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 December 2011 – 8 May 2012.

EUROPEAN UNION SELECT COMMITTEE

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A BUDGET FOR 2020

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

Thank you for your letter of 15 February regarding providing evidence for the Committee’s follow-up inquiry into the 2014-2020 EU Multiannual Financial Framework.

As you note, I will not be able to give oral evidence to the committee. However I am, as ever, pleased to provide written evidence in response to the questions you set out in your letter of 15 February. Officials from the International and European Union Group of HM Treasury will give oral evidence on 6 March, led by Mike Glycopantis (Deputy Director, Head of the EU Finance team).

As written evidence alongside the oral evidence my officials will provide later, I have set out responses to your questions in turn below.

NEGOTIATIONS

1. What concrete agreements have taken place thus far in the Council working groups considering the specific MFF proposals?
No concrete agreements have taken place thus far in the Council working groups considering MFF proposals. Council working groups and MFF formations have been primarily focussed on understanding Member States’ positions in advance of attempting agreements. The UK Government has been clear that, while the MFF breaks down into many individual elements of legislation, no concrete agreements on these are possible until there is agreement on the overarching question of budget size.

However, 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 very substantial spending increases compared with current spend is unacceptable, unrealistic, too large and incompatible with the tough decisions being taken across the EU.

2. Where does the Government anticipate finding the biggest disagreements between Member States in Council negotiations? How does the Government intend to bridge divides between Member States in the Council on the big questions, such as the overall envelope or own resources?

The UK Government is aware that there are diverse views on budget size and own resources across Member States. The Prime Minister has been clear, however, that the maximum acceptable increase is a real freeze in payments, year on year from actual payments in 2013. Four other Member States: France, the Netherlands, Finland and Germany, signed up to that message. Furthermore, a group of eight like-minded Member States made clear ahead of the General Affairs Council of September 2011 and again in January 2012 that the Commission proposal was too large.

Given the need for unanimity in Council to agree the overall envelope or to amend the existing own resources arrangements, this substantial coalition represents significant collective pressure in favour of budgetary restraint. Any effort to introduce new own resources to fund the budget, or to target the UK abatement, however, would require UK support to advance. The UK has made it clear that both changes to the abatement and new taxes to fund the EU Budget are unacceptable.

GENERAL PRINCIPLES

3. A recent paper on the EU budget as a tool for growth, published by the Centre for European Policy Studies begins: “Once again, the Member States are locked in an unrelenting and sterile battle about the size of the EU budget. They are barking up the wrong tree...When it comes to EU spending, quality matters far more than quantity”. To what extent does the Government’s focus on the overall size of the budget risk reducing the quality of the budget, particularly its ability to contribute to long-term growth?

The UK Government has been clear that the overriding priority for the next MFF is budgetary restraint, thereby ensuring that the EU budget contributes to domestic fiscal consolidation.

However, while the UK Government’s overall objective is to reduce budget size, we consider that spending on growth and competitiveness, on external funding and on climate change should have a proportionately larger share of a budget that at most increases by no more than inflation. Furthermore, in order to align the budget towards higher-value areas of expenditure, the UK Government is seeking very substantial reductions from the CAP, focussed on direct payments and from administration expenditure across the budget.

4. How much weight is given to European Added Value (EAV) by Member States during budget negotiations, as compared to questions of net contributions and receipts? How does EAV relate to Value for Money (VFM), and which of these does the Government think should take priority in the EU budget?

Considerations of EAV and the importance of net contributions and receipts vary by Member State. However, the UK Government recognises that some Member States value receipts from the budget particularly highly, regardless of relative value. That is a major reason behind the continued dominance of the budget by Structural Funds and CAP. The Government clearly places great importance on understanding, and restraining, the UK net contribution in the next MFF, in order that the EU budget contributes towards domestic fiscal consolidation.

However, the Government has also been clear that the budget should be directed towards what the UK Government considers to be higher-value areas, as set out above. This shift in spending aims to focus on areas of European Added Value, and therefore towards deriving greater Value For Money from the EU Budget as a whole.
5. Is the Government satisfied with the administrative processes being proposed for managing MFF programmes and funds, such as humanitarian aid, ITER and Connecting Europe?

