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 November 2012 - 8 May 2013

JUSTICE, INSTITUTIONS AND CONSUMER PROTECTION

(SUB-COMMITTEE E)

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ADDITIONAL ADVOCATES GENERAL AT THE COURT OF JUSTICE OF THE EUROPEAN UNION (5737/13, 7013/13)

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

Thank you for your explanatory memorandum of 1 March 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 20 March. We decided to retain this matter under scrutiny.

As you know, the Sub-Committee recommended in its 2011 report that the Court should request to the Council an increase in the number of Advocates General with a view to assist the Court in improving the speed with which cases could be dealt with while enhancing the quality of decisions. We welcome the Government’s support for the appointment of additional Advocates General.

We do question, however, the Government’s pessimism with regards to the Court’s proposed timetable. We would hope that the first additional Advocate General would take his/her place by 1 July 2013 since another opportunity for appointment would not present itself until October 2015. We should be grateful for a further explanation as to why you consider the timetable “unrealistic”. We would also like to know whether there are any dates scheduled for the Council to vote on this proposal.

In your explanatory memorandum you make clear the Government’s position with regards to the extra costs incurred in the appointment of additional Advocates General. Has the Court indicated how these extra costs will be met?

We look forward to your reply by 8 April

21 March 2013

Letter from the Rt Hon David Lidington MP to the Chairman

Thank you for your letter of 21 March about the Explanatory Memorandum covering Council Decision 7013/13 on increasing the number of Advocates General (AGs) to the Court of Justice of the European Union (CJEU). You asked why I thought the prospective timetable for appointing the first additional AG was unrealistic; and about dates for discussion in Council and the Court’s view on funding the new positions.

The reason why we consider the timetable unrealistic is mainly due to the short notice which the Court gave of its wish for three additional AGs. The proposal was issued in late January and Poland has estimated that several months are needed to recruit the first new AG. In order to meet a deadline of 1 July 2013, the Council and Member States would effectively have had only a few weeks to process the proposal - a challenging timetable by any measure and especially for those with robust processes of parliamentary scrutiny. In the UK’s case, section 10 of the EU Act 2011 requires that a decision under Article 252 of the Treaty on the Functioning of the European Union to increase the number of Advocates General requires an affirmative resolution of each House before the UK can agree in Council. The speed of this will inevitably be determined by the availability of parliamentary time.

No date has yet been fixed for the Council to discuss this matter, in part because the UK would not be in a position to support the decision until Parliament has debated it. Assuming that Parliament gives its consent to the proposal, however, the Council should be in a position to discuss the matter within the next few months. Fortunately, even though the Council is unlikely to agree in time to meet the Court’s proposed deadline of 1 July 2013 for a new AG, the appointment does not need to wait until October 2015. The first of the new AGs can be appointed at any time, provided all Member States have agreed.
On the question of funding, the Court has estimated that the additional costs will be around €4m, but has not indicated how that figure will be met. As you will know, the Government’s position is that the EU’s institutions need to cut their administrative costs; I am prepared to put down a minute statement in Council stating that the Court should meet the cost of the additional AGs from within its own budget.

8 April 2013

Letter from the Chairman to the Rt Hon David Lidington MP

Thank you for your letter of 8 April 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 24 April. We decided to retain this matter under scrutiny.

We note your explanation on the timetable for this proposal and the clarification on the timing for the appointment of the additional Advocates General.

You say in your letter that the Court should meet the cost of the additional Advocates General from within its own budget. However, in the course of our follow-up inquiry into the Workload of the Court of Justice of the European Union, Advocate General Eleanor Sharpston who told us that the increase in Advocates General “cannot be a achieved in budget-neutral terms”. As the decision to appoint additional Advocates General is so important, we assume that you have satisfied yourself that the funds to cover the additional cost can be found within the Court’s budget. Have you requested further information from either the Council or the Court on how will the additional cost be met? We hope in any case that the Government will not take a position that may be interpreted as obstructive.

We look forward to your reply by 13 May.

25 April 2013

Letter from the Rt Hon David Lidington MP to the Chairman

Thank you for your letter of 25 April in response to my letter to you of 8 April. You asked whether the Government was satisfied that the funds to cover the cost of three additional Advocates General (AGs) could be met from within the existing budget of the CJEU; and whether we had contacted the Court or Council to ask how the additional cost would be met.

In answer to your first question, I can confirm that the Government is satisfied that the relatively small additional cost – around €4m a year – can be met from within the budget of an institution which amounts to over €354m for 2013. Not only has the Court under spent in previous years, but in the current economic climate, there is an imperative on all the EU’s institutions to find ways to reduce their administrative costs. In this context, I should state that the UK is not alone among Member States in expecting the Court to absorb the cost of the additional AGs. We have expressed our view openly in the Council and the Court too is aware of our position.

In formal terms, the decision that will be put before the Council in the next few months is whether, in principle, to accept three additional AGs or not. Assuming the Council accepts this proposal, the question of how the AGs are financed will be taken in the context of separate discussions on the annual budgetary framework scheduled to begin next year.

8 May 2013

AMENDMENTS TO THE STATUTE OF THE COURT OF JUSTICE OF THE EU (8787/11)

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

As you will recall, in June 2012 the Council set up a Friends of the Presidency group to discuss further potential reforms to the General Court of the CJEU, including additional judges at the General Court, as well as wider efficiency measures. In my letter of 31 October, responding to yours of 15 October, I advised that I would provide an update on those discussions. I am writing now on that basis following recent Council discussions.

The issue of additional judges at the General Court was considered by the General Affairs Council on 11 December. No final conclusion was reached at that meeting, and discussions will continue under
the next rotating Presidency. I will provide a further update as and when I receive information on how the issue will be handled in future.

In terms of wider efficiency measures, I understand that the CJEU is currently preparing revisions to the General Court’s Rules of Procedure, which it will publish at some point this year. At that point I will of course write to you in accordance with standard scrutiny procedure.

The intention was that the Friends of the Presidency group would report to Coreper by the end of 2012. Until recently, my understanding was that this intention remained. However, the Presidency has now advised that it no longer intends to produce a formal report, as it does not consider that such a report would be a useful addition at this stage.

I remain deeply concerned at the extent of the backlog at the General Court, and can assure you that the Government will continue to engage closely with the Institutions and with other Member States on appropriate measures to address the Court’s backlog.

7 January 2013

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

Thank for your letter of 7 January 2013 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 January 2013.

The continued inability by Member States to reach agreement on this issue is leading to significant delays in the Court of Justice of the European Union delivering justice, in particular the General Court. This has severe implications in terms of bringing the institution into disrepute whilst undermining their legitimacy.

The Sub-Committee has decided to conduct a follow up to our report on the Workload of the Court of Justice of the European Union which was published in April 2011. We will be writing to selected stakeholders to canvas their views on recent developments. We would also like to invite you to give oral evidence to the Sub-Committee within the next four to six weeks. Officials will be in touch with your office to arrange a suitable date. The Sub-Committee will then publish a follow up report in early spring.

24 January 2013

**ANTI-FRAUD OFFICE (OLAF) (7897/11)**

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

I am writing to provide you with a further update on the reform of the Regulation that governs the European Anti-Fraud Office (OLAF). As you are aware, the Commission issued a revised legislative proposal in June 2011 which reviewed OLAF’s governance and procedural rules and was aimed at improving efficiency and effectiveness.

As set out in the EM 7897/11 and in the update letter from my predecessor, the Government’s priorities centred on four articles: confidentiality and disclosure of information to institutions (Article 4); procedural guarantees (Article 7); the role of the Supervisory Committees in the protection of individuals’ rights (Article 11); and the term of office for OLAF’s Director General (Article 12).

Progress on this dossier has been slow, with tripartite discussions ongoing for over a year on the amended legislative proposal on the new draft Regulation. However, the UK has been successful in achieving almost all of its objectives through these discussions, including three of the four priority articles (Article 4, 7 and 11) set out above.

A brief summary of the main improvements we have secured in the new draft Regulation during negotiations is below:

**IMPROVEMENTS TO EFFICIENCY**

- Articles 11 & 12: The tasks and duties of OLAF’s Director-General and of the Supervisory Committee, as well as the respective appointment procedures, have been more explicitly outlined with a view to clarify the scope of their action. If OLAF cannot close an investigation within twelve
months after it has been opened, the Director-General of the office must, at
intervals of six months, inform the supervisory committee of the reasons and
the remedial measures envisaged with a view to speeding up the
investigation.

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Article 4: The right of OLAF to immediate and unannounced access to
information held by institutions, bodies, offices or agencies has been
extended to the stages prior to the investigation in order to assess if there
are reasons to start an investigation. Key to the MEPs' approval was the two
Commission declarations that have now been attached to the regulation.

STRENGTHENING COOPERATION

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Article 9: The new rules provide for more timely and effective exchange of
information and clear reporting obligations during the various phases of the
investigations.

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Article 3 (4): As a general rule, Member States have to identify an authority
("the anti-fraud coordination service") with the task of coordinating the
protection of the financial interests of the EU and the fight against fraud and
to provide OLAF with the assistance needed in the performance of its duties
(Article 3).

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Articles 9 &10: At OLAF’s request, institutions, bodies, offices or agencies as
well as the competent authorities of the member states concerned will have
to report on the follow-up given to the recommendations of OLAF’s
Director-General. In addition, OLAF will get the opportunity to conclude
administrative arrangements with Europol, Eurojust, third countries’
competent authorities and international organisations (Article 13).

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Article 11a: An exchange of views will take place once a year between the
European Parliament, the Council and the Commission. Such exchanges
should cover, inter alia, the strategic priorities for investigation policies and
the effectiveness of OLAF’s work with regard to the performance of its mandate, without interfering, however, with its independence in the conduct of its investigations.

INCREASING ACCOUNTABILITY

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Article 7a: In line with the charter of fundamental rights of the EU, the
procedural rights of persons concerned by an OLAF investigations, witnesses
and informants will be further strengthened. Any person affected by an
investigation will have the right to make his or her views known before
conclusions referring by name to a person are drawn up. He or she will also
have the right to be assisted by a person of their choice during an interview,
in the EU language of their choice, to be given access to a record of the
interview and to add observations on it.

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Article 11: The OLAF’s supervisory committee will continue to ensure that
the office exercises its mission in full independence. In addition to its current
tasks, the supervisory committee will, however, also be mandated to
monitor the application of the procedural guarantees. In order to preserve
the supervisory committee’s expertise three and two members will be
replaced alternatively. The members of the supervisory committee will be
appointed for a single term of five years. Under the current rules, the five
members are appointed for a term of three years, once renewable, and
replaced simultaneously.

We were unable to achieve only one of our priorities, which was to keep the term of office for
OLAF’s Director General at a once renewable term of five years, as under the current rules. The new
regulation provides for a non-renewable term of seven years for future appointments.

The European Parliament’s Committee on Budgetary Control has now approved the latest version of
the draft legislation, subject to two Commission declarations being attached to the final Regulation
which cover: the working arrangements between OLAF and the European Parliament clearly
specifying the rights and obligations of the parties involved; and the confirmation of respect for the immunities protocol and the MEPs’ statute.

I attach the latest, January, version of the draft legislative proposal for the new Regulation for your information, which now requires approval by the Council and the European Parliament. The Regulation will enter into force 20 days after this is achieved. The Council has now been scheduled to give its formal support to the new regulation by adopting its first reading position on the 25 February 2013, earlier than we had previously expected. The UK will therefore abstain in accordance with the scrutiny reserve on this issue. However, we believe that the final regulation is a good result for the UK, and we expect it to be approved through qualified majority voting.

15 February 2013

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

Thank you for your letter of 15 February. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 13 March.

We are grateful for your update following the prolonged discussions of this proposal and for the further information on the changes in the text. We note that the changes are largely consistent with the Government’s policy and with the Committee’s views. As negotiations on the draft Regulation have come to a conclusion and the measure is expected to be adopted on the basis of the text you have provided, we are content now to clear this proposal from scrutiny.

14 March 2013

APPOINTMENT OF TEMPORARY JUDGES TO THE EU CIVIL SERVICE TRIBUNAL

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

I know that you and your Committee closely follow the work of the Court of Justice of the European Union. I am therefore writing to inform you of the nomination of three temporary judges to the EU Civil Service Tribunal. The letter attached contains the credentials of these three temporary judges.

In 2012, as part of a wider package of reform, we agreed to permit the Civil Service Tribunal the ability to appoint three temporary judges to serve as necessary. This facility will ensure that the work of the Tribunal is not unfavourably affected in instances where the sitting judges are unavailable, for example due to health concerns. The 2012 Decision was subject to scrutiny by your Committee.

The temporary judges will only be remunerated for each day actually worked, of an amount equal to one-thirtieth of the basic monthly salary payable to judges under Article 21(c) of Regulation 422/67/EEC. Temporary judges will also be entitled to reimbursement for their travel and hotel expenses. They will not be entitled to benefit under the social security scheme provided for in the Staff Regulations.

23 April 2013

BRUSSELS I REGULATION (18101/10)

Letter from the Rt. Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

I am writing to request scrutiny clearance from your Committee to the final text of the recast of the Brussels I Regulation prior to my attendance at the Justice and Home Affairs (JHA) Council on 6-7 December. The aim of the Cypriot Presidency will be to seek formal adoption of the Regulation at this Council. Subject to obtaining clearance, my aim would be to signal the UK’s agreement.

I attach, for your information, the proposed final text of the Regulation [not printed]. I believe a good result has been achieved by the UK on this dossier. This not only addresses our earlier concerns but resolves those which had proved problematic to the Regulation’s operation. I know from earlier exchanges with my predecessor that you were content with the general approach being taken by the Government on this matter. For your ease of reference, however, I have again outlined the final outcomes reached on our key issues below.
The Brussels I Regulation is an important instrument for UK businesses. It establishes a regime for resolving cross-border disputes which provide for legal certainty. Although the current Regulation has provided significant benefits, this has not been without problems. The Commission’s proposal to recast the Regulation was generally welcomed by the Government and, as a result we elected to opt in to the Regulation at the outset. There were, however, three key issues that we wished to address during the course of the negotiations: the extension of the rules of jurisdiction to defendants from non-EU states, arbitration and streamlining the process for the mutual recognition of judgments.

**Extension of Jurisdiction to Third State Defendants**

The Commission’s proposal to seek to extend the rules of jurisdiction to defendants from outside the EU was opposed by the majority of Member States including the UK. The UK was specifically opposed to the Commission’s proposal as it could diminish access to UK courts. This would damage their attraction to international commercial litigants, many of whom had little or no real connection with the EU, but choose to resolve their disputes in the UK. That choice reflected the liberal nature of the UK’s jurisdictional rules, together with the discretion of our judges to stay proceedings where they considered these should be pursued outside the EU. These long established rules work well in practice and have resulted in the high volume of international litigation that comes to the UK. From the Government’s perspective, it was important that nothing was done during the negotiations to change this, particularly if it was likely to lead to such business going outside the EU.

As the majority of Member States (including the UK) opposed the Commission’s proposal, the status quo was retained but with two minor exceptions. These exceptions are felt acceptable. They concern contracts involving consumers and employees (Articles 16(1) and 19(2)). In cases involving these weaker parties the protective rules of jurisdiction have been extended where the other party (the retailer or the employer) is resident outside the EU. The result is that the consumer or employee would be entitled to sue in the courts of the Member State where they are resident. The implications of these minor exceptions are unlikely to be significant for the UK. The volume of litigation would be insubstantial and the businesses in question will in any event be located outside the EU.

**Arbitration**

The Commission’s proposal tried to resolve the problems of abusive litigation resulting from the Court of Justice of the EU’s judgment in West Tankers. This decision created the potential for parties to either frustrate or undermine arbitration agreements by initiating court proceedings in another Member State. The Commission’s well intentioned solution, however, presented two difficulties for the UK. First, UK arbitration experts were not persuaded that the proposal dealt fully and adequately with all the technical complexity of the issues at stake and, secondly, although the EU indisputably had power under the Treaty to legislate in this way, the Commission’s proposal would have created a measure of additional external EU competence. This would have given the Commission an enhanced role in international negotiations in this area of business. Their role is currently limited as such competence generally falls to Member States.

The UK’s preference was to seek the reinforced exclusion of arbitration from the scope of the Regulation. Although the negotiations concluded in a compromise, the solution agreed achieves UK’s preferred result. This has been endorsed by the UK arbitration community. The Regulation now usefully clarifies, by way of a recital, that proceedings relating to whether an arbitration agreement is valid or not would fall outside the scope of the Regulation’s rules on the recognition and enforcement of judgments (Article 1(2)(d) and Recital 11a). This was the particular concern raised by the Court of Justice’s decision in the West Tanker’s case. There is also a useful general provision stating that the Regulation should not affect the application of the 1958 New York Arbitration Convention (Article 84(1a)). This solution has the advantage of not extending external EU competence in this area.

**Streamlined Mutual Recognition**

The Member States (including the UK) have agreed to abolish exequatur, namely the procedure to seek a declaration of enforceability of a foreign judgment to enable its subsequent recognition and enforcement in, for example, the UK. The Government supported this view as it was felt to be in the interests of judgment creditors, offering the prospect of reducing the time, complexity and costs that are currently imposed upon them by this procedure. At the same time, it was also agreed that all the current protections to safeguard the legitimate interests of judgment debtors should be preserved in full and should be resolved in the courts of the Member State where enforcement was being sought. This significantly improves upon the Commission’s proposal which would, to some extent, have reduced those protections. This reduction would also have been exacerbated by requiring the
protection relating to inadequate service of the originating process on the defendant to be resolved only in the Member State of origin.

Contrary to the Commission’s proposal, there will now only be one procedure for recognition and enforcement. This avoids the complexity that could have resulted from the two procedures proposed originally by the Commission which would have also been dependant on the particular type of case. A compromise was reached during the negotiations too on the inclusion of a mandatory provision to translate (in all cases) the notification of a foreign court decision. Article 42a(2) now limits the need for a translation here and is acceptable to the Government.

OTHER ISSUES

Choice of Court Agreements

The UK and the majority of Member States strongly supported in principle the Commission’s proposals on choice of court agreements. These had been designed to resolve difficulties arising out of the Court of Justice’s judgment in Gasser (a case involving tactical litigation where the parties to a contract had concluded a choice of court agreement). The Commission proposed that where the parties had validly designated a particular court to resolve their dispute, priority should be given to that court to decide on its jurisdiction. This would be regardless of whether it was the first or second seised in the dispute. Under this proposal any other court would be required to decline proceedings once the chosen court had confirmed its jurisdiction (Article 32). The Commission also proposed a useful harmonised conflict of law rule on the substantive validity of choice of court agreements (Article 23(1)).

The current text of the Regulation satisfactorily resolves the problems resulting from Gasser. It ensures that where parties have agreed to choose a court to resolve any dispute between them, this agreement will be respected. This means that if one of the parties attempts, in bad faith, to instigate proceedings in another Member State the court located in that State must stay its proceedings in order to allow the chosen court to exercise the jurisdiction conferred on it by the parties.

International lis pendens and related issues

All Member States, including the UK, supported the proposed international lis pendens rules (Articles 34 and 34a). These confer, on the courts of the Member State, the discretion to stay their proceedings where the courts of a third State are already dealing with the same or a related matter. These flexible rules should help in these commercial cases where it is more appropriate for the third State court to determine the case. It should also help reduce the occurrence of competing proceedings.

Trusts

We were unable to obtain Commission agreement to the inclusion of certain technical improvements to the Regulation’s provisions on trusts. As the terms of the Commission’s “recast” of the Regulation precludes the amendment of any of the Regulation’s provisions which were not being amended by the Commission’s original proposal, it was not possible to amend these provisions. These provisions remain unamended in the revised instrument.

6 November 2012

Letter from the Chairman to the Rt. Hon Chris Grayling MP

Thank you for your letter of 6 November. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 21 November. We decided to clear this matter.

The Committee was grateful for the recapitulation of the main change that this proposal will bring to the Brussels I regime and particularly supports changes which will prevent choice of court and arbitration agreements being torpedoed.

22 November 2012

Letter from the Rt Hon Chris Grayling MP to the Chairman

I write further to my letter of 6 November 2012, regarding the successful conclusion to the negotiation of the recast Brussels I Regulation, and to confirm that the Regulation was subsequently adopted at the December 2012 JHA Council meeting.
The Brussels I Regulation is a vital instrument for UK business. It deals with the recognition and enforcement of civil and commercial foreign judgments within the EU, providing a system of rules that ensures that decisions can easily be recognised and enforced with the minimum of obstacles placed in the way of business. The successful negotiation of the recast Regulation has therefore been an important priority.

The Commission's draft proposal was published in November 2010 and in overall terms, the UK agreed with it. As a result, the UK decided to exercise its opt in in February 2011, as the best way to enable us to resolve three key issues during negotiations. Indeed, we have secured a successful outcome for the UK in those three areas - abolition of exequatur, arbitration, and jurisdiction to defendants outside the EU.

26 February 2013

COMMON EUROPEAN SALES LAW (15429/11, 15423/11)

Letter from the Rt. Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

I am writing to you to outline the UK approach to the European Commission's proposal for a Common European Sales Law (CESL) and to inform you of the publication of the Government's Response to its Call for Evidence, a copy of which is annexed to this letter [not printed].

The UK position to date had been that the need for the CESL remains to be demonstrated, and that a final UK position would only be determined following analysis and consideration of the views aired in response to the UK's Call for Evidence. In light of the Government's own analysis of the proposal and taking into account the views expressed in the Call for Evidence, I am now able to clarify that position.

In general terms, the Government agrees with the underlying objectives behind CESL: strengthening the Single Market and boosting growth through enhanced cross-border trade, while reducing costs and complexity for businesses and consumers in challenging financial times. The UK has also been supportive of an ambitious approach to the harmonisation of consumer law to support the retail single market, and is seeking to prioritise the development of the Digital Single Market given its potential impact.

However, our Call for Evidence exercise demonstrated that while there is broad support for increasing cross-border trade, the vast majority of UK stakeholders do not see CESL as a viable way of achieving this objective. This is a view supported by our own analysis of the proposal. Whilst a minority of respondents, largely from small business organisations, expressed some support for the aims of the proposal, the legal and consumer sectors and a number of business organisations were particularly strong in their opposition. There was no clear support, from any sector, for the proposal as currently drafted.

Consequently, the Government is unable to support the proposal as drafted and has identified a number of key concerns:

— Lack of evidence of need or ability to achieve objectives: An analysis of the Commission's Impact Assessment of this proposal does not provide sufficient evidence of need to warrant such a wide ranging and complex legal instrument. Respondents to the Call for Evidence also felt that sufficient need for the proposal had not been demonstrated and were unconvinced that contract law presents a barrier of the significance the Commission suggests. Conversely, they believed other barriers, such as language and divergent tax requirements are more significant and that these would not be resolved by this proposal. Many respondents were also unconvinced that CESL could achieve the results anticipated by the Commission. Our own analysis indicates that the potential costs of the proposal are greater than its possible benefits.

— Creation of uncertainty and confusion: The Government's analysis, supported by the Call for Evidence, suggests that the proposal will create too much legal uncertainty to be a practical basis for contractual relations; for example, the practical difficulty in assessing whether a particular business can be categorised as an SME (“small to medium enterprise”) – in a contract between businesses, CESL is a valid choice only if one business is an SME as
defined in the proposal. Such ambiguity significantly diminishes the attractiveness of the proposal and therefore the likelihood that any business would choose to utilise it. Jurisprudence in the area would also take years (perhaps decades) to build up from scratch, creating an additional burden on the UK's judicial system and on the Court of Justice of the European Union (CJEU). In the meantime uncertainty about the interpretation of the instrument would create delay and drive up the costs of litigation for parties.

The same uncertainty and confusion is likely to be shared by consumers. Domestically the UK is in the process of modernising and simplifying the consumer rights framework with the Consumer Bill of Rights and an associated package of consumer law reforms. This package will implement the Consumer Rights Directive and use common language and definitions to make it easier for businesses and consumers to understand their rights. In contrast, there is insufficient evidence to demonstrate that a new, optional, highly complex legal instrument focussed on contract law for cross-border sales will provide benefits to consumers or business, nor is it clear that it will achieve the presumed benefits to cross border trade and growth.

Choice of legal base: The legal basis of the proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which permits the Parliament and Council to adopt measures that are aimed at ensuring that the internal market functions properly. As such, the proposal is subject to Qualified Majority Voting and the Ordinary Legislative Procedure will apply.

There are, however, strong arguments to indicate that Article 114 is not a proper basis for the CESL proposal. Firstly, jurisprudence of the CJEU indicates that Article 114 should not be used in proposals which are optional and which do not intend to harmonise the existing national laws of the Member States. Article 114 was held to be unavailable for an optional EU legal construct in the case of the "European Co-operative Society", and there are strong parallels between this case and the proposal to create a Common European Sales Law. Secondly, for Article 114 to be used there must be a clear need for the proposal in question to smooth barriers to the functioning of the Single Market. As noted above, there is significant doubt as to whether evidence of need can be demonstrated in this case.

At this stage, the Council and European Parliament Legal Services have both endorsed the use of Article 114. Member States, however, do not consider this matter closed and the Council has agreed it will remain under consideration.

The Government continues to endorse the harmonisation of consumer law to support the retail single market. I continue to think that this is more likely to deliver the Commission's aims than a new, optional contract law. The Government will therefore encourage the Commission to carry out a careful and specific review of the barriers to cross-border trade and to consider the most appropriate solutions. The Government would be content to support the Commission in doing so.

I am also clear that any proposal in this area must be consistent with the Government's priorities for British businesses and consumers, for the strengthening of the Single Market and for the development of a Digital Single Market.

The Government has noted the positions of both Committees on the proposal, including the Reasoned Opinion on Subsidiarity provided by the House of Commons in December 2011.

13 November 2012

Letter from the Chairman to the Rt Hon Chris Grayling MP

Thank you for your letter of 13 November enclosing the Government's Response to their Call for Evidence on the proposal for a Common European Sales Law. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 12 and 19 December.

You will recall that I wrote to your predecessor, Ken Clarke, on 12 January setting out our preliminary view. We wished to consider the responses to your Call for Evidence before reaching a final view. We were very interested, therefore, in the views expressed by stakeholders in your consultation.
The objective of the proposal – to improve the operation of the Single Market in the interest of both businesses and consumers - is clearly a good one, but having considered the matter further, we are now of the view that we cannot support the current proposal. We have never been persuaded that establishing a European law of contract met any proven priority and, as I said in my letter of last January, we consider that other factors, such as language, trader reputation and perceived problems for consumers in obtaining redress where a contract fails, are much more important impediments to trade in the Single Market.

Taking account of the views of stakeholders, we consider that the disadvantages of the proposal, in particular, lack of legal certainty and confusion, outweigh the potential benefits. We note that national laws of contract (and areas of law outside contract law which may be engaged by sales transactions) have evolved over long periods, not only through legislation but also through the decisions of the courts. The proposed Regulation could not provide an adequate substitute for such laws. We find convincing the view of the consumer organisations, that consumers would not be sufficiently protected by the proposed Regulation. We endorse your doubts as to the appropriateness of Article 114 TFEU as the legal base for a proposal of this kind.

