we could not make the whole process (including the EM) more intelligible, to make it both easier to complete and use and also more accessible to the media and public.

I stress the aim would be to ensure that efforts are concentrated on the issues that Parliament wants to scrutinise. But any efficiency savings that could be reaped would benefit all, including the departments across Whitehall whose agreement we would need for the practical changes necessary to implement new arrangements for scrutiny of delegated and implementing legislation.

If the committees of both Houses are content, I will consult colleagues for their agreement that officials can meet and consider these issues on this basis.

10 May 2012

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

I am writing in response to your letter of 10 May about the scrutiny of delegated and implementing legislation following the changes made by the Lisbon Treaty.

I welcome your willingness to consider the matter of delegated and implementing legislation, and confirm that I would indeed be grateful if you would now take forward the proposals set out in Lord Roper’s letter of 26 April (and in earlier correspondence from the House of Commons European Scrutiny Committee).

You also proposed examining, as part of a general review, what scope there is to streamline existing processes, including considering the classes of document for which EMs are provided, simplified EMs in certain circumstances, and making the whole process more intelligible.

For its part, the European Union Committee is of course willing to consider constructively any specific proposals which the Government may wish to make.

In stating this, I would make clear that any changes that the Government wish to propose would of course be subject to the approval of both of the scrutiny committees. As you know the committees have already shown that they are willing to make changes where this supports the effectiveness of the scrutiny process, most recently in response to proposals made by the Treasury concerning certain documents and EMs.

Broader accountability is essential, and this is currently provided by the fact that full information is given by the Government in EMs which are publicly available via the internet, and by the fact that all of the Committee’s work including scrutiny correspondence with Ministers is also publicly available.

It is also essential that the Government provide full information on EU documents and proposals promptly, in order to give the committees the opportunity effectively to hold the Government to account, to contribute to the finalising of the Government’s own position on EU policies, and to engage directly with the EU institutions. This is more important than ever now the Lisbon Treaty has formalised the concept of subsidiarity through the yellow card procedure, which as you know operates to strict timetables.

The Committee is in the process of finalising its Sessional Report on the Committee’s work in the 2010-12 Session, and we expect to use this work as a basis for making further comments and suggestions relating to the EU scrutiny process.

24 May 2012

DRAFT PROTOCOLS PUT FORWARD BY THE IRISH AND CZECH GOVERNMENTS

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

We provided an Explanatory Memorandum to your Committee on the draft Protocols put forward by the Czech (EUCO 91/11) and Irish (EUCO 92/11) Governments on 2 December 2011, which subsequently cleared scrutiny. This letter provides an update on the progress of the draft Protocols.
On 18 April 2012, the European Parliament (EP) gave a favourable opinion on the draft Irish Protocol and its consent not to convene a Convention. A copy of the EP’s opinion is attached. On 4 May 2012 the European Commission also gave a favourable opinion. A copy of the Commission opinion is attached. Some minor technical changes have been made to the text of the Irish Protocol by the Council Jurist-Linguists which take account of the agreement to add the Protocol to the Treaty on the Functioning of the European Union and the Treaty on European Union at the time of Croatian accession. The changes clarify arrangements for ratification and that Croatia may ratify the Protocol without having been a signatory. Our legal advice is that they do not affect the substance of the Protocol.

The European Council is expected to agree a Decision that an Inter-Governmental Conference (IGC) shall examine the draft Irish Protocol, that a Convention shall not be convened and that a mini IGC should take place in the margins of Coreper on the 16 May 2012 at which the Protocol will be signed. Once the Protocol is signed the process of ratification by all 27 Member States will begin.

In the UK, under the European Union Act 2011, the Minister must lay a statement before Parliament under section 5 of the Act as to whether, in the Minister’s opinion, the Protocol falls within section 4 of the Act - cases which attract a referendum. The 2011 Act also requires primary legislation to approve the Protocol before the UK can ratify it. The draft Czech Protocol is still under the consideration of the EP, the decision from the EP is not expected before autumn 2012. The European Commission has issued a favourable opinion on the draft Czech Protocol and a copy of the Commission’s opinion is attached.

A Written Ministerial Statement will be laid before Parliament when the Irish Protocol is signed at the IGC.

14 May 2012

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

I am writing to inform you that a statement will be laid before the House today pursuant to section 5 of the European Union Act 2011 as to whether the Protocol on the Concerns of the Irish People on the Treaty of Lisbon falls within section 4 of the Act. I will also lay a Written Ministerial Statement before both Houses.

5 July 2012

GENERAL AFFAIRS COUNCIL: 24 SEPTEMBER 2012

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

I am writing to inform you about the General Affairs Council (GAC) which met in Brussels on 24 September and which I attended.