The UK Government believes that EU institutions should not be immune from savings and is targeting very substantial savings in administration expenditure across the budget. Any suggestion of waste in the budget damages the standing of the institutions and of the EU as a whole.

We are also concerned by errors. According to the latest report by the European Court of Auditors on EU financial management, the error rate in the 2010 EU budget actually increased to 3.7%, up from 3.2% for 2009 and above the 2% level needed to for a positive statement of assurance. The UK recently voted against the discharge of the 2010 EU Budget, owing to the slippage on progress made in previous years, and has called for urgent improvements.

The DFID Multilateral Aid Review found that the European Commission Humanitarian Office (ECHO) is cost effective, with low administration costs and joint-working with the rest of the EU to ensure efficiency. Within ECHO, however, Value for Money is not yet an overarching narrative and some current financial management procedures can push partners towards greater bureaucracy. The Commission has not yet released a draft regulation on the Humanitarian Aid Instrument, but in negotiations on humanitarian aid in the next MFF, the UK will continue to argue for greater effectiveness and efficiency in ECHO.

On ITER, recent measures following a 2009 assessment have produced improvements in the management of the project. The UK opposes the movement of significant funding (including ITER and GMES), ‘outside the MFF’.

On Connecting Europe, we are concerned by the Commission’s proposal that they should be able to move money between the three sectors covered without consulting Member States and do not yet have a clear sense of to what extent the Facility will be centrally managed.

SPECIFIC PROGRAMMES AND BUDGET LINES

6. The Government has called for “a higher proportion of a restrained EU budget” to be “spent to promote sustainable growth” (HC Deb 909). What concrete counter-proposals does the Government have for programmes such as Connecting Europe and Horizon 2020 to show how this might be achieved? Where would the Government focus investment?

The UK Government’s top priority is restraining the size of the EU Budget to, at most, a real freeze in payments compared to 2011 levels. We are not advocating increases in any heading of the budget. However, within this context growth and competitiveness, external relations and the climate change components of these headings are priority areas. In Heading 1 we have made it clear that Horizon 2020 is a priority area, although we do not advocate the spending levels for it proposed by the Commission. We also oppose the huge 400% increase for transport, energy and infrastructure spending in the Connecting Europe proposal. These programmes can be scaled according to affordability.

Our counter-proposal therefore centres firstly on making reductions to the levels of spending proposed by the Commission and secondly focussing the spending that remains on these UK Government priorities. When targeting how the final agreed level of funding should be spent, we will aim to focus on those areas of the proposal that offer the best EU-added value and the best return to the UK taxpayer. Work is ongoing to assess which elements of the individual proposals best support these aims.

In parallel, we are also pursuing a series of administrative reforms at EU level which can make a genuine contribution to growth at minimal cost, such as completing the Single Market (particularly in services and the digital single market), reducing administrative burdens on business, and ensuring that the EU can be the driver of world trade. The joint pre-Spring Council letter also called for a well-functioning Financial Services sector which supports growth and helps business to access finance.

7. Does the Government see a role for cohesion policy and funds in supporting EU growth by addressing structural weaknesses and competitiveness challenges? How does this relate to the Government’s call for a budgetary freeze?

As highlighted by the Prime Minister’s recent joint letter “A plan for growth in Europe” with eleven other Heads of Government, the key to long term sustainable growth in the EU is structural reform. For example, amongst other things, the letter highlighted the importance of implementing previously
agreed single market legislation, establishing the European Research Area and the swift conclusion of free trade agreements with India and Canada.

The UK Government sees that, when designed well, cohesion funds and policy can compliment structural reform, but they are not, by themselves, the central mechanism for achieving EU growth. And as a result of the 2011 Annual Growth Survey, the Commission calls for three growth levers to be fully deployed as part of EU-wide action: EU digital single market; internal market for services; and tapping into the potential of external trade.