We would be prepared to consider more favourably a case for a proposal on similar lines to the Commission’s but with its scope limited to cross-border internet sales. While such a proposal would probably attract a similar cost-benefit analysis as the present proposal, it may be worth using such a restricted model (including a limit on the period of its operation and a requirement for review before the expiry of that period) as a pilot scheme to “test the market”.

We hope that, in any event, the Commission will continue to strengthen EU consumer protection legislation.

We look forward to hearing from you further as consideration of the proposal continues in the Council and in the European Parliament but, subject to that, we do not expect an immediate reply to this letter.

19 December 2012

Letter from the Rt Hon Chris Grayling MP to the Chairman

Thank you for your letter of 19 December 2012 regarding the draft Regulation for a Common European Sales Law for the European Union, and the publication of the Government Response to it.

I am grateful for the Committee’s view on the Common European Sales Law proposal. In general terms, the UK agrees with the proposal’s objectives of strengthening the Single Market and of boosting growth through enhanced cross-border trade, while reducing costs and complexity for businesses and consumers in challenging financial times. However, our Call for Evidence on this proposal has demonstrated that while there is broad support for increasing cross-border trade, the vast majority of UK stakeholders did not see the CESL as a viable way of achieving this objective. This is a view supported by our own departmental analysis of the proposal.

I note the Committee’s interest in considering a proposal with a scope limited to cross-border internet sales. We are not in a position to speculate on our response to a more limited proposal but if such a proposal were put forward we would first need to know the detail and then consider on its merits, including whether there was a demonstrated need for such a measure.

We will be working closely with the Commission and Member States, as well as colleagues in the European Parliament, to reiterate the UK’s position and ensure that this and any future measures reflect the best interests of the UK, its consumers and its businesses. We will continue to keep the Committee updated as the proposal continues in the Council and in the European Parliament.

18 March 2013

CONSULAR PROTECTION (18821/11)

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

I am writing to update your Committee on the discussions on the proposed Council Directive on consular protection for citizens of the Union abroad. Our position has not changed from that set out in my letter of 27 March 2012 and at my appearance before the EU Sub-Committee on External Affairs on 24 January. We maintain a general reserve against the Directive.
Discussions about the usefulness of the Directive have continued to take place at the relevant EU Working Group ("COCON") - most recently on 11 January - with a number of Member States (MS) opposing both the scope and basis of the Directive, and any role for the EEAS in the provision of consular assistance.

Further substantive discussions on the Directive are unlikely to take place during the next six months. The incumbent Irish Presidency have decided to focus their agenda, in terms of consular issues, on sharing best practice and will be holding a number of seminars for MS on subjects including Forced Marriage and Death Penalty cases.

We continue to work closely with like-minded MS over our opposition to this Directive. The FCO’s Director for Consular Services, Charles Hay, spoke at the European Parliament Committee on Foreign Affairs (AFET) workshop on ‘an EEAS role in consular protection’ on 9 January to reinforce our position on the Directive, and reaffirm our view that the EEAS neither has the capacity or expertise to provide front line consular services/assistance.

I note the concerns that you set out in your letter dated 26 April 2012 and I will continue to keep the Committee updated on the discussions, in particular when they become more substantive.

30 January 2013

Letter from the Chairman to the Rt Hon David Lidington MP

Thank you for your letter of 30 January. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 6 March. We are grateful for your update and are pleased to note that you have support from other Member States in questioning the need for the draft Directive.

We retain the matter under scrutiny. We should be grateful for a further update if substantive discussion begin and in any event when the intentions of the next Presidency in relation to the proposal become clear. Subject to that, we do not expect a response to this letter.

7 March 2013

CONSUMER DISPUTES: ALTERNATIVE DISPUTE RESOLUTION (17795/11, 17815/11, 17968/11)

Letter from the Chairman to Jo Swinson MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

Thank you for your letter dated 15 September and the two Supplementary Explanatory Memoranda dated 17 September. They were all considered by the Justice, Institutions and Consumer Protection Sub-Committee. In relation to the Supplementary Explanatory Memoranda we take this opportunity to thank the Minister for the very detailed analysis of these proposals which was included in them.

In addition we are also grateful to you for appearing before the Sub-Committee to give evidence at its meeting of 24 October. As we said to your predecessor we do not feel that the scrutiny of these matters has progressed smoothly so we welcomed the opportunity to discuss these proposals with you in person.

We have decided to retain the proposed Directive and Regulation under scrutiny.

Given the difficulties that have occurred throughout the Committee’s scrutiny of these proposals we have not as yet given our view on their merits. In this regard we note your argument that ADR provision throughout the EU is patchy, and in some Member States non-existent and that 57% of consumers “are not interested in making cross-border purchases because they are worried about the difficulties if they then later need to resolve problems” (Q 4). In addition, you pointed to the positive impact the proposals were likely to have on business practices and consumer information provision (Q 5), perhaps best summed up in your argument in relation to the merits of the Online Dispute Resolution platform that “[I]f consumers are more empowered and have more information, there is a wider benefit of that to business as well; it means that you can have more cross-border trade, which is good for British business” (Q 8). On the other hand, you were also clear that the proposed Directive and Regulation are not a panacea, that they form part of a range of measures designed to help consumers (Q 4) and you qualified your answers dealing with the detail of the consumer protection schemes these proposals introduce with the caveat that much of the detail remains subject to negotiation (Q 5).
However, in light of your evidence the Committee now feels better informed as to the respective merits of these proposals and we welcome the consumer protection principles which underlie them. However, a significant issue remains to be addressed to this Committee’s satisfaction, namely costs, and we wait to see whether the right balance can be drawn between the consumer and business which according to the draft must remain “moderate”. We look forward to considering the development of this issue.

Turning to the conduct of the scrutiny of these proposals, whilst the Committee was disappointed that your predecessor took the decision to override the scrutiny reserve in May we note your three explanations for his decision (Q 1). However, we do fear both from your letter dated 15 September and from the answers you gave in relation to our questions regarding the speed with which these negotiations have been undertaken (QQ 2, 3 and 18), that there is a real danger that the ongoing negotiation of these proposals remains driven by extraneous factors such as the 20th Anniversary of the Single Market rather than the goal of achieving the most effective legislation. We are concerned that these negotiations continue to be pursued with scant regard for parliamentary scrutiny procedures including the eight week timetable governing our consideration of any potential opt-in decision should a Title V legal base become necessary. The Committee will be disappointed if the Government feel that it is necessary for whatever reason to agree these proposals in December without having either first consulted the Committee on the merits of the opt-in or without first gaining scrutiny clearance.

Furthermore in relation to the potential inclusion of a Title V legal base, we note that you are seeking to avoid any JHA content in these proposals. In the event that you are not successful in achieving this aim we would remind you of the consistent position of this Committee; namely, that we do not consider that Protocol 21 applies unless the proposal includes an express Title V legal basis. Should these proposals be agreed with a Title V legal basis we will expect the Government to respect and honour the eight week timetable within which we are afforded time to consider the merits of the opt-in.

We look forward to hearing from you in due course as these negotiations develop.

14 November 2012

Letter from Jo Swinson MP to the Chairman

I am pleased to attach the text for the ADR Directive and ODR Regulation. This text has been agreed by the European Commission, European Parliament (EP) and European Council at trilogue negotiations in December 2012, and subsequently endorsed by Member States at a Committee of Permanent Representatives (COREPER) meeting on 12 December and the EP’s Internal Market and Consumer Affairs Committee (IMCO) on 18 December. These texts may be subject to minor amendments made by jurist-linguists to ensure legal clarity, but their substance will remain unchanged prior to adoption.

The EP has now set a date of 12 March for their plenary vote on these proposals. We anticipate that the Irish Presidency will schedule a Council vote on these proposals at either an Agrifish Council meeting on 22 April or a Competitiveness Council meeting on 29 May; we await confirmation of the date. As all parties are satisfied with the outcomes of negotiations we fully expect the texts to be approved by both the EP and Council.

In a letter to the Commons European Scrutiny Committee dated 11 December 2012 I advised that the final texts were likely to contain a provision which we believed would trigger the UK’s JHA Opt-in Protocol. I can now confirm that this is the case. We believe Article 9c of the ADR Directive will impose an obligation which affects our national justice system, and therefore triggers the Opt-in Protocol. Article 9c states:

Article 9c - Effect of ADR procedures on limitation and prescription periods

1. Member States shall ensure that parties who have recourse to ADR procedures, the outcome of which is not binding, in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings in relation to that dispute as a result of the expiry of limitation or prescription periods during the ADR procedure.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription contained in international agreements to which Member States are party.

As trailed in my previous letter to the Commons Committee, we were unable to secure the addition of a Title V legal base to accompany this amendment. We put in considerable effort to secure concessions on this issue. In particular, we were able to negotiate the exclusion of one of the two
provisions the EP had tabled which concerned national justice matters. Unfortunately the UK found itself isolated in its efforts to secure a Title V legal base. The widely held view was that, although the measure touches upon an area of civil law, this does not automatically trigger the application of Article 81, which concerns judicial cooperation in civil matters. All other parties to the negotiations felt that Article 114 remained the most appropriate legal base for the entire proposals.

Article 9c will affect any UK legislation which contains provisions about limitation and prescription periods in relation to business to consumer complaints. Although we do not expect there will be much legislation which is affected, the trawl to identify any relevant provisions will be time consuming. We will undertake this exercise as part of our preparations for implementing the ADR proposals.

As the EU institutions do not share our view that the Opt-in Protocol applies, we will not be granted the three month period in which to consider whether to opt in. The usual three month window would have allowed us until 12 June in which to reach a decision on opting-in, but the timetable for these proposals means that we will have to consider this between the EP vote on 12 March and the Council vote on either 22 April or 29 May. As a result, the Government will consider whether or not to opt-in to the provisions and what steps should be taken to safeguard the UK’s position regarding the application of the opt-in; including consideration as to whether a legal challenge is appropriate.

In the meantime, you have previously requested sufficient time to scrutinise the amendments. I am submitting these texts now, in advance of the EP vote, to ensure you have the normal 8 week period to give a view on opting in. I will write to you again immediately after the EP vote to submit Explanatory Memoranda for both the ADR and ODR proposals and request scrutiny clearance prior to the Council vote.

6 February 2013

Letter from the Chairman to Jo Swinson MP

Thank you for your letter dated 6 February which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 February 2013.

We have decided to retain these proposals under scrutiny.

We note that an agreed text has emerged from the Commission, Council and European Parliament stage of the negotiations which appears on the agenda for agreement at either the Council meetings of 22 April or 29 May. In our letter to you dated 14 November we welcomed the consumer protection principles which underlie these proposals, but we also raised with you “the significant issue” of the costs to business and consumers of the dispute resolution mechanisms introduced by them, particularly the requirement that costs must remain “moderate”. In our letter we said that we looked forward to considering the development of this issue but unfortunately your letter does not address this aspect of the agreed draft. We repeat our concern and look forward to you addressing it; in particular, we are interested in the costs of translation. In your evidence last autumn you indicated that the details were still being discussed at European level. What is the outcome of these considerations?

As for the opt-in, there is nothing in your latest letter that changes this Committee’s oft-repeated position that we do not consider the merits of the opt-in unless or until a specific Title V legal basis has been included in the relevant proposal. We note that you have afforded us time to consider the opt-in but, given that you failed to convince the other 26 Member States that a Title V legal basis was necessary, we remain of the view that there is no opt-in for us to consider. We welcome the consumer protection principles embodied by these proposals.

We look forward to considering your answer to our question on costs by 14 March 2013.

28 February 2013

Letter from Jo Swinson MP to the Chairman

Thank you for your letter dated 28 February, in which you ask for further details of the costs to business and consumers of the ADR/ODR proposals. Your letter was sent shortly after I submitted an Explanatory Memorandum (EM) on 26 February, which you should have now received. This EM discusses the potential costs of the substantive amendments agreed during the final stages of negotiations, which I will expand on now in response to the points you raise in your recent letter.
COSTS TO CONSUMERS

Article 8(c) of the ADR Directive states that Member States must ensure that the provision of ADR “is free of charge or available at a nominal fee for consumers”. Recital 20 adds to this and states that “ADR procedures should preferably be free of charge for the consumer. In the event that costs are applied, the ADR procedure should be accessible, attractive and inexpensive for consumers. To that end, costs should not exceed a nominal fee.”

Most UK ADR providers do not charge a fee to consumers and the cost of ADR generally falls on the business. Research conducted for the European Commission indicates that this is the case across the EU. The ADR Directive will ensure that this position remains the same and access to ADR for consumers will be either free or at a nominal cost. However, there could be additional minor administration costs associated with submitting or exchanging information as part of the ADR process. To minimise these administration costs, Article 5(2) of the ADR Directive will ensure that consumers have the option of being able to submit complaints and any supporting documents online.

Your letter mentions that you are particularly interested in translation costs. These should be minimal for consumers who purchase goods online due to the availability of the ODR platform, which will provide a translation function for information exchanged through the platform. If a UK consumer cannot resolve a dispute with a business from another Member State with regard to an online transaction, then it would be in their interests to submit the dispute to the platform. We will be encouraging UK consumers to take advantage of the ODR platform in these circumstances.

As the objective of the ODR platform is to build consumer confidence in online cross border shopping, we can expect that an increase in online transactions will subsequently lead to an increase in the number of online disputes. The European Consumer Centre Network’s statistics for 2012 show that across the whole EU, 60% of the complaints they received about cross border purchases related to online transactions, a figure that is rising.

In the event that a UK consumer makes an offline cross-border purchase which results in an unresolved dispute, it is likely that the consumer’s current position regarding translation would remain unchanged. Some ADR providers are able to handle disputes in other languages but others are not. Customers making offline purchases would not have use of the translation function provided by the ODR platform and may therefore be faced with paying for an external translation service. We will explore the likely costs and extent to which translation is needed for offline transactions in the impact assessment we will publish as part of our consultation in preparation for implementing the legislation.

I should point out that last year’s call for evidence on the ADR/ODR proposals did not reveal significant concerns about the potential costs to consumers. Further views will be sought as part of our consultation.

COSTS TO BUSINESS

The EM dated 26 February summarises the information requirements of the ADR/ODR proposals and the cost implications for business. I would like to reiterate the Government’s pledge to work with stakeholders to minimise these costs.

In the UK, the cost of using ADR tends to fall on business. It is however generally accepted that ADR provides all parties with a lower cost alternative to going through the courts. Most ADR providers operate a system whereby they charge a levy or an annual fee to businesses that are part of their scheme, in addition to a case fee. There are various approaches taken, with some bodies charging set fees and others charging different rates depending on the size of the business or the sum of money which is involved in the complaint.

For example, the Financial Ombudsman Service charges a levy ranging from £100 per year for small businesses to over £300,000 for large banks. They then charge a standard £500 for complaints they investigate, although FOS does not charge a business for the first three cases it deals with during that financial year. The Legal Ombudsman receives an annual levy from the legal profession of around £15 million and charges a case fee of £400 for complaints it accepts for investigation, although this fee is waived if the complaint is resolved in favour of the business. IDRS, a private dispute resolution service, charges fees ranging from £50 to £500.

The Directive obliges us to ensure that ADR is available for any dispute between a consumer and a business and we would like to encourage businesses to use ADR in instances where they are unable to resolve a consumer’s complaint. It will be difficult to get businesses to commit to using ADR if the costs of doing so act as a major disincentive, and this is something we will explore as part of our consultation.
UK businesses would be in a similar position to UK consumers when it comes to the translation costs of resolving a dispute. The ODR platform could be used for disputes originating from online transactions. For any sales conducted offline, there will be the expectation that the ADR process will be conducted in the language used in the territory where the ADR provider is located, although some ADR providers, such as FOS, are able to communicate in other EU languages if requested.

Assuming the ADR/ODR legislation is adopted, the Government will launch a consultation later in the year to obtain stakeholder views on implementing the legislation in the UK. This consultation will help us identify the full costs and benefits to business and consumers of these proposals, and help us to implement them in such a way as to minimise the costs as far as possible.

14 March 2013

Letter from the Chairman to Jo Swinson MP

Thank you for your letter dated 14 March 2013 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 March 2013. We have decided to clear these proposals from scrutiny. We note your reassurance that translation costs did not arise as a concern in your previous consultation on these proposals.

We do not expect an answer to this letter.

27 March 2013

Letter from Jo Swinson MP to the Chairman

The Government has concluded that it is in the UK’s interests to opt-in to the ADR Directive. The UK wrote to the Council to confirm our decision to opt-in to this proposal prior to the Council vote which took place on 22 April.

I have today laid a written statement in Parliament communicating this decision.

The Council approved this proposal and the proposal for a Regulation on online dispute resolution at their vote. It will come into force in the coming weeks, after which the UK will have two years to implement the legislation.

I would like to take this opportunity to thank your Committee for its detailed consideration of the Commission’s proposals and related documents.

24 April 2013

COPYRIGHT AND THE MULTI-TERRITORIAL LICENSING OF RIGHTS IN MUSICAL WORKS FOR ONLINE USES IN THE INTERNAL MARKET (12669/12)

Letter from the Rt. Hon Michael Fallon MP, Minister of State for Business and Enterprise, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 15 October 2012 following the Explanatory Memorandum filed on 31 July 2012 and the Supplementary Explanatory Memorandum filed on 31 August 2012. I am responding on behalf of Lord Marland. In your letter you raise a number of questions on the proposed Directive, which are addressed below.

SUBSIDIARITY

You asked for the Government’s view on subsidiarity.

The Government’s view is that the EU proposals, as currently drafted, are not inconsistent with the rules on subsidiarity as set out in Article 5(3) of the Treaty of the European Union (TFEU). This provides that the EU “shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States... but can rather, by reason of the scale or the effects of the proposed action, be better achieved at Union level.”

Our view is that an effective cross border licensing regime for online music could be better achieved at EU level. As the system would cut across potentially all member states, central co-ordination at EU level would seem logical. This is especially so given the scale: the EU digital royalties market continues to grow at a strong pace - 23.7% between 2010 and 2011. The system would seem to need
a level playing field to be effective: collecting societies, rights holders, and users want the assurance that they would enjoy consistent standards, regardless of the member state in which the licensing takes place. The UK’s two prominent collecting societies, PRS for Music and PPL Europe derive the largest share of their international income from Europe. If standards elsewhere fall, UK collecting societies may face difficulties, including in some instances their ability to retrieve monies owed.

The Government recognises the importance of tackling inefficiencies in the sector and is taking action at national level: both through the publication of minimum standards for collecting societies; and through provisions for a backstop power in the Enterprise and Regulatory Reform Bill should collecting societies fail to self-regulate effectively.

Given the significant differences in how individual Member States address the activities of collecting societies, the UK Government considers it unlikely that Member States acting alone will be able to tackle the inefficiencies the Commission describes as “the shortcomings and failures in the activities of some collecting societies, particularly in relation to transparency, governance and the handling of remuneration collected on behalf of rightholders.” It notes that the Commission’s previous “soft law” approach, including measures adopted in the 2005 non-binding Recommendation, was limited in scope (to the cross-border licensing of rights for online music services) and has not been applied uniformly across Member States.

**GOVERNANCE AND TRANSPARENCY**

You have requested details of any measures in the Directive that the UK Government believes go further than proposed domestic legislation; also any provisions considered being unsatisfactory and which the UK Government will be seeking to change during negotiations.

The core provisions of the Directive are twofold and relate to:

— those designed to improve the functioning of collecting societies in general (irrespective of the category of right holders they represent or the category of rights they manage);

— those specific to the supply of multi-territorial licenses for the online exploitation of musical works.

The UK is not planning to take any specific action in addition to the Directive’s proposals to create a framework for facilitating the online licensing of musical works.

The Commission’s proposals to put in place a legal framework for more efficient collective management of copyright by collecting societies, is broadly in line with UK domestic legislative proposals. The Enterprise and Regulatory Reform Bill includes a number of measures designed to promote greater transparency and improved governance of collecting societies through strengthened reporting obligations and rightholders’ control over activities.

Following consultation with a cross section of stakeholders representing collecting societies, rights holders and licensees, the Government has identified certain areas about which it plans to seek clarification during the line by line discussion in the Working Groups. These include those parts of the Directive that would appear to relate to matters covered by existing domestic company law, such as requirements around the annual general meeting; the establishment of a supervisory function; specific obligations of persons managing the business; and information and transparency requirements.

**EXTENDED COLLECTIVE LICENSING (ECL)**

You ask whether the UK Government agrees with the Commission’s approach to ECL at the EU level and specifically, with the Commission’s reasons for rejecting the option as set out in its impact assessment.

The option in question was the proposal to combine ECL with the ‘country of origin principle’. This means that when a service provider wants to provide his services into another Member State without a permanent presence there, he has, in principle, to comply only with the administrative and legal requirements of his country of establishment. Member States may not restrict incoming cross-border services from a provider established in another Member State by applying their own administrative and legal regimes in addition to the requirements the service provider is already subject to in his Member State of establishment. For example, an online service considered to be “originating” from one member state, would only need to clear the rights for the territory of that member state, rather than having to clear them in each individual Member State, as is currently the case for most copyright works.
The Commission identified a number of potential problems with this approach, which may be broadly summarised as:

— practical difficulties likely to be encountered in trying to identify the country of origin for online music, for example where content offered by one provider may be stored on servers in a number of Member States;

— the high likelihood that aggregation of repertoire would not materialise (because of the risk that valuable repertoire would be ‘opted out’ from individual ECL schemes, meaning that multiple licences would still be required)

— no incentive for collecting societies to improve their efficiency

Given these issues, the UK Government agrees with the Commission’s decision to reject this option as a specific solution for multi-territory licensing. We do not believe that ECL will provide an effective framework for multi-territory licensing, and could in fact create new complexities in the system for the reasons outlined above.

While the Commission’s consideration of ECL was as an option for creating a framework for multi-territorial licensing, the UK’s ECL proposals are not designed to do this. Rather, ECL in the UK is intended to be a tool, to be used on a voluntary basis, by UK collecting societies to help simplify the licensing and clearance process. Unlike the Commission’s proposals, it is not combined with the country of origin principle. The domestic proposals are needed as part of a package of measures to modernise and simplify the overall copyright licensing system, in response to recommendations made in the Hargreaves Review which were accepted by the Government.

CONSULTATION

You ask who has been consulted on this proposal and the results of that consultation. Consultation with key stakeholders affected by the proposals in the Directive is ongoing. These include:

— representatives of the majority UK collecting societies;

— creators and rights holders (eg artists’ groups, content producers) who use collecting societies to manage their rights;

— collecting society licensees – including businesses in a range of sectors, cultural institutions, charities and community organisations.

The Intellectual Property Office (IPO) has been consulting with stakeholders since the publication of the Directive in July. It holds regular meetings with stakeholders and has invited formal briefings from them. The IPO is also using a working group (which it originally set up for licensees, users, and collecting societies to discuss the domestic proposals on codes of conduct) as a forum that these stakeholders can use to raise concerns and/or points of detail about the Directive. Where necessary, points raised in this working group are being taken forward by IPO officials in the discussions in the working groups in Brussels.

I hope that you will find this information helpful

5 November 2012

Letter from the Chairman to the Rt. Hon Michael Fallon MP

Thank you for your letter of 5 November 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 28 November 2012. We decided to retain this matter under scrutiny.

In the light of your explanation of the Government’s view we do not have any subsidiarity concerns in relation to this proposal.

We accept your assessment that extended collective licensing combined with the country of origin principle was rightly rejected by the Commission as a solution to the problems of multi-territorial licensing of on-line music.

We should be grateful, in due course, for an update on the progress of negotiations, particularly in respect of Article 12 and the items which you have identified as needing clarification.

29 November 2012
Letter from the Chairman to the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your Explanatory Memorandum on this Communication. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 21 November.

When we considered the Commission’s Communication on fighting corruption last year, we thought that EU participation in GRECO would be a helpful step in furtherance of the EU’s anti-corruption process. We remain of that view, subject to the points made below. Participation should strengthen the EU’s anti-corruption policies and provide further information on the readiness for EU membership of aspirant countries. We agree with you that no issues concerning subsidiarity arise.

The proposed first stage of “full participant status” would not involve GRECO monitoring the EU Institutions, though it would bring Commission involvement (on behalf of the EU) in the monitoring of states, including the UK. Since monitoring and evaluation are the key activities enabling GRECO to maintain peer pressure, we do not understand why the EU would participate in GRECO but exclude itself from such monitoring. We therefore question why the Commission considers that a two-stage process for participation is necessary, and we hope you will consider pressing the case for full membership from the outset.

There are necessarily issues specific to EU participation in GRECO which arise from the fact that the EU is not a state and has limited competence. We note that the Commission acknowledges that and the annex to its Communication sets out principles which address these issues. We question one of those principles - that the EU’s representative should participate in other Council of Europe bodies - but, subject to that, we stress the importance of ensuring that those principles are fulfilled in any agreement for EU participation.

We believe your concern at the Commission’s choice of legal base for its decision to seek participation in GRECO (and, therefore, of the procedure under the EU Treaties) is well-founded. The Commission says it would act under Article 220 TFEU which concerns forms of cooperation between the EU and certain international organisations including the Council of Europe, but the status proposed goes further than cooperation with GRECO and amounts to a form of membership. We endorse your view that the Commission should follow the procedures prescribed by Article 218 TFEU and not begin discussions with GRECO on its own initiative. We note that the Commission appears to have changed its approach from that in its Report on the modalities of EU participation in GRECO, made in June 2011, when it concluded that it would seek the Council’s mandate to open negotiations with GRECO.

Do you consider that you would have the support of other Member States for pressing the Commission to bring itself into compliance with the Treaties in this respect?

We look forward to hearing from you by 8 December and, in the meantime, keep the Communication under scrutiny.

22 November 2012

Letter from the Rt Hon Chris Grayling MP to the Chairman

Thank you for your letter dated 22 November concerning the Commission Communication on the Participation of the EU in the Council of Europe’s Group against corruption (GRECO).

I welcome your view that our concern regarding the legal base for the Commission’s decision to seek participation in GRECO is well-founded.

You ask in your letter if I consider that other Member States would support pressing the Commission to bring itself into compliance with the Treaties in this respect. In recent meetings in both Strasbourg and Brussels, a number of other Member States have expressed similar views to the UK on the legal base and this matter is scheduled to be discussed in further meetings. The UK is actively expressing the concerns you allude to in your letter and encouraging other Member States to do the same.

13 December 2012
Letter from the Chairman to Rt Hon Chris Grayling MP

Thank you for your letter of 13 December. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 16 January. We are encouraged to note that you have support from other Member States on the issue of the legal basis for the Commission’s proposal. We retain the matter under scrutiny and ask that you keep us informed of the progress of discussions.

My previous letter made some points on the substance of the Commission’s proposal. We should be interested in your comments on those points. We look forward to hearing from you by 1 February.

17 January 2013

Letter from the Rt Hon Chris Grayling MP to the Chairman

Thank you for your letter dated 17 January concerning the Commission Communication on the Participation of the EU in the Council of Europe’s Group against corruption (GRECO).