The GAC was chaired by the Cypriot EU Presidency, Mr Andreas Mavroyiannis, Deputy Minister to the Minister for European Affairs. A provisional report of the meeting can be found at:


MULTIANNUAL FINANCIAL FRAMEWORK (MFF)

The plenary session of the GAC was the first formal discussion on the Multiannual Financial Framework (MFF) under the Cypriot Presidency and focussed on the latest version of the ‘negotiating box’. I have placed a copy in the Library of the House. This had been prepared under the Polish and Danish Presidencies to focus the negotiations on key areas of concern for Member States and had been amended by the Cypriot Presidency based on bilateral meetings that they had held with each Member State.

Thought it does not propose specific amounts, the latest version of the ‘negotiating box’ does reflect the need to reduce the figures in the Commission’s proposals to reach agreement. On the less positive side, it left out certain proposals, such as the ‘reverse safety net’ and our proposed ‘payments guarantee’ that I argued were necessary not only to control the levels of expenditure on Structural and Cohesion Policy but also for improved transparency giving Member States certainty over their expenditure liabilities (for contributors) or receipts (for recipients).
Some Member States attacked the UK rebate, with the usual arguments replayed. They argued that the current system of correction mechanisms is overly complex and that it was unfair that the UK enjoyed the only permanent rebate. I reiterated our position that given the inherent unfairness in the EU Budget and the continuing expenditure distortions our rebate remains entirely justified. The UK’s position will not shift on this issue.

More broadly I agreed with colleagues from Austria, Finland, Germany, France, Denmark and the Netherlands that considerable cuts to the Commission’s proposal were needed if an agreement is to be reached. I also argued that it is essential to address the problem of unspent commitments from the current period and that it was regrettable that efforts control the size of the EU Budget were undermined by the movement of items off budget. Finally I argued that the EU’s administration spending should be much more efficient.

The Presidency concluded that the aim remains to reach agreement at the November European Council but they recognised that there are still many outstanding areas of disagreement.

**Preparation of the October European Council (18/19 October)**

The Presidency tabled the annotated agenda for the European Council, which focused on economic issues, including a discussion on growth measures and banking union; strategic partners, focussing on China; and on foreign policy issues, likely to be focussed on Syria. We emphasised the importance of allowing sufficient discussion on growth measures at the European Council which received support from around the table. The agenda was agreed.

**European Semester**

The Presidency briefly noted that the 2012 European Semester process had been an improvement on the previous year. They presented a paper that sought to identify further areas for improvement building on work carried out by the Secretary General of the European Commission, Catherine Day. Essentially, these improvements meant establishing more frequent contact with the Member States—both to review implementation of the 2012 recommendations and to look ahead to 2013. I suggested that the Commission share its draft country specific recommendation with Member States earlier in the process to ensure a more constructive and productive discussion. I also pressed the need for sufficient time in the process to ensure proper consultation with national parliaments.

**Role of General Affairs Council**

There was a brief discussion over lunch on the role of the General Affairs Council. This was based on a Presidency paper that looked at the horizontal role of the GAC and its preparation of the European Council. I have placed a copy of this in the house of the libraries of both Houses. This initiative is a positive demonstration that the EU is looking at how it can improve delivery and implementation. I supported the sentiments of the paper and emphasised the importance of providing documents in good time for them to be properly considered before meetings of the GAC. I also argued that there should be a greater role for the GAC in the follow up to the European Council to ensure that its decisions were being properly taken forward.

**European Political Parties’ Statute and Funding**

The Commission presented the Commission’s proposal on the statute and funding of European political parties and political foundations and urged its rapid adoption by the Council and Parliament in time for the campaign for the 2014 European Parliament elections. This was not a substantive discussion, but is clearly an important issue which I shall report on separately in due course.

**National Roma Integration Strategies**

At France’s request, the Commission formally presented its evaluation of the national strategies on the inclusion of Roma. The Commission set out their three-step approach to the exercise. Firstly, a meeting of national authorities in Brussels on 2-3 October; second, identifying the best practices emerging from Member States; and finally, ensuring that any necessary follow up action is taken at the appropriate Council configuration. They would continue to work with national authorities to address the issue of Roma integration. Romania said that Member State cooperation was the key to finding a solution and that results would only be achieved in the medium to long-term.

*3 October 2012*
Letter from the Chairman to the Rt. Hon Greg Clark MP, Financial Secretary, HM Treasury

I am writing on behalf of the House of Lords European Union Committee to request the immediate deposit in Parliament of the Issues Paper on economic and monetary union produced by the President of the European Council. I am disappointed to have to write as this request has already been made via the staff of the Committee, and been refused.

On 12 September Mr Van Rompuy issued his important “Issues Paper on Completing the Economic and Monetary Union”. This paper provides a useful overview of the development of important policy debates concerning an integrated financial and budgetary framework, and ensuring adequate democratic / parliamentary accountability for that framework. To take just one example, one of the many important issues set out in the paper is how to enhance the discussion of country-specific issues in the European Parliament, and to strengthen debates on European issues in national parliaments.

At its meeting on 18 September, the Committee agreed to ask HMG that this paper should be deposited in Parliament so it could go through the normal process of Parliamentary scrutiny and examination in both Houses. On 24 September I learned that the Committee’s request for the document to be deposited had not, yet, been accepted.