The UK Government supports the aim of cohesion policy in reducing disparities in development between the different regions of the EU, so that every part of the EU is able to develop to its full potential. As well as raising living standards in poorer Member States, this compliments the growth and integration of the Single Market, of direct benefit to all parts of the EU, including the UK.

Growth and competitiveness are priority areas for the UK Government and should have a proportionately larger share of an EU budget that, at most, increases by inflation compared to payment levels in 2011. The UK Government message is clear that fiscal responsibility and restoring economic stability is vital for growth. As the Chancellor remarked in the Autumn Statement “If left unaddressed, high levels of public borrowing and debt risk undermining growth and economic stability in the UK Government”.

8. The staff regulations are currently being revised (18638/11), and the Commission is operating a zero growth policy in relation to staff numbers, among other initiatives. Does the Government think that enough is being done to restrain administrative costs? What specific actions could the Commission take to further reduce administrative costs, and what are the barriers to further reductions?

The Staff Regulations are indeed currently under revision, and the Commission is proposing a 5% staff reduction over the next Multiannual Financial Framework, among other initiatives, although the UK and other Member States have yet to see sound a financial analysis of these proposals and the savings they are estimated to make.

The UK Government believes that considerably more can be done to restrain the administrative costs of the EU Institutions. The proposals currently under discussion do not go anywhere near far enough in finding financial savings. The UK Government has committed to deliver savings of 33% on its own administrative domestic departments and would like to see a similar level of ambition from the European Institutions.

There are many areas where the UK Government believes the Commission could further reduce administrative costs, most notably in the automatic annual salary adjustment method, the pension scheme and the allowances offered to EU Institutions staff through the Staff Regulations. The UK has broad the support of other Member States on this issue, but does anticipate obvious reluctance from the EU Institutions themselves.

OWN RESOURCES AND THE REBATE

9. During the previous inquiry, the Government said that it would resist EU taxes and was in favour of the current VAT-system being axed (written evidence from Justine Greening MP). Would the Government therefore wish to see the EU budget financed solely through levies and the GNI-based resource? What is the Government’s current assessment of the proposed new VAT-based own resource?

In response to the Committee’s question of 18 January 2011 on the Government’s position on the VAT-based resource, the then Economic Secretary to the Treasury Justine Greening MP made it clear that the Government is in favour of simplifying the financing of the EU budget, for which the current VAT-based contribution is one candidate. The answer also highlighted the fact that there are a number of complications for the UK, including the explicit link between the abatement formula and VAT-based contributions. To be perfectly clear, the Government is not in favour of any change to the current Own Resources system that would jeopardize the UK abatement.

The UK Government opposes any new EU Own Resources, and in particular any new EU taxes or changes to the existing Own Resources system, that increase UK contributions or pose a threat to our position in the long term. The Commission’s current proposals on the Own Resources system would remove the permanency of the UK abatement. This means that we oppose the new VAT resource whether you consider it a new tax or not.
10. Does reliance on the GNI-based resource encourage a ‘juste retour’ approach from Member States? What is the Government’s assessment of the Commission’s suggestion that the current system of financing the budget results in a “tension which poisons” debate about the budget (p.1, 12478/11)?

A juste retour approach from Member States does not arise from reliance on GNI-based resource alone. The main drivers of such an approach likely include the perceived unfairness and imbalances in EU expenditures and increasing reliance on net contributors to finance higher spending.

The UK Government does not agree that the current system is the sole reason for the “tension which poisons” debate. The current system of allocating expenditures across budget headings is as much a reason for tension as the way these expenditures are financed, as exemplified by annual budget negotiations. Such references to tensions experienced in previous negotiations act as a distraction from more pressing issues, including for example questions of fairness and expenditure reform.

11. Do you agree with the Commission that the UK rebate results in “perverse” disincentives, such as discouraging applications for structural funds that require co-financing, or for EU aid following natural catastrophes (p.7, 12478/11)? How can such disincentives be avoided, either in the MFF or by the UK Government?