You have asked for my comments on the points you raised in your previous letter and for information on the progress of discussions.

Firstly, I wanted to update you on a General Matters and Evaluation committee (GENVAL) meeting that took place on 16 January, at which the Commission indicated that it now proposes for the EU to have full status in GRECO, operating on the basis of Article 220. The Presidency expressed the view that the EU should accede to GRECO but acknowledged that the logistics for this happening are far from clear. As such, the Commission is reflecting on its position, including the legal issue. We await clarity on the new proposal and information as to the next steps they propose.

In your previous letter, you questioned the Commission’s view that a two-stage process for participation is necessary. I agree that the intermediary phase on this appears uncalled for and UK officials have made the same point in Brussels and Strasbourg, including at the most recent GRECO meeting in December. Evidently the Commission, given its updated proposal, has taken into account this view, which is shared by other Member States.

You also, while questioning the Commission’s principle that an EU representative should participate in other Council of Europe bodies, stressed the importance of ensuring that the principles outlined by the Commission are fulfilled in any agreement for EU participation. I also welcome, for the most part, these principles and in particular I value the explicit references to the need for special regard to the division of competences between the EU and its Member States and the need to avoid affecting the rights and obligations of the Member States under GRECO. Concerning the reference to the EU representative seeking to obtain the right to participate in other Council of Europe bodies (to the extent that their activities are linked to the purpose of GRECO), as discussions continue, we would certainly ask for clarity on this principle and seek appropriate limitations to it.

With regard to the question of whether an Article 218 legal base will be appropriate, this will depend on whether an “act having legal effects” or an “agreement” will be necessary. This question will arise (1) when determining the EU’s position to be taken at the Committee of Ministers in the Council of Europe when the issue of EU participation is discussed there, and (2) in relation to any decision by the EU on whether to accept an invitation from the Committee of Ministers to become a full participant. The answer to this will ultimately depend on the nature of the EU’s proposed participation and what might finally be agreed between the EU and the Council of Europe. But these stages are currently further down the line. Whichever legal base is ultimately used, what must be decided at present is how to authorise the opening of discussions with GRECO in circumstances where it is not immediately evident that any legal agreement will necessarily result. It is clear there must be prior Council authorisation for the Commission to commence negotiations with GRECO given policy decisions are for the Council (Article 16 TEU). Our view is that the most appropriate way to do this at this stage would be by way of Council Conclusions, assuming the Council were to be of the view that EU participation in GRECO was appropriate.

13 February 2013

Letter from the Chairman to Rt Hon Chris Grayling MP

Thank you for your letter of 13 February. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 6 March.

We note from your comments on the substance of the matter that the positions of the Committee and the Government are close. On the immediate question of how authorisation should be given for
the opening of discussions with GRECO, we agree that decision-making should rest with the Council and the formal Conclusions would be appropriate.

We note that the Commission is expected to make a fresh proposal. We therefore retain the matter under scrutiny and ask that you let us know when the Commission brings forward that proposal and of any other developments in this matter. Subject to that, we do not expect an immediate reply to this letter.

7 March 2013

COURT OF JUSTICE-EVIDENCE SESSION

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

I would like to clarify certain points which were made in the course of the evidence session on 6 March for the benefit of the Committee.

As a preliminary point, in my response to Question 2 from Baroness O’Loan concerning the current workload of the Court of Justice, I would like to make it clear that I was commenting on the workload of the CJEU in general, constituting both the Court of Justice and the General Court. When I referred to the evidence provided to the Committee by Judge Forwood, I was referring to the latter in particular.

I refer to my answers to Questions 11 and 14. An increase in the number of judges of the General Court would not require a change to Article 19(2) TEU, which provides that the General Court should include at least one judge per Member State, but would require an amendment to Article 48 of the Statute of the Court of Justice (attached as a Protocol No. 3 to the Treaties).

Article 281 TFEU provides that this can be done by use of the ordinary legislative procedure and thus qualified majority rather than unanimity. In reality, however, before a proposal can be brought forward there needs to be political consensus amongst the Member States as to the method of selection of the judges since Article 254 TFEU provides that members of the General Court are appointed by common accord of the governments of Member States. There is, as yet, no political consensus in the Council on this.

In response to Question 11, I should make it clear that the Treaty itself does not require that individuals nominated as additional judges for the General Court must have served in high judicial office. Specifically, article 254 TFEU requires that, ‘the members of the General Court shall be chosen from persons who possess the ability required for appointment for high judicial office’.

In my response to question 15, I should clarify that in respect of any proposal for greater specialisation within the General Court’s chambers, the Court is at liberty to organise itself as it considers appropriate. The option of having specialist chambers does not need a prior legislative proposal. By contrast, as I explained in my evidence, the establishment of a separate specialist tribunal would require a legislative proposal by the Commission or the Court after consulting one or other and this is set out in Article 257 TFEU.

Finally, please note that Alistair Robinson who appeared with me is a senior lawyer within the EU Litigation Team of the Cabinet Office European Law Division rather than the head of that team.

Thank you again for the opportunity to give evidence to the Committee. I look forward to hearing the outcome of the Committee’s deliberations in due course.

15 March 2013

CREATIVE EUROPE PROGRAMME (17575/11, 17186/11)

Letter from Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Culture, Media and Sport, to the Chairman

I am writing to update you on developments on the Commission’s proposal for a new Creative Europe programme, ahead of the Education, Youth, Culture and Sport (EYCS) Council on 26-27th November.
You will recall that we were not able to support the partial general approach proposed at the EYCS Council in May, because it left selection decisions – i.e. decisions about which projects should receive EU funding under the programme – outside the formal comitology arrangements. However, as the Creative Europe proposal is subject to Qualified Majority Voting, the partial general approach was agreed by the Council.

Discussions in the Council working group during the Cypriot Presidency have focussed on the text relating to the proposed new loan guarantee facility. The Presidency is now proposing a revised partial general approach, including this text, to be agreed at the forthcoming EYCS Council. This will leave only the programme budget outside the partial general approach.

We will not be able to support this revised partial general approach. The proposed text still leaves grant award decisions outside the comitology arrangements; and at this stage we are not able to support the loan guarantee facility. We will only be able to consider supporting this once the negotiations on the Multiannual Financial Framework have been completed and the programme budget for Creative Europe has been agreed, so that we can consider the funding proposed for the guarantee facility in the wider context of the EU’s financial settlement for the period and, particularly, in relation to the amount of grant funding envisaged in Creative Europe.

Most other Member States support the loan guarantee facility, and I expect that the revised partial general approach will nevertheless be agreed by the Council.

After Council, the Creative Europe proposal will be considered by the European Parliament, where the Culture and Education Committee is expected to debate and vote on it on 18th December.

I will keep you informed of developments in due course.

22 November 2012

CROSS BORDER DEBT RECOVERY (13260/11)

Letter from Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

Kenneth Clarke wrote to you on 26 January enclosing a copy of the Government’s response to its consultation on this proposal. I thought you might find it helpful to have a report of progress over the last year.

Negotiations have moved slowly. The Council’s Civil Law Committee did not finish its first consideration of the text until the end of September. The Cypriot Presidency has so far revised about two thirds of the text. The European Parliament has only had an initial consideration of the proposal.

I set out below the main changes that have been made in the parts of the text that the Presidency has revised.

SCOPE

CROSS-BORDER RESTRICTION

The Cypriot Presidency has recast the definition of what constitutes a cross-border case in Article 3. Under the revised text a cross-border case will be one in which at least one of the bank accounts to be preserved is located in a Member State other than (a) the court hearing the substantive dispute to which an application for a Preservation Order has been made; (b) the Member State in which the creditor has obtained a judgment or other enforceable decision which has been used as the basis for an Order; or (c) the State in which the creditor is domiciled. The moment for determining whether there is a cross-border case will be the date on which the application for an Order is received by the court with jurisdiction. The Civil Law Committee is still considering all the implications of this revised definition but I believe this is a significant improvement over the Commission’s text.

INCLUSION OF FINANCIAL INSTRUMENTS

There has been a lot of discussion about whether/how financial instruments should be included within scope. The UK has joined with other Member States that have raised many concerns about how easy it will be for a Preservation Order to freeze a financial instrument given the fluctuating value and the not always straightforward ownership arrangements. Others have pointed out the risk that such
Orders will fall disproportionately on those less financially astute if financial instruments are excluded altogether. The Presidency has narrowed the scope by excluding over-the-counter derivatives but all involved in the negotiations recognise that more consideration needs to be given to this issue to strike the right balance between the effectiveness of these Orders and their practical application.

IMPACT ON COMPANY RESTRUCTURING AND RESCUE

You will be aware from the response to our consultation paper that a number of respondents feared that the introduction of these Orders could be of particular concern to businesses in the process of restructuring or rescue where the freezing of a bank account could undermine the rescue and make insolvency more likely. Some wanted to ensure that companies in the process of restructuring were excluded from the scope of the proposal. We are continuing to explore whether such a restriction is possible but it has become clearer during further consultation with those respondents that for many if such a restriction in scope cannot be achieved, their concerns would be significantly alleviated by higher thresholds being applied to the granting of such Orders, a matter I shall come to below.

IMPROVED PROTECTION FOR DEBTORS

The lack of adequate protection for debtors in the procedure was the most significant concern raised in our consultation. I am pleased to report progress on this point in the following areas.

THRESHOLD TESTS FOR OBTAINING AN ORDER

In Article 7 the text has been clarified to explain that for a pre-judgment Order a court must be satisfied that the creditor is likely to succeed on the substance of his claim against the debtor. The majority of Member States have agreed the principle that the court must also be satisfied that in such circumstances an Order should be granted only where the creditor’s claim is likely to be impeded or made subsequently more difficult as a result of a real risk of dissipation of assets. In the Commission’s text this was only one of the issues that might be considered. The final wording has yet to be agreed but I believe we have significant movement in the right direction. We would also like to see this risk of dissipation extended to circumstances where an Order is requested post-judgment. While the UK has some support for this position not all Member States are yet convinced of the need for this.

We have also called for a requirement that the creditor make full and frank disclosure in his/her application form. This has also been accepted in both Articles 8 and 15 with the inclusion of a declaration that the information provided by the creditor is true and correct to the best of his/her knowledge and that any deliberate false statements might lead to sanctions. More work is needed on what these sanctions might be and how they might work.

SECURITY

The Commission’s text in Article 12 said that a court “may” require a security deposit or an equivalent assurance by the claimant to ensure compensation for any damage suffered by the defendant. The Presidency has proposed that in all but exceptional circumstances there should be a presumption of security. They have also proposed a new provision which spells out the liability of the creditor. There are mixed views about both of these Articles but I am encouraged by the Presidency’s suggestions.

COMPETENCE FOR ISSUING ORDERS

There has been majority support within the Civil Law Committee, including from the UK, for the ability to issue Orders to be limited only to courts. However, the ability for another authority to be able to issue an Order where the claimant has a judgment, court settlement or authentic instrument which is enforceable in the Member State of enforcement remains in the text in Article 14, at least for now. We shall monitor this carefully together with our preference for the test of the risk of dissipation to be extended to such applications.

THE USE OF AN EX PARTE PROCEDURE

Most Member States accept that the Order should be issued without notice to the debtor although exactly how that is done has yet to be resolved. We have argued that while there should be a presumption of such an ex parte procedure, in appropriate circumstances a court should be able to
decide whether to notify the debtor. We have also raised the possibility of a later opportunity to hear the debtor after an Order is made ex parte.

**CHALLENGES TO AN ORDER**

We have called for the ability of debtors to be able to challenge an Order in a local court to be extended beyond the limited categories of debtor in Article 36. We have received some support for this suggestion but this is another area where more discussion is needed.

More helpfully the Presidency has suggested that where an Order has been obtained prior to the initiation of proceedings if those proceedings are not started within the set period an Order will automatically be revoked without the need for an application by the debtor. Where a judgment has been obtained a creditor will be required to initiate enforcement proceedings within a given period to ensure that the Order is not prolonged unnecessarily.

**PROVISION OF INFORMATION ABOUT BANK ACCOUNTS**

Many Member States have been concerned about the burdens that would be placed on both States and banks by the requirements of Article 17. The Cypriot Presidency has suggested that Member States could use “other appropriate and reasonable means” to provide information on bank accounts. More work is needed to clarify what this will mean for Member States. We are hoping that we might be able to use our system of obtaining the required information from the debtor with appropriate sanctions if the debtor uses advance knowledge of the possibility of the Order to then try and dissipate his/her assets.

The danger that this provision might encourage fishing expeditions has also been acknowledged. The Presidency has suggested that a creditor should have to specify the Member State in which the bank account is located. During the negotiations there was general agreement that creditors should also provide reasons as to why they believe an account is in a particular Member State.

**AMOUNTS EXEMPT FROM AN ORDER**

The Presidency has removed from Article 32 references to specific items which should be exempt from an Order. Instead they have used more general wording to state that “where the law of the Member State of enforcement provides that certain amounts are exempt from seizure, those amounts shall be exempt from preservation”. That will allow legal costs to be included, unlike in the Commission’s draft. The text no longer requires Member States to inform the Commission of the relevant rules for exemption which makes it easier for legal systems like ours where courts make decisions on a case by case basis but we still need to clarify exactly how our system will comply with this revised provision.

**MECHANISM FOR NOTIFICATION OF ORDERS**

The Presidency has streamlined the notification provisions for orders to allow greater flexibility in the way that courts and other authorities forward the orders between themselves and the ways they communicate with banks. This should speed up the process of implementing the Orders. This means that formal service of documents should be required only when the bank and debtor are notified of the Order. The text now clarifies the rules on service that should apply where the debtor is domiciled outside of the EU.

11 December 2012

**Letter from the Chairman to Rt Hon Chris Grayling MP**

Thank you for your letter of 11 December. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 19 December. We decided to hold the matter under scrutiny.

We were grateful for the update on the progress of negotiations and agree with the direction that the matters mentioned in your letter are taking.

We should be grateful for a further update when there have been any further significant developments. As previously indicated we would also be interested in developments in the following areas in addition to those mentioned in your letter:
The application of the proposal to third country defendants.

A residual discretion for a court not to issue an EAPO, or to issue one for a lesser sum, if it would otherwise be oppressive, as we suggested in our letter of 15 September, or would otherwise cause significant harm, as suggested in your letter.

The level of the fees to be charged by banks and Member States’ authorities.

Setting explicit objectives for delegated legislation.

Clarification of the application of an EAPO to debt with a UK cross-border element in the fields of succession and matrimonial property.

19 December 2012

DRAFT AGREEMENT ON A UNIFIED PATENT COURT AND DRAFT STATUTE
(9224/11, 9226/11, 11533/11)

Letter from Lord Marland of Odstock, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills to the Chairman

Although Lord Roper’s letter of 14 July 2011 cleared these documents [9224/11, 9226/11] from scrutiny, you have seen updates in March from my predecessor and more recently I wrote to you in October and I copied to you a letter I sent to the Chairman of the European Scrutiny Committee on 1 November. I would like to take this opportunity to update you further on recent developments following discussions in COREPER and in the European Parliament’s JURI Committee.

Proposals implementing the suggestions from the June European Council were discussed at COREPER on 19 November. The Regulations are expected be on the agenda for the Council of Ministers meeting in December. The European Parliament’s JURI committee also considered the issue on the 19 November. We expect the EP to vote on the Regulations at a plenary session before the end of the year.

The Regulation on applicable translation arrangements includes the two small amendments which were agreed at the December 2011 trialogy. There are also a number of clarifications to the text following legal-linguist scrutiny but these are not substantive.

Changes to the draft regulation establishing a unitary patent include:

— A new Article 5 has been introduced to reinforce the unitary character of the unitary patent. This was proposed by the Presidency to address concerns by some MEPs about the legal basis of the regulation without Articles 6 to 8. The compromise text provides an opportunity for the EP to agree the Regulation. The UK Government has carefully considered the wording and is content that it does not significantly increase the risk of reference to European Court of Justice on matters of substantive patent law.

— The infringement provisions previously at Articles 6 to 8 have been deleted. Equivalent provisions will appear in the UPC agreement. This change implements the suggestions from the June European Council. It will reduce uncertainty and delay for UK businesses using the unitary patent which might have occurred from routine references to the ECJ.

— There are a number of clarifications following legal-linguist scrutiny. These are not substantive changes.

— The changes which were agreed at the December 2011 trialogy have been incorporated.

The draft Court Agreement has also been amended to include infringement provisions for Unitary Patents. The infringement provisions in articles 14f to 14i of the agreement will apply to both EPO bundle patents and unitary patents. I will be writing to you separately with an update on the court agreement and the timetable for finalising this.

22 November 2012
Letter from Lord Marland of Odstock to the Chairman

In my letter of 22 November I offered to update the Committee on the Unified Patent Court (UPC) Agreement and to set out the timetable for finalising this [11533/11].

The deal reached on 29 June at the European Council, on the Unitary Patent and the Unified Patent Court (UPC) helped secure a number of important changes which UK stakeholders had been calling for. In particular, we successfully secured the removal of articles 6 to 8 from the regulation. This was a key concern raised by stakeholders earlier this year. The provisions on infringement are now included in the Court Agreement which will not be subject to ECJ jurisdiction.

Council working document 16222/12 dated 14 November contains the latest public consolidated text. This includes changes necessary to implement the June deal. It also includes the amendments proposed during the Polish Presidency and recent legal linguistic improvements.

The key changes to the original text are as follows:

— Article 5(1a) now states that the seat of the central division will be Paris with specialised sections set up in London and Munich. The Agreement has also been amended to include infringement provisions for unitary patents (principally in articles 14f, 14g and 14h) – previously the Agreement only included infringement provisions for European (bundle) patents. These changes implement the 29 June European Council agreement. The Committee will be pleased to see that the enhanced bifurcation measures proposed by Germany in June are not included in the final text

— Another proposal under the Polish Presidency in December 2011, was the extension of the transition period during which patent owners may continue to use national courts for European bundle patents. This has been implemented in Article 58. The transition period has been extended from five to seven years with the possibility of the period being extended by another seven years

— Also, the revision clause (Article 58d), has been changed to broaden the scope of the review

— In addition, the Presidency have further clarified the position regarding Supplementary Protection Certificates (SPCs). In particular, Article 15 has been amended to make it clear that the UPC will have competence to hear disputes relating to infringement and revocation of SPCs. The transitional arrangements have also been amended to make it clear that applicant’s may opt-out SPCs granted on a European bundle patent

The Agreement is expected to be signed by participating States on 18 February 2013. In signing, the UK will be indicating its support for the text. The Government will then undertake work to update any domestic legislation required to implement obligations under the Agreement. This process will be subject to the normal Parliamentary scrutiny procedures for implementing international agreements.

Further work will also be necessary to finalise the rules of procedure, to establish local and or regional divisions and to set the fees. The Government will ensure that we continue to influence the operational details related to the Agreement and that the views of UK stakeholders are considered in the wider discussions.

There are safeguards within the process as the Agreement cannot enter into force in the participating States until the UK ratification process is complete. It will also need to be ratified by 12 other States including France and Germany before it can enter into force.

I hope this information is helpful and that it will enable you to finalise consideration of this file before the signing ceremony.

6 December 2012
Letter from the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

Thank you for your letter to my predecessor of 12 July. I am writing to update you on progress on this Directive. As you know, a General Approach was agreed on the Directive at the Justice and Home Affairs (JHA) Council on 8 June, and the Directive is now subject to trilogue negotiations with the European Parliament and the Commission.

On 10 July the Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament (EP) held an orientation vote on its proposed amendments to the Directive. 81 amendments were adopted, forming the mandate for the Committee’s Rapporteur in trilogue negotiations. The final set of proposed amendments is attached to this letter for reference. In addition to these amendments, the Committee adopted a statement calling on the Commission to adopt a proposal on legal aid at the earliest opportunity.

Trilogue negotiations on the draft Directive began in September. The Cypriot Presidency of the Council held three trilogue meetings and updated Ministers on the progress of negotiations at the Justice and Home Affairs Council on 7 December. We expect negotiations to resume in the New Year.

The EP has supported the Commission’s original proposal in a number of areas. For example, the EP wants the right to access to a lawyer to include a right to meet a lawyer (AM 47). The majority of Member States could accept this amendment. We support the Council text which provides a right to communicate with a lawyer because we want to ensure that the instrument would not prevent the provision of publicly-funded legal advice by telephone in some cases. I note that this was one of your Committee’s key concerns with the draft Directive.

Notably, the EP, like the Commission, would like to restrict a Member State’s ability to derogate from a suspect’s right to access a lawyer and have a third party informed of a deprivation of his liberty solely to the situation where that is necessary to protect the life, liberty or physical integrity of a person (AM 57). In your Committee’s letter to the Department of 8 December 2011, you noted that such a lack of flexibility to allow Member State authorities to deny access to a lawyer in exceptional circumstances was one of the key problems that witnesses had raised with you during the course of the Committee’s short inquiry into the Commission’s proposal. The Committee agreed that measures such as the Police and Criminal Evidence Act 1984 (“PACE”), strike the right balance between the rights of the accused and the interests of justice.

As you are aware, the European Court Human Rights (ECtHR) does not, in interpreting the Convention, seek generally to prescribe strict criteria for restricting the right to access a lawyer. Instead, in considering whether a particular restriction is compliant with the ECHR it will consider whether in that particular case the reason for the restriction was justified in the circumstances. In the leading case of Salduz, the ECtHR held that access to a lawyer may be restricted in the light of “compelling reasons”, without seeking to define what exactly they do or do not include. Therefore, in our view any attempt to define what the “compelling reasons” are would go beyond the standards set by the ECtHR. Member States are seeking to reach a compromise with the EP and the Commission on this point, by specifying a closed list of criteria when derogations could also be permitted, including when there is an urgent need to prevent a substantial jeopardy to criminal proceedings. This derogation would, however, be available in a narrower range of circumstances than provided domestically. For example, PACE, allows for questioning to commence without the presence of a lawyer in a wider range of circumstances, including for example where the delay in waiting for a lawyer could hinder the recovery of property obtained in consequence of the commission of an offence.

The EP has also supported the Commission’s proposal that derogations to all of the rights in the Directive should only be authorised by a judicial authority (AM 60); this is in contrast to the Council text, which provides for derogations to be authorised by a judicial or other competent authority. We will also continue to support the Council’s text in this regard, which would permit these operational decisions to continue to be authorised in the UK by senior law enforcement authorities, and Ministers, rather than the judiciary.

Article 4 of the Council text (Article 7 in the Commission’s proposal), seeks to guarantee the confidentiality of communications between a suspect or accused person and his lawyer. The EP very strongly supports the provision in the Commission’s proposal and has stated that confidentiality “is absolute and shall not be subject to any exception” (AM 55). We strongly support the Council text in
this scope which recognises that derogations from this important principle should be permitted in some very limited exceptional circumstances and should be without prejudice to prison procedures to screen correspondence for illicit enclosures.

In terms of the scope of the instrument, the EP has accepted that minor examples of criminal behaviour such as speeding, which may be dealt with outside of criminal court proceedings, should be excluded from the Directive, as set out in Article 2(3) of the Council’s General Approach text. However, the EP did not suggest an amendment which would carve out similar types of offending to accommodate those systems which do not dispose of them out of court, as set out in Article 2(4) of the Council text. The EP is keen to ensure that the Directive applies when a person is deprived of his liberty. We support this objective in principle but will want to ensure that examples of minor offending which are dealt with in prisons by prison Governors or in relation to offences committed in a military context and which are dealt with in the first instance by a commanding officer remain outside the scope of the Directive, unless or until they come before a criminal court.

The EP has also supported some provisions in the Commission’s original proposal which had been deleted altogether during Council negotiations. For example, the EP would like to retain the provision in Article 11 of the Commission’s proposal which would give a person arrested pursuant to a European Arrest Warrant (‘EAW’) the right of access to a lawyer in the issuing Member State. This is a new concept not currently provided for by the Framework Decision on the EAW. We remain to be convinced that the right to legal representation in the issuing state is necessary until the person has actually been returned for trial or to serve their sentence, as there are already means available to obtain further information from the issuing State. We are concerned that this provision could risk creating delays in the execution of EAWs.

The EP supports the provision at Article 13(3) of the Commission’s proposal which set out that Member States shall ensure that statements made by a suspect or accused person or evidence obtained in breach of his rights to a lawyer, or in cases where a derogation has been authorised, may only be used as evidence against him if the use of such evidence would not prejudice the rights of the defence. I note that your Committee takes the view that EU rules should not be introduced regarding the admissibility of evidence in criminal proceedings. EP amendment number 80 stipulates that it should be without prejudice to national rules on the admissibility of evidence. We could accept a provision that required Member States to consider whether statements made in the breach of a suspect or accused person’s right to access to a lawyer might be used in evidence against him, provided that it did not fetter the discretion of the judiciary to make such decisions based on the overall fairness of the proceedings.

In some other respects the EP’s amendments go beyond the Commission’s original proposal. For example, at Article 5(3) of the Commission’s proposal concerning the right to communicate upon arrest, the EP has proposed that the rights applicable to children under the Directive be extended to other vulnerable persons (AM 53). We will resist the inclusion of detailed rules relating to the rights of vulnerable persons because this would stray into the area of a future instrument expected as Measure E on the procedural rights Roadmap. The EP has also suggested adding text to Article 8 of the Commission’s proposal (Article 9 in the Council’s General Approach text) providing that a child should not be able waive the right of access to a lawyer (AM 63). We will continue to ensure that this article is compatible with UK practice and is clear that it would not require a suspect or accused person to accept legal representation if they do not wish to do so.

The EP is keen to ensure that the rights specifically provided to children under the Directive, apply to persons under the age of 18 (AM 38). In England and Wales, section 37(15) of PACE defines “arrested juvenile” for its purposes and accompanying Codes of Practice as “a person arrested with or without a warrant who appears to be under the age of 17”. We do not think that it is necessary for all 17 year olds to be given the broad range of rights that are afforded to juveniles under PACE to those under 17. In addition, the cost of providing appropriate adults for all 17 year olds would be prohibitive.

The EP is also arguing strongly that in addition to the right for a suspect to have a third person informed of his deprivation of liberty, Article 5 should also provide a suspect with the right to communicate and meet in private with a third person, such as a relative or employer (AM 52). In England and Wales, PACE codes of practice do enable a suspect to communicate with a third person, but this is at the discretion of the custody officer. We note that the purpose of Article 5 is to ensure that suspects or accused persons are not held incommunicado: as a matter of minimum standards we are not convinced that providing for a right to meet is an appropriate addition to this Directive. We will be concerned to ensure that any relevant provision is sufficiently flexible to ensure that Member States are able to protect against interference with criminal investigations and proceedings, and harm to others, especially victims.
Finally, I note that in your letter of 12 July, you expressed disappointment that the State’s obligation under the Directive to provide a lawyer to those who cannot afford one had been further narrowed. The EP and the Council have called on the Commission to publish a Directive on legal aid at the earliest opportunity. We think that this will be important, both in terms of ensuring that the right to access a lawyer is practical and effective and for clarifying the cost implications for Member States.

I hope that this update is useful and I will continue to keep you informed as negotiations progress.