Matters of the highest importance to the United Kingdom are currently being discussed and decided in the European Union. I am very disappointed that, at such a time, HMG have not seen fit to facilitate effective Parliamentary scrutiny of these matters, by promptly accepting the Committee’s request to deposit the issues paper.

As you know well, these issues can be fast-moving, and therefore the delay in deposit is doubly regrettable.

On behalf of the Committee, I ask that the issues paper be now deposited in Parliament, without further delay.

I would also welcome a meeting with you to discuss how we can continue to ensure effective Parliamentary scrutiny of the important developments currently under discussion in the European Union.

26 September 2012

Letter from the Rt. Hon Greg Clark MP to the Chairman

I am writing to notify you of a recently published document by the Council Secretariat: “Issues Paper on Completing the Economic and Monetary Union”, a copy of which I attach to this letter. This document follows the paper published in June by the Presidents of the European Council, the Commission, the Eurogroup and the European Central Bank on strengthening the single currency entitled, ‘Towards a Genuine Economic and Monetary Union’. This paper was discussed at the June European Council.

This document has been prepared to help structure bilateral consultations between officials of the President of the European Council and of the Member States in the run up to the European Council. It asks a number of questions around the four areas of integration set out in the June report. There is no new analysis or concrete proposals in the document. The main questions are around:

a) an integrated financial framework, in particular how to implement the proposal for the ESM to be able to directly recapitalise banks and the interaction between the ESM and possible deposit insurance and resolution schemes.

b) an integrated budgetary framework, including improving the new economic governance architecture, further coordination of debt issuance and questions around stronger capacity at European level.

c) an integrated economic framework, specifically whether there should be more common standards or policies and whether the Euro Plus Pact should be more binding.
d) **strengthening democratic legitimacy and accountability**, including how to give effect to cooperation between the European Parliament and national parliaments on EMU related issues.

The bilateral discussions between the President of the European Council and representatives of the Member States form part of the consultation with all Member States on these issues committed to at the June European Council. These discussions will inform the interim report by the President of the European Council, which will be discussed at October European Council.

The Government will stay closely in touch with Parliament as these issues are discussed further in Europe, in particular on the questions of democratic legitimacy and accountability and the role of national parliaments.

26 September 2012

**Letter from the Rt. Hon Greg Clark MP to the Chairman**

I am writing to notify you of the recently published document (enclosed) by the Council Secretariat ‘Interim Report of the Four Presidents’. This document follows the paper by the Presidents of the European Council, the Commission, the Eurogroup and the European Central Bank on strengthening the single currency entitled, ‘Towards a Genuine Economic and Monetary Union’ published in June.

This report has been produced as a result of a commitment made at the June European Council by the ‘four presidents’ to provide a report in the interim before a final report in December. It does not contain any concrete proposals, but will inform discussions at the October European Council between Heads of State and Government and is intended to develop discussion in the run up to the December European Council. The Prime Minister will make a statement to the House following the October Council.

**INTEGRATED FINANCIAL FRAMEWORK**

The report initially states the Single Supervisory Mechanism (SSM), which is a matter of priority, has three elements: firstly, a clear separation between ECB monetary policy and supervisory functions; second, a balance between rights and obligations for all Member States participating in the new supervisory arrangements; third, appropriate accountability of the new single supervisor, including to the European Parliament. It also states that the SSM should operate in consistency with the Single Market and as such the European Banking Authority (EBA) will maintain its roles in implementing a single rulebook and as a mediator of the other various supervisory bodies. However, the EBA voting modalities will need to be adapted.

**INTEGRATED BUDGETARY FRAMEWORK**

The report describes the first priority as being the need to complete and implement the new steps for stronger economic governance (Six Pack, TSCG, Two Pack).

Secondly, alongside stronger fiscal discipline, it outlines the need for a fiscal capacity for the EMU, which could take various forms. The report also states that a fully-fledged integrated budgetary framework would require the establishment of a Treasury function with clearly defined fiscal responsibilities.

The report finally states that, to prevent contagion, the pooling of some short term sovereign funding instruments (e.g. treasury bills) on a limited and conditional basis could be examined further.

**INTEGRATED ECONOMIC POLICY FRAMEWORK**

The report highlights the importance of completing the Single Market as a way to address some of the EU wide flaws that have emerged since the introduction of the Macroeconomic Imbalances Procedure. It also states the rapid implementation of the measures included in the June 2012 Growth and Employment Compact is a top priority.

The report introduces the idea of individual arrangements of a contractual nature between euro area Member States and the EU institutions on the reforms promoting growth and jobs these countries commit to undertake and their implementation. These reforms could be those identified in the country-specific recommendations of the Council and be supported by limited, temporary, flexible and targeted financial incentives.
Finally, the report proposes that to avoid large and rapid build up of economic imbalances, macro-prudential policy tools could be provided to the single supervisor foreseen in the draft legislation on the single supervisory mechanism already presented by the Commission to significantly improve the impact of macro-prudential policy.