The abatement calculation mechanism is set in a way to reduce the imbalance between the UK’s share in overall EU expenditure and the UK’s share in contributions. In areas that require co-financing from national budgets, we of course do not get an abatement on the domestic financing that match EU funds.

Nonetheless, in strict financial terms, the UK derives a net benefit from EU expenditure in the UK. As such, the UK Government does not consider the abatement a disincentive for implementation of EU funds and the UK Government intends to fully draw down its Structural Funds allocation from the 2007-13 programming period.

12. The Government has taken a strong position on the UK rebate. How does the Government propose to renegotiate the Commission’s proposals for a new system of corrections? What is the Government’s response to the Commission’s consultation that found that there is “very heavy opposition among all categories of contributors against any kind of corrections, exceptions or compensations” (p.17, 12478/11 ADD 1)?

The temporary lump sum corrections proposed by the Commission would remove the permanency of the UK’s current abatement and threaten our long-term outcomes. It would mean giving up our permanent correction for a temporary one. As such, the proposal is not acceptable to the UK Government in its current form.

It is important to remember that the UK abatement is not the only budgetary correction. Germany, the Netherlands, Austria and Sweden pay a reduced share of the abatement and have a VAT correction. The Netherlands and Sweden also receive GNI corrections.

The UK abatement remains fully justified due to continuing expenditure distortions in EU budget. However, given its profile and visibility, the UK abatement seems to be used as an easy target by a number of people, often to deflect attention from more serious issues such as expenditure distortions.

Inequities in EU expenditure is common knowledge and an increasing number of Member States are not opposed to the principle of corrections in cases of excessive budgetary burdens in relation to Member States’ relative prosperity (i.e. the Fontainebleau principle), as the Commission suggests. Notwithstanding, the UK Government will continue to make a strong case and defence for the UK abatement to other Member States and remind them that there is an automatic mechanism to reduce the UK abatement, namely comprehensive expenditure reform that will remove distortions in the budget.

I hope that these responses provide all that you need, but remain happy to provide further evidence should Committee require it.

1 March 2012
Letter from the Chairman to the Rt. Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

Thank you for your explanatory memorandum of 19 December 2011 regarding the Commission Work Programme for 2012. The Committee considered this on 7 February and have cleared it from scrutiny. However, they have asked me to note that the explanatory memorandum was due on 9 December, and that this resulted in a corresponding delay in our scrutiny of a document that we had hoped to be able to clear early in the new year.

There is no need to reply to this letter.

8 February 2012

DANISH 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 Danish EU Presidency priorities, as well as a copy of the Danish Presidency strategic framework, a timeline of key events and information on key Danish personnel for the Presidency. I have also placed a copy of the summary and strategic framework 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.

You will note our analysis of the high degree of convergence between the UK’s EU priorities, and those of the Danish Presidency. Nevertheless, we will 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 am writing in similar terms to Richard Ottaway MP, Chairman of the Foreign Affairs Committee, William Cash MP, Chairman of the House of Commons European Scrutiny Committee, the Rt Hon Douglas Alexander MP, Emma Reynolds MP, the Rt Hon Nigel Dodds MP, Sylvia Hermon MP, the Rt Hon Ellyn Llwyd MP, Naomi Long MP, Caroline Lucas MP, Martin McGuinness MP, Margaret Ritchie MP and Angus Robertson MP. I am also copying this letter to the Clerks of relevant Committees and to Les Saunders at the Cabinet Office.

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

3 February 2012

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

I write to thank you and your departmental colleagues for the recent letters the Committee have received regarding the Danish Presidency’s priorities in relation to each department’s remit and activities. We have found these letters very informative, and they provide a helpful background to put the Presidency priorities into context.

I hope that you will pass this letter on to your departmental colleagues.

9 February 2012

DELEGATED AND IMPLEMENTING LEGISLATION

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

I am writing about the scrutiny arrangements for delegated and implementing legislation. Both the conferral of power on the Commission to adopt such legislation and the exercise of this power conferred can raise significant political and legal issues. I am keen to ensure that where this is the
case effective parliamentary scrutiny can be undertaken, without unnecessarily increasing the workload of the EU Select Committee or Departments.