20 December 2012

Letter from the Chairman to Rt Hon Chris Grayling MP

Thank you for your letter dated 20 December 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 23 January 2012.

We have decided to retain the proposal under scrutiny.

The Committee is very grateful to you for your detailed analysis of the text that has emerged from the European Parliament’s LIBE Committee. We note that if these amendments were adopted as suggested it is clear from your analysis that the LIBE Committee’s proposed amendments would return the text to a state which would be incompatible with our key concerns which we expressed to you in our letter dated 8 December 2011 following our evidence sessions with the Lord Advocate, the Association of Chief Police Officers and the Law Society in November 2011. We would ask that you keep the Committee informed of these negotiations as they develop.

As for the detail of your letter, there is one point you make which appears fundamental to the operation of this proposal and the Government’s approach to it which we would ask you to clarify; it regards the proposal’s scope and the ongoing difficulties of defining the boundary between minor offences that are covered by the proposal and those that are not. In the ninth paragraph of your letter, (see pages 2 – 3) you address this difficulty and the European Parliament’s suggested amendments. You state that the “EP is keen to ensure that the Directive applies when a person is deprived of his liberty” which is an objective with which your letter says the Government agree.

However, the General Approach text deals with this issue from a different angle and excludes from the proposal’s scope those minor offences to which “only a fine can be imposed ... and the deprivation of liberty cannot ... be imposed as such a sanction”. In this sense, the General Approach texts deals with the scope of the proposal from the end of the criminal process i.e. the sanction, so an individual could be arrested and detained for a minor offence to which a prison sentence would never apply and would fall outside the scope of the proposal and not enjoy the right of access to a lawyer.

On the other hand, the EP’s proposed amendment would widen the proposal’s scope and mean that the right to access a lawyer would ‘bite’ at the point of arrest. Based on the content of your letter this appears to be a fundamental difference of approach which you say you support. We ask that you clarify your stance; in particular, as in previous correspondence you have expressed your support for the compromise addressing the proposal’s scope engendered in the General Approach text (Article 2(4)).

We look forward in due course to hearing from you on the progress of the negotiations with the European Parliament.

24 January 2013

Letter from the Rt Hon Chris Grayling MP to the Chairman

Thank you for your letter dated 24 January in which you asked for clarification about the proposal’s scope and the difficulties of defining the boundary between minor offences that are covered by the proposal and those that are not.

You note that the General Approach text at Article 2(4) excludes from the proposal’s scope, those minor offences to which “only a fine can be imposed as the main sanction and deprivation of liberty cannot or shall not be imposed as such a sanction.”. In order to attempt to reach a compromise with the European Parliament, it has been proposed that text be added to the minor offences carve out which would require the Directive to apply in all cases where the suspect or accused person is deprived of liberty. You note that this is a fundamental change of approach regarding when the proposal’s scope would bite, because the General Approach text deals with the scope of the proposal from the end of the criminal process i.e. the sanction that could be imposed. You note that the new proposal would widen the scope and mean that the right to access a lawyer would bite at the point of arrest.
The intention of the new text is to deal with the issue from both angles. The proposal would clarify that the Directive should apply when a person is deprived of liberty and that the proposal should also apply where deprivation of liberty can be imposed as a sanction. We do not consider that the two concepts are incompatible and can support the amendment in principle.

As you will recall, Article 2(3) of the General Approach text exempts from the scope minor offences where the law of a Member States provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters. The Directive will apply if the imposition of the sanction is appealed to such a court. This provision is intended to exempt minor offences, such as certain speeding violations, which can only be punished by a fine rather than imprisonment, unless the case comes before a criminal court. In most Member States these types of cases are dealt with by way of an out of court disposal and are therefore exempted from the scope by Article 2(3). Article 2(4) of the General Approach was added to accommodate those Member States for which the use of out of court disposals to deal with minor offences is not possible in their criminal justice systems. Instead, this provision sought to define those offences by the sanction that they would attract: i.e. a fine. The Directive is now clear; however, that despite the exemptions above it will apply in all cases where the suspect or accused person is deprived of liberty.

OTHER MATTERS

Since I last wrote to you there have been two further official-level meetings of the Council and further trilogue meetings. It is of particular concern to the Government that there continues to be disagreement between the institutions and within the Council about when it should be possible temporarily to postpone access to a lawyer and whether it should be possible to derogate from the principle of lawyer-client confidentiality.

The Irish Presidency would like to reach a First Reading Deal by June. I note that you retain the proposal under scrutiny. In your letter of 24 May 2012, you stated that you intend to keep the proposal under scrutiny ahead of any review of the Government’s decision not to opt in to this proposal once it has been adopted. Whilst, I will of course provide you a further update, I assume that you would not consider the adoption of the Directive by the Member States who are participating in it, to be a scrutiny override by the UK Government.

27 March 2013

Letter from the Chairman to the Rt Hon Chris Grayling MP

Thank you for your letter dated 27 March 2013. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting on 24 April 2013.

We have decided to retain the proposal under scrutiny.

You will be aware that this Committee has taken a keen interest in this proposal since it was deposited in Parliament in June 2011. In November of the same year, we held evidence sessions on its merits with the Lord Advocate Frank Mulholland QC, the Association of Chief Police Officers and the Law Society. Our Report, which considered the European Union’s Policy on Criminal Procedure (30th Report of Session 2010-12, HL paper 288) also included a case study based on the proposed Directive.

We are grateful to you for the clarification and explanation of your comments regarding the operation of the proposal’s scope in relation to minor offences and the deprivation of liberty. We note your reassurance that despite the exemptions highlighted by your letter, it is now “clear” that the Directive will apply on the deprivation of liberty. However, we remain concerned that the precise boundary of the proposal’s scope continues to be difficult to draw. During the course of our scrutiny we have sought to clarify this issue by drawing on the example of drink driving offences and the law of the breathalyser and, once again, in light of your recent letter we would ask you to clarify the Directive’s scope with regard to this particular issue.

As for the “other matters” you raise, we note your concern that the participating Member States continue to disagree about the operation of the Directive, including when its provisions can be suspended and as to whether it should be possible to derogate from the principle of lawyer-client confidentiality. Your letter of 20 December 2012 summarised the 81 amendments that the European Parliament’s LIBE Committee had proposed to the Directive. We would welcome an update from you as to the progress of the negotiations with the European Parliament and whether in light of them, you would recommend we opt in to the measure once it is adopted.
On the issue of the potential for a scrutiny override, we can reassure you that as the UK is not participating in the negotiation of this proposal, we would not consider its agreement by the other Member States to be a scrutiny override, however, once it is agreed by the participating Member States we would expect to see the text in its final form with an explanation from you as to its detail. In addition, in light of your stated position that once the text has been agreed you intend to review the Government's decision not to opt in, we would also expect to be afforded sufficient time to scrutinise any Government decision in that regard.

We look forward to considering your response to our letter by 7 May.

25 April 2013

EU AGENCIES (15096/12)

Letter from the Chairman to the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your Explanatory Memorandum of 26 November 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 19 December.

The European Court of Auditor’s report raises important issues and we note its recommendations. We trust that you will pursue these matters with the Council, the Commission and others and give us an update within six months. In the meantime we clear the Communication from scrutiny.

19 December 2012

EU CIVIL PROTECTION ORDER (10613/11)

Letter from the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

I am writing to provide an update on the above dossier and to seek your agreement to the UK giving broad agreement at the next JHA Council to a General Approach being proposed by the current Presidency. I attach a copy of the Presidency paper. The Council is on 4/5 December so I should be grateful for clearance prior to then. I apologise for seeking this clearance at such short notice and possibly unexpectedly but as I will explain below, the dossier has taken longer to progress than was originally expected and has not reached any tangible conclusions. This has meant I have not been able to provide interim updates to you for some time. The proposal from the Presidency is an attempt to push this along, though was itself also unexpected.

BACKGROUND

The Commission published its draft proposal for this Regulation on 25 May 2011 and the UK Government decided to opt in to the negotiations in August 2011. You are of course aware of the scrutiny history. This Regulation applies to protection measures taken in civil matters and is intended to complement the Directive on criminal European Protection Orders, which was adopted by Council on 20 September 2011. It is intended that the two instruments will complement each other so that as many types of protection orders as possible are covered (whether criminal or civil) despite the differences in systems between Member States.

The purpose of this Regulation is that protection orders given in civil matters in one Member State can be recognised and applied in another Member State. The Regulation constitutes one part of the package of victims’ measures proposed by the Commission. The draft Regulation aims to provide a quick and efficient mechanism to avoid those needing protection having to go through time-consuming court procedures and giving evidence on the same matters in another Member State in order to get the protection they need. The Government strongly supports the underlying aim of the proposal.

UPDATE

Expert level negotiations on this dossier have progressed slower than anticipated partly as I think it was expected that its progress would be quite swift given it followed a Directive covering similar ground. Shortly into negotiations, however, it became clear that whilst the aims of the proposal were clear it needed to confront some quite complex issues. For example, the differences of approach in
civil matters between Member State laws are perhaps greater than in the criminal setting where there is greater commonality. This meant there have been differences in different perspectives on the most appropriate scope for the proposal. Also, the fact that in order to be most effective the protection mechanism must be simple and quick for the victim to use and the process of recognition be almost automatic to secure protection quickly creates a tension with providing protections to ensure the orders cannot be used to undermine valid substantive orders and also to give the person said to be posing the risk adequate scope to defend him or herself. Finding an appropriate balance to this has proven more difficult and more time consuming than was anticipated at the outset.

LATEST POSITION

In an attempt to press matters along, the current Cypriot EU Presidency has now produced a compromise text and offers this for agreement as the General Approach for the next phase of work. I attach a copy of their paper setting this out. It is essentially a draft text for the Regulation.

You will see this proposed text approaches the need for speed, ease and simplicity for the user by enabling certificates to be issued to mirror domestic protection measures which can be recognised without special procedure and with only limited grounds available for the Member State of recognition to decline recognition. It contains no jurisdictional restriction on the issuance of the order and includes ex parte orders.

On the other hand it explicitly excludes any matter which should be dealt with under Brussels IIa from the scope of this Regulation (so orders under this regime cannot trump BIIa orders) and includes a ground for non-recognition where there is an irreconcilable order between the same parties in place in the Member State of Recognition. It also provides a regime for the notification of the defendant and routes to appeal. Enforcement for breach is left to national law.

The UK Government considers this proposal to be a reasonable balance and a reasonable basis for a General Approach to make progress with this dossier. It seems to offer a solid platform for progress. I would like to indicate this general position at the forthcoming Council on 4/5 December and should be grateful for your clearance to do so.

22 November 2012

Letter from the Chairman to the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your letter dated 22 November 2012. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 12 December.

We have decided to retain the proposal under scrutiny.

Dealing with your request to clear this proposal ahead of the JHA Council on 6/7 December, in those weeks when there is no Committee meeting, in order to accommodate urgent requests to clear proposals ahead of their agreement at an imminent Council, the Committee has in suitable circumstances considered proposals outside of meetings. However, for the reasons set out below the Committee believes that it has not had sufficient opportunity to consider the text of this proposal which rendered it unsuitable for consideration other than at a formal Committee meeting; which, in turn, meant we could not, had we wished to, clear this proposal before the JHA Council held on 6/7 December (not 4/5 December as suggested in your letter).

As you know, the Committee has not considered this matter since October 2011 at which time we expressed our concern with the aspects of the draft which are supposedly designed to protect the position of the person causing the risk. In our letter to your predecessor dated 14 October 2011 we said: “we are pleased that you agree with the Committee that the safeguards in the proposal [to protect the person causing the risk] will need to be looked at carefully”.

Now, over a year later, you write to ask the Committee to clear this proposal with a letter which provides little textual analysis of the latest text and in relation to the Committee’s key concern simply says that the latest text “provides a regime for the notification of the defendant and routes to appeal”. This unsatisfactory situation is further complicated by the fact that the text that you enclosed with your letter is itself limited.

We are disappointed, given your explanation of the negotiation of this proposal, that the Government have not found at least one opportunity to write to us in the 14 months since the Committee last considered this proposal with an update on the situation. Such periodic updates or a more punctual letter might have avoided the urgency for clearance that you now seek from the Committee.
Whilst we recognise that the situation may be complicated by the fact that the Committee did not meet on 5 December this appears to be another situation in which the Committee finds itself being asked urgently to clear proposals ahead of their imminent agreement in the Council with scant regard for national Parliamentary scrutiny timetables. We wish to take this opportunity to remind the Government that regardless of the Presidency’s timetable, we ought to be afforded adequate time to scrutinise proposals and to that end we wish to receive a letter from you detailing the text (presumably) agreed at the Council, focusing, in particular, on the adequacy of the proposed measures designed to protect the person causing the risk.

We look forward to receiving your response in due course.

13 December 2012

Letter from the Rt Hon Chris Grayling MP to the Chairman

Thank you for your letter of 13 December 2012 responding to mine of 22 November about a General Approach proposed by the then Presidency on the above dossier which was received shortly before the JHA Council of 6/7 December.

You will have noted that I have since deposited the final version of the Presidency proposal in Parliament and also submitted an Explanatory Memorandum (EM) about it, both of which I enclose here for ease of reference. I hope the EM addresses the more detailed and substantive issues raised by the proposal, including those mentioned in your letter. I wanted to write to you as well to pick up on some of the points from your letter which do not fit easily within the usual EM format and to provide some more detail and background on the specific point you raised about the protections provided in the proposal for the “person causing the risk”.

Your letter explained that the Committee did not feel able to consider the proposal properly in the time available between receipt of my letter and the Council meeting. You noted that proper scrutiny and a response in this time frame was made more difficult due to the cancellation of the Committee’s planned meeting on 5 December and because the Committee had not received an update on the dossier for some time. There was also a delay of a couple of days in the despatch of my letter from here which clearly did not help matters and I apologise for that.

I also apologise that the Committee did not receive an update on this dossier for an extended time. The slow and inconclusive progress of the negotiations meant that officials waited longer than usual, in the hope of having something of substance to report, in advising Ministers to send the Committees an update. In the end this opportunity never arose before the Presidency proposal was unexpectedly received. We have learnt the lessons from this experience and will endeavour to make sure that we inform the Committees more regularly in future, even where there is no substantive progress to report. I take the scrutiny process seriously and always want to ensure the Committees are kept as up to date as possible. We place great value on the advice we receive from the Committees in general and in particular in response to updates.

Given the state of negotiations we had expected this dossier would simply roll forward into the Irish Presidential term for them to progress. The Presidency proposal to take a General Approach to Council came largely out of the blue and represented an attempt to push all the matters which had stalled in the negotiations toward some kind of conclusion. This meant we were then straight into dealing with a proposal for Council which was novel and a significant departure from all that had gone before it.

The Presidency proposal was received by officials here after close of normal business on Friday 18 November, when we were informed it was planned to be discussed at a JHA Councillors meeting on Wednesday 23 November before going to COREPER and then going forward to the 6/7 December Council. This meant we had little choice but to alert your Committee to the plan and ask if it agreed with the proposed approach. My letter indicated our analysis showed the proposal could be considered acceptable but in the time available there was no opportunity for us to set out a forensic analysis of the new text. I accept this was less than ideal though I hope you will see that there was little else to be done in the circumstances.

As you know, given that the Parliamentary Committees felt unable to clear the proposal from scrutiny the UK abstained on this issue when it arose at the Council meeting. The other Member States unanimously agreed it.

I know the Committee has a particular interest and concern about the protections within the proposal for the person causing the risk. The Government shared this perspective and it was a negotiating priority for the UK to secure some improvements in this respect. I am pleased to report
that we have had success in this regard and the EM sets out the specific protective measures in more
detail. For ease, I discuss the main points again below.

Under the terms of the General Approach the procedure for securing a protective measure will be
conducted under the national law of the Member State from which the victim seeks an order and that
law will also establish the protection of the defendant, so all the national rules for protection of
defendants will apply.

The certification process [to enable recognition in another Member State] requires that the defendant
has had notice and an opportunity to defend himself or herself prior to issue of a certificate. A
declaration to this affect is required as part of any certificate. The person posing the risk must be
alerted to the issue of any certificate and informed of its scope of enforceability. There is a process to
amend or withdraw incorrect or wrongly granted orders and appeals will be conducted under the
relevant national law. The system for notifying the person posing the risk is set out (see Articles
5(b)(2)) and which law applies to govern that process is sensitive to their place of residence. Article
8(3) establishes a notification procedure concerning any adjustment to the protective measure made
in the State of enforcement and that any appeal is covered by the law of that State.

Taken together the UK considers this an appropriate and balanced package which provides adequate
protection for the defendant whilst allowing the process to run speedily and effectively to secure the
protection needed for the vulnerable party. I should add that the UK was largely isolated in respect of
seeking improvements in the protection of defendant during the negotiations. Most other Member
States seemed to prefer a system where the authorities had little role in informing or protecting the
defendant. I consider the package we have secured in this regard to be the best we are likely to
secure, as evidenced to an extent by the agreement in Council to the Presidency proposal.

As I noted earlier, whilst the UK abstained due to the scrutiny reserve, the Cypriot Presidency’s
General Approach was agreed unanimously by other Member States at the December JHA Council.
Negotiations will continue at the expert level in Council on technical matters and in particular on any
recitals. I expect the text will be the basis for trilogue negotiations between Council, European
Parliament and the Commission in the New Year. I will endeavour to keep you updated on progress
and meanwhile would be grateful for any observations you wish to offer and I hope your Committee
is now prepared to release the proposal from scrutiny.

10 January 2013

Letter from the Chairman to the Rt Hon Chris Grayling MP

Thank you for your Supplementary Explanatory Memorandum and letter both dated 10 January which
were both considered by the Justice, Institutions and Consumer Protection Sub-Committee at its
meeting of 6 February 2013.

We note your request that the Committee now clear the proposal from scrutiny but we would
suggest that this is premature as the proposal has only recently entered the trilogue stage and
therefore remains subject to change. We have therefore decided to retain the latest text numbered
17165/12 under scrutiny, but we do clear from scrutiny the original text deposited in Parliament in
June 2011 numbered 10613/11.

In our view the General Approach text agreed in December is a clear improvement on the original
proposal and we agree with your assessment that it represents an acceptable compromise,
particularly with regard to our key concerns about the protections afforded the person causing the
risk. We also welcome the clarity brought to the text by narrowing its scope to the three specific
protections/obligations listed in Article 2, namely, that the defendant: (i) does not enter specific
premises or localities, (ii) does not enter into any form of contact with an individual including by
phone, or by e-mail, and, (iii) does not approach the protected person closer than a prescribed
distance.

The Committee is grateful to the Minister for his apology and clear explanation of the reasons behind
the sporadic scrutiny late last year. We note your comments that the Government take “the scrutiny
process very seriously” and “place great value on the advice [you] receive from the Committee in
general and in particular in response to updates”.

We ask that you keep the Committee informed of the progress of these negotiations.

7 February 2013
Letter from the Rt Hon Chris Grayling MP to the Chairman

As you will recall, a Partial General Approach on this Regulation was proposed by the then Presidency shortly before the JHA Council of 6/7 December 2012.

That Partial General Approach was agreed by Council, with the UK maintaining its scrutiny reserve, and trilogue negotiations involving the European Parliament (EP) began. An agreement has now been reached with the EP on a text of the proposal and it is being brought back to the JHA Council on 8 March. The intention will be to secure an agreement to the General Approach, in order that the necessary steps can be taken for it to proceed to Plenary in the EP. I understand that, once the necessary technical amendments and translations have been made, as well as the EP’s vote in Plenary, the final text will come back to Council for formal adoption at the June JHA Council meeting.

I am now writing to update you on the text of the draft Regulation and seek your agreement to release it from scrutiny - if you take that view - to enable me to signal agreement to the General Approach at the March JHA Council.

CHANGES TO THE TEXT OF THE DRAFT REGULATION

The proposal brought forward has changed very little from the one I deposited and provided an Explanatory Memorandum for in my letter of 10 January. I attach a copy of the latest text as it will be presented to COREPER prior to Council. We do not anticipate any substantive changes there.

There is only one change of significance from the earlier version the Committee has already seen. At the Parliament’s suggestion the proposed duration of any certificate issued under this Regulation has been extended to 12 months. The previous version had suggested this would be six months. The UK would have preferred the shorter duration, to better reflect the emergency nature of these orders. However, it is clearly a vital point for the Parliament – which had actually pushed for an extension to two years - and has been agreed by the Presidency and the European Commission and is likely to be agreed at Council. The Government considers the change acceptable.

The other material which is new in this version is chiefly the recitals which aim to aid interpretation and application of the Regulation. The Government is content with all of these and considers that the whole package can now be agreed.

I will, of course, keep the Committee updated with developments as we move to final adoption at the June 2013 JHA Council meeting.

I hope that the Committee now feels it has had an opportunity to reflect properly on the text of the draft Regulation, and an opportunity to consider my further comments in this letter. I would invite the Committee to release this draft Regulation from Parliamentary scrutiny.

26 February 2013

Letter from the Chairman to the Rt Hon Chris Grayling MP

Thank you for your letter dated 26 February 2013 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 6 March 2013. We are grateful to you for the update on the successful negotiations with the European Parliament and we have decided to clear this proposal from scrutiny ahead of the Justice and Home Affairs Council on 8 March.

We do not expect a response to this letter.

7 March 2013

EUROPEAN CONVENTION ON HUMAN RIGHTS - EU ACCESSION

Letter from the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

I am writing to inform you of how the negotiations for the accession of the EU to the European Convention on Human Rights (the Convention) are progressing since my predecessor’s last update in July this year.

In September the EU negotiator returned to Strasbourg to discuss at the specially constituted working group “47+1” the text previously produced for the 2011 round of Strasbourg negotiations,
along with the amendments developed at the Brussels fundamental rights working group (FREMP) to address concerns principally raised by the UK and France in September 2011.

The 47+1 group met for the second time in November. Progress has been made, with the EU negotiator achieving support for UK amendments which better define the type of acts attributable to the EU, reflecting the fact that it is not a state and cannot have territorial issues or national security interests of its own.

Amendments on joint but differentiated judgements – which will allow the Strasbourg court to give appropriate judgements where the responsibility for a violation must be apportioned between the EU and a member state co-respondent – financial contributions and voting rights were also discussed at 47+1. On the voting rights point, the EU proposal was considered, and in the face of opposition from non-EU High Contracting Parties, the Council of Europe Secretariat put forward a compromise measure that will be considered for the EU’s future negotiations in the New Year.

In Brussels, discussion has continued on EU presidency drafts of the internal rules and we expect the Commission to propose a text for the internal rules under the Irish presidency which will draw on the negotiations to date. It is not yet known under which legal basis these rules will be proposed, which will determine the UK’s own scrutiny requirements.

Good progress was made overall under the Cypriot presidency, which has brought discussion on the internal rules as far as it can go in advance of the Commission’s proposal. It remains to be seen whether Ireland will make Accession a priority for its presidency, and we look forward to working constructively with them next year.

17 December 2012

Letter from the Chairman to Rt Hon Chris Grayling MP

Thank you for your letter of 17 December which was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 23 January.

We note the further progress of discussions on the accession agreement and the supplementary internal rules. We hope that drafts will soon be published. We should be grateful for a further update by the end of the Irish Presidency in June or earlier if progress is made faster than expected. Subject to that, we do not expect a reply to this letter.

24 January 2013

EUROPEAN INVESTIGATION ORDER (18918/11)

Letter from Mark Harper MP, Minister for Political and Constitutional Reform, Cabinet Office to the Chairman

Your Committee has previously requested updates on developments in relation to negotiations on the European Investigation Order (EIO). This dossier was subject to a number of delays throughout 2012, but negotiations are now moving forward again and I write to update you on the progress made.

On 8 May 2012 the European Parliament (EP) adopted their amendments to the EIO (attached). This forms the basis of the European Parliament’s position going into trilogue. However, trilogue was put on hold because the European Parliament suspended co-operation on this (and four other dossiers) due to disagreements regarding the Schengen Evaluation Mechanism. The EIO is now “unblocked” and trilogue began on 14 November. Trilogue will continue this year under the Irish presidency.

You will be interested in the European Parliament’s amendments, in particular the proposals regarding Articles 2 (Amendment 22), 5 (Compromise Amendment 5 / Amendment 100) and 10 (Compromise Amendment 10):

— Article 2 - The proposed definition of “executing authority” as a “judicial authority” is unworkable for the UK as our executing authorities are generally the police. This is one of our key aims and we are therefore seeking to defend the existing Council text on this issue which reflects the UK position.

— Articles 5/5a - The proposed amendments on proportionality show there is support for a stronger role for a proportionality check. The amendment
creates a clear requirement for the issuing state to consider whether the request is proportionate, and now contains a consultation mechanism which can be triggered by the executing state and which may lead to the withdrawal of the request. Although we would have preferred for proportionality to constitute a ground for refusal, the practical effect of this proposal is close to the UK’s negotiating aims.

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Article 10 - This remains one of the most contentious provisions. The European Parliament proposed that dual criminality is a general ground for refusal for all coercive and non-coercive measures but maintained the “list” of 32 offence categories as exceptions (the same exception “list” that is found in the EAW). In maintaining the exception “list”, the EP amendments do not go as far as we had hoped (we had hoped to achieve a full dual criminality refusal ground without any exceptions). There is no appetite to drop the “list” approach in either the EP or the Council as a full dual criminality test is not considered to be important from a practical perspective and is seen as a step backwards in cooperation. There are also fears that a full dual criminality refusal ground here could make it easier to execute an EAW than an EIO. Given the advanced stage of negotiations, we are unlikely to achieve any significant changes on this point at the trilogue stage, although we are continuing to lobby on the issue.

In addition to these amendments the EP has suggested a number of other amendments that are attractive to us, for example, they have proposed a human rights ground as a full ground of refusal and a wider ground for refusal based on territoriality.

We will continue to work with Member States and MEPs to pursue UK objectives on the EIO. The first trilogue meeting on 14 November focused on some of the less contentious Articles (such as Articles 1, 7 and 12). Little was achieved and there were no further trilogue meetings in 2012. We are hopeful that progress will be made under the Irish presidency, with the next trilogue meeting expected to take place in February. It is likely that trilogue will continue until at least June 2013. I will update you of any significant progress made at these discussions.

22 January 2013

Letter from the Chairman to Mark Harper MP

Thank you for your letter of 22 January 2013, which was considered by the Justice and Institutions Sub-Committee on 13 February. We are grateful for this further progress report and your comments on some key amendments proposed by the European Parliament.

We note that, broadly speaking, the amendments put forward by the European Parliament appear to be in line with the text of the draft Directive which was the subject of the Council’s common approach and, with the exception of the amendment on the definition of “executing authority” are consistent with UK policy. We hope therefore that the trilogue process will be completed satisfactorily by the end of the current Presidency.

We keep the matter under scrutiny and acknowledge your proposals to keep us informed of developments. If there are significant developments in the course of the trilogue, we should like to be informed of them and we ask you to provide the text as agreed at the conclusion of the trilogue with an explanation of any significant changes.