**Strengthened Democratic Legitimacy and Accountability**

The report highlights the principle that democratic control and accountability should occur at the level at which the decisions are taken. It discusses how the European Parliament should be more involved in EU procedures suggesting it should hold debates on the recommendations adopted in the context of the European Semester.

*14 October 2012*

**Letter from the Rt. Hon Greg Clark MP to the Chairman**

Following my letter of 16 October, the Committee requested that the Government deposit the document: ‘Towards a Genuine Economic and Monetary Union – An Interim Report’ under the arrangements for discretionary deposit of documents not usually caught by the normal scrutiny rules.

Having considered this issue, the Government is content to meet the Committee’s request and an EM has now been produced (enclosed with this letter).

Of course, as you know, the European Council will not actually reach decisions on the document. Rather, it is expected to discuss the report and note that a further report will be produced for the December Council. As such, in this instance, the normal scrutiny reserve resolution would not operate. Going forward we will ensure as far as possible that the final report, published before the December European Council, is made available to the Committee so it can provide its views and report to the House. However, as you know, the timing of the presentation of these reports rests with the President of the Council and the time between presentation and the Council will always be very short.

*16 October 2012*

**Letter from the Chairman to the Rt. Hon Greg Clark MP**

I am writing in response to your letter dated 16 October on the Interim Report Towards a genuine Economic and Monetary Union.

Following our discussions, I am satisfied that the Government have now agreed to deposit this document as requested by the scrutiny committees of the two Houses of Parliament, together with a helpful Explanatory Memorandum.

I note your view that the Council “will not actually reach decisions on the document”, and that therefore there is no question of a scrutiny over-ride. The terms of the House of Lords scrutiny reserve resolution make it clear that “agreement” can include, amongst other things, “agreement to a programme ... [or] political agreement ... [or] agreement to a general approach”. As we do not yet know the outcome of the Council itself (and taking into account that the report itself was only published on 12 October, six days before the start of the European Council at which it will be considered), I am willing to grant a scrutiny waiver for this particular document.

I have referred the document to our Sub-Committee on economic and financial affairs for detailed scrutiny, and it is therefore likely that I will write to you again on these very important matters ahead of the December European Council.

There is one immediate point which I wish to make. Section 4 of the interim report is headed “Democratic legitimacy and accountability”, and sets out ideas on how effective parliamentary scrutiny and control of any new structures may be achieved. However, it must be for the parliaments of the European Union to take the lead in determining how any new structures and frameworks should be scrutinised and controlled. It would be entirely inappropriate for the European Council to put forward specific proposals, especially when the great majority of parliaments and their scrutiny committees have not yet had any opportunity to consider the matter. The best way for such discussions to take place would, I believe, be through the annual European Speakers’ Conferences, the next of which will be held in Cyprus in April 2013.

*17 October 2012*
“MONTI II” PROPOSAL: YELLOW CARD

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

You will be aware that, since a yellow card was tabled against the “Monti II” Proposal, the European Commission has withdrawn its proposal. By letter of 12 September, Vice President Sefcovic wrote to national parliaments explaining that the proposal was to be withdrawn but that this was due to lack of support among Member States and in the European Parliament rather than to the concerns expressed by national parliaments. On the basis of the arguments set out by national parliaments, the Commission did not consider that the subsidiarity principle had been breached.

The House of Lords did not submit a Reasoned Opinion to the proposal. We nevertheless have some concerns about the Commission’s response to the yellow card, which I and others raised with Vice President Sefcovic at the COSAC meeting in Nicosia earlier this month. You may have seen that the subsequent Contribution from that COSAC meeting includes a call for the Commission to provide individual responses to the Reasoned Opinions submitted on “Monti II” and its reasoning for why subsidiarity has not been breached.

The Committee would be interested to hear your views on the yellow card and the Commission’s response, and I hope that we will be able to discuss it briefly when you are with us on Thursday 1 November.

25 October 2012

MULTIANNUAL FINANCIAL FRAMEWORK 2014 – 2020 (9007/12)

Letter from the Chairman to Mark Hoban MP, Financial Secretary to the Treasury, HM Treasury

On 22 May, the EU Select Committee met to consider this document. The Committee decided to clear the item from scrutiny and awaits your response by 3 July to its report, The Multiannual Financial Framework from 2014-2020, which considered the Commission’s actual legislative proposals in detail. Nevertheless, there are two points we would wish to raise in relation to this document.

First, we were surprised at the brevity of your Explanatory Memorandum’s analysis of the policy implications of the Opinion. While we appreciate that the Court’s Opinion is not a legislative proposal, we consider that it is nevertheless important that an EU institution has, for example, openly recognised the risk of financial institutions relocating from the EU if a financial transaction tax was introduced (para. 32). We hope that the Government, in negotiations regarding the Commission’s own resources proposals in Council, will note this conclusion of the Court, which corresponds with this Committee’s own analysis.