Last year you were asked by the Chairman of the Commons European Scrutiny Committee for Government Explanatory Memoranda to include a specific heading to cover powers conferred on the Commission to adopt delegated or implementing legislation. I endorse that request.

Under this heading we would be particularly interested in the Government view on how the proposed powers would be used as well as those instances which raise other legal or policy issues, such as whether the power to legislate is validly conferred and whether the correct choice of procedure has been made. In certain cases, which are likely to be rare, the Committee may ask Departments in advance to deposit all proposals brought forward using a particular power.

In respect of the exercise of the delegated and implementing legislation procedures I propose the following:

— Any proposal to revoke a power for the Commission to adopt delegated legislation should be notified to Parliament by the deposit of the relevant document or the provision of an unnumbered Explanatory Memorandum. This is because it effectively amends the parent legislation. Insofar as the scrutiny reserve does not apply, the Government should take into account the opinion of the Committee provided that such opinion is received at least two weeks before the date indicated.

— As proposals for delegated legislation are, in principle, depositable, they should be subject to consultation with Clerks here. Should deposit of a proposal be requested, an Explanatory Memorandum will be provided as swiftly as possible and in any event within 10 working days of deposit. It should indicate the latest date on which the Council can request that the delegation be revoked or object to the proposal. Insofar as the scrutiny reserve does not apply, the Government should take into account the opinion of the Committee provided that such opinion is received at least two weeks before the date indicated.

— As proposals for implementing legislation are not, in principle, depositable, they should be brought to the attention of Clerks here if they are considered to be sensitive or if they have been referred to the Appeal Committee. If deposit is requested an Explanatory Memorandum should be provided as swiftly as possible and in any event within 10 working days of deposit. It will indicate the date on which a vote on the proposal is expected. The Government should take into account the opinion of the Committee provided that such opinion is received at least two weeks before the date indicated.

In the context of your welcome commitment to enhance Parliamentary scrutiny of EU matters I would be grateful for a prompt response to this letter.

26 April 2012

JHA OPT-IN

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

Thank you for your letter of 3 November. The Committee considered this on 13 December.

We note that the Government has reviewed its approach to the UK’s opt-in arrangements in the light of the comments and recommendations made by us and the Commons scrutiny committee in relation to specific proposals and that, on the principal issue, you have decided to maintain your position. We are grateful for your explanation of the policy.

For our part, we understand the Government’s concerns. The purpose of the Protocol is to protect the UK’s ability not to be bound by obligations within the scope of Title V. It is important, therefore, that the scope of the Protocol should be clear and that it should be applied by the EU Institutions whenever draft legislation makes the opt-in available.
However, we continue to see practical difficulties with the Government’s approach. Where a proposal does not cite a Title V legal base, if the UK notifies a decision to opt in, the Commission and the Council will be within their rights to regard this as meaningless, though no harm will be done. But what if the UK does not want to opt in? The Government would assert that it does not participate unless it opts in, so it will do nothing, and will presumably not vote in the Council – a situation which could, incidentally, affect the Council’s decision on whether to adopt the measure. The Commission and the other members of Council will consider that the UK is participating in negotiations and will be bound by the result. There would be no recital recording that the measure does not apply to the UK. On the adoption of the measure, how would a citizen decide what the law in the UK is? If the UK proceeds on the basis that the measure does not bind it, infraction proceedings appear to be inevitable.

On the interpretation of the Protocol, we doubt that a literal interpretation, in particular of the reference to the adoption of measures “pursuant to Title V”, assists the Government. In our view, a measure is more likely to be regarded as adopted “pursuant to” a Treaty provision if that provision is cited in the measure.

The key to establishing legal certainty and transparency is, plainly, the inclusion of a Title V legal base. This makes the application of the opt-in clear, to the UK, the other Member States – including, in particular, Ireland that also has an opt-in, and Denmark which is automatically opted out from Title V measures – and to third countries in the case of external agreements.