28 February 2013

EUROPEAN POLITICAL PARTIES: FUNDS AND FINANCE (13842/12, 13777/12, 17469/12, 6321/12)

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

Your Explanatory Memoranda on these two documents were considered by the Justice, Institutions and Consumer Protection Sub-Committee on 31 October. We are grateful for your accounts of the proposals.
We note that you are giving the proposals detailed consideration and we look forward to learning the results of your deliberation.

We retain the matter under scrutiny and look forward to hearing from you by 23 November.

1 November 2012

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

Thank you for your letter of 1 November 2012 in which you requested an update on our deliberations on the proposals listed above by 23 November.

There have been a number of discussions among Member States at official level since we first submitted these proposals to the Committee. The UK, along with other Member States, had several questions on the substance of the proposals, responses to which are needed before we can come to a definitive position.

Although the Commission has attempted to address some of the questions raised, there remain a number of outstanding points which need to be clarified or responded to. In recent weeks the Presidency has been working with Member States on compiling a non-exhaustive list of such issues to establish what remains to be clarified.

Examples of where the UK is posing further questions or seeking clarification include the question of what is envisaged by the Commission when it references the interrelationship with national law and a request for further clarification on the perceived impact and role of a European legal status.

Once these questions have been addressed, I will provide a further update to the Committee on the UK’s thinking on these proposals.

26 November 2012

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

Thank you for your letter of 26 November. This has been considered by the Justice, Institutions and Consumer Protection Sub-Committee.

My letter of 1 November, to which you have responded, asked for the Government’s view of these proposals when you had concluded your deliberations on them. It is clear that you have yet to complete your consideration of the proposals in the light of the points under discussion among the Member States. We therefore retain the matter under scrutiny and look forward to a full response early in January.

6 December 2012

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

Thank you for your Explanatory Memorandum on this proposal dated 8 January. This has been considered by the Justice, Institutions and Consumer Protection Sub-Committee which, as you know, also has under scrutiny the related proposal for a new Regulation on the statute and funding of European political parties and foundations (doc. 13842/12). We consider that the proposal complies with the principle of subsidiarity.

Taking the present proposal with the principal proposal on political parties and foundations, our preliminary view is that the proposals should be broadly welcomed as providing a firmer foundation for European parties and foundations and for the rules on public funding. The proposed rules on governance seem to us to strike the right balance between the prescription of minimum standards while not compromising the independence of parties and foundations always provided that an appropriate level of post event auditing takes place to safeguard the taxpayers interest. We should, however, like to take account of your considered view of the proposal before reaching firm conclusions.

We note that you continue to give the two proposals detailed consideration. We keep the matter under scrutiny and look forward to your full response by 21 February.

7 February 2013
Letter from the Chairman to the Rt Hon David Lidington MP

Thank you for your Explanatory Memorandum dated 1 March on the Opinion of the Court of Auditors on the proposals for changes to the regulation of European political parties and foundations (doc. 13842/12 and 17649/12). This was considered by the Justice, Institutions and Consumer Protection Sub-Committee on 27 March.

We agree with you that the Opinion is a helpful contribution to consideration of the main proposals. We think the recommendations would improve the drafting of the proposals by closing potential loopholes and, by substituting a formula for calculating financial penalties for a method which would leave discretion in the hands of the European Parliament, would properly take matters out of the political forum in which the parties themselves play a key role. We also consider that harmonised rules on reporting and the presentation of accounts would be helpful here. We urge you, therefore, to press your colleagues in the Council to act on the Court of Auditors’ recommendations.

My letter of 7 February noted that you were still considering the principal proposals and we hope you are now in a position to give us your full response to the proposals taking account of the Opinion. We keep the documents under scrutiny and should be grateful for a reply by 12 April.

27 March 2013

Letter from the Rt Hon David Lidington MP to the Chairman

Thank you for your letters of 7 February 2013 and 27 March 2013 on the aforementioned proposal and opinion, in which you requested further information on the Government’s developing position on these proposals. Please accept my apologies for the delay in responding to your earlier letter.

I note the Committee’s preliminary view that the proposals should broadly be welcomed as providing a firmer foundation for European parties and foundations and for the rules on public funding. As I said in the debate on these proposals in the House of Commons, international networks are important for UK political parties. European political parties, whose membership is made up predominantly of domestic political parties, can play an important role, in particular in helping to equip nascent democratic parties in states outside the EU with the political and campaigning know-how to cope with a democratic world. Negotiations are ongoing on these proposals, and are likely to continue for some time yet. However, I am able to outline in more detail the principles which have underpinned our approach in negotiations to date.

The Committee references the importance of ensuring that the independence of European political parties and foundations is not compromised by these proposals. We agree; the Government attaches importance to the independence of political parties and the right of citizens to associate freely in political organisations, and this has underpinned our approach. We have been working with our European partners, in considering the detail of these proposals, to ensure that the registration and governance processes for European political parties and European political foundations are not unnecessarily onerous. In particular, we are keen to ensure that administrative decisions on eligibility for the proposed European legal status, with all that that entails, are taken in an appropriate manner, and are not subject to political bias.

I note that the Committee also emphasises the importance of ensuring that taxpayers’ interests are protected. The Government is keen to ensure that the proposed changes to the way in which European political parties and foundations are funded do not compromise current levels of accountability, financial propriety or transparency. It is important in this context, as in others, that the proposal promotes the sound use of EU funds and that the proposals are cost neutral in effect. The Government is also keen to ensure that the proposals encourage European political parties and European political foundations to obtain funding from sources other than the EU budget, as is the case for political parties and charities/NGOs domestically within the UK.

Linked to these points is the opinion of the Court of Auditors, to which you refer in your letter of 27 March 2013. I agree with the Committee that the Court has made a number of helpful points which would serve to close potential loopholes within the current iteration of the proposal. The Irish Presidency very recently dedicated an initial working group discussion to the opinion. We have already referenced the opinion in wider negotiations, and will continue to be an active participant in discussions, stressing to our European partners the importance of ensuring the funding proposals are sufficiently clear and unambiguous; the opinion is a particularly helpful contribution to this discussion.

I would like to thank the Committee for their continuing interest in these proposals. We will keep the Committee updated on progress.

16 April 2013
Letter from the Rt. Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

I am writing to provide an update on the above dossier and to seek your agreement to the UK giving broad agreement at the next JHA Council to a General Approach being proposed by the current Presidency. I attach a copy of the Presidency paper [not printed]. The Council is on 4/5 December so I should be grateful for clearance prior to then. I apologise for seeking this clearance at such short notice and possibly unexpectedly but as I will explain below, the dossier has taken longer to progress than was originally expected and has not reached any tangible conclusions. This has meant I have not been able to provide interim updates to you for some time. The proposal from the Presidency is an attempt to push this along, though was itself also unexpected.

BACKGROUND
The Commission published its draft proposal for this Regulation on 25 May 2011 and the UK Government decided to opt in to the negotiations in August 2011. You are of course aware of the scrutiny history. This Regulation applies to protection measures taken in civil matters and is intended to complement the Directive on criminal European Protection Orders, which was adopted by Council on 20 September 2011. It is intended that the two instruments will complement each other so that as many types of protection orders as possible are covered (whether criminal or civil) despite the differences in systems between Member States.

The purpose of this Regulation is that protection orders given in civil matters in one Member State can be recognised and applied in another Member State. The Regulation constitutes one part of the package of victims’ measures proposed by the Commission. The draft Regulation aims to provide a quick and efficient mechanism to avoid those needing protection having to go through time-consuming court procedures and giving evidence on the same matters in another Member State in order to get the protection they need. The Government strongly supports the underlying aim of the proposal.

UPDATE
Expert level negotiations on this dossier have progressed slower than anticipated partly as I think it was expected that its progress would be quite swift given it followed a Directive covering similar ground. Shortly into negotiations, however, it became clear that whilst the aims of the proposal were clear it needed to confront some quite complex issues. For example, the differences of approach in civil matters between Member State laws are perhaps greater than in the criminal setting where there is greater commonality. This meant there have been differences in different perspectives on the most appropriate scope for the proposal. Also, the fact that in order to be most effective the protection mechanism must be simple and quick for the victims to use and the process of recognition be almost automatic to secure protection quickly creates a tension with providing protections to ensure the orders cannot be used to undermine valid substantive orders and also to give the person said to be posing the risk adequate scope to defend him or her self. Finding an appropriate balance to this has proven more difficult and more time consuming than was anticipated at the outset.

LATEST POSITION
In an attempt to press matters along, the current Cypriot EU Presidency has now produced a compromise text and offers this for agreement as the General Approach for the next phase of work. I attach a copy of their paper setting this out. It is essentially a draft text for the Regulation.

You will see this proposed text approaches the need for speed, ease and simplicity for the user by enabling certificates to be issued to mirror domestic protection measures which can be recognised without special procedure and with only limited grounds available for the Member State of recognition to decline recognition. It contains no jurisdictional restriction on the issuance of the order and includes ex parte orders.

On the other hand it explicitly excludes any matter which should be dealt with under Brussels IIa from the scope of this Regulation (so orders under this regime cannot trump BIIa orders) and includes a ground for non-recognition where there is an irreconcilable order between the same parties in place in the Member State of Recognition. It also provides a regime for the notification of the defendant and routes to appeal. Enforcement for breach is left to national law.
The UK Government considers this proposal to be a reasonable balance and a reasonable basis for a General Approach to make progress with this dossier. It seems to offer a solid platform for progress. I would like to indicate this general position at the forthcoming Council on 4/5 December and should be grateful for your clearance to do so.

22 November 2012

EU STAFF REGULATIONS (18638/11, 13327/12, 13176/12, 13270/12)

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

Thank you for your letter in relation to the above documents.

In response to your query about the outcome of proceedings in respect of the ongoing litigation on the 2011 annual salary adjustment for EU officials, I can confirm that the oral hearing has now taken place. The UK intervened in support of the Council. We expect a ruling in the first half of 2013.

You suggest in your letter that a repeat of the 2011 litigation seems inevitable in 2012. I should clarify that that will only be the case if Council votes against the annual salary adjustment, which is subject to qualified majority voting. At this time, we are still awaiting the Commission’s formal proposal for the 2012 annual salary adjustment, following their report on the Exception Clause (referenced above as doc 13327/12).

We have heard informally that the proposal is likely to be for an increase of 1.7% or thereabouts. However, the Commission will not publish this proposal formally until early December – a delay which the UK and other Member States have already protested due to the limited time it gives the Council for consideration. When the proposal is published, it will of course be the subject of an Explanatory Memorandum to both Committees.

I fully agree with your comments on the report of the Court of Auditors on the effectiveness of staff development in the European Commission. In that context, the UK is pushing for stronger provisions, for example on poor performance, within the ongoing negotiations on the Staff Regulations. As requested, I will also write again in due course with a more detailed update on the Staff Regulations negotiation.

26 November 2012

Letter from the Rt Hon David Lidington MP to the Chairman

I am writing to provide you with an update on negotiations in Council on the above document, the subject of an Explanatory Memorandum of 16 January 2012 and an exchange of correspondence on 4 July 2012 and 26 November 2012. Your Committee is currently retaining this document under scrutiny.

As I have previously noted, the Government’s view is that the Commission’s original proposal of December 2011 was seriously lacking in ambition, in terms of the scale of the reforms envisaged, and would not have achieved the substantial savings the Government wanted to see in Heading 5 of the Multi-Annual Financial Framework (MFF).

Since I last wrote to you the discussions have moved on and I wanted to write to you at this stage with a detailed update. I hope that this will give your Committee full insight into the mechanics of the negotiations on this dossier, and assist you in your scrutiny of this matter. As we are heading relatively quickly towards the date when the Irish Presidency intends for final agreement to be reached – the 25 June General Affairs Council – I hope that your Committee may be able to clear this item from scrutiny before that date. But I do appreciate that I am presenting you with a moving picture: my officials stand ready to provide more information, including in-person briefings to the Committee if helpful. I would also be happy to write in the next few weeks to update you if you have specific further questions that you would like answered.

In February, as you will be aware, the UK secured a landmark conclusion to the MFF – the first ever real-terms reduction of the EU budgets, as is right in this era of necessary austerity. Despite this, the outcome on Heading 5 – of which the Staff Regulations determine 70% of the total spend – was not as positive. The Heading 5 ceiling will be uplifted, that is, increased, over the course of the next MFF, from €56.5bn to €61.6 (an increase of 9%). Whilst this is €1.5bn a reduction from the original Commission proposal (€63.1bn), I can quite frankly tell you that it is not what we had hoped to

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achieve. Given the steadfast opposition of the EU Institutions, Unions, and some Member States, to any reduction in the EU’s administration budget, this was a hard-fought negotiation across all fronts. The overall MFF outcome was a good one and inevitably there were concessions made in some areas.

Despite the disappointing result on the Heading 5 ceiling, the MFF conclusions are not wholly without merit when it comes to reducing EU administrative spending. They mandate a two year pay freeze for all EU Institutions staff, the introduction of a new Solidarity Levy (a progressive 6% tax, the proceeds from which are paid into the EU budget) and a 5% reduction in staff numbers between now and 2020. These are positive results that will bring real savings.

What does this mean for the broader Staff Regulations reform? Our intention was to use a reduced Heading 5 ceiling to push for ambitious reforms to the pay, benefits and pensions of EU civil servants. Without that reduced ceiling, such ambitious reforms have become much more difficult to achieve. However, there is still scope for a number of positive reforms which will produce real savings.

Given the different negotiating context, let me set out the most recent developments in the Council Staff Regulation Working Group. Firstly, on timings: the Irish Presidency would like to see these proposals agreed at the General Affairs Council on 25 June. The reasoning is twofold: firstly, and less convincingly, it is argued that, given the Conclusion on the MFF, there is not much left to talk about and we should proceed rapidly; secondly, legal advice suggests that the further into 2013 we go, the more difficult it will be to implement a pay freeze and simultaneous reintroduction of a Solidarity Levy at 6%. I strongly disagree with the first point, and am not entirely convinced by the second. Nonetheless, I want to ensure that we achieve the greatest financial savings possible and would not want to jeopardise any hard won concessions in that direction.

Following the February MFF agreement, the Commission has consistently argued that its original proposal should now be taken forward, without amendment by Member States. The Council has maintained its original position, opposing substantial sections of the Commission’s proposal.

**SALARY ADJUSTMENT METHOD**

On the Salary Adjustment Method – the means by which the EU Institutions annually update remuneration for their staff, and an area which has been of particular concern to the Committee – our original position was to achieve financial savings, delink EU staff pay changes from civil service pay changes in Member States, and maximise the European Council’s political influence (the ability to set pay levels annually). Following the MFF conclusions, we have focused our attention on the first objective.

The current formulation of the Salary Adjustment Method, as provisionally agreed by the Council, will remain based on a mathematical formula with a link to pay changes in Member State civil services, but it will also go a long way to promoting pay moderation for EU staff. This is achieved by capping any pay increase at 2%, and reducing any pay increase resulting from the mathematical formula by 0.5%. This ‘double cap’ would have approximately halved the pay progression of EU staff between 2004 and 2012, and will serve to limit pay progression in the future.

Whilst increased political control over salaries and more stringent moderation would have been preferable, we operate within very tight legal constraints. We have sought to craft as legally secure a proposal as possible, whilst staying true to our objectives. Additionally, the involvement of the European Parliament and other Member States less keen than ourselves to see pay restraint have necessitated a compromise position. Despite this, the proposed Method should see pay moderation in the coming years for EU staff.

**EXCEPTION CLAUSE**

Turning to the Exception Clause – the means by which the above Salary Adjustment Method can be suspended, on which the Committee has also expressed an interest – the current Council position ensures that zero or negative GDP growth in the EU would result in a pay freeze. This would be a significant improvement on the current system, wherein the Commission decides what economic conditions are necessary to freeze the pay of EU officials. Despite several years of poor economic conditions, the Commission has not activated the existing Exception Clause.

**PENSIONS**

On pensions, the Council has agreed to push for an increase in the pension age to 67 whilst simultaneously increasing the contribution paid by EU officials. These changes are to be implemented with the shortest possible transitionary measures, to ensure maximum savings. As we have seen in
the UK, pensions are future costs that must be dealt with effectively, and these measures will help ensure that EU pension costs are placed on a more secure path.

CAREER STRUCTURE

The career structure of the EU Institutions currently allows staff to become more senior whilst remaining in the same role. The Council is seeking to break the automatic link between the number of staff at a specific grade and the number of promotions available at the next, whilst ensuring that the most senior grades are only available for officials with significant responsibilities managing a number of other staff. We also intend to encourage promotion on merit by mandating that no officials can advance to the next step in their grade unless they have three consecutive satisfactory annual reports.

This has proved one of the most contentious areas of reform within the Council. Whilst we and fellow likeminded Member States – including Germany and France – want to reduce costs by reducing the number of senior staff, newer Member States that have joined the EU since 2004 are concerned that to do so would prevent their nationals from rising to senior positions.

ALLOWANCES

A long-standing complaint for the pay and conditions of EU officials has been the generous system of allowances, paid on top of basic salary. Whilst the Council has yet to achieve a common position, the current proposal would see the Expatriation Allowances (set at 16% of basic salary) phased out over a 10 year period. At the moment, it is possible to continue claiming the allowance regardless of service period. We are also seeking to reduce the Foreign Residence Allowance, the Household Allowance, and travel allowances, including by limiting reimbursement for plane travel to economy class only.

GEOGRAPHIC BALANCE

On geographic balance – an area of acute concern to the UK specifically – Council continues to deliberate. As previously stated, in spite of the UK’s low representation among Institution staff (below 5% and falling), other Member States have refused to agree to the setting up of additional recruitment measures for underrepresented nationals. Given this reluctance, we are instead focusing on streamlining the recruitment process – the concours – to ensure that British applicants are not unduly deterred by a cumbersome system. It remains my firm belief that, when given the opportunity, British nationals are highly successful within the Institutions. Whilst we will continue to seek amendments to the Staff Regulations to facilitate greater UK recruitment, we are also tackling this problem in other ways, such as enhanced promotion of EU jobs in the UK and greater support from HMG to British candidates.

NEXT STEPS

Once the Council has agreed its provisional negotiating position, we will enter into trilogue with the European Parliament. This will occur simultaneously with the establishment of a Consultation Committee with the Trade Unions, as provided for in the Council Decision of 23 June 1981 establishing a tripartite consultation procedure concerning relations with staff (doc 6073/03). As I stated in my Explanatory Memorandum of 16 January 2012, negotiations with the European Parliament are certain to be difficult. Moreover, the Commission remains steadfastly opposed to our reform proposals. In addition, negotiations with the EU staff unions – whilst non-binding – will likely be complex. The Union Syndicale – the largest union for EU staff – is already mooting strike action at the mere suggestion of some of the above mentioned reforms.

Despite the difficulties, this negotiation is expected to take only a couple of weeks in the coming month – the Irish Presidency believes that these negotiations will have completed before their intended agreement date on 25 June.

In spite of the obstacles in our path, I remain hopeful that will achieve aspects of our reform agenda on this dossier. Whilst we have, by virtue of the hard-won MFF agreement, refocused our efforts, I remain committed to bringing the EU civil service further into line with those in Member States: at a time when there are significant austerity measures across the entire EU, it is unacceptable for European civil servants to remain immune. Whilst the two year salary freeze and reintroduction of the solidarity levy go some way towards this goal, we can still achieve more.

I hope this letter provides a useful update for your Committee – my officials are ready to provide an oral briefing on this topic, if you think it would prove useful for your deliberations.
FUNDAMENTAL RIGHTS AGENCY: ESTABLISHING A MULTIANNUAL FRAMEWORK FOR 2013-2017 (18645/11)

Letter from the Rt. Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

I am writing to respond to your letters dated 26 July and 15 October 2012 commenting on the application of an exemption pursuant to section 8(6) of the European Union Act 2011 to the decision on the Fundamental Rights Agency multiannual framework (2013-2017).

Like my predecessor, Kenneth Clarke, I am grateful for the detailed consideration your Committee has given to the application of the exemptions set out in section 8(6) of the European Union Act 2011.

I have carefully considered the comments received from both your Committee and the European Union Committee, with particular regard to your analysis that section 8(6) exemptions cannot be applied to measures previously agreed under Article 308 EC, the predecessor of Article 352 TFEU. In light of the matters raised the Government has reviewed its position on the application of the exempt purposes in section 8(6) of the EU Act and accepts that they are not applicable to the proposed Decision on the Fundamental Rights Agency Multiannual Framework.

Accordingly, the Government now proposes to bring forward a proposal for primary legislation to approve the proposal for the Fundamental Rights Agency’s multi-annual framework (2013-2017). The proposed legislation will also provide for approval of two other measures which require approval by primary legislation pursuant to the European Union Act 2011. Those measures are UK approval of the proposed Council Regulation on electronic version of the Official Journal of the European Union which is also based on Article 352 TFEU and a on the draft decision of the European Council on the number of European Commissioners to be adopted in accordance with Article 17(5) TEU. We will be seeking to introduce this Bill in the near future.

22 November 2012

FRAUD INQUIRY - ORAL HEARINGS- OLAF (9288/1, 18918/10)

Letter from David Gauke MP, Exchequer Secretary, HM Treasury, to the Chairman

During the course of the oral inquiry into fraud against the EU’s finances, which I had the pleasure of attending on the 16 January under your chairmanship, I undertook to write to Committee Members in response to a number of questions I was asked regarding suspected cases of fraud referred to the UK by OLAF in the last five years.

Statistics regarding cases of suspected fraud sent to Member States’ judicial authorities by OLAF are published in OLAF’s Annual Reports. The last publication in 2012 showed that between 2006 and 2011, 19 cases had been sent to UK judicial authorities. Of these, 13 (around 70%) investigations have been concluded. The remaining 6 cases were still ongoing. Of the 13 cases concluded, 3 cases led to convictions. Further detail on these judicial cases can be found in table 6 of the 2011 OLAF report.

25 January 2013

FIGHT AGAINST FRAUD (12810/12)

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

Thank you for your two Explanatory Memoranda dated 16 December 2012 and 28 December 2012 respectively. They were both discussed by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 6 February 2013.

The Committee retains these two reports under scrutiny. We do not, at this point in time, comment on either the content of these two reports or the Government’s views thereon.
As you know this Committee is currently undertaking an inquiry into fraud against the EU’s budget. We published a Call for Evidence on 9 July to which you replied in September.

The first document numbered 12810/12 is the Commission’s annual report looking at the EU’s fight against fraud. This was published on 20 July 2012 and deposited in Parliament on 24 July. We note that your accompanying Explanatory Memorandum on this significant dossier is dated 16 December 2012. The second document is OLAF’s annual report setting out the work they undertook in 2011 which was published in October 2012. Your accompanying Explanatory Memorandum is dated 28 December 2012.

We are very disappointed by the gap between the publication date of the Commission’s report and the date of the subsequent Explanatory Memorandum from your department. Neither Explanatory Memorandum offers the Committee any explanation for this delay. As you know as part of its scrutiny undertakings to Parliament the Government is obliged to supply the Committee with Explanatory Memorandum on relevant documents within 10 days of their deposit in Parliament. In relation to both these documents you have failed to satisfy that basic requirement and to uphold the Government’s oft-repeated commitment to Parliamentary scrutiny.

Your failure in this instance is made worse by the fact that you have known since July when you received our call for evidence that this Committee is engaged in an inquiry into fraud against the EU’s budget – an inquiry into a subject matter to which both these documents are key. Yet, it is only in December that you send us the requisite Explanatory Memoranda on their content. This failure takes place within a wider context of your department’s reluctance to appear before this Committee as part of its EU fraud inquiry.

It is our view that your department’s behaviour does not reach the standards that this Sub-Committee expects, in particular in relation to the Commission’s annual report.

We look forward to considering your explanation by 21 February 2013.

7 February 2013

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

Thank you for your letter of the 7th February concerning the timeliness of the two Explanatory memoranda referred to above. As I am sure you are aware your letter has generated some discussions between my officials and the clerks to the Justice, Institutions and Consumer Protection sub-committee over the reasons for the delay in supplying an EM on the Fight Against Fraud Annual Report and a clarifying of the previous misunderstanding on how these documents were to be treated that lead to this situation developing.

I hope this has resolved the timeliness issue, both concerning these EMs and future EMs on these subjects to everyone’s mutual satisfaction and I look forward to answering any further questions you may have on the content of these Ems

15 March 2013

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

Thank you for your letter dated 15 March 2013, which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting on 17 April.

We have decided to clear both reports from scrutiny.

As for the substance of your letter, like you, this Committee is aware that our recent correspondence has provoked discussion between officials in the Treasury and the clerks to this Sub-Committee and the Sub-Committee on Economic and Financial Affairs. Whilst we note your suggestion that there has been a misunderstanding, it remains the case that since July 2012 the Treasury were well aware that we were undertaking an inquiry into fraud on the EU’s finances to which both these two reports were very relevant. Yet neither Explanatory Memorandum offered any explanation or referenced any agreement between the Government and Parliamentary Officials which would have explained to us the gap between the reports’ respective publication dates and the dates on which Parliament received the requisite Explanatory Memoranda.

On 5 February you appeared before the Sub-Committee on Economic and Financial Affairs. Part of that session was devoted to discussing recent scrutiny problems with the Treasury;
in particular, the repeated missing of deadlines and the poor quality of Explanatory Memoranda emanating from the Treasury. This Sub-Committee has also recently suffered similar difficulties pertaining to:

— The proposals dealing with Staff Regulations (17360/12 and 17322/12),
— The proposed Regulation reforming OLAF (7897/11, 9843/11 and 13670/11); and,
— The proposed Directive designed to protect the EU’s financial interests via the criminal law (12683/12 and 17670/12).

During the course of your appearance before the Economic and Financial Affairs Sub-Committee, you stated that you take a personal interest in all Explanatory Memoranda that emerge from your department and your officials said that since January the Treasury’s performance has been much improved. We welcome these statements acknowledging the importance of Parliamentary scrutiny. We take this opportunity to make clear our intention to monitor closely the quality and timeliness of the Treasury’s ongoing performance of its scrutiny responsibilities where it is relevant to this Sub-Committee’s work. We hope that this will not happen again and we will not have to raise this matter in the future with the European Union Committee.

As you know, we have just concluded our inquiry into fraud on the EU’s finances. The substance of both these annual reports formed the basis of various lines of questioning in the evidence sessions we conducted during the fraud inquiry and, in turn, aspects of our Report. Our Report was published on Wednesday 17 April and we look forward to considering the Government’s formal response in due course within the agreed two months.

22 April 2013

FIGHT AGAINST FRAUD ON THE EU’S FINANCIAL INTERESTS BY MEANS OF CRIMINAL LAW (12683/12)

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

Thank you for your letter of 15 October, in response to my predecessor’s Explanatory Memorandum of 15 July in which he outlined the content and policy implications of the proposal for the Directive on the fight against fraud on the EU’s financial interests by means of criminal law (“the PFI Directive”). My apologies for the delay in responding to your queries on this issue, this is of course a live issue and it has taken until now to be in a position to respond to all your questions.