Second, we noted with some concern the Court’s suggestion that the reporting requirement in relation to VAT fraud and irregularities ought to be reviewed because it might require too much administrative effort. We would be grateful if you could supply us with details of the lower limit below which the Government at a national level would not pursue VAT fraud and irregularity cases, and also any data you may have on the relative costs and benefits of pursuing such cases. In addition, we hope that in negotiations you will emphasise the importance of combating VAT fraud and support the introduction of proportionate methods to tackle this problem.

24 May 2012

Letter from Mark Hoban MP to the Chairman

Thank you for your letter of 24 May regarding the Explanatory Memorandum (EM) in relation to the European Court of Auditors’ Opinion on the Commission’s Own Resources proposals for the 2014 – 20 Multiannual Financial Framework (MFF).

Firstly, I can confirm that the Government’s response to the Committee’s Report on the 2014-2020 MFF will be sent to you by 3 July.

Secondly, I would like to thank you for your point on the proposed Financial Transaction Tax (FTT). I can assure you that the length of the EM is not a measure of the importance that the Government attaches to the Court’s Opinion or its usefulness in the context of MFF negotiations. The particular
conclusion on FTT you refer to in your letter has already been incorporated into our negotiating strategy and narrative, and will be deployed as necessary during negotiations.

Lastly, I would like to focus on the second issue that you raised. I can confirm that the Government takes the issue of VAT fraud extremely seriously and has worked nationally and at EU level to improve the current system to make it less open to abuse. In assessing proposals and ideas, the benefit in the fight against fraud has always been considered alongside the potential burdens on legitimate business. In addition, the impact on the tax administration and its resources are also considered in order to strike what the Government considers to be a reasonable balance. The issue highlighted by the Court is whether the benefit of introducing a requirement to report irregularities to the Commission for the purposes of the VAT own resources calculation justifies the administrative effort. Reporting all required irregularities and fraud (including for example all assessments for errors issued by HMRC over £8,000 (€10,000) could be significant in terms of IT infrastructure changes and future running costs and would be a key element to explore in the detailed negotiations.

HMRC anti-fraud and assurance work is separate from, and will remain unaffected by, any requirement to report the outcomes at EU level. Any irregularities discovered by assurance work are addressed through assessments or adjustments to businesses’ VAT returns. Generally the only time HMRC would not assess for VAT and issue a demand for payment is where the total amount due was less than £100 in an accounting period.

I hope that this response helps with the questions you raised and that it will serve to reassure you that in discussions we will (i) note the Court’s conclusion on the relocation risk in the context of an FTT where relevant, and (ii) continue to stress the importance of combating VAT fraud through the introduction of proportionate measures.

18 June 2012

MULTIANNUAL FINANCIAL FRAMEWORK 2014 – 2020: NEGOCIATING BOX 
(11539/12, 12356/12, 13620/12)

Letter from the Chairman to the Rt. Hon Greg Clark MP, Financial Secretary, HM Treasury

I write to you regarding these three documents relating to the multiannual financial framework, which the Committee considered together at its meeting on 9 October, alongside the letter from the Minister for Europe of 3 October regarding the General Affairs Council on 24 September.

The Committee was disappointed at the long delay in depositing the June negotiating box, which prevented any scrutiny being undertaken before the parliamentary recess. We were pleased that an EM on the September negotiating box was made available to us promptly in order to allow both versions of the document to be scrutinised together.

The Committee noted that neither EM explained what the UK Government is doing to ensure that their position garners support from other Member States and ultimately comprises part of the MFF when it is agreed. We are particularly concerned about this given that the September negotiating box includes a number of changes that are unfavourable to the UK Government’s position, as the second EM acknowledges. What work is being done by Ministers to explain the logic behind the UK’s position to other Member States who may have similar views and interests? Are the Government confident that their position will prevail in reversing the unfavourable changes seen in the September negotiating box?

The Committee shares your concerns about several of the changes in the September box. In particular, we would like to reiterate our support for the discontinuation of the Food for Deprived Persons Fund, on which the House has at our recommendation twice issued a Reasoned Opinion. We are also concerned that the September box took several items back ‘off-MFF’, which is an unfortunate backwards step that we would oppose. Further, we would like to emphasise our continued support for the UK abatement, which remains fully justified until imbalances on the expenditure side of the budget can be rectified, and our opposition to the introduction of any new EU taxes. The Committee’s views on these matters were clearly set out in our most recent report on the MFF, The Multiannual Financial 2014-2020.

The Committee also shares your concern regarding the increased financial envelope set out in the Amended Proposal, following the adjustment to take account of Croatia’s accession, and we were dismayed that these figures could not have been made available sooner so as to inform discussion
about the overall size of the MFF. We have previously urged budgetary restraint and support the
Government in strongly opposing these additional increases to the size of the overall financial
envelope. The Committee would be grateful if you could share with us as soon as possible the further
information you have sought from the Commission regarding the calculation of the financial envelope
for Heading 1b and their methodology in calculating Croatia’s commitments and the necessary level of
administration spending in relation to Croatia’s accession.