We agree that the application of the Protocol should depend on the content of the measure, and we see merit in your view that the predominant purpose test should not apply where Title V and the opt-in are in issue. We understand that the Council Legal Service takes the same view. But unless you can persuade the Commission or the members of the Council of your case, establishing those propositions is likely to require a decision of the Court of Justice – in the first case, to take a broad purposive interpretation of the Protocol and in the second, to add a gloss to its current case-law on the citation of Treaty bases.

If you were successful, other practical difficulties in making the opt-in arrangements work can be foreseen. If a proposed agreement covered several areas including, for example, commercial policy (an area of exclusive competence), transport policy (shared competence) as well as justice and home affairs (JHA) policy (shared competence, subject to the opt-in), would the opt-in have to apply to the whole agreement – surely not – or only to the JHA provisions? And if the latter, and the UK did not opt in, how would the third country know that the EU would not be able to fulfil its obligations insofar as the UK was responsible for the subject matter of the JHA provisions?

We note that you are working with the EU Institutions with a view to resolving the difficulties we mention and wish your efforts success.

Finally, on the issue of the application of the opt-in Protocol in cases where the EU has exclusive external competence, we welcome the Government’s change of heart. While it may be very unlikely in practice, there could, in principle, be a possibility that the UK would wish not to opt in to an agreement within an area of exclusive competence. There must, however, be some doubt whether not opting-in in such circumstances would be sustainable and a risk that if the matter came before the Court of Justice, the judgment could damage the UK’s position more generally. We welcome your decision to take a cautious approach and act on the right to notify your intention to opt-in in all cases.

14 December 2011

Letter from the Rt. Hon Theresa May MP to the Chairman

I am writing to explain a change of Government policy on the issue of whether the UK is bound by an existing EU measure which has been repealed and replaced by a new measure.

As you are aware, we believe that EU measures that impose JHA obligations only apply to the UK if we choose to opt in to them. Since the entry into force of the Lisbon Treaty, the Commission has brought forward a number of JHA proposals that repeal measures that we are currently bound by and replace them with new ones. We have not opted in to all of the replacement proposals and there has been a question as to whether the measures that we currently do take part in (the “underlying measures”) would still bind us once the replacement ones entered into force.

The policy we inherited from the previous Government was that the UK was not bound by an underlying measure when we did not opt in to a measure repealing and replacing that underlying measure. Following a review of this policy, the position of the Government is that:
i) the UK considers itself bound by an existing JHA measure when we do not opt in to a new measure that repeals and replaces it; and

ii) Article 4a of the Title V Opt-in Protocol (Protocol No 21) should be interpreted as applying not only to amending measures but also to repeal and replace measures.

Our position has been reinforced by the fact that the Commission has started to introduce express wording in repeal and replace measures, making it clear that the underlying measures will continue to bind us if we do not opt in. Such language has appeared in the Directive on combating Human Trafficking, and the Directives on Asylum Qualification, Asylum Procedures and Asylum Reception Conditions. It is highly likely that the Commission will in future routinely insert such language into new measures.

We acknowledge that this new policy carries a small risk of the UK being bound by arrangements which no longer operate in relation to the EU as a whole but continue to apply as between the UK and Denmark (and sometimes Ireland). This would happen when only the UK and Denmark (and sometimes Ireland) remain bound by an underlying measure following a “repeal and replace” proposal. However, we already accept this position in relation to amending measures as a consequence of Article 4a of the Title V Opt-in Protocol. Article 4a of the Title V Opt-in Protocol provides that the UK remains bound by an underlying measure where a new measure amends it unless “the non participation of the UK and Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States of the Union….”. In such cases, the measure would cease to apply to the UK.

Our decision to accept that we continue to be bound by an underlying measure where it has been repealed and replaced has a direct read across to the interpretation of Article 4a of the Title V Opt-in Protocol. Our view is that a broad interpretation of Article 4a is the correct one and that repeal and replace measures should be considered to be a type of amending measure for the purposes of Article 4a. In practical terms, if we accept that the UK continues to be bound by the underlying measure where we do not participate in the new ‘repeal and replace’ measure, we believe that we must also accept that, in such cases, the UK would cease to be bound by the underlying measure where it was deemed to be ‘inoperable’.