In your letter you requested further details concerning areas of possible concern with the proposal. Specifically your letter was interested in the requirement for minimum sentences, extra-territorial jurisdiction, and the legal basis for the PFI Directive. You were also interested in the interaction of this proposal with another proposal on the confiscation of the proceeds of crime.

Regarding the legal base of the PFI Directive, you will recall that the Explanatory Memorandum of 15 July noted that the Government was considering whether the Commission’s choice of an Article 325 TFEU legal base was appropriate for this measure. This consideration has led us to conclude that the contents of the draft Directive would require an Article 83 legal base. As such, officials are already focussing at working-group level on lobbying both the Commission and other Member States to agree to change the legal base during the negotiations.

Regarding minimum sentences, I would agree with your assessment that such provisions are rare in the UK and, as currently proposed within the draft Directive, would remove the ability of judges to determine an appropriate criminal sanction having regard to all the circumstances of a particular case. Such broad obligations to impose minimum sentences would not only fetter judicial discretion but also conflict with a fundamental principle of our sentencing system.

Similarly I share your concerns about the articles in the PFI Directive on the freezing and confiscation of the proceeds of crime. Difficulties on this subject arise from ambiguity within the text, and it is critical that this PFI Directive does not override the Government’s decision not to opt in to the Confiscation Directive. Officials will first seek clarity on the consequences of the existing language and then seek to ensure that this instrument does not bind the UK to the Confiscation Directive itself through the back door.

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On the question of extra-territorial jurisdiction, I understand that the UK does not currently assume jurisdiction over overseas offending on the part of our nationals in respect of most of the offences covered by the proposed Directive. The Government is not convinced of the need for, or the proportionality of, the jurisdictional obligations, which would entail considerable resource implications. In the Government’s view the Commission has not provided sufficient justification for the prosecution by any EU Member State of a broad range of economic offences with an impact on the European Union budget committed anywhere in the world in the absence of any evidential or circumstantial link to that Member State other than the fact that the offender is one of its nationals. For these reasons the UK will therefore seek to resist the instrument’s extraterritorial jurisdiction obligation.

24 February 2013

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

Thank you for your letter of 24 February and your Explanatory Memorandum (EM) on the Court of Auditors’ Opinion. These were considered by the Justice, Institutions and Consumer Protection Sub-Committee on 13 March. The letter arrived much later than we had requested but we note your explanation and apology. Your EM on the Court of Auditors’ Opinion was also late; your officials have told ours that this was because of the need to take account of input from other Departments, but we would have expected to see an explanation in your EM.

We thank you for your further comments on the points mentioned in our earlier letter. We note that our positions on most matters and the proposal generally are close.

You did not mention how the negotiations on the proposal are progressing and we would appreciate an update on the procedural side of the matter. We keep the proposal under scrutiny and should be grateful for a reply to this letter by 5 April.

14 March 2013

**HAGUE CONVENTION (5218/12, 5306/12 TO 5312/12)**

**Letter from the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman**

Kenneth Clarke wrote to you about these proposals on 13 March. Given the time that has passed I am writing to update you about the state of play of the negotiations.

Your Committee will recall that the Government opposes the European Commission’s claims to exclusive external competence in this area. I am pleased to report that this position has been supported by all Member States that have spoken on this point (18 in total). The Presidency has concluded that as there is no chance of unanimity on any of these proposals no further progress can be made in the Council.

The next move will depend on the position of the Commission. The indications are that it is unlikely that the Commission will decide to withdraw the proposals. Therefore, although I cannot be certain, it seems to me very possible that the Commission will wish to refer this matter to the European Court of Justice.

I will write again when I know more about the Commission’s plans.

11 December 2012

**HERCULE III PROGRAMME (18940/11)**

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

I am writing to update you on the state of negotiations on the draft Regulation on the Hercule III programme.

As you know, the Government called for the European Court of Auditor’s (ECA) to provide an opinion on the Hercule II programme, which we saw as a useful input into any decision on the future of the programme. In addition, the Presidency has now confirmed that the Commission has
committed to providing an independent evaluation of the full impact of the programme by the end of 2014. The Government looks forward to seeing this report, which we hope goes some way to providing the comprehensive evaluation we previously called for. The Government still believes that an ECA Special Report on the effectiveness of programmes such as the Hercule may well be a useful supplement to the existing reports, although this will need to be re-assessed once we have evaluated the Commission’s report, in order to avoid unnecessary duplication.

The regulatory proposal for Hercule III relates to the next Multi-Annual Financial Framework (MFF). The Government has been clear that its top priority in these negotiations is budgetary restraint, and has secured a Council position on the MFF that delivers this for total EU spending in 2014-2020. The Commission have also suggested that the reorganisation of the European Anti-Fraud Office (who administers the programme) will establish synergies that should result in cuts to administrative costs, which we would welcome.

The Council’s agreement on the MFF now requires the European Parliament’s consent to become an MFF regulation, and we are waiting for the Commission to give an updated view on individual programme spending, so I am unable to provide details on compensatory reductions elsewhere in the MFF.

As you know an important change under the Hercule III programme is the proposed increase in the maximum co-financing rate for grants for technical support from 50% to 80% (and 90% in exceptional and duly justified cases). I am particularly pleased that the ECA, in its Opinion, suggested that the rate should be 50% to reflect the provisions of the legal base of the programme (Article 325 for the protection against fraud), which requires joint Member State and EU responsibility. This should ensure that EU and national interests are evenly balanced. In the ECA’s view, 80% should be the maximum rate only in exceptional cases.

In official-level discussions in Council, the UK was successful in building a blocking minority of like-minded allies (Denmark, Austria, France, Germany, the Netherlands, Finland and Sweden) against the proposed co-financing rate for both the Hercule and Pericles programmes, and have asked that discussion on the rate should be considered in light of the ECA’s opinion.

We understand that the Presidency will issue a compromise text with a further, more in-depth discussion anticipated at the next Anti-Fraud officials working group.

19 April 2013

HISTORICAL ARCHIVES OF THE INSTITUTIONS (13183/12)

Letter from Helen Grant MP, Parliamentary Under-Secretary of State for Justice, Ministry of Justice, to the Chairman

Thank you for your letter of 15 October 2012. You requested an update on our progress in clarifying how the institutions will achieve digital archiving. You also asked why the Court of Justice and the Court of Auditors are not included in this proposal.

DIGITAL ARCHIVING IN THE EUROPEAN INSTITUTIONS

The European University Institute (EUI) will provide access to the EU historical archives from a single location, to promote their consultation and to stimulate research. For paper archives this requires their physical deposit in Florence. Digital archives do not, however, have to be physically located at the EUI to achieve this objective. Instead, the EUI will have access to the relevant digital files and records in the institutions’ repositories and provide added value by centralising access to the digital archives of institutions, adding (descriptive) metadata and by ensuring their online dissemination.

The institutions will have flexibility on how they introduce digital archiving, to reflect their priorities and available resources. The Regulation does not prescribe technical solutions for digital archiving, which would be difficult in an age of rapidly evolving technologies. Each institution will need a long-term digital preservation strategy and a digital repository to manage its records and archives. The institutions will need to ensure that all systems are based on common preservation and dissemination models and standards, and respect legislative requirements, such as data protection and the re-use of public sector information.
The European Court of Justice (ECJ) and the European Central Bank (ECB) are the only two institutions which asked for an exception to the general rule of mandatory deposit at the EUI. The ECJ archives is a considerable size, the majority of which are case files, and many of which need to remain accessible to the court and often contain sensitive personal data. Arrangements for managing the records of courts and whether they are subject to national archives legislation vary across member states. The ECJ retains the possibility of voluntary deposit with EUI and giving the EUI access to digital archives which the Court might open to the public in the future.

The ECB refers to its organisational autonomy, staff expertise in guiding users to historical information and that public access to its documents is subject to specific Bank rules from 2004 (not Regulation No. 1049/2001 regarding public access to European Parliament, Council and Commission documents). This is in line with national arrangements in most member states (for example the Bank of England is not subject to the Public Records Act (1958). The European Court of Auditors is included in the general rule of mandatory deposit.

9 November 2012

Letter from the Chairman to Helen Grant MP

Thank you for your letter of 9 November. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 21 November. The Committee decided to retain this proposal under scrutiny.

We were grateful for your explanations of how digital archiving will work and of the special positions of the Court of Justice and the European Central Bank. We should be grateful for an update, in due course, on the progress of negotiations in the light of the deliberations of the European Parliament.

22 November 2012

INSOLVENCY PROCEEDINGS (17881/12, 17883/12)

Letter from the Chairman to Jo Swinson MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

Your Explanatory Memoranda of 9th and 11th January 2013 were considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 6 February. We decided to clear the Commission's report (doc 17881/12) and to retain the proposal (doc 17883/12)

We agree with you that no subsidiarity concerns arise.

Although the UK opt-in applies to this proposal, you have not complied with the undertaking of Baroness Ashton on 9 June 2008 and more recently affirmed in the Minister of Europe's statement of 20 January 2011. In accordance with this undertaking, the Explanatory Memorandum should set out, to the extent possible, an indication of the Government's views as to whether or not it would opt-in and the factors affecting the decision. Your Explanatory Memorandum does not address in any substantive way the question of the exercise of the UK opt-in. Please indicate the Government's views and/or the factors affecting the opt-in decision, including the consequences of not opting in.

We would like to consider the results of your consultation with stakeholders on this proposal when they are available.

In the meantime we should be grateful for a response to the following questions:

— What are the views of the devolved administrations?
— Have you identified any other matters, raised in the Commission's review of the current Regulation or otherwise, which should be included in this proposal?
— Would the proposal make pre-packaged administrations more likely?
— Do you think a test of habitual residence is sufficiently clear, without further definition, to determine jurisdiction in cases of personal insolvency? In other contexts this test has been subject to heavy criticism.
Letter from Jo Swinson MP to the Chairman

Thank you for your letter of 7th February on the above documents.

Regarding your comments on the Ashton undertakings, I would like to reaffirm this department’s commitment to these undertakings and I am happy to provide additional clarification on the question of opt-in to the proposed Regulation. Government will make the opt-in decision in March in advance of the deadline of 10th April, and the decision will be based on a number of factors, most important being the evidence we receive from stakeholders on the impact of the proposals on UK interests. My officials have already held a number of stakeholder meetings and there is a call for evidence currently running. Specifically we have asked stakeholders what the impact will be on businesses, creditors, debtors and other interested parties and whether they think Government should opt-in. Whilst I cannot pre-empt the decision of the European Affairs Committee on opt-in, I can say that stakeholders have already expressed support for the Commission’s proposals, many of which reflect the responses from UK stakeholders to a public consultation issued by the Commission in 2012.

Turning to your specific questions:

WHAT ARE THE VIEWS OF THE DEVOLVED ADMINISTRATIONS?

We have received the initial views of the Scottish and Northern Irish administrations on the Commission’s proposals. The Scottish Government is broadly supportive of the proposals but it has some concerns over the additional costs on courts from the proposed rules on determining jurisdiction, and additional costs on Government from the requirement to develop existing insolvency registers. Northern Ireland is also broadly supportive, although there is concern about the additional legal and administrative costs of ‘bankruptcy tourism’ and whether the Commission’s proposals go far enough to address the problem.

Have you identified any other matters raised in the Commission’s review of the current Regulation or otherwise, which should be included in this proposal?

As I mention above, the Commission has received input from UK stakeholders. The UK provided the largest number of responses to the Commission’s consultation, more than any other Member State, and UK experts participated in a committee set up by the Commission to advise on the Regulation and possible reforms. The resulting report on the existing Regulation and proposals for reform are a balanced package which addresses the key concerns raised by UK stakeholders.

WOULD THE PROPOSAL MAKE PRE-PACKAGED ADMINISTRATIONS MORE LIKELY?

UK Administrations, pre-packaged or otherwise, are already covered by the existing Regulation. The Commission’s proposals will not affect this and there is nothing additional contained within the proposals which would increase or decrease the incidence of pre-packs in the UK.

DO YOU THINK A TEST OF HABITUAL RESIDENCE IS SUFFICIENTLY CLEAR, WITHOUT FURTHER DEFINITION, TO DETERMINE JURISDICTION IN CASES OF PERSONAL INSOLVENCY?

For the vast majority of personal insolvency cases, habitual residence will give a clear indication of jurisdiction. In the few cases where the debtor has relocated prior to applying for insolvency, courts are increasingly asking additional questions and seeking evidence from third parties as to the correct jurisdiction for opening proceedings. The Commission’s proposals strengthen these rules.

ARE YOU CONTENT THAT THE COMMISSION SHOULD ADOPT AMENDMENTS TO THE ANNEXES TO THE REGULATION BY THE DELEGATED LEGISLATION PROCEDURE?

It is important that the Regulation only covers procedures which are in scope and which have been proposed by Member States for addition to the annexes. The Commission’s proposals provide for clarification on the scope of the Regulation, as well as setting out a procedure for Member States to
put forward new insolvency procedures for inclusion. The Commission’s proposal to amend the 
annexes by delegated act will speed up the process, but the Council and the European Parliament will 
still have the option to object to an annex amendment and also to revoke the delegated power. These 
safeguards appear satisfactory.

22 February 2013

Letter from the Chairman to Jo Swinson MP

Thank you for your letter of 22 February 2013. This was considered by the Justice, Institutions and 
Consumer Protection Sub-Committee at its meeting of 27 February. We decided to retain this matter 
under scrutiny.

We remain disappointed at the lack of information on the factors affecting the opt-in provided by the 
deadline for comments. For example, as this is a proposal amending an existing Regulation, we would 
have expected an initial assessment of whether it would be possible for the UK to operate the 
present insolvency regime if most other Member States adopt the proposed amendments; and thus 
whether Article 4a of Protocol 21 was likely to be engaged.

However, we note that the Government are supportive of the principles underpinning the 
Commission’s proposal, that no unacceptable elements in it have been identified, and that the 
preliminary indications are that it is supported by stakeholders. We are also conscious that failure to 
opt in at some stage by the UK would likely result, at best, in an undesirable increase in legal 
complexity.

In these circumstances, our preliminary view is that we would not object to a decision of the 
Government to opt in to this proposal at the negotiating stage in order to maximise the UK’s 
negotiating strength.

We are grateful for the response to the other questions in our letter and we look forward to an 
update, in due course, on the outcome of your consultation with stakeholders and on the progress of 
negotiations.

28 February 2013

Letter from Jo Swinson MP to the Chairman

The Government has concluded that it is in the UK’s interests to opt-in to the negotiations on the 
draft Regulation. The Foreign Secretary has now communicated the decision to the Council.

I have today laid a written statement in Parliament communicating this decision.

I would like to take this opportunity to thank your Committee for its detailed consideration of the 
Commission’s proposals and related documents.

15 April 2013

INTELLECTUAL PROPERTY: CUSTOMS ENFORCEMENT (10880/11)

Letter from the Chairman to Sajid Javid MP, Economic Secretary, HM Treasury

Your predecessor’s letter of 30 August 2012 was considered by the Justice, Institutions and 
Consumer Protection Sub-Committee at its meeting of 31 October. The proposal was cleared.

The Committee is grateful for the further information you have provided, and considers that the non-
monetised benefits identified in the Government’s Impact Assessment outweigh the small costs 
involved.

Please can you forward to us the text of the Council’s common position when it has been adopted, 
with your view on the prospects of it being agreed by the European Parliament.

1 November 2012
IRISH PRESIDENCY PRIORITIES

Letter from Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

Ireland took over the rotating European Union Presidency on 1 January 2013. I am writing to provide an overview of the Presidency’s priorities in the areas of justice on which the Ministry of Justice leads. I hope that this will help in the planning of the scrutiny of dossiers that are likely to be considered by the Justice and Home Affairs (JHA) Council during this period.

The Irish Presidency is planning to host the following JHA Councils:

- 17 - 18 January (Informal Council) in Dublin, Ireland
- 7 - 8 March in Brussels
- 6 - 7 June in Brussels

The Presidency will prioritise measures which aim to promote economic activity and growth. With this in mind, the Presidency will work to achieve progress on the Common European Sales Law (CESL) and European Account Preservation Order (EAPO). The Government issued its response to the UK’s call for evidence on the CESL on 13 November 2012. It is likely that the Presidency will want to conclude negotiations on the EAPO. The UK did not opt in to this proposal because of concerns about the lack of safeguards for defendants. Negotiations are continuing and we continue to work with others to improve the text to enable consideration of a post-adoption opt in. We will, naturally, consult Parliament on any decision to opt-in post adoption.

The Irish will continue negotiations on the proposed Regulations on Matrimonial Property Regimes and the Property Consequences of Registered Partnerships. The UK has not opted in to these proposals and has no plans to opt in post adoption.

Achieving progress on the Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) and the Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data will be a key priority for the Irish. The UK did not invoke the opt-out under the Schengen Protocol on the Directive.

The Presidency will work with the European Parliament on the right to access to a lawyer in criminal proceedings and on the right to communicate upon arrest. This is the third measure of the “Roadmap” to strengthen the procedural rights of suspected or accused persons in criminal proceedings, which is part of the Stockholm Programme. The UK did not opt in to this Directive because the Commission’s proposal as originally drafted would have had an adverse impact on our ability to investigate and prosecute crime. We are actively negotiating in order to improve the Directive with a view to considering whether to opt in post adoption, in the event our concerns are met. We will consult Parliament on any decision to opt in post adoption.

The Presidency will also be keen to reach agreement on the proposed regulation on the Regulation on the mutual recognition of Protection Measures in Civil Matters. The UK opted into this proposal in July 2011. A General Approach for the next stage of negotiations and the trilogue discussions with the Commission and European Parliament was agreed at the December 2012 JHA Council.

We expect the Irish Presidency to move forward negotiations on Accession of the EU to the European Convention on Human Rights (ECHR) over the next six months. We shall keep you informed of developments in this area.

The proposals for the Justice and Rights and Citizenship funding programmes are part of the Multiannual Financial Framework 2014-2020 package (MFF). It is unlikely that final agreement on individual programmes will be reached until the MFF is adopted. This will be a top priority for the Irish Presidency, which is aiming for final agreement in early 2013.

13 January 2013
Letter from the Rt Hon Vince Cable MP, Secretary of State for Business, Innovation and Skills

I am writing to summarise briefly the areas that we expect to be most active during the Irish Presidency.

SUMMARY

The Irish Presidency will be given shape by four European Councils: on 7-8 February, 14 March, 30 May and 28 June, covering trade, Multi-Annual Financial Framework (MFF), economic reform and growth and the Banking Union. However the exact agendas for the Councils have not yet been issued.

BIS’s main interests will be in the Competitiveness, Employment and Social Affairs (EPSCO), and FAC-Trade Councils, though we also have substantial interests in proposals going to the Environment and Energy Councils and Education Councils. The Competitiveness Council meets on 18/19 February and 22-23 May, with an Informal in Dublin on 1-3 March. EPSCO meets on 28 February and 20 June with an Informal on 7-8 February. The FAC Trade has an informal on 17-18 April and a formal meeting on 18 June, coinciding with the G8 Summit on 17-18 June in Lough Erne.

MULTI-ANNUAL FINANCIAL FRAMEWORK (MFF)

The Irish will aim to bring negotiations on the Multi-Annual Financial Framework to conclusion. Under the Cypriots progress was made on the negotiating box (a document similar to council conclusions containing overall numbers on budget size), although key UK objectives on the size and financing of the budget are not yet satisfied. Progress on all the associated legal instruments will be dependant on the Irish Presidency resolving the financial dimension of the negotiation. The main legal instruments, on which BIS has the policy lead, are covered below separately specifically: Structural and Cohesion Funds, Horizon 2020, Euratom and International Thermonuclear Experimental Reactor (ITER), COSME, Galileo and Erasmus for All.

The Irish Presidency will aim to ensure that COSME is delivered to achieve greater alignment between Horizon 2020 and Cohesion Policy instruments while retaining the important distinction between the two programmes. Final agreement will only then be reached when figures are slotted in following resolution of overarching Multi-Annual Financial Framework discussions.

The Commission has proposed that ITER is funded outside the MFF. HMG strongly opposes this, and the UK, (along with FR and DE), are unwilling to negotiate the ITER proposal while ITER remains off budget. The expectation is that ITER will come back on budget as part of the eventual MFF agreement.

Depending on whether there is an agreement on the multiannual financial framework, Ireland aims by the end of its Presidency to have reached agreement with the European Parliament of the cohesion package of legislation, including the Commons Provisions Regulation, so that programmes might start early in 2014.

INTERNAL MARKET

The growth agenda will dominate. The Cypriots, as anticipated, have made limited progress, consequently there are many priorities from Single Market Act I (SMA) identified by the European Council still outstanding. Notwithstanding this, the Commission published the SMA II in October which contained further plans for enhancing the single market in other areas, particularly in energy and infrastructure.

The task for the Irish presidency will be to ensure that the commitments given in two communications on the Services Directive and Single Market Governance published last July are fully carried out. These communications were a great success for UK early engagement and may go a long way to delivering UK priorities for full implementation and enforcement of the existing Directives.

Progress on the proposed amendment to the rules on Recognition of Professional Qualifications has been slow but the Irish Presidency is keen to work towards a first reading deal which may mean agreement by the end of February. We have made good progress from the original text in a number of our key areas but have outstanding concerns over the use of delegated acts and the minimum training requirement for medical professionals. We will continue work to seek a resolution acceptable to the UK on these issues.

Since the general approach on the Accounting Directive last year, there has been no formal discussion of the chapters dealing with the preparation of financial statements. Chapter 9 of the Directive, which
focuses on the reporting of payments to governments by extractives companies, has been the focus of all trilogue meetings to date. We expect discussions on Chapter 9 to draw to a conclusion shortly and formal discussion of the remaining chapters to begin. On these chapters, the UK was able to secure a number of important changes to the Commission’s original proposals during negotiation of the Council’s position. The Irish Presidency is expected to produce a full compromise text shortly and will be seeking a First Reading agreement in early/mid 2013.

On the Commission’s proposals on audit, the Irish Presidency has made clear its intention to develop a General Approach from the Council in the next 6 months. Concerns that the proposals are disproportionate have made progress difficult thus far but the presidency is devoting time and resources aimed at developing a consensus.

The Irish Presidency will also take forward various aspects of the EU better regulation agenda. There will be Competitiveness Council Conclusions in May on the Commission’s recent Regulatory Fitness and forthcoming SME Scoreboard Communications, and also ongoing work to improve the use of Impact Assessments in Council.

The Presidency has said that they will take Women on Boards as far as possible. The Commission Directive, adopted on the 14 November, is currently being considered by Member States and discussions on the proposal are due to start in working groups in February.

One of the key priorities for the Irish Presidency is advancing the Digital Single Market by making progress on the draft Regulation for e-identification and other trust services (e-IDAS), cyber security and EU data protection. E-IDAS were a priority under the Cyprus Presidency and the Irish have confirmed that it will remain a priority for them. It is a very technical and potentially contentious proposal, including issues around the references to Member State liability and the proposed use of delegated and implementing acts. Progress on this dossier has been slow and the timetable for taking it forward is ambitious.

The Irish Presidency will be seeking to reach urgent agreement with the European Parliament on the European Network and Information Security Agency (ENISA) dossier, as the Agency’s current mandate expires in September.

Closely linked to this will be the new work in this field on cyber, where we expect the Commission to bring forward a Communication on an EU Cyber Security Strategy, as well as a Directive on Network and Information Security at the end of January.

We are concerned that the Presidency will try and rush discussions on data protection at the Commission’s behest to the detriment of the final instrument. The current draft Regulation has a considerable number of flaws in terms of the prescriptive nature and practicality of approach. MoJ, who lead on the document, are pressing for a directive instead. There is a serious risk that the document will lead to significant burdens on business whilst stifling research and innovation.

The Irish hope to get an agreement in May on State Aid rules. State Aid is a Commission competence.

**INTELLECTUAL PROPERTY**

Agreement on the Unitary Patent Regulation and associated language regulation was reached at the end of the Cypriot Presidency. The Irish Presidency hopes to host a signing ceremony for the inter-governmental agreement on the Unified Patent Court in the margins of the February Competitiveness Council. Following this, focus will turn to implementation of the system.

Negotiations on the proposed Directive on Collective Rights Management, which is intended to facilitate cross-border licensing of online music and improve the governance of collecting societies, have progressed during the Cypriot Presidency. The Irish Presidency has indicated in their Presidency plan that this dossier is a priority, so activity on it should increase. They are planning a political debate at the May Competitiveness Council.

**CONSUMER POLICY**

The proposals relating to alternative and online dispute resolution (ADR and ODR) are expected to be adopted in the spring, from which Member States will have two years to implement the legislation.

It is also likely that the Package Travel Directive will be formally adopted by the Commission during this Presidency, although it is not an Irish Presidency priority.
INDUSTRY AND GOODS SINGLE MARKET

A new Product Safety and Market Surveillance Package is expected to be adopted in mid-February with negotiations starting shortly after. This will include an EU Regulation to revise the General Product Safety Directive and an accompanying new Market Surveillance Regulation. The package will be completed by a non-legislative Communication from the Commission on a multi annual plan for market surveillance.

The Presidency aims to finalise the alignment package, the proposal to align nine existing product safety or performance Directives with the common framework on the marketing and market surveillance of products under the New Legislative Framework.

On the Batteries Directive, the Presidency is likely to try for a first reading agreement on a proposal that ends a current exemption allowing the use of cadmium in cordless power tool batteries (cadmium is already prohibited in other consumer batteries).

RESEARCH AND SPACE

The Irish intend to build on the progress made by previous Presidencies in obtaining Partial General Approaches (political agreement) on the texts of the main instruments in the Horizon 2020 package, including the European Institute of Innovation and Technology. In addition to obtaining political agreement on the EURATOM aspects of the programme, they will be undertaking negotiations with the EP starting early in the year. The aim is to reach agreement on a compromise text which will allow Horizon 2020 to be launched on time in the autumn, although final agreement will obviously be conditional on the outcome of negotiations on the EU budget as a whole.

Council conclusions on the Communication on the European Research Area (ERA) were adopted at the Competitiveness Council in December 2012. These endorsed the Commission's non-legislative approach to completing the ERA by 2014 and included further information on how progress would be monitored. Work will proceed with the Commission, through the ERA Committee (ERAC), to agree the detail of the monitoring process.

The work related to the EU's global satellite navigation systems Galileo and European Geostationary Navigation Overlay Service (EGNOS) will continue to be taken under the Transport Council. A new regulation on the protection of EU satellites (Galileo, EGNOS and others) from debris and other spacecraft is expected to be adopted.

Work will be undertaken on the relationship between the European Space Agency and the European Union during 2013 now that the Union has competence for space under the Lisbon Treaty. The Council is expected to adopt Conclusions in February agreeing to a debate about the future relationship.

The Commission is expected to adopt their Communication on a Space Industrial Strategy. This looks likely to set out the case for EU-level action in a number of space-related areas, including sharing of private Earth observation data. It may also put forward the case for a far more aggressive interventionist approach to building and supporting space-related industry.

Depending on the outcome of negotiations on the EU Budget, a proposal for the Regulation governing the Copernicus system (previously known as GMES - Global Monitoring for the Environment and Security) may begin under the Irish Presidency.