Given the fast pace of activity on the MFF expected over the course of the next few weeks, it seems
unlikely that the formal scrutiny process will allow the Committee sufficient time to consider the
progress of negotiations and write to you if necessary. Therefore, I would ask that you write
promptly to the Committee in order to keep us apprised of the course of negotiations and any
further iterations of the negotiating box, particularly when a version including prospective figures for
each of the programmes and headings is produced towards the end of October.

We are clearing the June negotiating box from scrutiny, but will retain the September negotiating box
and the Amended Proposal under scrutiny while we await your response to the points that we have
raised.

I look forward to a response to this letter within 10 working days.

11 October 2012

Letter from the Rt. Hon Greg Clark MP to the Chairman

Thank you for your letter of 11 October 2012, regarding these three documents relating to the
Multiannual Financial Framework (MFF). I am grateful for the views of the Committee on this issue
and for your continued support of the Government’s position.

As a brief update on negotiations, the Cypriot Presidency are aiming towards a deal on MFF at the
next (November) European Council. As you have seen, the September Negotiating Box does not
include numbers for heading or total budget size. These are expected in the coming weeks following
October European Council.

Of course, the Government is ensuring that this position is heard by other Member States and by the
Institutions of the European Union. In bilateral discussions with other Member States, with the
Cypriot Presidency and with the Commission and European Parliament, the Government has been
absolutely clear on its red line positions. The MFF should be restrained to no more than a real terms
freeze in payments in the next period. The Government will not accept any change to the UK’s
abatement or the introduction of any new EU taxes to fund the EU budget. These positions have also
been made clear in meetings of the officials’ ‘like-minded’ group of budget-disciplined Member States
on a monthly basis.

The Government position is based on fundamental principles which have been made clear to other
Member States and to the Institutions for some time. These principles were set out in the Prime
Minister’s original letter to President Barroso in December 2010. Since that time, the Government
has actively lobbied other Member States to explain the UK’s position and to garner support across
Europe. Work with the like-minded group of budget disciplinarians has seen particularly helpful
coordinated effort in seeking reductions across the Commission’s proposal, including substantial
reductions in administration and in seeking action on unspent commitments (RAL).

It is clear that and that all Member States have the ability to block a potential Council agreement.
However, I remain confident, as ever, that when faced with the economic and fiscal realities of the
current situation, Member States across Europe will recognise that the EU budget cannot be immune
from the tough decisions being taken in capitals. Similarly, I am confident that Member States will
ultimately acknowledge that the UK Government will absolutely protect the abatement.

On the overall envelope for Heading 1B, the biggest uncertainty is the forecasts of Gross Domestic
Product (GDP) for those Member States that are subject to the 2.5% GDP cap. We have sought an
annual breakdown of those GDP forecasts from the Commission. The Commission has released
annual averages for the 2014-2020 MFF period, but is unwilling to release the annual data despite
pressure from a number of Member States.

The Commission has clarified the methodology for calculating Heading 1B commitments for Croatia.
In particular that commitments will be phased in across 2014 and 2015 and in subsequent years
Croatia will be subject to the 2.5% GDP cap. As such Croatia’s commitments in 2016-20 are
calculated by multiplying the Commission’s GDP projections in these years by 2.5%. Again the
Commission has only provided an average across the entire MFF period and not the annual breakdown, meaning that their figures are not fully transparent.

I am grateful for your clearance of the June negotiating box and hope that this letter will address the points you have raised. I have asked my officials to continue to liaise closely with the clerks of the Committee to ensure that you are fully aware of the latest state of discussion as negotiations continue. I will, as you request, also write to the Committee in order to keep you appraised of further iterations of the negotiating box.

25 October 2012

SCRUTINY PROCESS

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

On 13 December 2011, the then Chairman Lord Roper wrote to you regarding delays in scrutiny correspondence and responses to Committee reports. Following your and your colleagues’ constructive response to that letter, the Committee has again reviewed its records regarding scrutiny correspondence and Government responses, as well as on the timeliness of EMs. The results of this review are presented in the three annexes below, in tabular form. For your reference, I also attach copies of our records indicating each individual delayed EM and item of scrutiny correspondence.

As a Committee, we take our role in scrutinising EU documents very seriously, and we are proud of the success of the Select Committee and its Sub-Committees in conducting in-depth scrutiny work. The provision of timely scrutiny correspondence, Government responses and EMs are crucial in facilitating this work. I hope that the information in this letter and the attached annexes will be of use to you as part of your review of scrutiny work.

First, regarding correspondence on specific scrutiny items, the Committee appreciates that the Government is not always able to provide an immediate response. Each of the Committee’s letters should spell out when the Committee wishes to receive a response, usually within 10 working days or in due course, and Clerks are always able to advise scrutiny co-ordinators if this information is omitted. We consider that the obligation to provide a response in 10 working days when requested is an important one for the Government to meet. Departments should bear in mind that, when a delay is anticipated, they should discuss this with the relevant clerk at the earliest opportunity to understand whether a partial response within the time limit is preferable to a complete but tardy reply.