I hope you are satisfied with this explanation of our position. I am aware the views of the Government and your Committee are now closely aligned on this issue.

I would also like to thank you for your letter of 14 December on opt-in interpretation issues. I can confirm we are taking forward work to resolve difficulties around the interpretation of the Protocol and I will of course write back to you in due course with a substantive response updating you on progress and answering your questions.

8 February 2012

EURO AREA CRISIS AND THE PROPOSED FISCAL COMPACT TREATY

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

Please find attached a copy of the latest draft [not printed] of the proposed Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.

I think it important in the spirit of openness and transparency that the Scrutiny Committees should see this document, though it is not of course covered by the scrutiny reserve resolution as it is not an EU document and in any case the UK will not be a signatory.

Please be aware that all those participating in the Working Group considering this draft Treaty have been asked that, where it is national practice to transmit drafts to our national Parliaments, safeguards to ensure due confidentiality should be in place.

13 January 2012
Letter from the Chairman to the Rt. Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

Thank you for providing the Committee with useful oral evidence at the meeting on Tuesday for the Committee’s inquiry into the euro area crisis and the proposed fiscal compact treaty. As indicated at the end of the meeting, I am writing to seek further written evidence from the Government, as follows:

1. A commentary on the fourth draft of the proposed treaty, dated 19 January 2012, setting out the Government’s views on the elements of the treaty, and highlighting any concerns.
2. The Government’s views on the six points set out in the note of the same date from the Chairman of the “ad hoc working group on a fiscal stability union”.
3. Any further information or comment from the Government which would help the Committee to understand and form a balanced view of the treaty.

This evidence should be received no later than Friday 27 January, with an update to follow no later than Wednesday 1 February after the informal EU summit to be held at the end of the month.

20 January 2012

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

Thank you for your letter of 20 January, following my appearance at the Committee meeting of 17 January, where I gave evidence for the Committee’s inquiry into the Euro area crisis and the proposed fiscal compact treaty.

In response to your request for commentary on the draft Treaty and on the Chairman’s note, you will appreciate that we are studying the proposed draft Treaty carefully and are keen to work constructively with our European partners to achieve our shared aim of restoring stability to the Eurozone. However, the Government cannot comment in detail on a draft text on which we are not negotiating.

As the UK will not be a party to the proposed agreement, the agreement cannot create obligations for the United Kingdom nor will the agreement form part of the acquis of the European Union. The UK agrees with those Member States which have expressed concerns to ensure that the Agreement does not undermine the operation of the Single Market, or otherwise infringe on areas of policy that are properly for discussion by all Member States in the EU context.

The UK has further stressed that nothing should be done which cuts across the provisions and procedures in the EU Treaties, or seeks to by-pass the prescribed procedures for amending the EU Treaties, and in this regard shares the concerns of some other Member State in relation to Articles 7 and 8 which raise important questions of compatibility with EU law. Respect for EU law is fundamental to legal certainty which is key to the shared aim of restoring stability in the Euro-zone.

I will be pleased to provide whatever further information I can following the informal European Council at the beginning of next week.

27 January 2012

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

Further to my letter of 13 January 2012 which enclosed an earlier draft of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, please find attached a final copy [not printed]. As this is now a public document, the earlier issues around confidentiality no longer arise and I am placing a copy in the libraries of both Houses.

15 February 2012

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

Further to my letter of 15 February 2012 which enclosed the final copy of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, please find attached a letter [not printed] from Jon Cunliffe, the UK’s Permanent Representative to the EU, to the European Council Secretariat. I am placing a copy of the letter in the libraries of both Houses.

22 February 2012
Letter from the Chairman to the Rt. Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

I am writing with regard to correspondence between the Committee and Government Ministers as part of the parliamentary scrutiny process, and with regard to Government responses to Committee reports, which the Committee considered at its meeting on 13 December.