EMPLOYMENT

The Irish Presidency will focus on tackling youth joblessness through a Youth Employment Package. Following its Employment Package the European Commission has presented a similar range of initiatives and documents aimed at tackling youth unemployment. It comprises a proposal for a Council Recommendation on Establishing a European Youth Guarantee; a Communication launching a second stage consultation of European social partners on a possible Quality Framework for Traineeships; and an “umbrella” Communication on Moving Youth into Employment.

The Youth Guarantee recommends that all Member States make an offer of employment or education and training after four months' unemployment or where young people have been out of education for that length of time. The Government has cautiously welcomed the initiative in recognition of the need to do something about youth unemployment, but will be seeking flexibility over the headline period of four months.

The scope used by the Commission for the proposed framework for quality traineeships is very broad and it compares a wide range of offers for young people, each of which it terms ‘traineeships’. The UK
Government does not agree that a single European Framework for traineeships is necessary or desirable for all types of ‘traineeship’.

A European Alliance for Apprenticeships would add no value to the apprenticeship system in England as this already largely fulfils the Commission’s description of the good quality apprenticeships the Alliance would be intended to promote.

Negotiations on the Posting of Workers Enforcement Directive are ongoing, and the Presidency has allocated a number of working groups in order to progress Council discussion and work towards a general approach. The European Parliament is currently expected to hold its first reading plenary vote in May.

The Social Partners had until 31st December 2012 to conclude their negotiations on the Working Time Directive. The outcome of the discussions has not yet been announced, but the negotiating parties released statements in December outlining that little progress had been made and that agreement looked unlikely. If negotiations do fall through, the responsibility for amending the Directive will revert back to the Commission.

Education and Skills

The Irish Presidency will focus on the skills agenda and qualifications linked to it, teacher training, and the social dimension of Higher Education.

Rethinking Education: The recent Communication sets out the Commission’s ideas for future activity in a wide range of education policy areas: compulsory education (primary and secondary), vocational education and training (VET), and higher education. These suggestions for future activity are, broadly speaking, in line with domestic policy, however, there are some wide generalisations which need to be more tightly defined in future Commission policy documents. The Commission’s language occasionally implies a too-prescriptive attitude to Member States’ national policies. The UK has strong reservations about this approach: all follow-up documents will therefore be subject to close scrutiny and we will be asking for cost/benefit analyses of proposed actions.

Erasmus for All: The UK supported the partial general approach on the Erasmus for All proposal for the next generation of Education, Youth and Sport programmes (2014-2020), agreed at the May 2012 Education Council. Under the Irish Presidency trilogues will be held to resolve the differences between the European Parliament position and that of the Education Council. The UK would like to achieve an outcome as close as possible to the partial general approach. We would particularly like to retain the name ‘Erasmus for All’ for the programme in preference to the European Parliament suggestion of ‘Youth, Education and Sport (YES) Europe’, and to retain the streamlining and efficiency gains for the education and youth programmes set out in the Commission’s original proposal. The proposed Masters Loan Guarantee Scheme, which was not included in the partial general approach, will be discussed under the Irish Presidency. We have been giving this proposal careful consideration and hope shortly to have an agreed UK position on it.

Trade

The main deliverable during the Irish Presidency for the EU’s ambitious programme of FTA negotiations is expected to be the potential launch of negotiations with the USA. Assuming a positive report from the EU-US High Level Working Group on Jobs and Growth and the necessary political support from both sides of the Atlantic, negotiations could launch by the summer. The Prime Minister will use our G8 Presidency to maintain momentum on this. In addition, the Irish Presidency will be working towards: concluding negotiations with Canada, concluding technical work on the EU-Singapore FTA following political agreement in December, and the launch of negotiations with Japan and Morocco.

The Irish Presidency has inherited a busy portfolio of proposed trade regulations. Progress will be expected on Trade Omnibus I and II and on a new proposal for a legislative framework for taking measures to safeguard EU rights under multinational and bilateral trade agreements. We expect the Irish to give some time for negotiations on the proposed regulation on the access of third-country goods and services to the Union’s internal market in public procurement but with a strong blocking majority we do not expect it to progress. We also expect new proposals from the Commission for modernising the EU’s trade defence instruments by April. The proposals could very easily be divisive between Member States and the tone the Irish set for the discussion will be important.

Finally, negotiations on the European Commission’s proposal for a regulation establishing financial responsibility in investor-state disputes are in their early stages. The Government supports the main
principle underpinning the proposal, that whoever is responsible for the act leading to a claim by an investor under an EU bilateral investment treaty with a third country should bear financial responsibility if the claim succeeds. However, we are seeking certain adjustments to make it more effective and to address concerns about the division of competence in this area.

I hope you find the above information useful. The Department, of course, will keep you updated on progress of all of the key issues for the UK through the Presidency.

22 January 2013

MATRIMONIAL PROPERTY REGIMES AND PROPERTY CONSEQUENCES OF REGISTERED PARTNERSHIPS (8160/11, 8163/11, 8145/11, 8253/11)

Letter from the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

Although the UK did not opt in to these proposals and I do not anticipate that we will wish to opt in after their adoption I am aware that my officials promised that an update on the negotiations would be provided before the end of this year. I set out below the main changes that have been made to the texts since negotiations began.

SCOPE AND DEFINITIONS

Within the scope of both proposals the existence, validity or recognition of a marriage or registered partnership is now excluded as are gifts or companies set up between the spouses and partners. Within the definitions, a new provision is included which allows the concept of 'domicile' to replace that of 'nationality' in those Member States where that is the usual connecting factor in family law matters. This will be helpful to UK citizens making use of these Regulations in participating Member States.

JURISDICTION

There has been discussion as to whether the courts with jurisdiction in the recently agreed Regulation on successions and wills should also automatically have jurisdiction to rule on property issues arising from the succession or whether a previously made choice of court agreement by the spouses or partners should be respected. We can see the advantage of not fragmenting the succession jurisdiction. The Presidency has proposed to the December JHA Council that any choice of court agreement in such situations should be disregarded.

The courts with jurisdiction to hear a divorce, separation, annulment or dissolution of a marriage or partnership will also have jurisdiction to rule on the property issues but only where the spouses or partners so agree. We would prefer such courts to always have jurisdiction in such circumstances to help protect a weaker party from being pressured into accepting the court with the jurisdiction most favourable to the stronger party but it is clear that this view is not supported by the majority of other Member States.

The remaining provisions in this Chapter in the matrimonial property regimes proposal are similar to the Commission’s text except for mainly technical changes. An additional jurisdiction rule has been proposed, based on the defendant’s appearance before a court of a Member State without objecting to the jurisdiction. This is not objectionable.

Within the registered partnerships proposal there is not, as yet, a similar choice of court provision allowing partners to choose the court of a Member State whose law they have selected. However the Presidency has suggested that if registered partners are allowed to choose the applicable law of a country whose law recognises the type of partnership in question (which they cannot at present) there should also be consideration about whether they should also be able to choose the court that will adjudicate their property disputes. The Government hopes that participating Member States will look favourably on the Presidency’s suggestions, not least because there appears to be no justifiable reason for not doing so.

There is an additional difficulty in the jurisdictional rules on the registered partnership proposal because couples whose partnership was registered outside of the EU may find it difficult to find a forum in which to determine a property dispute. The problem arises because a court of a Member State which has jurisdiction under this Regulation may decline to exercise it “if its law does not
recognise the institution of registered partnership”. If the provisions on subsidiary jurisdiction or forum necessitatis do not apply the only way such couples will be able to resolve any dispute will be by way of ordinary civil law principles (to which the Brussels I Regulation would apply).

APPLICABLE LAW

The provisions on applicable law in the matrimonial property regimes proposal have been reordered or have had technical amendments. The scope has been helpfully clarified in a new provision (which is also included in the registered partnership proposal) to help determine what issues are to be considered under the relevant applicable law. There is also a proposed additional exception to give the court a discretion to apply a law with a closer connection with the couple than the laws indicated in the normal hierarchy. All of these changes are unobjectionable. Those with UK domicile or parties habitually resident in the UK will still be able to choose a law of one of the UK’s jurisdictions to apply to their case, even though choice of court (i.e. jurisdiction) will not apply for such couples as we are not a participating Member State.

In the registered partnership proposal the default rule remains that the applicable law shall be the law of the State under whose law the partnership was registered. However, as mentioned above, the Presidency has raised the option of allowing partners or future partners to choose the law of another country with which at least one of them has a connection provided that country recognises the type of partnership and attaches property consequences to it. While we believe this would be a helpful addition, it is by no means clear that this will be agreed because the registered partnership proposal has proved to be politically controversial during the negotiations.

With regard to the position of third parties the new text of both proposals continues to state that the law applicable to the matrimonial property regime will also determine the powers, rights and obligations of the spouses with regard to property and the effects of the matrimonial or registered partnership property regime on a legal relationship between a spouse and third party. This confirms our earlier concerns about the proposal in that it does not allow third parties to contract out of the applicable law where they have notice of that law. The only choice seems to be to refuse to contract or enter into the relevant legal relationship. However, revision of the specific provision on the effects in respect of third parties in both proposals is helpful because it clarifies that the applicable law may not be invoked by a spouse against a third party unless that third party knew or should have known of that law and provides more protection for third parties compared to the original drafting.

RECOGNITION AND ENFORCEMENT PROVISIONS

These have been redrafted in both proposals to align them more with the recently agreed Regulation on successions and wills and are unobjectionable. Member States that do not recognise registered partnerships will no doubt make use of public policy grounds of objection to refuse recognition.

Given that a UK post-adoption opt in is not anticipated, the UK is not participating actively in the negotiations of either of these proposals but is rather just monitoring their progress with the objective of minimising any negative impact on UK citizens. While there are a number of provisions which could be improved, in particular in relation to registered partners, it is our view that the latest versions of the texts do not in any significant way create any particular problems for UK citizens over the current situation in relation to such matters when they are considered in the courts of other Member States.

11 December 2012

Letter from the Chairman to Rt Hon Chris Grayling MP

Thank you for your letter of 11 December. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 19 December. We decided to retain these matters under scrutiny pending further developments.

We were grateful for the helpful update on negotiations. Whilst we agree with your analysis that the changes are mostly in a positive direction, we do not consider that the matters you raise make sufficient improvement to alter our view that the UK should not opt in to these proposals.

We should be grateful for a further update when there have been any significant further developments in these proposals.

19 December 2012
Letter from the Rt. Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

I am writing to update you on progress on the above Directive. The previous Justice Secretary last wrote to you on this matter on 11 June 2012. You agreed to clear the proposal from scrutiny in your letter of 14 June 2012 on the basis that the agreed text is in line with that which we have previously seen and shared with the Committee and the amendments you have been advised of.

Since then the proposals received European Scrutiny Committee clearance following a debate in the House of Commons on 26 June 2012. The Directive was adopted by the Employment, Social Policy, Health and Consumer Affairs Council on 4 October. On 15 November it was published in the EU's Official Journal, and entered into force the following day. Please find enclosed a copy of the final Directive [not printed].

I would also like to provide an update on the areas you raised in your letter of 14 June 2012:

ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

This Article allows for national law to provide for decision on compensation from the offender in the course of criminal proceedings. Courts have the power to require an offender to pay compensation to their victim for any loss, injury or damage the offence caused. Her Majesty's Courts and Tribunals Service has tough powers to recover unpaid compensation orders and other financial penalties.

From December 2012, changes made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will place a strengthened duty on courts to consider imposing compensation in any case where a victim is caused injury, loss or damage by a crime. The Government also intends to raise up to an additional £50m for victims’ services through increases and extension of the Victim Surcharge and increases to fixed penalties.

ARTICLE 25 (24 OF THE COMMISSION PROPOSAL) – TRAINING

Training for the legal profession is to be recommended rather than mandatory and therefore does not impinge upon independence of the legal profession. Similarly, training on the needs of victims for the judiciary and prosecutors is not mandatory and must happen without prejudice to judicial independence. We intend to discuss provision for legal professional training with the Judicial Office, the Bar Council and the Law Society as we consider approaches to implementation.

There have been no significant alterations to the substance of the Directive since the parliamentary debate in June. The content has only altered to the extent that the language has been revised by jurist linguists.

22 November 2012

Letter from the Chairman to the Rt Hon Chris Grayling MP

Thank you for your letter dated 22 November 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 12 December 2012.

We are grateful to you for the notification that this Directive has been adopted and came into force on 16 November. In addition, we thank you for the sections of your letter which addressed specifically the two remaining areas at issue; namely, the right to compensation and the training of the legal profession. This brings this matter to an end and we do not expect a reply to this letter.

13 December 2012
Letter from the Chairman to the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your letter dated 22 November 2012 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 12 December 2012. We are pleased that on reflection you now agree with the Committee’s interpretation of the EU Act 2011. We have decided to clear the proposed Decision from scrutiny and we do not expect an answer to this letter.

13 December 2012

Letter from the Rt Hon Chris Grayling MP to the Chairman

Following my letter to you of 22 November indicating the Government’s decision to introduce a Bill which seeks Parliamentary approval for the proposal for a new multiannual framework (MAF) for the Fundamental Rights Agency (FRA), I am writing to inform you of recent developments on this issue concerning the work of the FRA from the end of this year.

Although the Government has now introduced the EU (Approvals) Bill 2012, which seeks the required Parliamentary approval for the proposal, this process is not going to be completed before the expiry of the current multiannual framework (MAF).

Without a MAF, the FRA’s work will be limited to responding to requests from the EU institutions. These will reflect the priorities of those institutions and could go beyond the themes set out in the current MAF. In order to provide the FRA with a full and meaningful programme of work after the expiry of the current MAF, and one in which the Council continues to have a voice, the Council is considering a proposal to ask the FRA to undertake a number of projects. These would reflect the projects set out in the FRA’s 2013 annual work programme which the FRA’s Management Board agreed in September 2012. This annual work programme has been developed to be in line with the existing MAF (2007 – 2012) and is confined to projects which fall under former first pillar (community law) themes.

This proposal will ensure that the Council continues to set the parameters for the FRA’s work and I am therefore minded to give the support of the UK to this proposal which would be given effect through a Council conclusion, to be agreed at a Council meeting before the end of the year. Although Council conclusions are not depositable, given that Parliament is separately considering the next MAF for the FRA, I wished to inform you of my decision.

The annual work programme has been developed with reference to the existing (2007 - 2012) MAF; it does not include any projects under themes outside the former first pillar, and is a continuation of the current MAF. It does not therefore prejudice the work that Parliament has recently begun to consider the proposal for a new MAF (2013-2017).


19 December 2012

Letter from the Rt Hon Chris Grayling MP to the Chairman

I am writing to update you on the proposal for a multiannual framework (2013-2017) for the Fundamental Rights Agency. The European Union (Approvals) Act which provided Parliamentary approval for the proposal received Royal Assent and came into force on 28 February 2013. Once it came into force it was open to Ministers to proceed to vote in favour of the decision in EU Council.

The proposal has since been agreed at the General Affairs Council of the EU on 11 March 2013.

I would like to thank your Committee for the thorough consideration of the proposal and for its interest throughout the passage of the European Union (Approvals) Bill.

18 March 2013
Letter from the Chairman to the Rt. Hon Greg Clark MP, Financial Secretary, HM Treasury

Your Explanatory Memorandum of 18 December was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 9 January. We decided to hold these proposals under scrutiny.

We strongly support the Government’s quest for savings in staff costs. Indeed these proposals and the litigation over the application of the “Method” in 2011 illustrate why we favoured its abolition as part of the wider reform of the Staff Regulations which is currently under negotiation. Although it is not mentioned in your Explanatory Memorandum, we have noted press reports that COREPER refused a Commission proposal to extend the Method for a further year, as a consequence of which it should have expired on 31 December. We should be grateful for your confirmation that this is the case and your view as to how this affects the position.

We do not have any subsidiarity concerns with these proposals as they are matters of internal EU organisation. We would, however, be grateful for clarification of paragraph 17 of your Explanatory Memorandum. Why do you assert that these proposals concern “the EU Budget” and why should they be matters of exclusive EU competence when their subject matter is not featured in the list of such matters in Article 3 TFEU?

We should be grateful for your response by 31 January.

17 January 2013

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

Thank you for your letter of the 17th January 2013.

I would like to thank your Committee for its continued support of the Government’s efforts to find savings in EU staff costs, and for a reformed ‘Method’.

A number of elements of the Staff Regulations have recently expired or are due to expire shortly. One of them, as you noted in your letter, is the existing ‘Method’, which will expire on 30 June 2013. I can confirm that the Commission did propose to extend the existing ‘Method’ for a further year. This would have had the effect of maintaining for an extra twelve months the automatic and mechanistic formula for adjusting EU salaries, which does not allow for political discretion or sensitive responses to the economic situation in the EU.

At a time of evident economic difficulty across the EU, the fact that the current automatic salary adjustment continues to inflate EU staff pay shows it is obsolete. The system requires urgent reform, on which the UK is a leading voice within the Council while it negotiates the Staff Regulations as a whole. Another year of the existing ‘Method’ was therefore not a proposal which the UK, or its likeminded EU Member States, could accept. This proposal was therefore rejected by the Council at COREPER.

In your letter you ask why these proposals concern the EU budget. In 2012 the EU Institutions spent approximately €4 billion each year on staff salaries, and a further €1.3 billion on pensions. These costs, together with staff allowances and benefits, comprise around 70 percent of Heading 5 of the EU budget. Therefore any increase to salaries and pensions has a direct and significant impact on the EU budget.

Finally, you raise a concern with these proposals being a matter of exclusive EU competence. I consider that Article 336 TFEU, which provides the ultimate legal basis for the Staff Regulations on which these proposals are based, provides a function for the Council and European Parliament rather than a substantive area of competence such as is provided for in Articles 2 to 6 TFEU. The Council and European Parliament carry out this function only to the extent that the Union has competence and thus respects the division of competence between Union and Member States. Article 336 TFEU cannot fall within an area of shared competence within the meaning of Article 2(2) TFEU, as the implication would be that the Member States could legislate for the EU’s exercise of its powers under the Treaties.

31 January 2013
Letter from the Chairman to the Rt. Hon Greg Clark MP

Thank you for your letter of 31 January 2013 which was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 February. We decided to hold these proposals under scrutiny.

You indicate that the Method will expire on 30 June 2013. This does not appear to accord with the text of Article 15 of Annex XI of the Staff Regulations, which indicates that the method expired at the end of December 2012. We should be grateful if you would clarify this.

In the light of the explanations in your letter, it is clear that your original Explanatory Memorandum was unsatisfactory. At paragraph 17 you informed us that “The EU Budget is a matter of exclusive Community competence and subsidiarity issues are therefore not raised.” It appears that you now rely on Article 336 TFEU for your assertion of exclusive EU competence. We consider your new explanation to be tenable, although it does not appear to take into account the recent opinion of Advocate General Bot that only matters listed in Article 3 TFEU (which do not include the Staff Regulations) are matters attracting exclusive EU competence.

If you have not, in fact, abandoned the original reasoning in your Explanatory Memorandum, we would consider your position surprising. In the context of your statement that the EU Budget is a matter of exclusive EU competence, you assert that these proposals fall within the EU Budget because they involve substantial expenditure against that Budget. However there are undoubtedly other instances of EU legislation which incur substantial expenditure and which are clearly not matters of EU exclusive competence. We are sure that the Government would not want to concede exclusive EU competence in respect of these.

As you know, other Sub-Committees have also been dissatisfied with the scrutiny material provided by HM Treasury. This is a further example. We hope that the steps that HM Treasury have taken to improve the timeliness and quality of the material they provide to Parliament will prevent a recurrence.

We should be grateful for a response to this letter by 14 March.

28 February 2013

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

Thank you for your letter of the 28 February 2013.

You are indeed correct that the Method expired at the end of December 2012. However, because the Method runs from June to June retrospectively for the preceding year, the Method will remain in effect until 30 June 2013. This was the meaning intended in my letter of 31 January 2013 – I apologise for any confusion.

On the matter of EU competence, by way of clarification, the opinion of Advocate-General Bot in Cases C-274/11 and C-295/11 was concerned with the amendments to the Treaties agreed at Lisbon addressing exclusive and shared competence, specifically articles 3 to 6 TFEU. The list of areas of exclusive competence in Article 3 is on its face exhaustive, but the areas listed (like the customs union for example) are all policy areas where the EU can in effect legislate for the Member States. The Advocate-General was not called upon to consider other provisions of the Treaties which in effect give the EU exclusive power to act or legislate on matters which are essentially internal to the EU machinery. These are not listed as matters for exclusive competence in Article 3 TFEU but the power of the Union to act, which is conferred explicitly by the Treaties, is nonetheless exclusive in the sense that the Member States could have no residual power to legislate. The EU budget and the Staff Regulations are both examples of such areas where individual member state legislation would be unworkable, for obvious reasons.

The remarks I made on the EU budget in terms of salaries and pensions were in response to the specific request in your letter of 17 January. I would not of course accept that any matter involving substantial EU budget expenditure would, for that reason alone, fall within the exclusive competence of the Union.

27 March 2013
Letter from the Chairman to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Culture, Media and Sport

Thank you for your Explanatory Memorandum of 15 October 2012. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 14 November.

Like you, we welcome the Commission’s Communication as a useful overview of the Commission’s plans and the strategic elements to support the development of the cultural and creative sectors. We look forward to careful scrutiny of specific proposals as they are brought forward, particularly in terms of cost and effectiveness of individual measures.

We clear the Communication from scrutiny. A reply to this letter is not expected.

14 November 2012

PROTECTION OF THE EURO AND OTHER CURRENCIES AGAINST COUNTERFEITING BY CRIMINAL LAW (6152/13)

Letter from the Chairman to the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your Explanatory Memorandum of 15 February 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 20 March. We decided to retain the proposal under scrutiny.

We do not consider that the proposal raises subsidiarity concerns.

We were very disappointed that that your Explanatory Memorandum contained no analysis of the UK opt-in. The undertaking given by the then Leader of the House on 9 June 2008 and affirmed by the Minister for Europe on 20 January 2011, indicated that the Government would, to the extent possible, provide an indication whether or not the opt-in would be exercised; and that the Explanatory Memorandum would cover the factors affecting the decision. Neither of these issues has been addressed at all in the Explanatory Memorandum. We should therefore be grateful if you would provide further analysis as to the opt-in and, if possible an indication of the Government’s intentions.

In the meantime, we share your concerns at the proposal for minimum sentences. We consider that judicial discretion should be retained to fully ensure that any sentence imposed reflects the criminality of the particular offender. We further consider that there is inconsistency in the proposal between the general obligation for Member States to ensure a proportionate sentence in paragraph 1 of Article 5 and the imposition of minimum sentences of imprisonment, without even the possibility of taking account of exceptional circumstances, in paragraph 4.

We should also be grateful for further information as to the extraterritorial jurisdiction that would be introduced by Article 8 of the proposal. What are the advantages and disadvantages of requiring extraterritorial jurisdiction in relation to offences committed by Member State nationals in paragraph 1(b)? Are there any adverse implications for the UK in Eurozone Member States exercising the extraterritorial jurisdiction that would be required by paragraph 2?

We should be grateful for a reply to this letter by 10 April 2013.

21 March 2013

Letter from the Rt Hon Chris Grayling MP to the Chairman

Thank you for your letter of 21 March in response to my Explanatory Memorandum of the 15th February. I note that the Committee has decided to retain the proposal under scrutiny and that in the Committee’s view the proposal does not raise subsidiarity concerns.

I also note that you are disappointed that the Explanatory Memorandum contained no analysis of whether the Government plans to exercise the Title V opt-in. I am not yet in a position to indicate the Government’s intentions as regards the opt-in, which remains under consideration. I should however clarify that the Government approaches legislative proposals in Justice and Home Affairs on a case by case basis, with a view to maximising the country’s security, protecting civil liberties and the integrity of the criminal justice systems. In considering the opt-in decision the Government will in
particular take into account the points outlined in the policy implications section in my Explanatory Memorandum.

Your letter refers to the two most significant issues. I note that you share my concerns about the proposed minimum penalty for serious counterfeiting and I also note the additional inconsistency that you have identified between this provision and the general obligation for Member States to ensure that proportionate sentences are given that is contained in paragraph 1 of Article 5.

You asked for further information about the extraterritorial jurisdiction that would be introduced by Article 8. There is some justification for the obligation to ensure that national authorities can prosecute cases committed extra-territoriality. Indeed, the obligations at article 8.2 as regards the eurozone Member States can be defended on the basis that the available evidence suggests that the production and distribution of counterfeit euros is undertaken by a complex web of criminal undertakings operating across international borders. To answer your specific question, I do not anticipate that the assumption of the extraterritorial powers referred to at article 8.2 will have any adverse implications for the UK. The exercise of criminal law extraterritorial jurisdiction by other Member States of the EU is not new. The choice of venue for a criminal trial is a matter that is resolved through international operational cooperation, in which the UK already plays a role.

As I explained in the Explanatory Memorandum, however, I have very strong doubts about the practicability and effectiveness of powers to prosecute extraterritorial counterfeiting of any currency, particularly where the only nexus between the offending and the prosecuting state is the nationality of the offender. In this regard it is notable that there is no evidence to suggest that there is significant counterfeiting of the euro in the UK. Current information also suggests that counterfeiting of sterling is almost entirely a domestic concern and that UK nationals are not typically involved in counterfeiting of other currencies in or outside the UK.

The prosecution of extraterritorial crime is notoriously difficult and expensive due to the necessary reliance on obtaining evidence from, and the cooperation of, foreign jurisdictions. This feature is one of the drivers of the Government’s policy on extraterritorial jurisdiction, referred to in my Explanatory Memorandum. In addition the assumption of extraterritorial jurisdiction in respect of this crime will raise questions as to why it is not being assumed for other comparable crimes. In my view therefore the disadvantages of assuming extraterritorial jurisdiction for counterfeiting clearly outweigh the advantages as an enforcement tool.

8 April 2013

Letter from the Rt Hon Chris Grayling MP to the Chairman

Further to my letter of 8th April, I am writing to inform you that the Government has decided not to opt-in to the draft EU Directive on counterfeiting under UK’s opt-in facility under Title V of the Treaty on the Functioning of the European Union.

Whilst we agree that fight against counterfeiting requires robust national laws and effective international cooperation at the operational level, we are content that our national law and the UK’s participation in international cooperation under the framework put in place by the Geneva Convention is sufficient to ensure that the UK provides effective enforcement against counterfeiting. The Government takes the view that participation in this Directive would have very little if any positive impact on UK enforcement or on the UK’s participation in international operational cooperation.

Moreover, this proposal could also have unwelcome legislative consequences for the UK. There are two aspects of particular note, both of which have been covered in our previous correspondence. On the information available it seems that extraterritorial powers of jurisdiction would not amount to an effective enforcement tool for UK enforcement authorities. In addition there are strong doubts about the practicability of exercising jurisdiction over the counterfeiting by UK national overseas. The Directive would also require the UK to legislate for a minimum penalty for serious counterfeiting, which is inconsistent with previously agreed EU Council guidance on legislation on penalties and is particularly objectionable because of the obvious threat to the exercise of judicial discretion in sentencing, one of the fundamental principles of our criminal justice system.