Secondly, regarding Government responses to the Committee’s reports, we would note that there have been no significantly delayed responses during the period we reviewed. This is in contrast to our findings during the previous review, when four responses were several weeks late. We would also like to express our gratitude for the number of responses that were received early during the first half of 2012. Prompt responses allow the Committee to move forward with any follow-up work it may wish to undertake and are appreciated. We hope that this will continue.

Finally, regarding EMs, the Committee was more concerned with the findings of this review. The Committee appreciates that EM extensions are sometimes arranged with the Clerks of both Houses in order to allow lead departments more time to confer with other departmental colleagues. However, a significant proportion of EMs are still being received late by the Committee, according to our records.

As you know, we operate a sift process; the EM deadline is therefore 12pm on Thursday for inclusion in a sift at the beginning of the following week. This means that even a single day’s delay in receiving an EM can mean a week’s delay in the Committee’s scrutiny work. Consequently, although many of the delays noted in the attached report are of only one or two few days, this can have serious implications for the Committee’s work.

The Committee considers that the timely production of comprehensive EMs is an important undertaking by the Government, and is vital to a smooth scrutiny system. We look forward to hearing, in due course, your proposals for changes to the scrutiny system, but would emphasise that this Committee’s priority is for the agreed current mechanisms to work effectively.

I would also emphasise the importance of the Government’s EMs and correspondence being comprehensive, as well as timely. An EM or letter that is on time but that fails to deal appropriately
with all of the issues raised by a proposal or scrutiny letter will also have a detrimental effect on our scrutiny work.

I would also ask you to remind your colleagues that, should an extension be arranged for a Government response, a scrutiny letter, or an EM, it is important that our EU Documents Office is made aware of this so that our records are accurate. Scrutiny co-ordinators should bear this in mind and for the avoidance of any doubt should always copy to our EU Documents Office any correspondence with Clerks about these matters.

I hope that this information is of use to you. I would be grateful if you would remind your departmental colleagues of these important points, and also that the Clerks and our Progress of Scrutiny document are always available to provide information and assistance to scrutiny co-ordinators in fulfilling their scrutiny obligations. The Committee will now conduct these reviews on a regular, six-monthly basis in July and January.

25 July 2012

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

Thank you for your letter of 25 July which followed our exchange of correspondence on this issue at the beginning of the year.

I am pleased to see that you record a better picture in regard to Government responses to reports published by the Committee. However, I agree that there is still work to be done to improve the overall picture on responses to correspondence where the Committee had set a date for the Government to respond. I note that on this occasion you have provided a picture of the occasions when the Government has submitted Explanatory Memoranda (EM) after the deadline set. I accept that even a delay of one day in providing the Committee with information can impact upon the scrutiny process and the Government should strive as far as possible to meet Committee deadlines. However, as you acknowledge, there will be occasions when an extension to an Explanatory Memorandum or correspondence deadline will allow the submission of a better informed product without impacting on the time that the Committee has to carry out its scrutiny work.

Your letter is helpful in continuing to underpin the discipline we must have within Government in meeting our commitments. I fully respect that meeting deadlines is important for the integrity of the process. Also helpful are departmental scrutiny awareness raising events, and the recent networking meeting that the Committees jointly hosted for departmental scrutiny coordinators is a good example of that.

Our earlier exchange, together with my letter to colleagues from 13 May 2011, reinforced the message across Government that we must comply with our scrutiny commitments. I would be happy to raise this with my colleagues at a future meeting of the European Affairs Sub-Committee. Our correspondence will also be circulated by the Cabinet Office to departmental scrutiny coordinators.

Cabinet Office and FCO officials can discuss these and other issues further with your clerks when we begin discussions of scrutiny reform.

29 August 2012

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

Thank you for your response of 19 July to the Committee’s Report on 2010-12 [not printed], and your reply of 29 August to my letter regarding the Committee’s experience of delays in the scrutiny process. The Committee considered both of these responses at its meeting on 18 September.

We note that the Government will be attempting to make further progress in updating the Cabinet Office’s scrutiny guidance and in developing a Code of Practice regarding opt-ins. We also note that the Cabinet Office’s Guidance is not the only assistance available for departmental scrutiny coordinators in their day-to-day work. We look forward to taking part in awareness raising events in the future to assist the departments in their understanding of parliamentary scrutiny processes, at both a member and a staff level.

We are grateful for your response regarding scrutiny overrides, and are pleased that it appears that the Committees and the Cabinet Office are already on track to agree the most recent set of records promptly after the end of the summer recess.
We note the Government’s response regarding the Athens Protocol and the Data Protection Directive. We hope that, in future, Government officials and our staff will be able to work more closely to avoid similar problems from recurring.