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. At its meeting on 13 December, the Committee noted that there have been some particular instances of delayed correspondence and responses to Committee reports, and would like to remind you of a number of the Government’s existing obligations with regard to scrutiny. I include with this letter two annexes providing some statistics regarding delays, which were considered by the Committee at its meeting.

First, we wish to stress that Committee inquiries and subsequent reports are a key part of the Committee’s scrutiny function. Over the past year, the Committee has received some notably late responses to its reports, some being one or even two months late. As I am sure you are aware, it is usual for the Committee’s reports to be listed for debate only after a response has been received from the Government. Therefore, delayed responses can have a serious effect on the impact of a Committee report. The Committee considers that the Government’s undertaking to provide a response within two months is a very important one, and that only in extremely rare cases should a response be delayed beyond the two month period.

Secondly, 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 spells out when the Committee wishes to receive a response, usually within 10 working days or in due course. We should like to emphasise that when a response is requested within 10 working days, the Committee considers this an important obligation for the Government to meet. We would like to draw your attention to the undertaking that the Government have given to provide a “holding reply” in circumstances where a detailed response cannot be provided within 10 working days due to the complexity of the issues being addressed.

Finally, the Committee considers both the two month deadline for responses to reports and the 10 working day deadline for correspondence to be ceilings, rather than targets.

I would be grateful if you would remind your departmental colleagues of these important points, and also that Clerks and our Progress of Scrutiny document are always available to provide information and assistance to scrutiny co-ordinators in fulfilling their scrutiny obligations.

13 December 2011

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

Thank you for your letter of 13 December 2011 which reminds me of the Government commitment to respond promptly to Committee reports and correspondence. As you know, I take this commitment seriously and I am grateful to you for raising this issue again.

I recall that the need for prompt responses was one of the issues you raised in our meeting last February. I am sorry to learn that there is still a way to go.

I have arranged for your letter to be circulated to all departmental scrutiny coordinators, together with my earlier letter to Ministerial colleagues following our February meeting, to encourage them to look seriously at the individual cases you have highlighted in the annexes to your letter and to improve their performance. I have asked my officials to do this in regard to those you have highlighted for the FCO to see what lessons can be learnt. They will follow up with committee clerks where necessary.

At the same time, I have arranged for departments to be reminded again of Government commitments to respond both to reports within the agreed two month period and to correspondence on specific scrutiny items within the specified deadline where indicated. I have also
arranged for them to be reminded of the importance of speaking to your clerks if delay is unavoidable, to consider jointly how to handle this delay including a holding reply where this would be helpful.

I hope these messages will serve to improve performance. I would be happy to look again with you at the picture in say a year’s time either to confirm this has been the case or to consider further steps. In the meantime, I will ask officials in FCO and Cabinet Office to monitor the situation to the full extent that they are able, including raising this issue at the next jointly chaired meeting of departmental scrutiny coordinators. I am keen that departments should make promptness a key message when they hold scrutiny awareness raising events.

23 January 2012

SCRUTINY RESERVE OVERRIDEs: JANUARY - JUNE 2011

Letter from Jon Cunliffe, 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 36 items listed, 33 were overrides in the House of Lords. The figures are higher than corresponding periods in previous years (apart from last year when there were a larger number of overrides as a consequence of the dissolution of Parliament). The increase can be largely attributed to the number of urgent measures needed particularly to address the political situation in North Africa and the Middle East and I know that for these instruments you have acknowledged the need for quick decisions. I am of course aware of the efforts by FCO Ministers and officials to manage this business through early contact with the committee and delaying decisions in Brussels where this is possible. And of course there were a number of occasions where overrides occurred when the committee was not meeting. Following the Minister for Europe’s engagement with you earlier in the year he wrote to Ministerial colleagues to impress upon them the importance of complying with scrutiny commitments to Parliament. This included planning business effectively to avoid overrides.

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. I am aware too that FCO and BIS have held scrutiny awareness raising events recently where these messages were reinforced, including by your staff who attended them, and other departments plan to hold similar events in the coming months.

2 December 2011