8 May 2013
Letter from the Rt. Hon Lord McNally, Minister of State, Ministry of Justice to the Chairman

I am writing further to my letter of 28 May 2012 in relation to the recast of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents (the Regulation). In particular I wanted to update you on the efforts of the Danish and Cypriot Presidencies to take the recast forward, and to advise you on the likelihood of further progress being made in the immediate future.

In my letter of 28 May I explained that a mandate for the Danish Presidency to enter trilogue negotiations with the European Parliament and Commission had been agreed. These negotiations commenced, but it was clear that there was some distance between the three parties. On reverting to the Council Working Party the Danish Presidency sought agreement for a revised negotiating mandate for a further trilogue discussion in June. If agreed the mandate would have taken the position closer to that of the Parliament. However, in doing so it would have gone further than a considerable number of Member States were prepared to agree to. In discussion it was clear that a considerable number of Member States planned to vote against the revised mandate for that reason. It was concluded that the likelihood of success in trilogue discussions with the European Parliament was limited owing to the Parliament’s more radical aims for the recast than the more modest ones of the Danish Presidency.

The key areas of disagreement included whether:

— the documents within the scope of the Regulation (and therefore amenable to a request made under it) should be limited only to those that have been “formally transmitted” by a EU institution;
— there ought to be a rebuttable presumption that the names and contact details of EU and Member State officials acting on EU business should be disclosed in response to a request made under the Regulation; and
— the exemptions from the obligation to disclosure of the following subject matter ought to be weakened or strengthened:
  — ongoing competition law investigations
  — legal advice; and
  — policy discussions

In each instance the Parliament’s favoured approach was for an option that would lead to a greater amount of material being disclosable under the Regulation. By contrast, the majority view of the Council Working Party was that these proposals went too far by failing to recognise the proper interest in being able to protect genuinely sensitive material in appropriate cases.

It is important to note that the Danish Presidency made highly commendable efforts to progress the recast of the Regulation, and that the UK played a full and constructive part in negotiations. That the Danish were ultimately unsuccessful is a result of the wide divergence of views on this matter between the institutions and between Member States. As you are aware, these differences of opinion are the cause of the very slow progress on the recast since the Commission published its original proposals for reform in April 2008.

In October 2012 the Cypriot Presidency commenced further discussions aimed at taking the recast of the Regulation forward. At the time of your draft report, however, it was unclear what the timetable would be hence my not writing at that time. Ultimately, the Cypriot Presidency concluded in December that there was little prospect of reaching agreement. Since the beginning of January, the Irish Presidency has not made any intentions it may have in relation to the dossier clear; but we do not expect negotiations to recommence in the immediate future.

While the UK is committed to playing a constructive part in future discussions about the recast, the lack of progress is not detrimental to our interests. Our position is that the current Regulation works well, although it should be extended formally in line with the Lisbon Treaty to EU institutions beyond the European Parliament, Council and Commission. The UK opposes, for example, the proposal by the Commission (supported by a number of Member States) that the definition of a document subject to the Regulation should be narrowed to one which has been formally transmitted. This would result in an unacceptable retraction in the scope of the Regulation. At the same time, recognising the need
to protect genuinely sensitive information, we have been concerned by some proposals to weaken a number of exceptions from disclosure, in particular that relating to personal data. We believe the current exceptions to be broadly adequate.

I do not anticipate significant further discussion on the recast in the immediate future. However, when discussions do begin again in earnest I will write to inform you of developments.

27 March 2013

ROADMAP ON THE FOLLOW-UP TO THE COMMON APPROACH ON EU DECENTRALISED AGENCIES (5022/13)

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

Thank you for your Explanatory Memorandum of 31 January 2013. This was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 27 February.

Like you, we broadly welcome the proposals contained in the Roadmap aimed at improving the effectiveness, accountability, transparency and coherence of the EU’s decentralised agencies. The Committee will follow with interest the implementation of the Roadmap and the Commission’s list of priorities for the coming months.

The Committee considers it regrettable, however, that the Commission has disregarded the main recommendation included in the European Court of Auditors report: Management of conflict of interests in selected EU Agencies, namely that a comprehensive EU regulatory framework dedicated to conflict of interest which would ensure comparable minimum requirements on independence and transparency applicable to all EU agencies and all key players that influence strategy, operations and decision-making. The Commission has chosen instead to work with the agencies in a set of guidelines.

In our view, this is a missed opportunity. What are the Government’s views on the Court of Auditors’ recommendation and the Commission’s preference to issue guidelines instead?

The Commission say that one of their main objectives in more balance governance. In this respect, the Committee considers it important that the turnover of management board members is adequate to ensure that they remain effective in challenging the management of the agencies. What is the view of the Government in this respect?

Both the Joint Statement and the Roadmap say nothing on gender balance on the management boards of agencies. Should the Roadmap include a deliverable on this issue?

We note your current internal review on the performance of the EU agencies in respect of their interaction with the UK and your consultation with Government Departments on their views of the Roadmap. We should be grateful if you would inform us of the results of your review and consultation in due course. We should also be interested to hear what has been the reaction of other Member States to the Roadmap.

The Committee retains the proposal under scrutiny and looks forward to your reply by 15 March.

28 February 2013

THE FUNDAMENTAL RIGHTS AGENCY

Letter from the Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

Following my letter to you of 22 November indicating the Government’s decision to introduce a Bill which seeks Parliamentary approval for the proposal for a new multiannual framework (MAF) for the Fundamental Rights Agency (FRA), I am writing to inform you of recent developments on this issue concerning the work of the FRA from the end of this year.

Although the Government has now introduced the EU (Approvals) Bill 2012, which seeks the required Parliamentary approval for the proposal, this process is not going to be completed before the expiry of the current multiannual framework (MAF).

Without a MAF, the FRA’s work will be limited to responding to requests from the EU institutions. These will reflect the priorities of those institutions and could go beyond the themes set out in the
current MAF. In order to provide the FRA with a full and meaningful programme of work after the expiry of the current MAF, and one in which the Council continues to have a voice, the Council is considering a proposal to ask the FRA to undertake a number of projects. These would reflect the projects set out in the FRA’s 2013 annual work programme which the FRA’s Management Board agreed in September 2012. This annual work programme has been developed to be in line with the existing MAF (2007 – 2012) and is confined to projects which fall under former first pillar (community law) themes.

This proposal will ensure that the Council continues to set the parameters for the FRA’s work and I am therefore minded to give the support of the UK to this proposal which would be given effect through a Council conclusion, to be agreed at a Council meeting before the end of the year. Although Council conclusions are not depositable, given that Parliament is separately considering the next MAF for the FRA, I wished to inform you of my decision.

The annual work programme has been developed with reference to the existing (2007 - 2012) MAF; it does not include any projects under themes outside the former first pillar, and is a continuation of the current MAF. It does not therefore prejudice the work that Parliament has recently begun to consider the proposal for a new MAF (2013-2017).


19 December 2012

UNIFIED PATENT COURT: DRAFT AGREEMENT AND REGULATIONS (11533/11)

Letter from Lord Marland of Odstock, Parliamentary under Secretary of State, Department for Business, Innovation and Skills to the Chairman

In my letter of 22 November I offered to update the Committee on the Unified Patent Court (UPC) Agreement and to set out the timetable for finalising this.

The deal reached on 29 June at the European Council, on the Unitary Patent and the Unified Patent Court (UPC) helped secured a number of important changes which UK stakeholders had been calling for. In particular, we successfully secured the removal of articles 6 to 8 from the regulation. This was a key concern raised by stakeholders earlier this year. The provisions on infringement are now included in the Court Agreement which will not be subject to ECJ jurisdiction.

Council working document 16222/12 dated 14 November contains the latest public consolidated text. This includes changes necessary to implement the June deal. It also includes the amendments proposed during the Polish Presidency and recent legal linguistic improvements.

The key changes to the original text are as follows:

— Article 5(1a) now states that the seat of the central division will be Paris with specialised sections set up in London and Munich. The Agreement has also been amended to include infringement provisions for unitary patents (principally in articles 14f, 14g and 14h) – previously the Agreement only included infringement provisions for European (bundle) patents. These changes implement the 29 June European Council agreement. The Committee will be pleased to see that the enhanced bifurcation measures proposed by Germany in June are not included in the final text.

— Another proposal under the Polish Presidency in December 2011, was the extension of the transition period during which patent owners may continue to use national courts for European bundle patents. This has been implemented in Article 58. The transition period has been extended from five to seven years with the possibility of the period being extended by another seven years.

— Also, the revision clause (Article 58d), has been changed to broaden the scope of the review.

— In addition, the Presidency have further clarified the position regarding Supplementary Protection Certificates (SPCs). In particular, Article 15 has been amended to make it clear that the UPC will have competence to hear disputes relating to infringement and revocation of SPCs. The transitional
arrangements have also been amended to make it clear that applicant’s may opt-out SPCs granted on a European bundle patent.

The Agreement is expected to be signed by participating States on 18 February 2013. In signing, the UK will be indicating its support for the text. The Government will then undertake work to update any domestic legislation required to implement obligations under the Agreement. This process will be subject to the normal Parliamentary scrutiny procedures for implementing international agreements.

Further work will also be necessary to finalise the rules of procedure, to establish local and or regional divisions and to set the fees. The Government will ensure that we continue to influence the operational details related to the Agreement and that the views of UK stakeholders are considered in the wider discussions.

There are safeguards within the process as the Agreement cannot enter into force in the participating States until the UK ratification process is complete. It will also need to be ratified by 12 other States including France and Germany before it can enter into force.

I hope this information is helpful and that it will enable you to finalise consideration of this file before the signing ceremony.

6 December 2012

Letter from the Chairman to Lord Marland of Odstock

Thank you for your letter dated 6 December 2012. It was considered by the Justice, Institutions and Consumer Protection Sub-Committee at its meeting of 19 December 2012. We are also grateful for your two recent letters sent to us in October and November updating the Committee on the ongoing progress of the two Regulations numbered 9224/11 and 9226/11.

We have decided to clear the proposed Agreement from scrutiny. As you know, this Committee has a very long history of considering the EU’s attempts to create a viable pan-European patent protection system. Our first Report on this subject matter was published in 1986 and we have taken a very keen interest in this latest attempt which was deposited for our consideration in November 2009. Given this context we are pleased to hear from you that the participating EU Member States are in a position to sign this Agreement in February next year.

We intend to keep a close eye on the operation of the patent protection system introduced by this Agreement and the related EU legislation being pursued via enhanced cooperation. With this in mind we may choose at a suitable time in the future to undertake another inquiry into this subject, in particular the Court. We do not expect an answer to this letter.

19 December 2012

WORLD INTELLECTUAL PROPERTY ORGANISATION TREATY ON AUDIOVISUAL PERFORMANCES (7489/13)

Letter from the Viscount Younger of Leckie, Parliamentary Under Secretary of State for Business, Innovation and Skills, to the Chairman

I am writing to you concerning the World Intellectual Property Organisation (WIPO) Treaty on Audiovisual Performances.

The European Commission has recently published a proposal for a Council decision on the signing, on behalf of the European Union, of the World Intellectual Property Organisation (WIPO) Treaty on Audiovisual Performances. The Commission is looking to refer this matter to the Committee of Permanent Representatives (COREPER) at the end of April 2013, with a view to signing the Treaty towards the end of May 2013. The Treaty itself is open for signing until June 2013.

I understand that my predecessor, Baroness Wilcox wrote to you about the Treaty (see correspondence dated 6 September 2011 and 28 May 2012) and kept you up-to-date on its progress at WIPO. The details of the Treaty are set out in the attached explanatory memorandum. The Treaty addresses the disparity in the international framework by providing actors and other performers with equivalent rights to those available to musicians and recording artists under the WIPO Performances and Phonograms Treaty adopted in 1996.
I would be grateful if the House of Lords Select Committee on the European Union could consider
the proposal at its earliest convenience.

10 April 2013

Letter from the Chairman to the Viscount Younger of Leckie

Thank you for your Explanatory Memorandum of 28 March 2013. This was considered by the Justice,
Institutions and Consumer Protection Sub-Committee at its meeting of 24 April.

We decided to clear this matter.

In doing so we regret that it did not prove possible to negotiate a provision in the Treaty for a
declaration to provide transparency as to the respective competence of the EU and the Member
States.

We do not expect a reply to this letter.

25 April 2013

Letter from the Viscount Younger of Leckie to the Chairman

I wrote to you recently concerning a European Commission proposal for a Council decision on the
signing, on behalf of the European Union, of the World Intellectual Property Organisation (WIPO)
Treaty on Audiovisual Performances. I am very grateful that the Committee and the House of
Commons European Scrutiny Committee were able to give early consideration to the proposal and
to provide clearance. However since providing clearance, the proposal has been amended and I
would now like to update you on these amendments.

The amended proposal is attached (Annex I). Two new paragraphs have been added which go some
way towards providing clarification in respect to the division of competence. Paragraph six in
particular makes clear that Member States retain competence in areas covered by the Treaty which
do not affect common rules or alter their scope. As such, these amendments recognise the mixed
nature of the agreement. Consequential deletions have been made to paragraph 4 and a further
amendment made to Article 2 concerning the designation, by the President of the Council, of persons
empowered to sign the Treaty on behalf of the Union.

Also attached is a draft statement by the Council and the Commission which is to be entered in the
Minutes of the Council (Annex II). The statement makes clear that the EU and its Member States will
examine the extent to which it will be necessary to make a reservation under Article 11(3) of the
Treaty on the basis of financial consequences for EU performers and users. The statement is in line
with the UK’s intention to consult further with stakeholders such as performing artists, broadcasters
and filmmakers, prior to any ratification of the Treaty.

7 May 2013

2014 DECISION EVIDENCE SESSION

Letter from the Rt. Hon Chris Grayling MP, Lord Chancellor and Secretary of State for
Justice, Ministry of Justice, and from Theresa May MP, Home Secretary, Home Office, to
the Chairman

We are grateful to you and your Committee for the letters of 1 November, 14 November, 29
November and 3 December concerning the 2014 decision. In particular, we welcome the work your
Committee is undertaking which will be useful in informing the Government’s consideration of the
2014 decision. In the Committee’s letter of 3 December you asked whether officials would be able to
attend an informal evidence session on 9 January 2013, and if we would provide oral evidence on this
matter on 13 February 2013. Although at this stage of the process we do not feel that it is
appropriate for officials to provide oral evidence, we can confirm that we are both content to provide
oral evidence on this matter on the proposed date.

In your letter of 1 November, you ask whether the vote in Parliament will be binding or advisory. The
Government is still considering the form that the votes will take, including via initial discussions with
your clerks, and we are grateful for your comments at this stage.

You asked for an undertaking that the vote in the House will not take place until your Inquiry has
reported. We are happy to give that undertaking; we would like any debate in the House on this
matter to be informed by your work. We understand that you and Lord Hannay will be meeting James Brokenshire and Lord McNally to explore some of these issues in December, and we look forward to hearing your views in more detail.

Enclosed is the Government’s response to your Committee’s call for evidence. You pose a number of additional questions in your letter of 1 November; these are addressed below.

Our reading of the terms of Protocol 36 suggests that pre-Lisbon measures will only be removed from the list of measures subject to the 2014 decision once any post-Lisbon PCJ measure, which repeals and replaces or amends any of the original measures and to which the Government has decided to opt in (or not opt out) is formally adopted, having completed the whole EU legislative process. What is the Government’s view on this?

The Government’s key objective is to reach a shared understanding with the Commission and Council on the technical and legal aspects of the 2014 decision in order to provide legal certainty for all involved. Officials have been having technical and legal discussions with the Commission and Council Legal Service in order to progress this, including whether ‘adoption’ or ‘entry into force’ is the date at which the underlying measures cease to be within the scope of the 2014 decision. To date there is no firm agreement on this point.

Whilst the date of ‘entry into force’ is clear on the face of the measure, that is not always the case: the default position if no date is given is 20 days after publication in the Official Journal. The date of ‘adoption’ can also be complicated. For non-co-decision measures adoption takes place when the Council adopts the act. For co-decided dossiers there is a practice of writing the relevant date (shown in the Official Journal) as the date on which joint signature of Council and European Parliament Presidents takes place. While this is neater presentationally, it cannot be relied on as having any legal significance. The actual date of adoption for legal purposes varies depending on the stage:

— If first reading deal: the date when Council approves the European Parliament position [Article 294(4) TFEU]
— If first phase of a second reading deal: the date when the European Parliament adopts the Council position [Article 294(7)(a) TFEU]
— If second phase of a second reading deal: the date when the Council approves the European Parliament’s second reading amendments [Article 294(8)(a) TFEU]
— If Conciliation/third reading deal: the date when the last of either the Council or the European Parliament votes to adopt [Article 294(13) TFEU]

The Government will update Parliament when this issue has been agreed.

How does the Government’s consideration of the opt-out decision, including the consideration of each PCJ measure by Home Office and Ministry of Justice officials relate to the review of the Balance of Competences, which was announced by the Foreign Secretary last July?

The 2014 opt-out is a separate decision that is provided for under the EU Treaties and one which we are obliged to make; the Balance of Competence review is a commitment in the Coalition Programme for Government. The review aims to deepen public understanding of the nature of our EU membership and provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU. As such, the review must be considered separately from the 2014 decision.

In this respect what methodology have the same officials used to analyse each PCJ measure and have they consulted UK police and law enforcement authorities and the wider stakeholder community as part of this process? When do they expect to conclude their analysis of all the measures subject to the 2014 decision?

Analysis of these measures seeks to establish which are in the national interest. As part of this, the Government is looking at how a measure contributes to public safety and security, whether practical cooperation is underpinned by the measure, and whether there would be detrimental impact on such cooperation if pursued by other mechanisms. The Government will also consider the impact the measure has on civil liberties and rights.
The Government has held discussions with a number of interested parties, including the EU Institutions, other Member States, the Devolved Administrations and Gibraltar, Parliament and operational partners to inform its analysis. This analysis will be an ongoing process but the Government is committed to providing Parliament with as much information as possible as soon as is practical.

You will also have noted that the joint letter of 22 November from the European Scrutiny, Justice Select and Home Affairs Committees requests that we provide Explanatory Memoranda on the measures subject to the 2014 decision. We will be providing Explanatory Memoranda; however, we have suggested that this is done in a slightly different manner from that suggested in that letter. We have proposed that we provide Explanatory Memoranda on the following areas:

— Schengen measures
— Measures for which the Justice Secretary is responsible
— Measures for which the Home Secretary is responsible (1) – EU agencies, mutual legal assistance, drugs, proceeds of crime
— Measures for which the Home Secretary is responsible (2) – extradition, crime (including cyber and organised crime), fraud and counterfeiting, databases and automated information exchange, and all others
— Measures for which the Chancellor of the Exchequer, Foreign Secretary and Transport Secretary have responsibility.

We trust that this additional information will be useful. We hope to be in a position to provide you with the first of these by early January and to have provided all necessary Explanatory Memoranda by the middle of February, ahead of our appearance at your Inquiry. We regret that this is later than the deadline set for the submission of evidence to your inquiry but as I am sure you understand, we need to consider carefully the information we provide at this time. We do, however, wish to provide you with as much information as possible to allow you to exercise fully your role in this important issue.

HAS THE GOVERNMENT CONSIDERED PRODUCING IMPACT ASSESSMENTS ON THE CONSEQUENCES OF EITHER OPTING OUT, OR NOT OPTING OUT?

Our analysis of the measures and their impact is still ongoing. At his appearance before the European Scrutiny Committee on 28 November, the Parliamentary Under-Secretary for Security, James Brokenshire, gave an undertaking that the Government will provide an Impact Assessment on the final package of measures that the Government wishes to rejoin, should the Government decide to exercise the opt-out.

AS PCJ MEASURES HAVE GENERALLY BEEN IMPLEMENTED INTO UK LAW BY WAY OF PRIMARY LEGISLATION DOES THE GOVERNMENT ANTICIPATE THAT THIS BODY OF IMPLEMENTING LEGISLATION WOULD BE REPEALED IF THE OPT-OUT IS EXERCISED? IF SO THEN HOW SIGNIFICANT DOES IT BELIEVE THIS TASK WOULD BE? FURTHERMORE, WHAT UK MEASURES MAY BE REQUIRED TO REPLACE THIS LEGISLATION IF IT WAS REPEALED?

The question of whether or not we would repeal implementing legislation would need to be considered on a case by case basis. For example, changes to primary legislation may be necessary if we were to opt out and not rejoin measures such as the European Arrest Warrant. Clearly, the legislation required to replace any repealed legislation would depend on the measures put in place, if any, to replace such EU measures. Consequently, at this stage it is impossible to give a definitive answer. However, should the UK opt out it should not be necessary to repeal legislation that has implemented the majority of minimum standards measures. In many such cases our domestic legislation predates the European legislation and would not repeal our domestic legislation. For example, Council Decision 2000/375/JHA to combat child pornography on the internet has been implemented through a variety of measures. The UK legislation relating to illegal images of children is Section 1 of the Protection of Children Act 1978. The reporting point for the public for illegal images is the Internet Watch Foundation, which was set up by the internet industry in 1996. Police in the UK have consistently tackled illegal images and the creators of them.

WHEN DOES THE GOVERNMENT EXPECT TO BE IN A POSITION TO ADVISE PARLIAMENT WHAT PCJ MEASURES IT WOULD LIKE TO OPT BACK IN TO IF THE OPT-OUT DECISION IS EXERCISED? HAS THE GOVERNMENT ALREADY COMMENCED DISCUSSIONS WITH THE COMMISSION ABOUT THIS PROCESS?

We have opened discussions with the Commission and Member States on the 2014 decision. These discussions are at an early stage and it is not yet clear what approach our EU partners will take. In
addition, we are keen to hear Parliament’s view, discuss this issue with interested parties and continue to gather evidence before taking a decision. As such, it is similarly not possible at this stage to state when the Government will be able to advise Parliament which measures it will seek to rejoin.

14 December 2012

Letter from the Rt. Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, and from Theresa May MP, Home Secretary, Home Office, to the Chairman

We wrote to you on 14 December to set out further detail on the 2014 decision and to accept your invitation to provide evidence to the European Union Committee on the 2014 decision. We continue to appreciate the work that your Committee is doing to collect a wide evidence base and explore all elements of what is a large and complex decision.

At that stage we also committed to providing Explanatory Memoranda to help inform your inquiry into the 2014 decision. We hoped to have provided you with the first of those Memoranda in January and with all Memoranda by mid February. However, whilst we plan to have all five of these with you as soon as possible, we will unfortunately not be able to provide them to you ahead of our forthcoming evidence session on Wednesday 13 February. We apologise that it has not been possible to maintain our planned timetable, and would understand if you therefore preferred to delay the session.

Once again, we are committed to providing the Explanatory Memoranda as soon as possible but wish to ensure that these are as informative and useful to your overall report as they can be. We sincerely apologise for any inconvenience this may cause your Committee.

7 February 2013

Letter from the Chairman to the Rt. Hon Chris Grayling MP and Theresa May MP

I am writing in response to your letter dated 7 February, informing the Committee that the promised Explanatory Memorandum on the decision to be made under Protocol 36 will not be available until 13 February.

I continue to look forward to seeing you both on 13 February for the evidence session with the Committee, which is of course an important element of the Committee’s inquiry.

The promised Explanatory Memoranda must be provided promptly to avoid the risk of our report being delayed but their availability will not unduly affect next week’s evidence session.

8 February 2013

Letter from the Rt. Hon Chris Grayling MP and Theresa May MP to the Chairman

2014 Decision: Points of Clarification Following the Evidence Session on the 13 February

Thank you for the opportunity to give evidence to your Committee’s Inquiry into the 2014 decision on 13 February. Following that evidence session, we would like to clarify two points.

Firstly, we would like to provide further information about our engagement with interested parties prior to the announcement of the Government’s current thinking on 15 October 2012. The Committee expressed concern that our position asserting that operational partners and the devolved administrations had been involved in discussions prior to the October Statement was inconsistent with evidence received from those parties. However, we can confirm that discussions took place on a case by case basis with operational partners and the devolved administrations as work was undertaken to consider each of the measures in the scope of the decision.

As you are aware, our current thinking is based on an initial analysis of all measures subject to the 2014 decision. In conducting that analysis our officials engaged with operational partners on a measure by measure basis. The operational partners consulted varied from measure to measure and included, but were not limited to, the Serious Organised Crime Agency (SOCA), the Crown Prosecution Service (CPS), the Association of Chief Police Officers (ACPO), and the Metropolitan Police Service.

Officials also spoke to officials in the Scottish and Northern Ireland Executives, again to inform the initial analysis of individual measures. Our officials met with their counterparts from both Executives
in March last year to discuss the approach being taken on the initial analysis of the measures. That was followed by regular contact at official level by phone and e-mail to discuss the decision. The Scottish and Northern Ireland Executives were given the opportunity to feed into the initial analysis of the individual measures and we understand that operational partners in Scotland and Northern Ireland were consulted via the Executives at that stage. Officials have also been speaking to counterparts in Gibraltar throughout the analysis of the measures.

This work helped to inform the Government’s current thinking. However, as we explained during the evidence session, we felt that it was important to set out the Government’s current thinking to Parliament when we did so in order to enable scrutiny of that position to take place. Following the announcement to Parliament we have been able to hold more detailed conversations with operational partners and the Devolved Administrations at Ministerial level.

Specifically, representatives from a number of operational organisations, including Europol and Eurojust, have met with the Chief Secretary to the Treasury, the Minister for Government Policy and the Minister for Security. Last month we met again with representatives from ACPO, SOCA, the Metropolitan Police, Her Majesty’s Revenue and Customs (HMRC), the National Crime Agency and the Security Service. This month we have met with the Director of Public Prosecutions and representatives from the Serious Fraud Office and the Crown Prosecution Service. The Attorney General was also at this meeting.

We wrote to both Minister David Ford and Cabinet Secretary Kenny MacAskill immediately following the statement to Parliament in October. As set out in our letter to you of 1 February, we followed that with Ministerial level engagement, including a visit by the Minister for Security to both Edinburgh and Belfast. The Justice Secretary has also had discussions on the 2014 decision in Belfast.

Turning to the second point, we undertook to clarify the figures concerning Eurojust. We would like to confirm that the UK National Desk registered 151 new cases at Eurojust in 2011 and 2012, amounting to 5% of the total new cases registered in that period. Over the same period, the UK National Desk was approached by other National Desks to be involved in 387 other cases. This relates to 13% of the total new cases registered in that period. Therefore the percentage of new cases at Eurojust in 2011 and 2012 involving the UK was around 18%.

In relation to cases registered to the UK, the figure of 7% supplied by Eurojust to your Committees in their written evidence, and to the Home Office to inform our oral evidence, was not an analysis of the actual number of new cases opened at Eurojust. Rather, it was an analysis of the total number of requests, where the multi-national nature of Eurojust’s work means that requests are often opened to more than one Member State. By considering actual cases rather than requests the UK was invited to be involved in 13% of the caseload in addition to its own 5%.

We are grateful for the opportunity to clarify these points and we look forward to further engagement with your Committee.

13 March 2013