Finally, regarding the timeliness of departmental responses, we acknowledge that there are circumstances in which an extension allows for a more thorough Explanatory Memorandum or item of correspondence with minimal impact on our scrutiny timetable. However, we hope that you will emphasise to your departmental colleagues that it is important that in these circumstances a formal extension is sought, and that EMs and letters are not merely submitted late. In addition, we strongly consider that the 10 working day deadline should be sufficient in most instances. The proportion of late EMs (over 30%) indicates that more needs to be done to ensure that appropriate extensions are sought at an early stage.

We remain open to any constructively specific proposals that you may put forward regarding streamlining existing scrutiny processes. We consider that a meeting would be helpful in order to facilitate discussion of any proposals you may have and the issues surrounding them, and hope that our staff will be able to arrange something along these lines after the end of the summer recess.

19 September 2012

SCRUTINY RESERVE OVERRIDES: JULY - DECEMBER 2011

Letter from Ivan Rogers, Head of European and Global Issues Secretariat, Cabinet Office, to the Chairman

I am writing to provide the latest list of scrutiny overrides [not printed] as agreed between my officials and the Clerk to your committee.

Of the 56 items listed, 41 were overrides in the House of Lords. As before the largest single category of overrides (36) were on fast moving FCO instruments, a number of which needed to be adopted at times where the Committee was not sitting during the Summer recess. We will continue to work with departments to promote the importance of early engagement with your Committee and more effective follow up on proposals retained under scrutiny to ensure that overrides can be kept to a minimum.

Last year FCO and BIS held scrutiny awareness raising events and HMT held a similar event recently; DEFRA will be holding an event next month. We also have an active scrutiny coordinators’ network which meets several times a year to discuss current scrutiny issues and exchange best practice. This will hopefully contribute to a better and wider understanding of the scrutiny processes. I am of course aware of the Minister for Europe’s engagement with the Committees on ideas for scrutiny reform. The Minister for Europe recently wrote to Lord Boswell about scrutiny of delegated and implementing acts and ideas for further streamlining matters subject to scrutiny. The Government is ready to work with the Committees on any ideas to improve processes to address the issue of overrides.

8 June 2012

Letter from the Chairman to Ivan Rogers

Thank you for your letter of 8 June setting out the latest list of scrutiny overrides, as agreed between your officials and the clerks of the EU Select Committee and its sub-committees. I have tabled the usual Parliamentary Written Question, which will put these figures on the record. I would note that the number of overrides during this six-month period are higher than those occurring in the same period in 2009 and 2010 (32 and 17 respectively), and I appreciate your continued work with departments to help ensure that the number of overrides can be kept to a minimum during 2012.

Your letter notes the Minister for Europe’s engagement with our Committee and the European Scrutiny Committee on potential changes to the scrutiny system. I believe that you will have received a copy of a letter from me to the Minister in relation to the Committee’s Report on 2010-12, which expressed the Committee’s willingness to consider constructively any specific proposals the Minister might wish to make.

My letter also remarked upon the delays that we have experienced in reconciling our overrides records, published in Progress of Scrutiny, with those of your officials once a six-month period has
come to an end, something that the Committee has also commented on in its recent Report on 2010-12. In addition, my letter to the Minister highlighted the importance of departments raising promptly any queries they might have about the overrides set out in Progress of Scrutiny, in order to ensure that the publicly available lists of overrides are as accurate as possible throughout the year, as well as after six-monthly lists have been agreed. These two areas are ones that the Committee is keen to see improved, and I would welcome your, or the Minister’s, views on how this might be achieved.

12 June 2012

UK PRESIDENCY OF THE G6 GROUP OF MINISTERS

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

The UK took over the Presidency of the G6 group of Ministers on 1 July 2012. The G6 is an informal group of Interior Ministers from the six largest EU Member States: UK; Germany; France; Spain; Italy and Poland. The group meets twice a year and I am writing to inform you that I will be hosting the next meeting at Lancaster House in London on 20 and 21 November.

It has become the convention to invite the EU Commissioner for Home Affairs, the US Attorney General and the US Secretary for Homeland Security to provide a wider perspective on the issues under discussion. Cecilia Malmström, Eric Holder and Janet Napolitano will attend along with the G6 Interior Ministers.

The meeting will begin with dinner on 20 November where G6 partners will be joined by the US delegations. The US Secretary for Homeland Security will provide us with an update on work she has undertaken on Piracy since the previous G6 meeting. I also hope to have a general discussion on Data Issues.

The following day will consist of three working sessions where we will be joined by the EU Commissioner for Home Affairs. The first will cover Radicalisation and Cooperation in North Africa and the Sahel. The US delegations will depart after this session. The second working session will cover Free Movement of Persons and the third will concentrate on Improving the Exchange of Criminal Records of Child Sex Offenders.

I also hope to discuss the Future of Europol informally over lunch and I have invited the Europol Director, Rob Wainwright, to join us for this.

I will report the outcome of this meeting in a Written Ministerial Statement within five days of the meeting.

29 October 2012